

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 560
3316940

BETWEEN ROELOF PETRUS
BLIGNAUT
Applicant

AND WASTE MANAGEMENT NZ
LIMITED
Respondent

Member of Authority: Sarah Blick

Representatives: Daniel Church, counsel for the applicant
Daniel Erickson, counsel for the respondent

Investigation Meeting: 25-27 March and 12 May 2025 in Auckland

Information and
submissions received: 14 May 2025 from both parties

Determination: 11 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Roelof Blignaut (known as Roland) was employed as a project engineer by Waste Management NZ Limited (WMNZ). He pursues unjustified disadvantage grievances and a breach of contract claim, for which he seeks the higher of compensation or damages. Mr Blignaut further says he was unjustifiably dismissed by WMNZ and that it breached the duty of good faith, for which he also claims remedies.

[2] Mr Blignaut also claims his employment agreement with WMNZ (IEA) contained an availability provision which did not meet the requirements of s 67D of the Employment Relations Act 2000 (the Act). He seeks to recover arrears of wages for alleged unreasonable overtime worked.

[3] WMNZ denies all of Mr Blignaut's claims.

The Authority's process

[4] Mr Blignaut, his wife Jenine Blignaut and friend Jacques Moll, along with two WMNZ employees, Head of Fleet Jitesh Singh and HR Business Partner Stuart Angus, all gave evidence under oath or affirmation at the investigation meeting.

[5] This determination states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter and specifies orders. It has not recorded all evidence and submissions received and considered, which was extensive.¹ The Chief of the Authority has decided exceptional circumstances exist to allow this determination to be issued outside of the three month timeframe in s 174C(3) of the Act.

Issues

[6] There are numerous issues for investigation and determination:

- (a) Did Mr Blignaut raise unjustified disadvantage grievances within the statutory timeframes?
- (b) Does Mr Blignaut have a grievance on the grounds of unjustified action causing disadvantage arising from:
 - i. bullying and harassment by WMNZ, through Mr Singh?
 - ii. WMNZ attempting to procure his resignation?
 - iii. an unlawful suspension from work?
- (c) Does Mr Blignaut have a personal grievance for unjustified dismissal?
- (d) What, if any, personal grievance remedies should be awarded?
- (e) Was Mr Blignaut subjected to bullying and harassment in breach of the parties IEA, and are remedies available?
- (f) Did the parties' employment agreement comply with s 67D of the Act?
- (g) Does Mr Blignaut have a claim for wage arrears for alleged unreasonable overtime worked?
- (h) Should interest be awarded on any arrears owing?
- (i) Did WMNZ breach good faith obligations and if so should a penalty be imposed on it?

¹ As permitted by s 174E of the Employment Relations Act 2000.

Background

[7] WMNZ provides materials recovery and recycling services. Part of their operation involves the building and maintenance of a fleet of vehicles (the Fleet). The Fleet includes heavy vehicles such as collection trucks and smaller vehicles.

[8] Mr Blignaut commenced working for WMNZ as a Project Engineer – Fleet on 20 February 2023. He was predominantly involved in two projects. Mr Blignaut reported to Mr Singh, who is responsible for managing the Fleet and delivering the projects his team works on.

IEA provisions

[9] Mr Blignaut's IEA stated he was guaranteed 40 hours of work per week, Monday to Friday. It included the following clause in Schedule A:

Normal work times may be varied by agreement; however, you must also be flexible to work outside your normal work times and/or days when requested by the Employer to meet the genuine and reasonable demands of the position. This includes public holidays or weekends.

...

Additional (Overtime) Hours Compensation for any additional (overtime) hours worked is included in the salary for this position.

[10] Clause 20.1 of the IEA stated WMNZ would ensure, so far as is reasonably practicable, Mr Blignaut's health and safety while in its employment.

Time recording

[11] WMNZ uses an electronic system to record employees' working hours. During the investigation meeting, Mr Singh and Mr Blignaut gave evidence that this would be done each day, or at least weekly, for accuracy reasons. During his evidence, Mr Blignaut stated after the number of hours he was recording as work was raised with him as an issue, he stopped recording many of the additional hours he was working. He said he was still expected to work long hours and this was required and expected of the role.

[12] In a Teams message exchange on 1 March 2023, Mr Singh referenced flexibility and expectations of hours to Mr Blignaut:

JS: In terms of work hours i know you had a few questions - we do require minimum of 8hrs. I emphase [sic] on getting the job done so some times you

work more other times less but all balances out. I'm flexible within reason and preference is more on finishing the tasks on hand and not sticking to hours to the dot... Any other questions let me know.

RB: Wow that sounds great. Thank you...

[13] WMNZ says Mr Blignaut had a significant amount of autonomy in managing his working hours, but that he had difficulty doing so. Mr Blignaut says that in around April 2023, he began to experience issues at work with working excessive overtime.

[14] Mr Singh accepted that a reasonable level of overtime would be required from time to time to discharge the requirements of Mr Blignaut's role, but says there were few occasions during Mr Blignaut's employment where the long hours he claims to have worked (including weekend work) were genuinely required.

[15] Mr Singh says Mr Blignaut often worked outside of regular business hours without being requested to. Instant messages between the two men show they were in contact outside of standard business hours regularly in 2023. Mr Singh says Mr Blignaut's frequent messages made it difficult for him to set boundaries. Mr Singh told the Authority that if he did not respond, Mr Blignaut would send follow up messages until Mr Singh responded.

[16] WMNZ says Mr Blignaut had a lack of trust in his co-workers, describing them as "dead weight" in notes he kept which are before the Authority. WMNZ also says he had adverse views of its contractors and suppliers, describing one subcontractor as a "bottleneck", which it says led Mr Blignaut to micromanage them. WMNZ says this attitude inevitably, but unnecessarily, increased Mr Blignaut's workload.

[17] Mr Singh says he attempted to manage Mr Blignaut's workload and encouraged him to take care of his wellbeing. Examples Mr Singh gave of his efforts included:

- (a) Mr Singh and his manager, having multiple conversations with Mr Blignaut about his working hours;
- (b) When it became apparent Mr Blignaut would not stop working on weekends, Mr Singh told him to finish earlier on weekdays;
- (c) In July 2023, Mr Blignaut emailed Mr Singh about listing tasks that with the aim of relieve him of work and reassured him that a subcontractor need to manage their own work;

- (d) In September 2023, Mr Singh sent Mr Blignaut a message stating “Let’s avoid working weekends – think of ways we can get more done in the work week.” In a further message the same day, Mr Singh said “Appreciate all your hard work. But I need to look after you and your health, family and well being”.

[18] Mr Singh says although his efforts would address matters for a short time, Mr Blignaut’s work practices would revert back again.

[19] WMNZ says the manufacture of low entry vehicles was a new endeavour for it, which increased the complexity of some aspects of Mr Blignaut’s work on a project. It says issues arose in this build which had to be rectified, and delayed the delivery of trucks. Fifteen trucks were due to be delivered in October 2023, which resulted in the whole team working long hours over one weekend to meet the deadline.

Issues with co-workers

[20] Mr Blignaut says Mr Singh effectively “empowered” other employees to mistreat him, and enabled a situation whereby Mr Blignaut had to fix other employees’ substandard work, or it would never be done, or would not be done on time. He refers to two colleagues in particular – Mr P and Mr D – that he had difficulties with. Mr Blignaut’s evidence was that he and Mr Singh would agree to a plan, but then Mr Singh would renege on this once spoke with the two colleagues, resulting in a lack of collaboration and support for him to get the builds done.

[21] WMNZ acknowledges Mr Blignaut had difficult relationships with his colleagues. There is ample documentary evidence showing Mr Blignaut expressing to Mr Singh difficulties he was having working with other members of the team. Mr Singh gave evidence that he provided Mr Blignaut with regular support. It is not in dispute that Mr Singh met regularly with Mr Blignaut for one on one discussions and coaching. There are numerous examples of Mr Blignaut expressing gratitude to Mr Singh for his assistance.

[22] On 8 June 2023, Mr Singh reminded Mr Blignaut to approach him if he encountered any problems with his co-workers asking him to do something extra.

[23] WMNZ says in July 2023 Mr Blignaut experienced difficulties with a colleague (Mr P). Mr P made an online entry via WMNZ's health and safety software about alleged aggressive behaviour by Mr Blignaut. On 7 July 2023 Mr Blignaut wrote to Mr Singh with his own concerns about Mr P, his own efforts to go the "extra mile" and long work hours. Mr Singh advised him not to take the issue raised personally, assured him the problem would be resolved, that his work was appreciated and that his concerns were taken seriously, and suggested Mr Blignaut finish work for the day and spend time with his family.

Mr Blignaut emails colleagues

[24] On 13 July 2023, Mr Blignaut emailed Mr P, copying Mr Singh into the email. Mr Blignaut referenced the issues between him and Mr P. WMNZ says Mr Singh supported Mr Blignaut throughout the next week with the issues regarding the colleague, including taking steps to lessen his workload, which is borne out by the correspondence between them.

[25] Also in around July 2023, another colleague, Mr D, raised health and safety issues with Mr Blignaut. On 28 July 2023, Mr Blignaut emailed Mr D, again with Mr Singh copied in. Mr Blignaut referred to an incident where Mr Blignaut had collected parts from the workshop and put them in the scrap bin. Mr Singh spoke with Mr Blignaut about the issue, advising him in future not to discard any parts. After their conversation, Mr Singh considered the matter resolved and no further action was taken.

[26] On 31 July 2023, in response to the issues raised by Mr Blignaut and Mr D, Mr Singh facilitated a meeting with them. Mr Singh says from his perspective, the meeting had resolved matters.

[27] Mr Blignaut says in late July 2023 or early August 2023, he was required to move his desk to another area of the office isolated from the rest of his team, an area he believed employees seemed to be moved just before they left the company. Mr Angus says the move was motivated by team growth, and Mr Blignaut and one other team member were moved a short distance away. Additionally, Mr Angus says Blignaut did not raise this move as an issue, which Mr Blignaut has not denied.

Mr Blignaut emails Mr Angus

[28] On 26 July 2023 Mr Blignaut emailed Mr Angus asking for help. Mr Blignaut stated:

I need help, please. My heart is heavy, and I am struggling at the moment with work.

Can I please have time to chat and talk?

... I am failing completely and struggling to do my job.

[29] Mr Angus recalls following this email up by way of a conversation with Mr Blignaut. He explained that he sat near Mr Blignaut in the office and had a number of conversations with Mr Blignaut when he sought assistance. He recalled he and another colleague reminded Mr Blignaut of his ability to access EAP services, but Mr Blignaut declined this, saying he had his own supports in place.

[30] On 26 July 2023, Mr Blignaut also expressed to Mr Singh over a message that that Mr Singh's approach with him had changed, and asked what he could do to be a "better employee". After Mr Blignaut messaged again, Mr Singh advised he had been busy. Mr Singh says this was a frequent issue with Mr Blignaut who often worried that Mr Singh was upset with him if he did not respond quickly enough. Mr Singh then told Mr Blignaut he needed to figure out a way to "gel with the Team – that will make things easier" that he is otherwise "doing well". He said they would chat in the morning.

Incident at contractor premises

[31] It is common ground that on 11 August 2023, Mr Blignaut attended the premises of a WMNZ subcontractor (the engineering company). He had a conversation with the engineering company owner, Mr F, about one of the trucks it was working on. Mr Blignaut left the premises. Mr Blignaut accepts that the incident was followed up by a text exchange between the owner and Mr Blignaut on 14 August 2023:

Mr F: Not impressed by the way you left here on Friday, all my staff commented. You were also in a company vehicle, a bit foolish.
RB: You are right. I was wrong.
Do you want me to apologise to your staff
And if you want to you can put in a formal complaint or email Jitesh

[32] Mr Blignaut did not mention this incident or the text exchange to Mr Singh, which later would form the basis for Mr Blignaut's dismissal.

Further team issues and 'reset' meeting

[33] In his oral evidence Mr Singh referred to having a “reset” meeting with the team in early September 2023. He said the purpose of the meeting was to address tension within the team and was led by Mr Singh’s manager and Mr Singh.

[34] On 7 September 2023, Mr Blignaut sent Mr Singh a text message asking for his support in anything he asked in relation to a build, and to keep people out of it except the suppliers.

[35] WMNZ points to a message exchange on Sunday 17 September 2023, started by Mr Blignaut, with Mr Singh. The exchange included the following:

JS: Hope you had a restful weekend?

...

RB: Yes, feel a bit better. Slept most of my weekend. Did work yesterday for few hours...

JS: Let's avoid working weekends - think of ways we can get more done in week days

RB: ...I'll try not to work over weekends and I want to be with my family. But work our time-frame to deliver and the difficulty of this project, weekends gives me advantage to get so much done. I really do not want to work so much but I have a job and a goal in my job. I love having free reign and let me to it to achieve what is given to me. I appreciate and treasure my job and make every effort to give results which does not look good at this stage.

JS: Appreciate all your hard work. But I need to look after you and your health, family and well being.

Mr Blignaut’s email of 19 September 2023

[36] On 19 September 2023, Mr Blignaut emailed Mr Singh and his manager. He started by saying he was writing the email with a heavy heart and wanted to thank Mr Singh for being “the best manager” he had ever had, referencing Mr Singh’s “support, compassion, kindness, and care for people, especially for [his] team” and that he enjoyed and appreciated working with Mr Singh “immensely”. He thanked him for all his one-on-one talk and coaching.

[37] Mr Blignaut went on to advise that the trucks would not be finished on schedule and advised that if WMNZ wanted the work done:

...then [he] need[s] unrestricted workflow, and the internal team needs to stay away from the builds as far as possible.

[38] In the same email, Mr Blignaut said it seemed like his colleagues were “sabotaging” the projects to get him to fail, were slowing things down, and that he was taking abuse from them. He further stated:

I cannot carry on like things are now; I am putting in 12 to 17 hours a day and working over weekends. I am constantly tired and in pain. My shoulder is giving me so many issues, and the pain is not contributing to my work situation, and my family is very unhappy with my working conditions... I am exhausted and do not want to work with the current team anymore. I am not a good fit for the current team, and this will affect the team's performance and project builds.

I can devise a list of who and what has been done to delay and sabotage these projects. My work colleagues do not like me, and I do not blame them. I joined the team and tried to make a difference and work with the people, but I did not fit into the team. I have had multiple people being upset with me and putting in complaints. I cannot see how some of these guys will ever have respect for me and work with me.

[39] Mr Blignaut also stated he knew he did not have an allocated work vehicle, but the uncertainty of not having an allocated ute was stressing him out. He said he planned to work hard and as he wanted a raise in salary and growth, but this would not happen due to the situation he was in. He advised he was going to “start to look for other work opportunities”, wanted to stay at WMNZ but was looking outside of it. The email said “this is not a formal resignation, I wanted to be honest so that you are prepared for when I issue my formal resignation”.

Late September and early October 2023

[40] Mr Singh says he continued to engage with Mr Blignaut to manage his workload. On 20 September 2023, Mr Singh and Mr Blignaut had the following exchange via message:

JS: Once EV workshop are done converting they will send to [subcontractor] – [Mr P] will manage the LEV conversion and once completed you take over and get the unit/ hydraulics/ electrical and lifters to complete the truck

This way you are not over loaded as you have become with the EW trucks

we have to work as a team otherwise you will burn yourself Roland - the above still give you a lot of control over the projects

...

We have done a lot of these trucks know [sic] so everyone involved need to do their part

...

I really need you to look after your well being – that’s my priority for now

...

RB: Understood

[41] In a further Teams exchange on 20 September 2023, Mr Singh mentioned he still needed to sit down with Mr Blignaut for a formal investigation of the “aggressive behaviour” entry for the incident reported by Mr P. Mr Blignaut responded:

This I do take personally. Aggressive behaviour is a relative term and who determines what is aggressive and what is not? I also could go and enter so many vault entries including him abusing me. Do have witnesses and so on. This really gets me, I can and want to burn this guy and mirror him as the same what he is doing to me, I have the ability to push him so far that he can hit me and get him fired. But the respect I have for you prevents me to do it. I choose to do my work instead of playing office corporate politics, but this have burned me very badly.

[42] Email correspondence shows steps were taken by WMNZ to lease a ute for Mr Blignaut’s use in early October 2023.

[43] From 6 October 2023 to 11 October 2023, Mr Blignaut went on leave in Australia with his family. Mr Blignaut says this was annual leave planned well in advance, although Mr Singh says he approved this as time in lieu in light of overtime Mr Blignaut had worked.

[44] Mr Blignaut says he was required to take his laptop and mobile phone with him oversea. Mr Singh denies instructing Mr Blignaut to work while he was in Australia.

[45] Mr Blignaut and his child returned from Australia, and his wife travelled to South Africa. On 12 October 2023, Mr Blignaut returned to work and had the following message exchange with Mr Singh:

RB: I should have thought about this earlier. I am sorry
Just prove that my wife is in SA.
And that I taking care of my daughter

...
JS: Mate I believe you and no worries at all. You have to look after your
daughter that's top priority

...
RB: Thank you. I just feel cut in two. Taking care of her and doing my job.
It is hard

...
JS: She's your top priority mate

[46] Mr Blignaut says Mr Singh had unreasonably expedited a project by two weeks, promising five trucks for delivery by Sunday 15 October 2023, forcing him to work the whole of that weekend. Mr Blignaut says this meant he had to find a babysitter for his daughter at short notice, and made plans to sleep in the trucks. Mr Singh acknowledges

weekend work was required by staff members that weekend. Mr Singh says Mr Blignaut mentioned his plan to sleep in the trucks but told him it was unnecessary and that he should not do so as it was a risk to his health and safety.

Mr Blignaut says he wants to resign

[47] After this weekend spent working, Mr Blignaut emailed Mr Singh on 16 October 2023 saying he wanted to resign. He said “I do not want to leave you in trouble so ideally for you and the business, I think best to plan me resigning end of February or March.” He said he wanted to stay in the business at East Tamaki (WMNZ’s head office) and also asked for reference.

[48] Mr Singh responded the following day, asking whether there was anything he could do to “hold” Mr Blignaut “back from resigning” and requested a face to face chat.

[49] On 17 October 2023, Mr Singh and Mr Blignaut met at a café. Mr Singh’s evidence was that Mr Blignaut asked for a pay increase and a company ute. Mr Singh said that he could not guarantee a ute for personal use, but confirmed a pool ute had been assigned to him. Mr Singh said Mr Blignaut’s pay could not be reviewed until annual salary reviews took place, and he could not authorise an increase. Mr Singh says they also had discussions around Mr Blignaut’s hours of work, and he told Mr Blignaut he did not need to work on the weekends. Mr Singh says Mr Blignaut brought up mental health issues and that Mr Blignaut said he was receiving mental health support, which Mr Blignaut does not deny. Mr Blignaut says at this meeting Mr Singh “sweet-talked” him and promised he would talk to Mr Singh’s direct manager about a salary increase, a brand new ute, and would support him with anything he needed.

[50] The ute ordered for Mr Blignaut’s use was ready for pick up by 25 October 2023. On 28 November 2023 he was advised by a procurement team member that he was “assigned” a vehicle. It is unclear when Mr Blignaut picked up the vehicle but did so, and was able to drive it to and from work.

[51] Mr Blignaut continued to work and messages between him and Mr Singh between continued to be friendly, with Mr Singh responding to Mr Blignaut’s build queries, concerns and updates through to 2 November 2023.

Mr Blignaut emails Mr Singh regarding concerns in early November 2023

[52] It appears they had a discussion on or about 2 November 2023, because on Saturday 3 November 2023, Mr Blignaut emailed Mr Singh, referring to a discussion they had about the Food Waste truck build, asserting:

...In our chat, we agreed that I need to make a spreadsheet that needs to be updated regularly where you have visibility of the project, and then you would stop interfering. I have kept up my end of the bargain, and I cannot say the same from the other end. Please do not take this personally.

I have prioritised and managed work very well but keep failing to address the factors I informed you of regularly and I need to see the purpose of repeating it. Once anyone communicates or takes over the task of managing the body build and foot, I will act accordingly by either managing the build or handing over the control to whoever interferes.

I can not work like it is now as no one takes ownership regarding the problematic part. I am not going to take responsibility for the failures from here on forward. Please do not ask me why things are going a certain way, as I have no control whatsoever.

[53] Mr Singh responded the same day, copying in Mr Angus, saying Mr Blignaut needed to understand the concept of working as a team, and that all he was “getting at the moment is that you are correct and everyone else is wrong”. He stated Mr Blignaut was again “jumping to conclusions” about a truck timing issue. He went on to say:

As for you [sic] below email – I will not respond as you are directly challenging me – happy to forward this to People and Culture Team to advise next course of action if you are no longer interested or happy in your current role. Please let me know.

[54] The same day Mr Singh emailed Mr Angus saying he was “really concerned” with Roland, that he could not work as a team with the others, continually upset most of the contractors, which meant Mr Singh had to step in. Mr Singh asked for a meeting, which I understand he did.

[55] On 7 November 2023, Mr Blignaut expressed to Mr Singh via email that he kept failing, and made the following statement:

I am open to anytime that you want me with HR. i am sorry for what I have done. I sense I am getting fired and with reason... You have more than enough evidence to fire me.

Mr Blignaut goes on sick leave

[56] On 6 November 2023, Mr Blignaut went on leave to have shoulder surgery. On 13 November 2023, Mr Blignaut sent Mr Singh a medical certificate stating he would be fit to return on 20 November 2023.

[57] On 17 November 2023, Mr Angus advised Mr Blignaut via text message that he would receive a letter with a request for a meeting to discuss his return to work. Mr Angus said:

...while a formal letter it's an informal meeting if you're all good to return to work. It's to discuss everything and move forward.

[58] A "formal letter" does not appear to have been sent.

Meeting on 20 November 2023

[59] On 20 November 2023, Mr Blignaut returned to work and attended a meeting with Mr Singh and Mr Angus.

[60] Mr Blignaut claims that during the meeting:

- (a) He was subjected to a tirade;
- (b) Mr Singh said he did not believe Mr Blignaut could work in his team any longer. He said the team did not trust Mr Blignaut;
- (c) Mr Singh said he was "accepting" Mr Blignaut's resignation and asked him to confirm when his last day would be;
- (d) Mr Angus said that if Mr Blignaut did not resign, he would do a "full blown disciplinary";
- (e) Mr Angus said "Jitesh could have gone and got a letter from a supplier that says you have breached some sort of company conduct and then fired you without any notice or pay or anything";
- (f) Mr Singh compared employing someone to a marriage and "sometimes it does not work like a marriage";
- (g) Mr Blignaut begged Mr Singh and Mr Angus for his job;
- (h) Mr Singh said:

I just cannot see you fitting in the team, the trust is broken ... Middle of February should be your last day, I need the certainty ... You have weekly emotional outbursts, you cannot work with key suppliers; I

cannot use you anymore ... I have tried everything and you do not change – You say you will change but you do not.

[61] Mr Blignaut has provided handwritten notes contained in a notebook, which he says were drafted after the meeting, outlining the above.

[62] WMNZ's witnesses say the meeting was intended to be a quick catch up about Mr Blignaut's return to work from his shoulder surgery. However, when Mr Blignaut arrived at the meeting, his arm was in a sling. Mr Singh says they expressed concern about whether Mr Blignaut was ready to safely return to work, he removed the sling and said "don't worry" and he was "fine".

[63] Mr Angus says during the meeting Mr Blignaut raised concerns about his colleagues, and they discussed how he 'fit' in with the rest of the team. He says they also discussed Mr Blignaut's consistent adverse views of his colleagues' performance, and the subsequent tension that this caused within his team.

[64] Mr Singh's witness statement to the Authority did not detail what was discussed at the meeting. At the investigation meeting, he accepted there was a discussion of Mr Blignaut's 'fit' within the team and about the date Mr Blignaut's intended to leave employment. He says this was for planning purposes given upcoming project work. He acknowledged he likely would have said employment relationships are like a 'marriage' and sometimes they do not work out. He also acknowledged asking when Mr Blignaut's last day would be, having advised of his intention to resign.

[65] Mr Angus denies referring to a "full-blown" disciplinary, or making statements in relation to a "letter from a supplier". Mr Angus' witness statement says that after Mr Singh left the meeting:

- (a) Roland asked "does Jitesh want to fire me?". I said to Roland that Jitesh had no reason to fire him.
- (b) We discussed Roland's internal job application. Roland had applied for a role which was supervising around 30 people, however Roland had no management experience.
- (c) Roland talked about resigning in the new year, he said that this would be in around February 2024 or March 2024. I asked Roland what his plan was and why he said he would resign next year. Roland said that it was difficult to get a job over the Christmas period. Roland said that his main priority was to put "food on the table for [his] daughter".
- (d) Roland then asked "what [he] should do now". I said to him that we needed medical clearance. One of the potential issues was driving. Roland's role required him to drive vehicles and if he had an arm in a sling, he could not

do this safely. I explained that medical clearance was standard practice after surgery or leave of medical related absence.

- (e) Roland said that he was unable to do heavy lifting. We discussed needing both arms to safely drive trucks, which was part of his role. I said to Roland that it seemed it was better for him to stay home until a GP said that he was safe to work. We discussed the option of working from home and completing administrative tasks while he awaited clearance.

[66] Mr Angus acknowledges telling Mr Blignaut to “go home” at the end of the meeting because he needed to be fully fit to return to work. He also said they could look at him completing alternative duties until Mr Blignaut had received full medical clearance to drive trucks and to perform manual loading and unloading.

[67] Mr Angus says the meeting did last longer than was expected. Mr Angus says it lasted about one and a half hours, explaining he had another regular Monday meeting at 10.30am at which his attendance was expected. Mr Blignaut, on the other hand, asserts it went on for three hours.

[68] The next day, Mr Blignaut sent Mr Angus a medical note stating he would be fit for work and light vehicle driving on 22 November 2023. Mr Angus responded that he would call around 9:30am. Mr Blignaut queried whether he should stay at home, Mr Angus said “Just for now maybe a 10am start”. Mr Angus acknowledges that he did contact Mr Blignaut that day during business hours.

Mr Blignaut returns to work

[69] Mr Blignaut returned to work between 23 and 29 November 2023 inclusive.

[70] On 27 November 2023, Mr Singh emailed Mr Blignaut asking that he make the ‘pool ute and keys available for other staff members to use because Mr Blignaut no longer needed it to tow trailers to and from the engineering company. Mr Singh advised this could be re-evaluated once Mr Blignaut was fully recovered.

Mr Blignaut emails Mr Angus about resignation

[71] On 28 November 2023, Mr Blignaut emailed Mr Angus saying he wished to clarify some things from the discussion last Monday (20 November 2023). He said it was mentioned that he resigned, and he was “being held by this resignation that my last day is assumed to be 28 February 2024”. He said this was never a formal resignation and he wished to continue working in the role and applied for a mentorship program to assist his improvement. There is no evidence Mr Angus replied to this email.

[72] On 28 November 2023, Mr Singh emailed Mr Blignaut advising he was unable to park in the suggested parking space. Mr Angus was copied into the email. Mr Blignaut said that if any team member needs the ute “they are more than welcome to come and ask [him] for it”. Mr Singh responded, reiterating his request for Mr Blignaut to leave the keys in the EV workshop. Mr Singh further stated the vehicle was a pool vehicle not assigned to Mr Blignaut’s role. Mr Blignaut responded that Mr Singh said he was getting a ute allocated to him and Mr Singh’s response contradicted that. Mr Singh wrote back saying the ute provided is for work purposes only and pointed out that Mr Blignaut’s IEA did not include provision of a trade vehicle. He also said:

Also not forgetting you have resigned as per your email sent to [manager] and I. We need to finalise what your last day will be in 2024 by the COB Friday this week (01 December 2023).

[73] Mr Blignaut says Mr Angus advised him to report to a senior project engineer. Rather than this being “odd” as Mr Blignaut suggests, Mr Singh explains that he went on leave during this time and the relevant engineer was in charge in that situation.

[74] On 30 November 2023, Mr Blignaut received an email from Mr F declining to give him a character reference. Mr Blignaut explains that he had spoken to Mr F about this shortly prior. On the same day, Mr Blignaut sent Mr Singh the following email with the subject line “Reconciliation”:

I don't know what I have done wrong, but please give me an opportunity to discuss this. I am more than happy to apologise from my side for any wrongdoing.

Can we please reconcile as soon as possible?

Complaint from Mr F

[75] Mr Singh says on around 4 December 2023, upon returning from leave, he received a call from Mr F, advising Mr Blignaut had requested a character reference, and he had declined to give one. Mr Singh says Mr F recounted the 11 August 2023 incident, citing it as a reason for declining a character reference. He said Mr Blignaut had stormed out of the workshop and into a company vehicle. He said his engineering staff and another subcontractor to WMNZ (Mr L), witnessed Mr Blignaut speed out of the carpark, the vehicle lost traction causing stones to fly into the air. Mr Singh says Mr F subsequently provided him with a copy of his text message exchange with Mr Blignaut on 14 August 2023.

[76] Mr Singh later followed up with Mr L who confirmed the account given by Mr F. Mr Singh asked the subcontractor to record his account in an email.

[77] Also on 4 December 2023, Mr Singh arranged for two WMNZ colleagues to attend Mr Blignaut's home and pick up the ute he had been using. Mr Blignaut says this happened without advanced warning, although Mr Singh says he attempted to contact Mr Blignaut prior to their attendance.

Mr Blignaut takes sick leave

[78] Mr Blignaut says due to the stress of the workload and Mr Singh and Mr Angus' "unreasonable behaviour", he went on sick leave. On 4 December 2023, Mr Blignaut sent an email to Mr Singh and Mr Angus saying he had been booked off work for two weeks due to stress. Mr Blignaut attached a medical certificate dated 1 December 2023 which certified he should be fit to return on 15 December 2023.

WMNZ starts a disciplinary process

[79] On 14 December 2023 Mr Singh sent an email to Mr Blignaut attaching a letter requesting a meeting on 15 December 2023, for when Mr Blignaut was expected to return to work. The proposed meeting was stated to be an "investigation meeting" about the incident at the engineering company (August incident). That evening, Mr Blignaut replied with a medical certificate dated 11 December 2023, which certified he would be unfit to work until 23 December 2023.

[80] On 15 December 2023, Mr Singh queried what this sick leave was for and whether it was related to his shoulder injury. Mr Blignaut responded, declining to say.

[81] On 18 December 2023, Mr Angus telephoned Mr Blignaut - he says to check in on him. He says Mr Blignaut became quite upset at aspects of his job and said, "I can't do this anymore". At Mr Blignaut's request, Mr Angus says they discussed some options which included an application for other roles within WMNZ. Mr Blignaut asked about without prejudice negotiations. Mr Angus also outlined the disciplinary process. Mr Angus' evidence is that this was a general discussion to ease Mr Blignaut's concerns and not an attempt to elicit Mr Blignaut's resignation as he alleges. Mr Blignaut says they discussed a two-month salary figure as an exit.

[82] Mr Angus followed up with an email on 19 December 2023. WMNZ has provided the Authority with a copy of that email, on the basis neither party is asserting it is a privileged communication. The email says the discussion the previous day had been “without prejudice” and that Mr Angus could not authorise offers but was just talking through options to help Mr Blignaut.

[83] On 21 December 2023, Mr Blignaut was locked out of access to his work emails. WMNZ says that this was an automatic response by the system, which occurs when an employee has been absent for an extended period. It notes he was also off work at the time.

[84] On 8 January 2024, Mr Blignaut advised Mr Angus he was fit to return to work. Mr Angus says he did not anticipate this as many staff were still on leave. Mr Blignaut says he was still locked out of his work emails, and his swipe card to the office had also been deactivated.

[85] On 11 January 2024, Mr Blignaut attended the work site but his swipe card was still not working. Mr Angus says he advised Mr Blignaut that the lock out was due to his absence and that it required his direct manager to grant access. Mr Singh was on leave until 15 January 2024, so Mr Angus says he found a temporary work around to allow Mr Blignaut access in the meantime. However, by the time Mr Angus had managed to arrange temporary access, Mr Blignaut had gone home.

[86] The same day, Mr Blignaut called Mr Angus, and recorded the conversation without Mr Angus’s knowledge or agreement. Mr Blignaut said he discussed that he was very interested in another position in WMNZ he had applied for, saying a transfer would be the best for everyone. Mr Angus is recorded as saying Mr Blignaut could not continue to be paid to do nothing, and if he did, the settlement number proposed would drop. Mr Blignaut indicated he had applied for other WMNZ roles and could provide proof he had been looking for other work. The transcript shows Mr Angus explaining the hiring decision for the other position fell on the individual hiring manager. Mr Angus stated “we could still go through another process, where we have a meeting about, this, the wheel spinning at the subcontractor’s place” and “... would be that or the discipline route and they’re ready”. Mr Angus further said he did not “get to get to dictate what options [sic] happens”.

[87] WMNZ says Mr Angus was referring to options available. The disciplinary process had not progressed (the scheduled meeting had been postponed). Mr Angus was not the decision maker in respect of either option (settlement or disciplinary).

[88] At around 9am on 15 January 2024, Mr Blignaut emailed Mr Angus saying his site access was blocked and that he was going home and said he was awaiting his instructions. Mr Singh says he reinstated Mr Blignaut's access as soon as he became aware of the issue.

[89] On 16 January 2024, Mr Singh sent Mr Blignaut an invitation to a "disciplinary investigation meeting" for the afternoon on 17 January 2024, referring back to the August 2023 incident and some additional allegations of "aggressive methods of communication (verbal and written)" which had been viewed as intimidation by a subcontractor. Extracts from apparently two emails were attached – the first regarding the August incident, the second regarding Mr Blignaut's engagement with another subcontractor. Neither extract identified the authors of the email or dates they were received. WMNZ says the reason the meeting changed to a 'disciplinary investigation meeting' was because the new allegations increased the seriousness of the allegations.

[90] By 17 January 2024, Mr Blignaut's had instructed a lawyer. His lawyer at the time emailed Mr Angus and Mr Singh advising the notice of the meeting was not reasonable, and they would be unable to attend. They requested copies of the two email statements and allegedly aggressive written communication. The lawyer said Mr Blignaut's removal from building and computer access was also potentially a suspension without notice.

[91] On 30 January 2024, Mr Angus sent Mr Blignaut's former lawyer a letter and relevant documents inviting Mr Blignaut to a meeting on 1 February 2024. It provided additional information about both sets of allegations. This included the text messages on 14 August 2023 between the Mr F and Mr Blignaut; a full email from the Mr L to Mr Singh dated 4 December 2023 about the August 2023 incident; "overspeed dashboard" list of speeding events; the full email from the other subcontractor company; and a statement entitled 'affidavit' from a team leader of that subcontracting company. The letter additionally stated during its investigation, WMNZ had identified 113 speeding events and that a failure to register into the E-road system meant they "did not register with your manager".

Disciplinary meeting - 1 February 2024

[92] Mr Angus and Mr Singh met with Mr Blignaut and his former lawyer on 1 February 2024. At the outset the lawyer sought to clarify if the meeting was an investigation meeting or a disciplinary meeting, to which Mr Angus responded it was the former. The lawyer went on to query various work issues as Mr Blignaut saw them, some of which related to the allegations in the letter. Mr Angus described the meeting as one of the most difficult he had attended because of the aggressive approach adopted by the lawyer. Mr Blignaut did not give a direct response to the allegation regarding the incident at the engineering company.

[93] Following the meeting, on 8 February 2024, Mr Angus emailed Mr Blignaut's lawyer to schedule a meeting in order to deliver the preliminary outcome. The lawyer said Mr Blignaut did not wish to have a meeting, to avoid additional stress and cost.

[94] WMNZ says Mr Singh reached a preliminary decision based on the information before him. The preliminary outcome was that the allegations regarding bullying behaviour from Mr Blignaut did not have sufficient evidence to be established. However, the allegation regarding the August 2023 incident was established and, in Mr Singh's view, amounted to serious misconduct.

[95] On 13 February 2024 Mr Angus emailed Mr Blignaut's lawyer with a proposed outcome in Mr Singh's name, asking for any submissions or alternatives in relation to it by 12pm 15 February 2024. The allegation regarding the August 2023 incident was found to be established, constituting a serious breach of WMNZ company policies and procedures, warranting termination of employment. It advised the second allegation relating to another contractor had not been substantiated and no further action would be taken in relation to it. The email went on to say WMNZ proposed to terminate Mr Blignaut's employment on notice, with the opportunity to provide feedback on the proposed outcome. If none was provided, it stated Mr Singh would confirm the outcome based on the information already received.

[96] Mr Blignaut's lawyer provided his response to the preliminary decision by email message on 15 February 2023. They stated despite the meeting on 1 February 2024 having been clarified as an "investigation" meeting, it was clear it was in fact a "disciplinary" meeting. However, the email went on to strongly disagree with the outcome to terminate on notice outlining 11 evidential points in response. Further, the

email reiterated how long ago the August 2023 incident was and the effect this had on the veracity of statements, and that at the most it could be considered misconduct and could have been dealt with informally.

[97] Also on 15 February 2024, Mr Blignaut's former lawyer sent a 15-page letter raising, among other things, a number of unjustified disadvantage grievances and a claim for unpaid wage arrears.

[98] Mr Angus responded by email to Mr Blignaut's feedback on 16 February 2024. A letter was attached under Mr Singh's name, which included responses to the evidential points raised. The letter advised Mr Singh considered Mr Blignaut's submission but given the seriousness of the incident, all relevant information including his responses, he had breached employment obligations and termination on notice would be an appropriate outcome. The letter confirms the reason for dismissal was:

Based on the investigation into the allegations against you, it has been determined that your conduct constitutes a serious breach of our company policies and procedures, warranting the termination of your employment. Regarding Allegation 1 the evidence demonstrates that you knowingly operated Waste Management company vehicle in a dangerous manner while representing the company at a subcontractor site, this action was witnessed by management and staff of the subcontractor, and had the potential to endanger persons and or property which is a direct breach of company policies including the Safe Driving Policy and Health and Safety Policy, and section 23.10 of your employment agreement by acting in a manner which may bring the Company into disrepute or discredit its image and failure to observe safety rules or working in an unsafe manner.

[99] The other allegations were confirmed as unsubstantiated.

[100] The letter attached one page of E-road information for the vehicle Mr Blignaut was driving on the day of the August incident, showing a map of the route taken to and from the engineering company. In his cover email Mr Angus advised that information was "not part of the process but is at the request of Roland".

[101] A few days later, Mr Blignaut was advised by letter that he was now on garden leave.

Did Mr Blignaut raise unjustified disadvantage grievances within the statutory timeframes?

[102] The 15 February 2024 letter from Mr Blignaut's former lawyer listed about 15 "separate and distinct" breaches resulting in separate unjustifiable disadvantages in the

last 90 days of his employment, along with about 24 other examples of what was said to be bullying, intimidation and harassment. The number of unpaid additional hours worked was also referred to as a separate grievance.

[103] Mr Blignaut submitted that events which fall both within the 90-day period preceding 15 February 2024 and those outside of it are all sufficiently connected to constitute one related and continuous cause of action.²

[104] WMNZ says any allegations should be disregarded if either there is no evidence as to when the conduct in question occurred or the events occurred before 17 November 2023. This captures, for example:

- (a) allegations regarding Mr Blignaut's relationships with Mr P and Mr D;
- (b) the issue of 'thrown away' parts;
- (c) disadvantage claims arising from excessive working hours prior to 17 November 2023.

[105] Overall, the Authority is not satisfied Mr Blignaut has shown the events complained of outside the 90 days were connected to those within the period so as to establish a course of conduct. His subjective belief that they are related has not been shown to be the case on the balance of probabilities, as addressed later. The Authority has however considered the evidence outside the 90 days as background and context to the alleged personal grievances.

Relevant law

The test for justification

[106] In assessing whether an employer's actions are justified, the test is set out in s 103A of the Act and it involves determining 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 action occurred.

[107] In addition, a fair and reasonable employer is expected to comply with its statutory obligations which include the good faith obligations which include at s 4(1A)(b). These require the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in

² *Premier Events Group Limited v Beattie* (No. 3) [2012] ERNZ 257 (EmpC) at [19]-[20].

which the parties are, among other things, responsive and communicative. Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action “because a fair and reasonable employer will comply with the law”.³

Does Mr Blignaut have a grievance on the grounds of unjustified action causing disadvantage?

[108] An unjustified disadvantage personal grievance is set out in s 103(1)(b) of the Act - an employee may have a personal grievance where the employee’s employment or any condition of employment is or was affected to the employee’s disadvantage by some unjustified action by their employer. Based on s 103(1)(b), the questions to be addressed are:

- (a) What does Mr Blignaut complain of in terms of WMNZ’s actions and did it act as alleged?
- (b) If so, did WMNZ’s actions cause any disadvantage to Mr Blignaut’s employment or a condition of his employment?
- (c) If so, were WMNZ’s actions unjustified?

[109] Mr Blignaut’s claim related to unjustified actions causing disadvantage from:

- (a) Bullying and harassment by WMNZ, particular by Mr Singh.
- (b) Unlawful suspension from work.
- (c) Attempts to procure Mr Blignaut’s resignation.

Alleged bullying and harassment by WMNZ, particular by Mr Singh

[110] Although Mr Blignaut’s statement of problem originally claimed he had a personal grievance on the grounds of unjustified disadvantage arising from “bullying and harassment” by WMNZ through Mr Singh, their focus to him having been subjected to “unreasonable behaviours and treatment”.

[111] Mr Blignaut gave examples of the conduct, saying it, combined with the excessive workload and unreasonable hours that the job required of him, created an unsafe working environment for him, which was, in turn, disadvantageous to him. The

³ *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 (EmpC) at 842 [65].

disadvantage and lack of “safety” (from a mental health and well-being perspective) was further exacerbated by WMNZ’s attempts to procure his resignation.

[112] Regardless of Mr Blignaut’s approach to this issue, I am not satisfied many of the actions he now complains of as causing disadvantage are established on the balance of probabilities. This includes Mr Blignaut claims Mr Singh told him he “could not do (his) job” properly in front of contractor employees; being isolated from team members in the office environment; accusing Mr Blignaut of “blowing out the budget”; “politicking” by giving conflicting instructions between Mr Blignaut and other employees; failing to intervene when he raised concerns about co-workers Mr P and Mr D; and being falsely accused of having “thrown parts away”.

[113] I agree with WMNZ that the documentary evidence including direct communications between Mr Blignaut and Mr Singh show Mr Singh was a supportive manager who proactively sought to manage Mr Blignaut’s workload and wellbeing. This included meeting with him frequently for mentoring and coaching; being responsive to his messages and emails; attempting to help him with managing his workload by sharing work with others, dealing with team and contractor issues or conflicts (for example facilitating meetings with the two coworkers and the team reset meeting; urging him not to work weekends and allowing flexibility around his hours of work. These all contradict his subsequent allegations of bullying or unreasonable treatment.

[114] There is no evidence that Mr Singh’s behaviour demonstrates a failure to act as a fair and reasonable employer in all the circumstances. Mr Singh’s behaviour was that of a supportive manager who made significant attempts to accommodate Mr Blignaut’s issues and concerns until he sought HR assistance from Mr Angus in November 2023, at which point their relationship deteriorated.

[115] Mr Singh’s actions did not constitute bullying nor did he subject Mr Blignaut, or allow him to be subjected, to unreasonable behaviours or treatment. Mr Singh made reasonable attempts to address his relationship issues with others, which Mr Blignaut also held responsibility for.

Alleged suspension and attempts to procure Mr Blignaut's resignation

[116] Mr Blignaut says he was suspended and a number of events towards the end of his employment constituted attempts to procure his resignation.

[117] The first main event for consideration was the 20 November 2023 meeting. Mr Blignaut says WMNZ's actions at a meeting on 20 November 2023 and for two days after resulted him being unlawfully suspended, constituting an unjustified action causing disadvantage.

[118] The Authority has some doubt about whether Mr Blignaut's handwritten notes of the meeting are contemporaneous or near contemporaneous, in light of WMNZ's observation that they appear next to handwritten email addresses of WMNZ's directors, to whom the personal grievance letter was sent on 15 February 2024. This suggests the notes may have been prepared later, around the time grievances were raised. I also cannot discount that the notes contain subjective interpretations of what was raised with Mr Blignaut at the time.

[119] While WMNZ's witnesses say this was meant to be a short return to work meeting, the text message from Mr Angus the Friday before signalled it would be an informal meeting to "discuss everything and to move forward". This indication and the oral evidence given at the investigation meeting show this was not just a return-to-work meeting. While the evidence is inconclusive about how long the meeting lasted, it was clearly a long meeting in light of the issues discussed.

[120] Mr Singh in oral evidence acknowledged raising a number of the issues Mr Blignaut alleges. WMNZ refers to both Mr Blignaut's emails on 19 September 2023 and 16 October 2023 advising of his intention to resign, with the latter email saying the business should plan on him resigning end of February or March 2024. WMNZ says regardless of whether Mr Blignaut had tendered a formal resignation, Mr Singh reasonably interpreted his communications as an indication he intended on leaving the team (and possibly the business) at the end of February or March 2024.

[121] I accept WMNZ was entitled to raise issues of how Mr Blignaut was fitting into the team and seek clarity from Mr Blignaut regarding his intention to resign. It attempted to do so informally at the 20 November 2023 meeting. Mr Singh was also clearly concerned about Mr Blignaut's ability to fit within the team. There were clearly

compatibility issues with Mr Blignaut's working relationships with other staff and contractors that remained unresolved.

[122] It is also common ground that Mr Blignaut was wearing a sling which he took off during the meeting. I accept this would have raised concerns about whether he was fit to perform his usual duties, which included driving trucks. Mr Angus acknowledges telling Mr Blignaut to "go home" at the end of the meeting because he needed to be fully fit to return to work, and they would look at him completing alternative duties until he had received full medical clearance.

[123] The parties' employment agreement entitled WMNZ to require Mr Blignaut to provide a medical certificate certifying that he was fit to resume work at its expense. There was no evidence that WMNZ advised it would meet the costs. However, Mr Blignaut was due for a check-up appointment for his surgery the next day. I am not satisfied this was an unlawful suspension in the circumstances. Mr Angus' direction to obtain a medical clearance was not unreasonable in the circumstances.

[124] Rather than making any attempt to address the pressing relationship issues, the next day there was a delay in communicating with Mr Blignaut about his return to work. Mr Blignaut had been advised to carry out alternative administrative duties, and by 27 November 2023 he was asked to make the ute he had been allocated available to other staff members, despite being cleared for driving light vehicles. Although it may have been a coincidence in timing with Mr Singh's leave, he was told to report to another person.

[125] Mr Blignaut's email to Mr Angus on 28 November 2023 said his earlier email was "never a formal resignation" but a clear expression of his emotions. Mr Singh was not copied into that email. Mr Angus explained in his oral evidence that he interpreted the 16 October 2023 email as an indication that Mr Blignaut wished to resign, though not an official resignation. Mr Singh's subsequent advice to Mr Blignaut on 30 November 2023 saying he had resigned and was asking for confirmation of his last day by 1 December 2023. By 4 December 2023, Mr Singh was sending staff to pick up the ute from Mr Blignaut's home address, with little to no notice.

[126] Shortly thereafter, Mr Singh says he received the phone call from Mr F regarding Mr Blignaut on 4 December 2023. There is no evidence Mr Singh approached Mr F first, and given the proximity of timing, it is also possible Mr

Blignaut's own interaction with Mr F in late November 2023 was the prompt for Mr F's phone contact with Mr Singh, given Mr F's reference to it.

[127] While Mr Blignaut was on sick leave, WMNZ prepared the 14 December 2023 letter, requiring Mr Blignaut to attend a meeting the next morning on return to work. This was unreasonably short notice, particularly given WMNZ had been aware of the August 2023 incident since 4 December 2023. In the same sentence the letter stated there would be a preliminary investigation, WMNZ stated it wished to engage in a "without prejudice manner" towards a resolution.

[128] Mr Blignaut says WMNZ then sought to coerce him into accepting an "exit package", with threats of disciplinary action, or some form of formal "process" if he did not do so. He refers to the phone call with Mr Angus on 18 December 2023. That WMNZ wished to resolve matters without the need for a disciplinary process at this meeting is consistent with the letter of 14 December 2023. While it may have been Mr Blignaut who raised the option of an exit package during their phone conversation on 18 December 2023, so were other options like including Mr Blignaut continuing to explore other roles at WMNZ. However, none of the options involved remaining in his role - there was no way back for Mr Blignaut within Mr Singh's team.

[129] Although Mr Blignaut's access issues to WMNZ's premises and systems were unfortunate and would understandably have caused Mr Blignaut concern, they were addressed by Mr Angus and then Mr Singh in a timely way when raised. The evidence does not establish this as a suspension or clearly part of a pattern of behaviour designed to coerce Mr Blignaut's resignation.

[130] Mr Blignaut also refers to the other phone call on 11 January 2024 as corroborating evidence that an exit figure, or a disciplinary process if this was not accepted, was intimated by Mr Angus during the earlier phone conversation.

[131] Mr Blignaut further refers to the 1 February 2024 meeting, when his then lawyer Mr Angus raised the salary figure identified having been made 'on the record', saying there was a push to take the offer for him to exit. He points out the transcript shows Mr Angus did not refute this or try to assert the earlier conversation(s) was without prejudice.

[132] Opening up exit negotiations outside of mediation or a clear agreement that discussions are on a without prejudice basis was an unsafe strategy for WMNZ. With such discussions being before the Authority, it is clear Mr Blignaut's role within the team had all but come to an end after the 20 November 2023 meeting. Although Mr Blignaut had indicated he wished to leave the team, WMNZ still had an obligation to take reasonable steps to maintain a productive employment relationship, and be active and communicative.

[133] My assessment is that the main issue was difficult incompatibility issues that needed to be addressed by WMNZ. Rather than taking any steps to address them after the 20 November 2023 meeting onwards, Mr Blignaut was isolated from his manager, team and project work, and it became clear there was no way back in the role. The way WMNZ acted from that point formed part of the process leading to Mr Blignaut's dismissal. In light of that, a separate disadvantage grievance has not been found in relation to attempts to procure his resignation.

Does Mr Blignaut have a personal grievance for unjustified dismissal?

[134] The Authority must consider:

- (a) Whether, having regard to the resources available to it, WMNZ sufficiently investigated the allegations before taking action against Mr Blignaut;
- (b) Whether it raised the concerns with Mr Blignaut before dismissing him;
- (c) Whether it gave him a reasonable opportunity to respond to its concerns before dismissing him; and
- (d) Whether it genuinely considered Mr Blignaut's explanation (if any) before taking action against him.

[135] Any other relevant factors can be considered. The test for justification is an objective test and the Authority may not substitute the employer's decision with its own but is required to review the facts on which the decision was made to determine whether an employer acted justifiably.

Whether WMNZ sufficiently investigated the allegations

[136] Given the resources available to WMNZ as a large employer with in-house human resources, such an employer could be expected to conduct a robust

investigation. In light of the Authority's findings below, it did not meet that expectation.

Whether WMNZ raised concerns with Mr Blignaut

[137] WMNZ raised the concern about the August 2023 incident with Mr Blignaut by letter on 14 December 2023. The proposed meeting did not proceed due to Mr Blignaut remaining on sick leave beyond the date of his medical certificate. The meeting was postponed until after the Christmas/New Year closedown period, and then again until 1 February 2024 due to Mr Blignaut's lawyer seeking further information and not being unavailable at the proposed time.

[138] Additional information and allegations were provided on 30 January 2024, ahead of the meeting on 1 February 2024. Although WMNZ could have provided additional time, it has not been shown how this resulted in any unfairness to Mr Blignaut.

Whether Mr Blignaut was provided with all relevant information

[139] Initially Mr Blignaut was provided with limited information, including only extracts of the statements of complainants. However, on 30 January 2024, Mr Angus emailed Mr Blignaut's then lawyer with a revised meeting invitation letter and information relevant to the allegation including a description of the event based on Mr Singh's conversation with Mr F; the text message exchange between Mr F and Mr Blignaut; an unredacted email from Mr L regarding the incident; E-road overspeed data which included the day of the incident. Copies of his IEA and the relevant policies were also provided.

[140] The requirement in s 4(1A)(c) of the Act is to provide access to relevant information and an opportunity to respond before the relevant decision is made, and it was in time for him to comment on it.

Whether Mr Blignaut was given an opportunity to respond

[141] Mr Blignaut was given an opportunity to respond to the information and allegations on 1 February 2024 at the meeting. He was represented at the time. Mr Angus gave Mr Blignaut the opportunity to respond to the August 2023 allegation at this meeting. However, his lawyer's responses focused on that allegation being raised too late, such that Mr Blignaut did not directly address the allegation at the meeting.

The lawyer spent significant parts of the meeting raising other concerns with WMNZ, as well as issues with the other subcontracting allegations. However, it is clear the meeting provided Mr Blignaut with an opportunity to respond to the August 2023 allegation.

[142] After that meeting, Mr Angus proposed a further meeting to discuss the proposed outcome. The meeting request was declined on Mr Blignaut's behalf.

[143] As requested, WMNZ delivered the preliminary outcome in writing, inviting Mr Blignaut to provide feedback. His lawyer raised the issue of the status of the first meeting, but responded, "strongly" disagreeing with the proposed outcome.

Whether WMNZ gave genuine consideration to Mr Blignaut's responses

[144] WMNZ says Mr Blignaut did not provide a substantive response, nor did he provide any evidence to contradict the description of events provided by the witnesses.

[145] Evidential matters raised by Mr Blignaut on 15 February 2024 included that Mr L was not at the site when Mr Blignaut had the conversation with Mr F. He further responded that as vehicles are fitted with traction control, loss of control over the vehicle is prevented when driving, and there was no evidence of the vehicle he was driving or E-road evidence (relevant to its whereabouts and speed).

[146] Under questioning at the investigation meeting, Mr Singh acknowledged that he had not made any further enquiries of Mr L as a result of Mr Blignaut's explanation that Mr L was not present during the incident, had not witnessed it, and that loss of traction was unlikely. WMNZ also did not seek to corroborate or substantiate Mr L's brief email claims with a statement from Mr F, whose evidence was only held in a text message which gave no specific information about the incident, and Mr Singh's short relaying of a phone call his letters.

[147] Further it was said Mr Singh considered Mr Blignaut's comments but ultimately disagreed, stating that the E-road system was basic and would not have recorded the type of incident described. WMNZ says E-road would not have recorded a sharp acceleration like the one described in the incident, it did record that Mr Blignaut's vehicle sustained a speed of 60km/h in a 50km/h zone in proximity to the engineering company on the day of the incident, which it says aligns with the narrative that Mr Blignaut did speed out of the workshop.

[148] Although Mr Singh asserted at the investigation meeting that he did not accept Mr Blignaut's explanation regarding loss of traction, arguing that wheel spins can occur on utes, this assessment was not referred in the final outcome letter, or put to Mr Blignaut for a response prior to a decision being made.

[149] The evidence before the Authority does not show WMNZ genuinely considered Mr Blignaut's comments or explanations at the time of the dismissal (at least in relation to Allegation 1, which was upheld). His comments called into question the sufficiency of WMNZ's investigation, which was important given the four-month delay between the incident and WMNZ becoming aware of it, which may have affected the veracity of statements made.

[150] Not making additional inquiries was a significant departure from what could be expected of a fair and reasonable employer in the circumstances at the time, and resulted in Mr Blignaut being treated unfairly because it could have affected the factual basis for a finding of serious misconduct. Such inquiries need not have been onerous or time-consuming in the circumstances of this case, and in indicative of WMNZ's wish to end the employment relationship.

Substantive justification

[151] WMNZ says that a large part of its operations is transport, and one of its top priorities is the safe and responsible operation of its vehicles. It says this is reflected in the requirements of its Safe Driving Policy and Health and Safety Policy, which it found Mr Blignaut breached both of, in respect of operating a company vehicle in a dangerous manner while representing the company and having the potential to endanger persons or property. It further stated his actions constituted a breach of the parties' IEA by acting in a manner which may bring the company into disrepute or discredit its image and failure to observe safety rules or working in an unsafe manner.

[152] WMNZ's conclusions were based on the single incident which – as I have found above – was not sufficiently investigated. The relevant incident took place in August 2023, but that it was not raised by the subcontractor until December 2023. In the meantime, Mr Blignaut had continued working, including with the subcontractors, despite his giving Mr F the option of making a complaint to Mr Singh. This does not

give the impression WMNZ's reputation was damaged in any substantive way as a result.

[153] Based on the evidence before the Authority, there was also no genuine consideration of the alternatives to dismissal Mr Blignaut raised.

[154] I conclude in all the circumstances, WMNZ did not act as a fair and reasonable employer could, and Mr Blignaut was unjustifiably dismissed.

Remedies – personal grievance

[155] I have found Mr Blignaut's dismissal to be unjustifiable and he is therefore entitled to an assessment of remedies. Mr Blignaut seeks significant compensation under s 123(1)(c) of the Act and reimbursement of lost wages under s 123(1)(b) of the Act up to the date of the investigation meeting.

Reimbursement of lost wages

[156] Pursuant to sections 123 and 128 of the Act if an employee has a personal grievance and they have lost remuneration because of that grievance then they are entitled to their actual lost remuneration or three months ordinary time remuneration. The key issue at the outset being whether the employee has lost remuneration because of the grievance, and the further issues then arising relate to quantification of the loss.

[157] Mr Blignaut says he took reasonable steps to mitigate his losses. Evidence has been provided that he began searching for alternative employment as early as 11 January 2024 (the day of his recorded phone call with Mr Angus). That day alone he appears to have applied for 15 roles. Thereafter, he applied for dozens more roles until 29 May 2024. Since then, he says he enrolled in further tertiary education, but gave evidence that he has continued to apply for jobs while studying.

[158] In view of these factors, if he had not been dismissed, it is very unlikely Mr Blignaut would have remained employed beyond May 2024. In these circumstances, an award of lost wages up to 29 May 2024 is appropriate.

Compensation under s 123(1)(c)(i) of the Act

[159] It is clear that Mr Blignaut perceived many issues with his employment in connection with WMNZ's actions. There was medical information provided to the

Authority dated 20 January 2025 which assessed long-standing pre-existing personal features as influencing the impact his workplace challenges at WMNZ had on Mr Blignaut. The information identifies work conditions and intense pressure placed on him as impacting Mr Blignaut's health. It is clear to me that he struggled with his role and this created stress for him. As the Authority has not found unjustified disadvantages have been established, there is an insufficient causal connection between some of the harm or loss suffered and WMNZ's breach.

[160] Mr Blignaut has given evidence of the impact losing his employment has had on his mental health, his family situation, and employment prospects. I find there is evidence of hurt, humiliation and injury to feelings connected Mr Blignaut's unjustified dismissal, the severity of which was compounded by preexisting personal features. WMNZ did not have knowledge of those features, although with hindsight they explain some of Mr Blignaut's behaviours and interpersonal relationships with co-workers. I have considered the general range of compensation awards in other cases. Standing back to objectively assess the impact as best I can, and subject to any reduction for contribution, I consider an appropriate award of compensation under s 123(1)(c)(i) of the Act is \$20,000.

Contribution

[161] WMNZ submitted Mr Blignaut's actions were blameworthy on the basis he operated a vehicle in an unsafe manner, having the potential to damage WMNZ's relationship with the engineering company. It says this action was causative of the dismissal and as such any award of compensation should be reduced under s 124 of the Act. Given the Authority's finding that the dismissal was neither procedurally or substantively justified, which rendered WMNZ's finding of fault unsafe, no reduction in remedies is required to be made on that basis.

Was Mr Blignaut subjected to bullying and harassment and was this in breach of clause 20.1 of the parties' IEA, and are remedies available?

[162] While conflict clearly developed between Mr Blignaut and his colleagues, the evidence demonstrates that this was as much due to do with Mr Blignaut's own conduct and expectations of himself and his colleagues, as it was to do with them.

[163] I agree with WMNZ that although the communication of health and safety issues between Mr Blignaut and his colleagues may not have always been level-headed,

this was due to personality clashes and did not amount to bullying or harassment. When Mr Blignaut raised concerns about his colleagues Mr Singh took action to address them, and Mr Angus provided informal support as needed.

[164] The alleged workplace bullying and harassment has not been established. In light of this, it cannot be said WMNZ breached clause 20.1 of the IEA, nor are remedies available in relation to it.

Did the parties' employment agreement comply with s 67D of the Act?

[165] Mr Blignaut submits that the IEA contained an 'availability provision' which did not meet the requirements of s 67D of the Act.

[166] Section 67D deals with the legality of availability provisions. It defines an availability provision as a provision in an employment under which:⁴

- (a) the employee's performance of work is conditional on the employer making work available to the employee; and
- (b) the employee is required to be available to accept any work that the employer makes available.

[167] An availability provision may only be included in an employment agreement where the relevant employment agreement specifies agreed and guaranteed hours of work and may only relate to a period which is in addition to the guaranteed hours of work.⁵ An availability provision must not be included in an employment agreement unless the employer has genuine reasons based on reasonable grounds for including the availability provision.⁶

[168] Availability provisions must provide for the payment of reasonable compensation to the employee for making themselves available, which it to be determined taking into account all relevant matters including those at s 67D(6).⁷ An employer and an employee who is remunerated for agreed hours of work by way of salary may agree that the employee's remuneration includes compensation for the employee making themselves available for work under an availability provision.⁸

⁴ Employment Relations Act 2000, s 67D(1).

⁵ Section 67D(2).

⁶ Section 67D(3)(a) and (5).

⁷ Section 67D(3)(b).

⁸ Section 67D(7).

There needs to be an express recognition that a salary takes into account availability provisions.⁹

[169] The scope of s 67D has discussed in detail in two relevant Employment Court judgments relating to salaried employees.¹⁰ In the first of those decisions, *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd*, the Court held:

[29] ... an employee's time is a commodity which has a value. ... It seems to us to be self-evident that the value of an employee's otherwise private time applies equally whether they are waiting to be called in for work or on the off-chance they might be required to undertake additional hours of work at the end of their usual working day. In either case the employee is forgoing opportunities in their private life. ...

[30] If an employer wishes to rely on being able to require an employee to work overtime, as opposed to it being a voluntary exercise, it must comply with the requirements of the Act, including by providing reasonable compensation for the availability the employee has committed to providing for the employer's benefit.

[170] WMNZ does not dispute that the hours of work clauses in the parties IEA constituted an availability provision. The IEA specified that Mr Blignaut had 40 guaranteed hours of work per week with normal work times being 8am to 5pm Monday to Friday. It stated the period he was required to be available outside of those hours was when requested by WMNZ to meet the genuine and reasonable demands of the position. I am satisfied this did constitute an availability provision.

[171] WMNZ says it has periods where more work needs to be completed, and it is necessary to work longer hours or on weekends to meet deadlines. It says this would occasionally happen where issues with builds arise and delay progress, increasing the workload closer to deadlines. Mr Singh gave evidence that there was only one time during Mr Blignaut's time with WMNZ where the whole team was requested to come in the weekend and work together to meet a deadline, being over the October 2023 weekend. There are clearly other examples (shown largely in messages) where Mr Blignaut was working outside normal hours on weekdays and on weekends. Mr Singh clearly had knowledge of that given his attempts to address it and him allowing Mr Blignaut to take time in lieu over the relevant October 2023 weekend.

⁹ *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd* [2019] NZEmpC 47, [2019] ERNZ 78 at [56].

¹⁰ *Postal Workers Union of Aotearoa Inc v New Zealand Post Ltd*, and *Chief of the New Zealand Defence Force v Williams* [2025] NZEmpC 16.

[172] While the evidence was clear the demands on Mr Singh's team in the relevant period were significant, the weight of the evidence shows Mr Blignaut was not required to work overtime to the extent he did, but did so anyway despite requests that he stop, and various steps taken to enable him to do so. The evidence indicates he did so due to a tendency to impose very high standards on himself and others, a pattern of self-sacrificing behaviour, a persistent concern that he was failing in the role, and desire for approval and validation, and to progress within the business.

[173] As was necessary, the IEA provided an express recognition that the compensation for additional (overtime) hours worked was included in the salary for the position. WMNZ submits that that salary was sufficient to compensate him for the availability required of him. The evidence has not established otherwise. Based on the evidence presented, WMNZ has not breached s 67D of the Act such that reasonable compensation would need to be quantified.

Does Mr Blignaut have a claim for wage arrears for “unreasonable overtime”?

[174] Mr Blignaut says he is owed wage arrears for unreasonable overtime hours worked, plus payment of time and a half and alternative holidays in relation to four public holidays he says he worked. He points to the overtime table he has compiled as evidence of his hours as supporting his claim.

[175] It is not clear on what basis Mr Blignaut is seeking full overtime arrears of wages. The Authority has not found a breach or breaches of s 67B that would warrant quantification of compensation. There is no suggestion Mr Blignaut was paid less than the minimum wage for the hours worked. On this basis, the Authority can see no basis to award wage arrears for overtime worked.

[176] If I am wrong on that, as WMNZ has submitted, Mr Blignaut's records of his hours was created based on his reviewing his messages with Mr Singh, and the analysis assumes Mr Blignaut was working continuously between messages. WMNZ says this is not a safe assumption in the absence of corroborating evidence. I agree. Therefore, the evidence would have been insufficient to quantify the overtime claims in any event.

[177] The Authority is also not satisfied amounts are payable in relation to work on public holidays. It was submitted that it is irrelevant whether or not Mr Blignaut sought express permission from WMNZ to work on a public holiday, on the basis the Holidays

Act 2003 (the HA) mandates that an employee must be paid time and a half and alternative holidays whether contractually authorised to work on the day or not.

[178] Section 50(1) of the HA requires an employer to pay an employee at time and a half for work on a public holiday, where an employee works “in accordance with [their] employment agreement” on any part of a public holiday. Section 56 of the HA is similarly worded in relation to the entitlement to alternative holiday pay. Any work by Mr Blignaut performed on a public holiday needed to be in accordance his employment agreement. In relation to public holidays, clause 14 of the parties’ IEA stated working on a public holiday was to be approved in advance by Mr Blignaut’s manager. The evidence does not show Mr Blignaut had approval, was required to work or agreed to work on the public holidays in question in accordance with his employment agreement. There is no established entitlement to be paid in relation to those days.

[179] The arrears of wages and holiday pay claims are dismissed.

Did WMNZ breach good faith obligations and if so should a penalty be imposed?

[180] Mr Blignaut claimed WMNZ breached good faith obligations under ss 4(1) and 4(1A) of the Act.

[181] WMNZ were entitled to have a view about the indication from Mr Blignaut that he wished to leave employment, and his going back on that. It was also entitled to follow up with him and seek clarity from him. However, the manner of that follow up and actions leading to termination were inconsistent with the duty of good faith, including the obligation to be active and constructive in maintaining a productive employment relationship. I consider the dismissal was likely substantially motivated by WMNZ’s wish to bring about the end of the employment relationship in light of his relationship issues with others, a breakdown in the relationship with Mr Singh, and the uncertainty about his employment ending and its need to deliver on significant project work. I am satisfied its actions undermined the employment relationship and are serious enough to warrant a penalty.

[182] In considering whether a penalty is warranted and, if so, at what level in relation to the breach of good faith, regard has been had to the factors set out in s 133A of the Act, as well as the Employment Court decisions in *Boorsbom v Preet*, *Nicholson v Ford*

and *A Labour Inspector v Daleson Investment Ltd.*¹¹ The starting point for a penalty in the case of a company is a maximum amount of \$20,000. The purpose of penalties is punitive, and to act as a specific deterrent to an employer and other employers not to act in a similar fashion.

[183] In all the circumstances and considering proportionality, I consider that a penalty of \$5,000 to be appropriate. Part of that penalty amount is to be made payable to Mr Blignaut.

Outcome

[184] It is clear to the Authority that Mr Blignaut's period of employment, involving long hours, project pressures and conflict with co-workers impacted his wellbeing and family life. However, I have not ultimately found WMNZ's actions unjustified, except in relation to his dismissal as outlined.

[185] Waste Management NZ Limited is to pay Roelof Petrus Blignaut within 21 days of the date of this determination:

- (a) Compensation of \$20,000 under s 123(1)(c)(1) of the Act;
- (b) Lost wages for the period between 15 March 2024 to 29 May 2024;
- (c) A penalty of \$2,500.

[186] Within the same timeframe, WMNZ must pay the balance of the penalty of \$2,500 to the Crown Bank Account.

Costs

[187] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed Mr Blignaut may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination.

[188] From the date of service of the costs memorandum WMNZ would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted. If the Authority is asked to determine costs, the parties can expect the Authority to apply its usual daily rate unless

¹¹ *Boorsbom v Preet PVT Limited* [2016] NZEmpC 143 at [138]–[151]; *Nicholson v Ford* [2018] NZEmpC 132 at [18]; and *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [19].

particular circumstances or factors require an upward or downward adjustment of that tariff.

Sarah Blick
Member of the Employment Relations Authority