

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 7
5620985

BETWEEN MARK BROKESHIRE
 Applicant

AND SPOTLESS FACILITY SERVICES
 (NEW ZEALAND) LIMITED
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Nikkii Flint, Counsel for Applicant
 Guido Ballara, Counsel for Respondent

Investigation Meeting: 28 September 2016 at Palmerston North

Submissions Received: 13 September, 3 and 12 October 2016 from Applicant
 13 September and 10 October 2016 from Respondent

Determination: 15 February 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mark Brokenshire claims he was unjustifiably dismissed from his position as Maintenance Supervisor at the Ohakea Airbase on 29 February 2016. He also has a claim for outstanding holiday pay. He withdrew a claim of unjustifiable disadvantage at the commencement of the investigation meeting. Mr Brokenshire seeks financial remedies comprising lost wages, holiday pay, compensation for hurt and humiliation and costs.

[2] Spotless Facility Services (New Zealand) Limited (Spotless) rejects Mr Brokenshire's claims and says he was dismissed on substantively justifiable grounds following a procedurally fair investigation. Spotless disputes Mr Brokenshire's claim to outstanding holiday pay.

The Authority's investigation

[3] Evidence was given by six witnesses. I have not referred to all of those witnesses in this determination or to all the evidence provided. I have, however, set out the material facts and made findings on issues relevant to the determination of Mr Brokenshire's claim in accordance with s. 174E of the Act.

[4] In the course of the investigation Mr Brokenshire's manager confirmed Mr Brokenshire had been at work on a day for which one day's annual leave had been deducted from his holiday entitlement. I informed the parties at the end of the investigation meeting I was satisfied Mr Brokenshire was owed one day's holiday pay. Spotless acknowledged the finding and asked if it could correct the situation immediately. Mr Brokenshire had no objection to that occurring.

[5] This determination has been issued outside the statutory period of three months after receiving the last communication from one of the parties. When I advised the Chief of the Authority this would occur he decided, as he is permitted by s174D(3) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s174D(2) of the Employment Relations Act 2000 (the Act).

Relevant background and evidence

[6] Mr Brokenshire was employed by Spotless as a Maintenance Supervisor at its Linton Army Camp on 24 March 2014. He was employed on terms and conditions that were specified in an individual employment agreement and in the Spotless staff handbook. Mr Brokenshire agreed to transfer to Ohakea Air Force Base ('Ohakea' or the 'Base'), performing the same role, on 12 October 2015.

[7] In the course of his employment at Ohakea, Mr Brokenshire reported to the Spotless Facilities Manager for the Base. Mr Brokenshire had approximately 11 trades staff reporting to him. He held regular toolbox meetings with them, which he usually led on his own. The Facilities Manager would attend toolbox meetings from time to time, depending on the subject matter.

[8] Mr Brokenshire's dismissal followed a fractious toolbox meeting on 3 February 2016 at the start of which he had circulated a letter about trades vehicle use. The letter had made it clear that, with specified exceptions, trades vehicles were

not to be taken off site outside of working hours. This was a matter that had caused disgruntlement among the trades staff when raised at an earlier meeting run by the Facilities Manager on 11 January 2016 and attended by Mr Brokenshire. The 3 February meeting was rowdy and involved swearing by both Mr Brokenshire and trades staff. Mr Brokenshire was sufficiently concerned about the meeting that he contacted the Contract Manager shortly afterwards to inform him about it.

[9] His own manager, who reported to the Contract Manager, was on sick leave at the time and returned to work on 4 February. His evidence was that he had not known Mr Brokenshire intended to discuss the issue of vehicle use at the toolbox meeting. He said he had instructed Mr Brokenshire on Friday 22 January 2016, in the course of a hand-over meeting before Mr Brokenshire went on a week's leave, not to raise the issue again with trades staff until they had discussed how they would approach the matter. Mr Brokenshire denied they had discussed vehicles at the hand-over meeting or that any such instruction had been issued.

[10] A Senior Project Manager employed by Spotless told the Facilities Manager on 4 February about the meeting. That manager had not attended the meeting but had spoken with Mr Brokenshire, and observed him drive off in his work vehicle, immediately after he had left the toolbox meeting. The Facilities Manager asked the manager to provide him with a written statement. The Senior Project Manager recorded in a statement made on 15 February that Mr Brokenshire had looked visibly upset/angry, had made a derogatory comment about the trades staff and had left in his vehicle "at speed" which, in his observation, was "well exceeding the 30kph Base speed limit".

[11] A number of trades staff approached the Facilities Manager on 4 February expressing concern about the toolbox meeting and Mr Brokenshire's conduct. He asked them to put their accounts in writing. The Facilities Manager spoke briefly with Mr Brokenshire the same day and also asked him for his account of the meeting in writing. He told Mr Brokenshire there would need to be an investigation into complaints the trades staff had made. Mr Brokenshire emailed his statement to the Facilities Manager that day. In it he referred to the document he handed out to trades staff regarding terms of company vehicle usage at the beginning of the meeting on 3 February. He said the trades staff members were openly hostile once they had read the document, and were shouting and finger pointing.

[12] Mr Brokenshire's statement recorded that other matters were raised in the meeting that also resulted in some of the trades staff swearing, jeering and shouting over him when he spoke. He acknowledged he had reacted "in a less than professional manner" and had sworn at the group of trades staff, suggesting they should grow up. He had left the meeting at this point to "cat calls, jeers and more verbal abuse" which led him to repeat what he had previously said as he left the room. Mr Brokenshire recorded in the statement he prepared for his manager that, although he had known the meeting would be difficult, he found the open hostility, aggressive manner and intimidation of some of the group to be staggering. While admitting he had sworn twice at the meeting, he said it was a reaction to being verbally abused and having threatening behaviour aimed at him.

[13] The Facilities Manager said he received eight written complaints from 4 February onwards from trades staff who had attended the toolbox meeting. The complaints referred to Mr Brokenshire's unprofessional manner, and the abuse and threats he had made as well as to the aggression and swearing he displayed. The Facilities Manager said he sought advice from Spotless Human Resources (HR) and that HR had confirmed there would need to be an investigation. He said he was advised to interview the trades staff who attended the 3 February toolbox meeting and then interview Mr Brokenshire.

[14] On 5 February Mr Brokenshire requested a meeting with the Facilities Manager to discuss his own concerns with the trades staff, their behaviour and their work. They met that afternoon but Mr Brokenshire said there was very little discussion of his concerns. This was due to the Senior Project Manager joining them shortly after their meeting began and questioning Mr Brokenshire about his personal use of a company vehicle. Mr Brokenshire recorded his dissatisfaction over the way the meeting had gone in a note he made after the meeting.

[15] It was the Facility Manager's evidence that, before the other manager joined them, he asked Mr Brokenshire if he wished to make a complaint against the trades staff, or provide any further information about how they had behaved. Mr Brokenshire denies that conversation occurred.

[16] The Facilities Manager also said he had asked that manager to join them as the matter was serious and he wanted a witness to his discussion with Mr Brokenshire. Under questioning in the Authority's investigation the Facilities Manager said that, in

hindsight, it had been inappropriate for the manager to question Mr Brokenshire about his own vehicle use at that meeting. He acknowledged he did nothing to stop it at the time.

[17] The Facilities Manager emailed Mr Brokenshire on 9 February advising him he was meeting individually with trades staff starting that afternoon and he expected to complete the interviews by 11 February. He informed Mr Brokenshire he intended to meet him again on either Thursday or Friday, i.e. 11 or 12 February, to discuss the outcome of his meetings with the trades staff.

[18] Shortly after receiving that communication from the Facilities Manager, Mr Brokenshire emailed the General Manager Human Resources for Spotless (GMHR), setting out the events of 3 February, the background to his broaching the vehicle use issue at the toolbox meeting, and his view that his future as a maintenance supervisor was in the balance. Mr Brokenshire appealed to the GMHR to contact him as he required advice and assistance.

[19] On 10 February the Facilities Manager exchanged emails about Mr Brokenshire with the respondent's Contract Manager for the area. I shall return to these emails shortly.

[20] Also on 10 February, the Facilities Manager wrote to Mr Brokenshire inviting him to a “*disciplinary investigation meeting*” to discuss allegations of serious misconduct. The meeting was scheduled to take place on 12 February and its purpose was to investigate allegations of:

1. Fighting and/or verbal physical abuse and/or threatening behaviour towards an employee, customer or client on Company or client premises or when attending Company functions.
2. Being rude and/or offensive to other employees, clients contractors or patients.
3. Failure to observe the Companies or clients security or safety procedures.

Specifically its alleged on the 3rd of February 2016 during an Ohakea Tradess Meeting you swore at the tradess staff, you sped on base and failed to stop at a stop sign.

[21] The letter informed Mr Brokenshire such behaviour was a direct breach of Spotless rules and, if proven, would constitute misconduct or serious misconduct. It

put him on notice that the outcome of the investigation could be disciplinary action which could include a formal warning or termination of his employment. The letter ended by encouraging Mr Brokenshire, given the seriousness of the allegations and their possible consequences, to bring a representative to the meeting.

[22] Mr Brokenshire, who said he was shocked to receive the letter and had been unaware of the seriousness of the situation, immediately sought advice from an employment advocate, Gregory Bennett. He declined to attend the meeting on Friday 12 February on Mr Bennett's advice. He accepted an offer of paid leave from the Contract Manager and did not return to the workplace until 29 February.

[23] On 11 February, Mr Brokenshire emailed the Contract Manager and copied his email to the GMHR. He informed the Contract Manager about the email he had sent the GMHR two days earlier and reiterated his feeling of being unsupported in his current situation. He reminded the Contract Manager that, when he had been approached about taking on the role of Maintenance Supervisor at Ohakea, he had agreed to do so but had said he would need support and backing and had been assured by the Contract Manager that support and backing would be there. Mr Brokenshire expressed his concern that he now found himself:

... left hanging with absolutely no support and for doing my job and trying to implement company policies and procedures. I also find myself facing a disciplinary hearing and fighting what I can only describe as absolute fabricated lies, but the process must be obeyed, which will I am sure result in termination of my employment, based on what is alleged I said and did. If my employment is not terminated then my ability to perform as MS will be untenable.

[24] Over the next 2½ weeks Mr Brokenshire's advocate and Spotless exchanged letters and emails. In the course of the correspondence Mr Bennett raised a number of employment relationship issues relating to Spotless' actions, and the procedure it had followed, to date.

[25] On 12 February 2016 the Facilities Manager sent out an email to the Ohakea Air Force Base Adjutant stating he was currently investigating the actions of one of his (the Facilities Manager's) staff on 3 February. The actions included excessive speeding on base, which he said was estimated to be 70 kilometres per hour between two named points, and failing to stop at a stop sign. The Facilities Manager asked the Adjutant to confirm if he, or any other personnel, had witnessed the "dangerous driving described above". The Adjutant put out an email to all personnel at Ohakea

asking any witness to the incident to contact the Facilities Manager. No response was received.

[26] The disciplinary investigation meeting the Facilities Manager had originally scheduled for 12 February took place on 29 February. The decision maker was the GMHR and the meeting ended with Mr Brokenshire being summarily dismissed. That decision was confirmed by letter dated 1 March 2016. According to the GMHR's notes, the meeting lasted approximately two hours fifteen minutes. Mr Brokenshire's evidence was that it was two hours and that, with a break of one hour twenty minutes, the parties were together in the same room for only a small portion of that time.

[27] The letter confirming his dismissal advised Mr Brokenshire there was insufficient evidence to support the allegation he had failed to stop at a mandatory stop sign. However, there was "reasonable evidence" to support the allegation he had exceeded the site speed limit. With regard to the allegations about his conduct at the toolbox meeting, Mr Brokenshire was found to have used "inappropriately harsh language" and the manner in which he had conducted himself and interacted with employees had significantly distressed the employees and, in some cases, had left them feeling "shocked and disrespected". The GMHR's letter advised Mr Brokenshire this met the threshold for serious misconduct and had irreparably damaged the relationship of trust and confidence between Spotless and him. In evidence to the Authority the GMHR said his finding that Mr Brokenshire had been speeding on Base did not form part of his decision to dismiss him.

Issues

[28] The issue for determination is whether or not Mr Brokenshire's dismissal was justifiable. If it was not, issues of remedies and possible contribution will be considered.

Relevant law

[29] Whether a dismissal is justifiable must be determined on an objective basis by applying the test set out at s.103A(2) of the Act. The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[30] The Act specifies at s.103A(3)(a)-(d) the following factors that must be considered in applying this test as well as any other factors I think appropriate:

- (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
- (b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
- (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and
- (d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

[31] The Act constrains me from determining a dismissal or an action to be unjustifiable 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.¹

Was Mr Brokenshire's dismissal justifiable?

[32] Counsel for Mr Brokenshire submits that of the three specific allegations made against him, he was dismissed on the basis of only one, which was that he had sworn at trades staff in the 3 February toolbox meeting. Ms Flint notes the allegation that he failed to stop at a stop sign was not upheld and that the decision maker had stated in evidence that his finding that there was reasonable evidence of his speeding on base did not form part of his decision to dismiss. She further notes that Mr Brokenshire had acknowledged to his immediate manager and to the Contract Manager he had sworn at the trades staff in response to the swearing and abuse from them. Ms Flint submits that Mr Brokenshire's actions and use of language could not justify the finding of serious misconduct Spotless had made.

[33] Counsel has also referred to procedural flaws in the investigation Spotless carried out which, in her submission, were significant and resulted in Mr Brokenshire being treated unfairly. The multiple flaws included the failure to meet with Mr Brokenshire as part of the investigation and before the disciplinary process was commenced; failure to explore disputed evidence; failure to put to Mr Brokenshire

¹ Section 103A(5)

allegations he had sworn more than he had admitted to, and the speed with which the decision maker decided to dismiss him. Ms Flint also noted inconsistencies and differences among the statements made by trades staff particularly in relation to their allegations about Mr Brokenshire's conduct which Spotless had not challenged.

[34] Counsel for Spotless refers to the recent Court of Appeal judgment in *A Ltd v H²* and submits that judgment makes clear that the test at s.103A is about substantive fairness and reasonableness, rather than minute or pedantic scrutiny to identify failings.

[35] To summarise Mr Ballara's submissions, Spotless adopted a reasonable approach and undertook a fair and sufficient investigation. The decision maker approached the matter with an open mind and reached a conclusion he could reasonably reach. His decision that dismissal was the appropriate sanction was justified in the circumstances.

[36] I have reached a different conclusion from counsel for Spotless. I find there were significant flaws in the investigation it undertook which resulted in Mr Brokenshire's dismissal being unjustifiable. I have taken into account that Spotless is a substantial organisation with a national presence and that it has access to human resource and legal advice.

[37] One of the flaws in the investigation was that the investigator of the complaints from trades staff following the 3 February 2016 meeting did not interview Mr Brokenshire as part of his investigation. The investigator, who was both the Facilities Manager and Mr Brokenshire's immediate manager, interviewed the complainants and then requested Mr Brokenshire to attend a disciplinary investigation meeting in which there was scant emphasis on investigation. Mr Brokenshire's first and only opportunity to respond in person to the trades staff complaints was the meeting that ended in his dismissal.

[38] This was not what Mr Brokenshire had expected. He had, reasonably in my view, anticipated he would be interviewed as part of the Facilities Manager's investigation and have the opportunity to give his perspective of the toolbox meeting as well as comment on the complaints made by the trades staff. He expected this to happen before any decisions were made concerning whether further action was

² [2016] NZCA 419

required, or further investigation should be undertaken. His expectation appeared to be in line with his manager's intention on 9 February when the manager emailed him to advise he anticipated meeting Mr Brokenshire after he had interviewed the trades staff. The purpose, as the Facilities Manager said in oral evidence, was "to discuss what came out of all of that" with Mr Brokenshire. That would have also have been in line with the advice the Facilities Manager said he had received from Spotless HR. He had made no reference to possible disciplinary action in his 9 February email to Mr Brokenshire and I conclude the meeting he intended at that time was for investigation, rather than disciplinary, purposes.

[39] The failure to interview Mr Brokenshire as part of the investigation process resulted Mr Brokenshire being denied the opportunity to be interviewed about the incident for which he was dismissed until the disciplinary meeting at which his dismissal was effected. While there is no immutable rule about the timing of such an interview, I conclude that in Mr Brokenshire's case the lack of an earlier interview was unfair to him and was a flaw in the employer's investigation process.

[40] A second flaw has its genesis in the adverse opinion the investigator acknowledged he had formed of Mr Brokenshire on 10 February, the day he requested Mr Brokenshire's attendance at a disciplinary investigation meeting. While he attributed that adverse opinion to one cause, I find it more likely from the investigator's evidence that it was based on two matters. The first was his assertion Mr Brokenshire had raised the vehicle use issue with the trades staff without his authorisation. Mr Brokenshire disputed this. He rejected his manager's evidence that he had instructed him on 22 January not to raise vehicle use with trades staff until they had discussed the approach they would take. He said the issue of vehicle use was not discussed when he and the Facilities Manager met for what they both described as a short handover meeting on 22 January.

[41] I find Mr Brokenshire's evidence to be more credible. The reason for the handover meeting was that Mr Brokenshire was about to go on a week's annual leave. It seems unlikely his manager would issue him an instruction at that time about not raising vehicle use with trades staff given that Mr Brokenshire would have no opportunity to do so while he was on holiday.

[42] There is no evidence the Facilities Manager made Mr Brokenshire aware of his view that he had acted without authorisation in raising the vehicle policy issue

with trades staff when he and Mr Brokenshire had a brief discussion on 4 February about the previous day's toolbox meeting. Nor is there any evidence he made him aware of it on 5 February when the meeting instigated by Mr Brokenshire was deflected from its purpose by the senior project manager's questioning of Mr Brokenshire about his own use of a vehicle.

[43] The Facilities Manager's letter of 10 February inviting Mr Brokenshire to a disciplinary investigation meeting did not contain any allegation that he had acted against his manager's instructions in raising the issue of vehicle use at the 3 February toolbox meeting. The only time it appears to have been raised was in an email of 16 February to Mr Bennett, to which were attached a large number of documents Mr Bennett had requested. I am not satisfied the allegation was ever properly put to Mr Brokenshire to respond to, yet it is clear from the Contract Manager's written evidence that he accepted Mr Brokenshire had acted "in breach of (the Facilities Manager's) direction".

[44] More significantly it was also accepted by the GMHR who referred in his written evidence to Mr Brokenshire's decision to raise the vehicle use issue at the toolbox meeting as "unauthorised and imprudent". The GMHR did not dismiss Mr Brokenshire for that. However, his description of Mr Brokenshire's action leads me to conclude he had formed a negative view of Mr Brokenshire in relation to the toolbox meeting on the basis of an untested assertion by Mr Brokenshire's manager.

[45] The second matter causing the investigator to form an adverse opinion of Mr Brokenshire was his belief that Mr Brokenshire had no authorisation to hand out the unsigned letter to the trades staff on 3 February. That belief was not contradicted by the Contract Manager whose name and job title were at the end of the letter. Documents provided by the parties show an email exchange occurred on 10 February 2016 between the Facilities Manager and the Contract Manager about the unsigned letter.

[46] The Facilities Manager emailed the letter, which was dated 2 February 2016, to the Contract Manager on 10 February and asked if he had authorised Mr Brokenshire to hand it to trades staff. If he had, the Facilities Manager asked him to advise the date on which he had approved it, and why he had approved it directly to Mr Brokenshire without going through him. The Facilities Manager then stated his

view that, if the Contract Manager had not approved the letter to be presented to trades staff, there was a case for Mr Brokenshire to answer:

"...for falsifying/altering a document without authorisation and falsifying information as the statements I have from the trades staff is that (Mr Brokenshire) stated he had your approval directly and he was at the meeting to enforce this letter".

[47] The Contract Manager's response was that the letter had been sent to all trades staff in May 2012. The only changes between the original and the 2 February letter were the date and the removal of the signature block of a former Contract Manager. The date on the document automatically changed to the current date each time it was printed, although it was clear from the Facilities Manager/investigator's oral evidence he did not know this at the time and assumed Mr Brokenshire had made the change.

[48] The Contract Manager also enclosed in his response to the Facilities Manager a copy of an email he had sent to Mr Brokenshire on 18 January 2016, attached to which was the original May 2012 document. He asked the Facilities Manager if he would interpret his email to Mr Brokenshire as authorisation to use the 2012 document. In the brief email he had sent to Mr Brokenshire, the Contract Manager had told him the attached letter had gone out to the trades staff in May 2012 and that "it may be time for a reissue".

[49] The Facilities Manager's response conveyed his view that the Contract Manager's email was not approval to use the May 2012 document without his (the Facilities Manager's) involvement.

[50] In my view it was reasonable for Mr Brokenshire to have interpreted the Contract Manager's email as an instruction, given the context of earlier email correspondence among the three Spotless employees regarding vehicle use by trades staff. The Contract Manager had emailed the Facilities Manager and Mr Brokenshire on 29 October 2015 noting that most Ohakea trades staff were taking their work vehicles home at night. He had observed that at 6.30 that morning only three Spotless trades vehicles had been in the yard and stated "...this practice is to stop immediately. Only those trades on call and the agreed pool vehicles are permitted to be taken off site overnight". The Facilities Manager's response of the same day, which he copied to Mr Brokenshire, had been that he had spoken to Mr Brokenshire "and he will get this sorted out".

[51] The meeting with trades staff on 11 January 2016, which the Facilities Manager led and Mr Brokenshire attended, was part of the attempt to sort out the trades vehicle situation. It clearly did not go well and, according to Mr Brokenshire, the Facilities Manager had been verbally abused and there had been shouting and heckling from the trades staff. Mr Brokenshire's toolbox meeting of 3 February 2016 was a further attempt and was again met with strong and vocal resistance.

[52] I accept Mr Brokenshire genuinely believed he was carrying out an instruction from both his manager and the Contract Manager in raising the issue with the trades staff on 3 February. Neither of those managers could reasonably have formed the adverse views they did of Mr Brokenshire, arising from his decision to address the matter with trades staff and to recirculate the (amended) May 2012 letter. I find their forming of such adverse views of Mr Brokenshire's actions, and the failure to put those matters to him for his response, constituted a further flaw in the investigation process. While neither of them was the decision maker, both had interactions with the GMHR and, as I have already noted, had negatively influenced his thinking in relation to at least one issue, that of Mr Brokenshire raising vehicle use policy with trades staff without authorisation.

[53] It was the Contract Manager's evidence that he had suggested to the GMHR he should be the decision maker in the matter. There was no evidence the suggestion had been made other than verbally, and it is reasonable to infer the Contract Manager and the GMHR had a conversation before the meeting of 29 February. They both gave evidence of having a conversation during that meeting. The Facilities Manager attended the 29 February meeting with the GMHR. I do not doubt the GMHR's belief that he was acting as an impartial decision maker. However, I find it more likely than not that he was influenced by the adverse views the Contract Manager and the Facilities Manager had both formed of Mr Brokenshire.

[54] It was the GMHR's evidence that his view over Mr Brokenshire raising the issue of vehicle use at the toolbox meeting contrary to his manager's instruction did not form part of his decision to dismiss Mr Brokenshire. While that may be so, the fact he had formed that view of Mr Brokenshire's action on the basis of an assertion by the Facilities Manager which had not been put to Mr Brokenshire is concerning. As decision maker, the GMHR had the responsibility of ensuring the investigation carried out by the Facilities Manager had been thorough and fair. I am not satisfied he

did this and I find it likely the Facilities Manager's views, and the adverse views about Mr Brokenshire the Contract Manager had formed, influenced the GMHR in his decision making.

[55] In my view the decision to dismiss was compromised by the flawed investigation that underpinned it. The test of justification under the Act was not met and the decision to dismiss was not one a fair and reasonable employer could have reached in all the circumstances at the time.

Remedies, contribution and mitigation

[56] Mr Brokenshire is entitled to remedies for his personal grievance for unjustifiable dismissal. I accept his evidence regarding the hurt and humiliation he suffered from his dismissal and is entitled to be compensated for it. I consider \$9,000 to be appropriate compensation, subject to my findings as to contribution.

[57] I also accept his evidence of being unable to obtain full time employment until 6 June 2016 and of having attempted to mitigate his loss by seeking contract work and taking lower paid roles between his dismissal and that date. His evidence was that he earned \$4,633.71 (nett) in that time. I consider an award of three months' wages, based on his salary of \$72,000 per annum, to be fair, less his earnings during the three month period. That sum is subject to findings as to contribution.

[58] As I have found Mr Brokenshire to have a personal grievance I am obliged under s.124 of the Act to consider whether he contributed to the situation that led to that grievance. If he did, I am required to consider the extent to which his actions contributed and, if those actions so require, reduce the remedies that would otherwise be awarded to him.

[59] I consider it appropriate to take into account Mr Brokenshire's admission of his conduct during the meeting that resulted in his dismissal. While it is likely the meeting would have caused dissention and dissatisfaction amongst the trades staff regardless of Mr Brokenshire's conduct, it is unlikely he would have been dismissed if he had not sworn at the employees and acted unprofessionally in the meeting. I assess his contribution at 25 per cent and have reduced the compensation and wages' awards accordingly.

Determination

[60] Spotless owes Mr Brokenshire one day's holiday pay for the leave it deducted from him in respect of 1 February 2016. If it has not already done so, I order it to pay him for that day's leave.

[61] As remedies for his personal grievance for unjustifiable dismissal I order Spotless to make the following payments to him:

- a. the sum of \$6,750.00 as compensation for the hurt, humiliation and injury to feelings he sustained, under s.123(1)(c)(i) of the Act;
- b. the sum of \$13,500 gross under s.128 of the Act, less \$4633.71 nett, being the amount Mr Brokenshire earned during that period.

Costs

[62] The issue of costs is reserved.

Trish MacKinnon
Member of the Employment Relations Authority