

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 51
3196920

BETWEEN	GRAEME CASEY Applicant
AND	UPLIFTING HOMES LIMITED Respondent

Member of Authority:	Alex Leulu
Representatives:	Jenifer Silva, advocate for the Applicant Michael O'Brien, counsel for the Respondent
Investigation Meeting:	3 and 4 August 2023 in Hamilton
Submissions received:	7 September and 1 November 2023 from Applicant 20 October 2023 from Respondent
Determination:	31 January 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Graeme Casey was employed by Uplifting Homes Limited (UHL) as a sales and development manager. Mr Casey claimed he was dismissed without justification by UHL on 8 August 2022. Mr Casey also made other claims against UHL including claims for unjustified disadvantage and a breach of the Wages Protection Act 1983 (WPA).

[2] UHL denied Mr Casey's claims and it said Mr Casey was not disadvantaged and his dismissal was justified. It also said it did not breach its obligations under the WPA.

The Authority's investigation

[3] For the Authority's investigation, written witness statements were lodged from Mr Casey, his wife Lynda Casey and UHL director Abby Daly. All three witnesses attended the investigation meeting and answered questions under oath or affirmation from me and the parties' representatives. After the investigation meeting, sworn affidavits were also filed by Mr Casey, former UHL employee Caesar Ballie and UHL office manager Wendy Spratt. The representatives also submitted written closing submissions.

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

The issues

[5] The issues requiring investigation and determination were:

- (a) Was Mr Casey unjustifiably disadvantaged during his employment with UHL?
- (b) Was Mr Casey unjustifiably dismissed by UHL on 8 August 2022?
- (c) If Mr Casey was unjustifiably dismissed and/or unjustifiably disadvantaged, was he entitled to remedies including:
 - (i) compensation in accordance with s 123(1)(c)(i) of the Act; and
 - (ii) remuneration for lost wages (subject to evidence of reasonable endeavours to mitigate his loss)?
- (d) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Casey that contributed to the situation giving rise to his grievance(s)?
- (e) Did UHL breach any of the following:
 - (i) its obligation of good faith to Mr Casey;
 - (ii) the terms of the employment agreement between it and Mr Casey;and

- (iii) its obligations under the WPA by making an unlawful deduction from Mr Casey's final pay?
- (f) For any established breach, should a penalty be imposed against UHL for each breach?
- (g) For any breach of the WPA for unlawful deductions, should an order be made for UHL to repay Mr Casey the amount of any unlawful deduction?
- (h) Was Mr Casey's holiday entitlements calculated and paid correctly in accordance with the Holidays Act 2003 (Holidays Act)?
- (i) Should either party contribute to the costs of representation of the other party?

Context

Mr Casey's initial employment

[6] UHL operated as a renovation and home removal business. Ms Daly was both the sole director and general manager of UHL.

[7] Mr Casey started his employment for UHL on 17 May 2021. His work was primarily based in Hamilton. During his employment, he resided in Auckland but travelled regularly to Hamilton to carry out his work for UHL. As part of his employment agreement, Mr Casey was provided a work vehicle, a laptop, and a mobile phone. UHL also paid for Mr Casey's membership for a gym facility in Hamilton.

[8] Mr Casey did not receive a written employment agreement at the start of his employment. About a year after starting, he received and signed several employment related documents including a written employment agreement. The parties dispute whether during this time, Mr Casey had received and signed UHL's House Rules document (House Rules). The House Rules included a company vehicle policy which sets out UHL's rules on staff use of company vehicles.

[9] For the first year of Mr Casey's employment, his working relationship with UHL progressed positively. Around the time he signed his written employment agreement, Ms Casey also received a pay rise from UHL.

[10] On 20 June 2022 UHL had planned for a house to be moved. Mr Casey was tasked with arranging insurance before the house was to be moved. Mr Casey did not arrange the insurance beforehand. On the same day, Ms Daly approached Mr Casey to discuss the matter further. Mr Casey and Ms Daly disagreed on whether Ms Daly had sworn and shouted at Mr Casey during the discussion.

UHL's proposal meeting

[11] On the following day Ms Daly sent Mr Casey an email inviting him to a meeting on Thursday 23 June 2022. Mr Casey attended the meeting. On arriving to the meeting with Ms Daly he realised UHL's legal representative Michael O'Brien was also present.

[12] At the meeting, Ms Daly and Mr O'Brien explained to Mr Casey UHL's proposal to disestablish Mr Casey's role (the proposal meeting). As part of the proposal, Mr Casey's duties were to be distributed to other UHL staff and contractors. Mr Casey was also given a letter setting out the details of the proposal.

[13] Mr Casey was given an opportunity to consider the proposal and provide feedback. Both Mr Casey and UHL arranged to meet again on Wednesday 29 June 2022 to discuss any feedback from Mr Casey (the feedback meeting). Mr Casey was also offered special leave to consider the proposal further. Mr Casey agreed to take leave.

[14] Towards the end of the proposal meeting, Ms Daly asked Mr Casey to return all his work property including laptop and mobile phone. Ms Daly was then reminded by Mr O'Brien that Mr Casey was still employed by UHL. Mr O'Brien also explained to Ms Daly that Mr Casey still needed his laptop and mobile phone.

[15] After the proposal meeting, Mr Casey said he was approached by Ms Daly. He said Ms Daly asked him to return his laptop and his mobile phone. He declined Ms Daly's request.

[16] Shortly after leaving the UHL offices, UHL stopped Mr Casey's access to his work emails and the use of his work mobile phone. A few days later, Mr Casey's gym membership was also cancelled. Both parties dispute the circumstances behind why Mr Casey's access to these services and work equipment had ceased.

UHL's allegations of misconduct

[17] On 28 June 2022 Mr Casey tested positive for COVID-19. As a result, the feedback meeting was postponed until Monday 4 July 2022.

[18] On 3 July 2022 UHL contacted Mr Casey alleging he had breached the COVID-19 requirements by driving his work vehicle when he should have been in isolation. UHL said Mr Casey's alleged actions would have put the company into disrepute. UHL had relied on GPS data which showed Mr Casey's vehicle being driven while he was in isolation. As a result of this allegation, Mr Casey and UHL agreed to further postpone the feedback meeting to 5 July 2022. This would allow Mr Casey an opportunity to consider and respond to UHL's allegation.

[19] On 5 July 2022 Mr Casey attended the feedback meeting by Zoom video conference. Mr Casey's representative Jenifer Silva, Ms Daly and Mr O'Brien attended the meeting. Mr Casey provided his feedback on the proposal and responded to UHL's misconduct allegations. In response to the allegation, Mr Casey said his wife, Ms Casey had been driving his work vehicle while he was in isolation. After the feedback meeting, Ms Casey provided UHL with a signed statement confirming her use of Mr Casey's work vehicle.

Termination of Mr Casey's employment

[20] On 15 July 2022 UHL decided to terminate Mr Casey's role due to redundancy and provided him with four weeks' notice.

[21] On 1 August 2022, UHL reached a preliminary outcome on the allegations against Mr Casey. UHL provided Mr Casey with a letter saying it had found more evidence about the use of Mr Casey's vehicle while he was in isolation. UHL presented photo evidence of Mr Casey's son, Samuel Casey, using Mr Casey's work vehicle.

[22] On 8 August 2022 UHL terminated Mr Casey's employment for serious misconduct.

Mr Casey's claim for unjustified disadvantage

Mr Casey's claims

[23] Mr Casey made several claims for unjustified disadvantage which can be summarised as follows:

- He was sworn at and bullied by Ms Daly.
- His ability to access his email and use his mobile phone was stopped by UHL while he was still employed.
- UHL's decision to make his role redundant was predetermined.
- UHL made unlawful deductions from his final pay without reasonable consultation with him.

Bullying claim

[24] Mr Casey claimed he was bullied by Ms Daly when she swore and shouted at him on 20 June 2022. UHL denied Mr Casey's allegation and said Ms Daly did not swear at Mr Casey.

[25] Mr Casey said shortly before 20 June 2022, Ms Daly had suddenly stopped talking to him and began to treat him differently. Ms Daly acknowledged the change in her behaviour and how she became quieter around Mr Casey. She said the reason for her behaviour was because she was coping with stress due to her competing work priorities and personal issues.

[26] WorkSafe New Zealand's "Preventing and Responding to Workplace Bullying: The Guidelines" (Worksafe guidelines) defined bullying as:¹

... repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.

[27] Although there is no statutory definition for bullying, the Employment Court had described the WorkSafe guideline definition as a "yardstick" for assessing whether an employer took appropriate steps.² The Worksafe guidelines provide several

¹ WorkSafe New Zealand "*Preventing and responding to Workplace Bullying: The Guidelines*", first published in 2014 and updated in 2017.

² *FGH v RST* [2018] NZEmpC 60, (2018) 15 NZELR 944.

examples of what should not be considered as bullying. This included circumstances of “one-off or occasional instances of forgetfulness, rudeness or tactlessness”.

[28] Ms Daly’s actions on 20 June 2022 did not amount to bullying. Although Mr Casey and Ms Daly agreed their relationship had changed, there was no signs of previous animosity between them. Ms Daly had shouted at Mr Casey, but her actions were best described as a one-off occasional instance of rudeness or tactlessness.

Redundancy decision

[29] Mr Casey said Ms Daly had predetermined its decision to make his role redundant before considering his feedback to UHL’s redundancy proposal on 27 June 2022. He also argued the real reason UHL had decided to make his role redundant was in response to his interaction with Ms Daly on the 20 June 2022.

[30] In support of his claims Mr Casey relied on UHL’s decision to remove his access to work emails, stopping his ability to use his work mobile phone and cancelling his gym membership. These services were all stopped relatively quickly after Ms Daly had approached Mr Casey after the proposal meeting.

[31] The earliest instance of Mr Casey’s work services being stopped was while returning to Auckland after the proposal meeting. While driving home, Mr Casey said he received a text notification confirming his work email access had been stopped.

[32] UHL disagreed with Mr Casey’s claims of predetermination. It said its redundancy process was sound and its reasons for making Mr Casey’s role redundant were genuine. Ms Daly said the reason for the restructure was because she wanted to personally focus on the operational and house buying side of UHL’s business. These tasks were a part of Mr Casey’s role. She also said, the change would save UHL \$50,000 to \$60,000 a year.

[33] UHL also said it needed Mr Casey’s mobile phone to ensure it did not miss business calls while Mr Casey was on leave. Ms Daly said, shortly after the meeting she tried to temporarily divert Mr Casey’s mobile phone calls to her phone. Because the mobile phone service provider could not divert Mr Casey’s calls, Ms Daly said she decided to relocate Mr Casey’s mobile phone number. This meant Mr Casey’s mobile

number would be transferred to another device. She said she did not realise this would disable Mr Casey's use of his mobile phone.

[34] In terms of Mr Casey's gym membership, Ms Spratt disputed Mr Casey's evidence. Ms Spratt was a UHL office manager and in her evidence, she said she spoke to another UHL employee who was responsible for UHLs accounts during Mr Casey's employment. The former UHL employee told Ms Spratt, Mr Casey had cancelled his own gym membership on 19 June 2022 and not UHL.

Assessment of Mr Casey's unjustified disadvantage claim

[35] UHL's reasons for proposing the restructure of its business and redundancy of Mr Casey's role were genuine. However, there were procedural flaws in UHL's redundancy proposal process. These flaws showed UHL had predetermined its decision to make Mr Casey's role redundant without proper consultation with him.

[36] After the proposal meeting, Ms Daly knew Mr Casey was still employed by UHL and a decision was not yet made about whether his role would be made redundant. However, she took active steps to prevent Mr Casey's access to his work emails and the use of his work mobile phone.

[37] Mr Casey's gym membership was also cancelled by UHL. His evidence is preferred over Ms Spratt's untested affidavit evidence which also relied on hearsay evidence from another UHL employee. Neither Ms Spratt nor the UHL employee were present at the investigation meeting and could not be questioned about their recollection of how Mr Casey's gym membership was cancelled. Also, it is unlikely Mr Casey had cancelled his own gym membership on 19 June 2022. This was because it was before the proposal meeting took place and there was no sound reason why he would cancel his membership.

[38] UHL's actions in respect of Mr Casey were not that of a reasonable employer. Mr Casey was disadvantaged because UHL had predetermined the termination of his employment by redundancy. He was also disadvantaged when UHL had stopped his access and use of his work emails, his work mobile phone and gym membership without proper consultation with him.

Unlawful wage deductions

[39] On 11 August 2022 UHL deducted \$409 from Mr Casey's final pay. The deductions were for speeding tickets allegedly owed by Mr Casey and a power board device UHL said was in Mr Casey's possession. Mr Casey argued he was unjustifiably disadvantaged by UHL because these deductions were made without his consent. He also disputed the reasons for the deduction and said there was insufficient evidence to show he was responsible for the speeding tickets. He also said he did not take the power board device from UHL.

[40] UHL opposed Mr Casey's disadvantage claim because the alleged deduction occurred after Mr Casey employment had ended. It also said the deduction was justified and was in accordance with clause 24 of Mr Casey's employment agreement which said:

By signing this agreement, the Employee gives written consent to the Employer (pursuant to section 5 of the Wages Protection Act 1983) to make deductions from any remuneration or other money (including but not limited to, holiday pay) owing to the Employee at any time during the course of the Employee's employment or on termination of the employment. Deductions may be made for any sum which may be owing from the Employee to the Employer for any reason whatsoever.

The Employer will consult with the Employee prior to making any deductions.

[41] Mr Casey's unjustified disadvantage grievance for an unlawful deduction could not be investigated because it occurred after his employment was terminated by UHL. However, Mr Casey's claim for a breach of the WPA can be investigated.

[42] In his termination letter on 8 August UHL had notified Mr Casey of its intention to deduct amounts from his wages for speeding tickets it said were caused by Mr Casey driving his work vehicle.

[43] Mr Casey disputed the proposed deduction and requested a copy of the speeding tickets which were provided to him on 12 August 2022. At the time the tickets were provided, UHL had already paid Mr Casey his final pay and had already carried out the deduction from his pay on 11 August 2022.

[44] UHL had not reasonably established whether Mr Casey was responsible for the speeding tickets or whether he had the power board in his possession. For these reasons,

UHL's deduction of the speeding ticket amounts from Mr Casey's final pay was unreasonable and therefore an unlawful deduction for the purposes of the WPA.

Mr Casey's unjustified dismissal

Mr Casey's claims and UHL's response

[45] While Mr Casey was in COVID-19 isolation around June and July 2022, Ms Casey and Samuel Casey drove his work vehicle without UHL's knowledge. UHL determined this to be serious misconduct and terminated Mr Casey's employment because:

- Mr Casey allowed others to drive his work vehicle without UHL's consent; and
- He was dishonest when he said Ms Casey was the only person driving his work vehicle (while he was in isolation).

[46] UHL said it followed a fair and reasonable process and was within its rights to dismiss Mr Casey from his employment with UHL.

[47] Mr Casey claimed his dismissal by UHL was not justified because:

- He had not ever seen or signed the House Rules;
- UHL were aware of previous occasions where Ms Casey and Samuel Casey had driven Mr Casey's work vehicle; and
- His conduct was not serious enough to warrant summary dismissal.

UHL's disciplinary process

[48] On 3 July 2022, UHL had communicated to Mr Casey his alleged breach of the COVID-19 rules. They agreed to discuss this at the 5 July 2022 feedback meeting. After the meeting Ms Casey provided a statement confirming her use of the vehicle.

[49] On 15 July 2022 UHL acknowledged Ms Casey's statement and explained it would investigate the matter further. The allegation against Mr Casey was now described as "personal use and excessive personal use of the company vehicle while you were self-isolating".

[50] After investigating the matter further, UHL found evidence of Samuel Casey's use of the vehicle. The evidence was in the form of petrol station surveillance photographs of Samuel Casey refuelling Mr Casey's work vehicle.

[51] On 1 August 2022, UHL sent Mr Casey a letter proposing to summarily terminate Mr Casey's employment. The letter referred to Samuel Casey's use of the work vehicle and had determined Ms Casey's statement to be false and accused Mr Casey of misleading UHL. The letter also invited Mr Casey to provide a response and to meet with UHL by 2 August 2022.

[52] On 2 August 2022 Mr Casey provided UHL a further statement from Ms Casey. In her second statement Ms Casey admitted she had driven Mr Casey's work vehicle with Samuel Casey to a food outlet. She also said, Samuel Casey then drove the vehicle from the food outlet to the petrol station. Mr Casey did not respond to UHL's invitation to meet. This led to UHL's decision on 8 August 2022 to terminate his employment.

[53] UHL's process for investigating Mr Casey's conduct was reasonable given the circumstances. Throughout UHL's disciplinary process, both parties were represented and were aware of the circumstances and the consequences of each of the interactions between them. UHL communicated its allegations to Mr Casey in advance and Mr Casey had reasonable opportunity to respond. UHL's disciplinary process leading up to Mr Casey's dismissal was appropriate.

The House Rules

[54] Clause 41 of the House Rules set out UHL's policy on staff vehicle use. The House Rules' reference to vehicle use was brief and simply referred to company vehicles not to be used for personal use. The House Rules provided no exceptions to this rule.

[55] Mr Casey said he was never given the House Rules document during his employment. The first time he heard about the House Rules was during the feedback meeting on 5 July 2022. He also said he didn't see the House Rules until he attended mediation with UHL on 20 October 2022.

[56] UHL eventually provided Mr Casey a copy of the signed House Rules it claimed was signed by Mr Casey. Mr Casey lodged his amended statement of problem with the

Authority on 11 November 2022. In his statement of problem, he disputed UHL's signed copy of the House Rules. He claimed the signature on the House Rules was not his signature. Mr Casey reaffirmed his claim in his evidence provided both before and during the investigation meeting (in August 2023).

[57] Mr Casey provided various examples of his signature including a copy of his driver's license. His examples clearly showed his signature was different to the House Rules signature.

[58] During the investigation meeting, UHL presented a second signed version of the House Rules. It said the second version was the correct version signed originally by Mr Casey. The signature on the second version appeared to be a closer resemblance to Mr Casey drivers license signature. Mr Casey still maintained he had not seen or signed the House Rules and disputed the signature on the second version of the House Rules.

[59] In support of UHL position, Ms Spratt said Mr Casey had signed the House Rules and provided her with a signed copy. She said she had provided a physical copy of all relevant documents (including the House Rules) to Mr Casey on 18 May 2022. She then followed this up with an email to Mr Casey on Friday 3 June 2022 which said:

Please see the attached contract which you received on 18 May 2022, along with the other documentation that needs filling in.

Could you please have this filled by Tuesday.

[60] Attached to the email was a copy of Mr Casey's employment agreement and other employment related documents. The House Rules were not attached to the email.

[61] On balance, it is more unlikely than likely that Mr Casey had not physically or digitally received a copy of the House Rules during his employment with UHL. Arguably, Ms Spratt's email shows her only providing Mr Casey with a physical copy of his "contract" (on 18 May 2022). There is no mention of her previously providing Mr Casey with "other documentation". It was reasonable to interpret Ms Spratt's email to mean she did not provide a physical copy of the House Rules to Mr Casey on 18 May 2022, and she clearly did not attach the House Rules in her email.

[62] Also, upon lodging his statement of problem to the Authority, Mr Casey disputed his signature at a relative early stage of the Authority's investigation. UHL

did not initially respond to Mr Casey's arguments about his signature. UHL had the opportunity to respond to Mr Casey's concerns on a number of occasions before the investigation meeting. This included when it lodged its statement in reply and filing its evidence before the investigation meeting. UHL did not provide the second version of the House Rules until during the investigation meeting.

[63] Mr Casey also said he would usually initial the pages of documents before signing. As an example, he referred to his employment agreement where he had initialled each page and signed the last page. Both versions of the House Rules did not have his initials on any of the pages.

Vehicle use agreement

[64] Because Mr Casey had not seen or signed the House Rules, much of what was agreed to about his use of the work vehicle depended on his initial discussion with Ms Daly. Both Mr Casey and Ms Daly agreed the vehicle could not be used for the purposes of Mr Casey's pet dog. UHL was also to pay for the petrol for the vehicle. Mr Casey said there were no other restrictions imposed upon him in terms of his use of the work vehicle.

[65] Ms Daly disagreed with Mr Casey and said they agreed for the vehicle to be used for work purposes and no other person was to drive the vehicle apart from Mr Casey.

[66] During his employment, Mr Casey said Ms Casey and Samuel Casey had previously driven his work vehicle and UHL was aware of it. He said Ms Casey had only driven the work vehicle once before and Samuel Casey had driven the vehicle to assist with house moving.

[67] Ms Daly did not deny Ms Casey and Samuel Casey's previous use of the vehicle. She also confirmed occasions where she allowed Mr Casey to use his work vehicle for personal reasons.

[68] Based on the available evidence it was likely Mr Casey and Ms Daly had a general understanding for Mr Casey to use his work vehicle primarily for work purposes. However, he would need to obtain consent from Ms Daly to use the vehicle for personal use or for others to use the vehicle for work related reasons.

UHL's dishonestly allegation against Mr Casey

[69] UHL claimed Mr Casey had lied at the feedback meeting about only Ms Casey driving his work vehicle while he was in isolation. It claimed Mr Casey knew Samuel Casey had also driven the work vehicle during this time. As a result, UHL said Mr Casey's alleged deception had seriously undermined the employment relationship.

[70] Although Mr Casey said he knew Ms Casey drove his work vehicle while he was in isolation, he did not know Samuel Casey had also driven the work vehicle. Mr Casey also denied any deception on his part.

[71] Mr Casey was given a number of opportunities to respond to UHL about the use of his work vehicle while he was in COVID-19 isolation. Although he initially responded at the feedback meeting about Ms Casey's use of the vehicle, he did not disclose Samuel Casey's use of the vehicle. However, as a UHL employee, Mr Casey was responsible for the vehicle. He should have made reasonable enquires with his family as to how the work vehicle was used.

[72] It was reasonable from UHL's communications with Mr Casey during his disciplinary process to conclude Mr Casey had misled UHL as to who was driving Mr Casey's work vehicle while he was isolating.

Serious Misconduct

[73] Mr Casey also argued his alleged misuse of his work vehicle did not amount to serious misconduct. In support of his argument, he referred to previous instances where his work vehicle was used by others and had not been previously raised as a formal issue by UHL.

[74] UHL's disagreed with Mr Casey and relied on decisions from the Employment Court to show an employee lying during a disciplinary investigation was capable of justifying summary termination of employment.³ UHL also said an employee lying during a disciplinary investigation was blameworthy conduct capable of tipping the scales in a situation where initial allegations, if proven, would not constitute serious misconduct.

³ As an example: *Nee Nee v C3 Ltd* [2013] NZEmpC 207 at [45].

[75] Clause 14.4 of Mr Casey's employment agreement confirmed UHL's ability to terminate Mr Casey's employment without notice for serious misconduct. Mr Casey's employment agreement also provided several examples of serious misconduct. The examples provided a range of categories of serious misconduct which included sexual harassment, theft, and other criminal activity.

[76] Although Mr Casey was not aware of the House Rules, he needed to obtain consent from UHL to use the vehicle for personal use or for someone else to use the vehicle. He breached this obligation by allowing Ms Casey to use his work vehicle while he was in isolation.

[77] This breach alone was enough for UHL to categorise the breach as misconduct. But this breach was not serious enough to meet the standard of serious misconduct as set out in Mr Casey's employment agreement. This was because UHL said it was concerned Mr Casey's personal use and/or use by other family members would put UHL at risk of breaching its insurance obligations. However, this concern was inconsistent with evidence showing UHL had allowed:

- Mr Casey to drive the vehicle to Tauranga on personal trips; and
- Ms Casey to drive the vehicle from Auckland to Hamilton to attend a work dinner.

[78] Mr Casey had an opportunity to properly respond to UHL's allegations of him misleading UHL during his disciplinary process. He did not sufficiently respond to the allegations and did not take the opportunity to meet with UHL to discuss it.

[79] The Act requires the substantive justification for a dismissal by an employer to be determined objectively. It also requires consideration of whether the employer's actions were what a fair and reasonable employer could have done in the circumstances at the time.

[80] UHL's process was fair and ultimately it was reasonable for it to reach its decision to terminate Mr Casey's employment on 8 August 2022. It was also open to UHL to consider and determine Mr Casey's actions of misleading UHL as serious misconduct.

[81] The only flaw in UHL's decision was its reliance on the House Rules which Mr Casey did not see or sign. This flaw was a minor flaw given Mr Casey had agreed his work vehicle could not be used for personal use or by others without consent from UHL. For these reasons, Mr Casey's personal grievance claim for unjustified dismissal was unsuccessful.

Remedies

[82] Mr Casey had established his personal grievances for unjustified disadvantage through the redundancy process. Mr Casey sought compensation of \$30,000 for each of his proven unjustified disadvantage claims.

[83] Mr Casey said he suffered a considerable amount of grief and as a result he was deprived of sleep, and he suffered severe depression. He explained the stress he suffered because of his mobile phone being disconnected. This included the stress he experienced when he was unable to contact his daughter while both participating in a family activity on Rangitoto Island.

[84] UHL disputed Mr Casey's claimed for compensation because it said his evidence was limited and Mr Casey had not provided medical evidence to support his claims of depression. Mr Casey did not provide medical evidence to support his claim. However, I am satisfied Mr Casey had suffered some form of hurt and humiliation which warrants an order for compensation. In considering the harm Mr Casey experienced and considering his circumstances alongside other cases, the appropriate compensation award in this case is the sum of \$15,000 for his successful unjustified disadvantage claim.

Contributory conduct

[85] The Authority must consider whether any remedies awarded should be reduced due to any actions of the worker which contributed to the situation giving rise to the personal grievance.⁴

[86] In Mr Casey's case, there is no evidence to suggest Mr Casey contributed to UHL's flaws in its redundancy process. No reduction of the remedy awarded to him is required.

⁴ Employment Relations Act 2000, s 124.

Breach of good faith and employment agreement

[87] Mr Casey had also made claims against UHL for a breach of both good faith and his employment agreement. Mr Casey's claim relates to some of the circumstances which contributed to his grievance claims. Accordingly, his claims were more appropriately addressed as part of the findings for those grievances. For this reason, no further finding was made in respect of these alleged breaches.

Penalty and payment of arrears for breach of the WPA

[88] As previously determined UHL had breached its obligations under the WPA. Mr Casey had sought repayment of amounts which were the subject of UHL's unlawful deduction from his wages. Mr Casey is entitled to repayment of that amount and accordingly UHL is ordered to pay Mr Casey \$404 gross.

[89] Mr Casey also sort an order for penalty against UHL for its breach of the WPA. Although it is important to recognize the need for an employer not to make unreasonable deductions from an employee's wages, UHL's breach of the WPA was at a relatively low level. UHL took some steps to consult with Mr Casey about the grounds for its pending deduction from Mr Casey's final pay.

[90] However, UHL failed to appropriately consider Mr Casey's response and had deducted the amounts from his wages before providing Mr Casey with the speeding ticket evidence. For this reason, a penalty should be imposed against UHL. UHL is ordered to pay a penalty of \$1,000 to the Crown within 28 days of this determination.

Mr Casey's holiday entitlements

[91] In his statement of problem, Mr Casey claimed his holiday pay had not accrued during the time he was on special leave. There was insufficient evidence provided to support and quantify his claim to outstanding holiday pay under the Holidays Act. For this reason, no determination was made on Mr Casey's claim for holiday pay.

Costs

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

[93] If they are not able to do so and an Authority determination on costs is needed Mr Casey may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum UHL would then have 14 days to lodge any reply to memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[94] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless circumstances or factors required an upward or downward adjustment of that tariff.⁵

Alex Leulu
Member of the Employment Relations Authority

⁵ See www.era.govt.nz/determinations/awarding-costs-remedies.