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Cox v Kiwi Green Island Club Ltd CA 137/07 (Christchurch) [2007] NZERA 858 (6 December 2007)

Last Updated: 23 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

CA 137/07 5071454

BETWEEN	DAVID COX Applicant
AND	KIWI GREEN ISLAND CLUB LIMITED Respondent

Member of Authority: James Crichton

Representatives: Scott Wilson, Counsel for Applicant

Jeff Goldstein, Counsel for Respondent Investigation Meeting: 2 August 2007 at Christchurch Determination: 6 December 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Cox) alleges that he has suffered unjustifiable actions by the respondent (Green Island Club) which have caused him disadvantage, that he has been unjustifiably dismissed by Green Island Club and that there have been breaches of his employment agreement by the respondent together with a breach of the statutory duty of good faith.

[2] The respondent Green Island Club resists those claims in their entirety. The parties attended mediation together but were unable to resolve the employment relationship problem.

[3] Mr Cox had worked for Green Island Club for a number of years in a number of different capacities. There is no dispute that he commenced his employment with Green Island Club in January 1992, that he became Construction Manager for Green Island Club in 1995, Project Director in 1999 and Project Manager after he resigned

as a director in December 2004. When the employment relationship terminated, Mr Cox was the Project Manager of Green Island Club.

[4] The kernel of the dispute between the parties revolves around Mr Cox's allegation that, from a point in May 2006 when the then Chief Executive Officer Mr House, resigned his employment, Mr Cox started to lose control of the master planning process for which he had been responsible since 1999.

[5] Evidence was given at the investigation meeting about what *master planning* consisted of. For the purposes of this determination, I accept that master planning is a process of establishing a comprehensive development plan for the resort being developed by the Green Island Club and the division of that plan into stages together with the overall management of the delivery of those stages.

[6] It was apparent from the evidence that the Authority heard that the development of the resort complex by Green Island Club had not been entirely plain sailing. In his brief of evidence filed in support of his application, Mr Cox describes in unchallenged evidence the development process in the early days of the resort's construction. A high country sheep farm was purchased in 1990 by a Japanese businessman, Saito San, to develop into a golf resort for existing members of a Green Island Club based in the Philippines. That farm became the basis for the resort being developed by the respondent, Green Island Club.

[7] Towards the end of the 1990s, it became clear that there was a shortage of money available to develop the resort with its existing ownership structure. Green Island Club entered into a joint venture arrangement in 2001 with a third party which enabled some of the proposed development to continue, but in December 2004, after an extensive period of ill health, Saito San sought to reassert his authority over the whole project and this event seems to have been a major watershed leading to the resignation of the then Chief Executive Officer (with whom Mr Cox had a good relationship), and the resignation of Mr Cox himself as a director of Green Island Club.

[8] There were further changes in the directorate of Green Island Club immediately thereafter and by November of 2005, another joint venture arrangement had been entered into between Green Island Club and an entity which, for the purposes of this determination, it is sufficient for me to refer to simply as Titan. Titan

brought to the whole project new participants and a number of these individuals play a significant role in Mr Cox's future employment.

[9] However, before leaving this period chronologically, it is appropriate to record that in January 2005 (that is, before the Titan involvement), Mr Cox was asked by the Acting Chief Executive Officer to prepare a job description of his own role. Mr Cox did that, and in his evidence before the Authority indicates that that job description, which he developed, resulted in him obtaining a \$20,000 salary increase. He says this job description was subsequently sought by the incoming permanent Chief Executive Officer, some six months later. The importance of this job description is that Green Island Club denies that the job description to which I have just referred was in fact ever accepted by it as determinative of the duties and responsibilities of Mr Cox's role. However, Mr Cox's evidence is that he did not find that out until the present proceedings commenced and he saw a letter from the solicitors acting for Green Island Club dated 9 November 2006 in which Green Island Club's position on the job description is made clear.

[10] When Titan entered into its arrangement with Green Island Club, Mr Cox says in his evidence that he had no involvement in that new relationship. That evidence is hotly denied by Green Island Club which says that Mr Cox, like other members of the senior management team, was intimately involved in the process and had been working collaboratively with Titan's principal players, including in particular John Radovonich since September 2005 when he first had an involvement with the project.

[11] Mr Cox says that the relationship between the then Chief Executive Officer, Mr House, and Titan broke down and Mr House terminated his employment with Green Island Club in May 2006. Mr Cox claims that from this point on, Titan through Mr Radovonich, effectively took control of the whole project.

[12] On 16 August 2006, Mr Cox was asked to attend a meeting with David Littlefair who was by then the Acting General Manager of Green Island Club. Mr Cox was told that the employer proposed to make his position redundant and it sought proposals from Mr Cox as to any alternative position which he might aspire to within the organisation. Mr Cox suggested that Green Island Club might reduce something to writing for him to consider and that was agreed to.

[13] When the letter documenting the employer's proposal finally emerged, there followed an exchange of correspondence between the parties and there was a further meeting on 15 September 2006 to discuss the proposed redundancy. That meeting seems to have focused on some confusion in the mind of Green Island Club about the employment agreement that Mr Cox was working to. Mr Cox was very clear about the nature of his employment agreement; it contained a very clear redundancy provision.

[14] There was also discussion at this second meeting about Mr Cox's concern that his duties were already being reallocated to other people in advance of his departure. Mr Littlefair, according to the minutes of that meeting,

seemed to not want to confront the issue head on and indicated that he did not have enough information to respond. However, Mr Littlefair had himself issued a newsletter to Terrace Downs property owners dated 14 September 2006 in which he referred in glowing terms to the work of the master planning team who he named, without referring at all to Mr Cox.

[15] Then, on 27 September 2006, Mr Littlefair advised Mr Cox by letter that Green Island Club had decided not to proceed with the restructure and that Mr Cox's *position therefore remains as before*.

[16] Mr Cox continued to feel that his access to work remained minimal and accordingly by letter dated 5 October 2006 Mr Cox's solicitors sought an assurance from Green Island Club that the duties and responsibilities contemplated by Mr Cox's employment agreement and the job description to which I have already referred, be restored to him.

[17] Green Island Club solicitors' responded substantively by letter dated 9 November 2006 in which they took issue with the reliability of the job description provided by Mr Cox himself (and this was the first occasion allegedly that Green Island Club had indicated that this job description was not agreed), and also indicated that Mr Cox was never in charge of the master planning process as he himself had alleged. Finally, Green Island Club's solicitors make the point, which was a feature of their defence of Mr Cox's claim in the Authority, that Mr Cox knew or ought to have known that his responsibilities had and would change over the course of his employment by Green Island Club.

[18] A request by Mr Cox for Green Island Club to attend mediation was declined and immediately thereafter Mr Radovonich sent Mr Cox a long list of work that allegedly needed to be done. However, Mr Cox indicated in his evidence that much of that work had in fact already been done and the balance took him a week to complete.

[19] Mr Cox initiated his proceedings in early December 2006.

[20] In the early part of the New Year, the difficulty about finding work for Mr Cox was exacerbated by an argument apparently developing between the joint venture partners.

[21] On 20 March 2007, Mr Cox was asked to sign an amendment to his employment agreement. He refused to do so. The amendment had the effect of removing rights he had in respect of redundancy compensation in his original agreement. Mr Cox's evidence is that he was *hassled* by Green Island Club in relation to his refusal to sign this agreement and accordingly he resigned by letter dated 10 April 2007.

Issues

[22] It will be convenient for the Authority to consider the matters in dispute under the following headings:

- (a) The master planning process;
- (b) What was Mr Cox's role?
- (c) The possible redundancy;
- (d) The initiation of legal proceedings;
- (e) The amendment to the employment agreement.

The master planning process

[23] I have already noted that the central claim made by Mr Cox is that he gradually lost control of the master planning process, specifically from about May 2006, and that that process was central to his employment with Green Island Club. At

para.[5] above, I have referred to a working definition of *master planning* for the purposes of this determination.

[24] While Mr Cox maintained that the master planning process was both central to his role and had gradually been taken from him, Green Island Club contended that master planning was not central to Mr Cox's role at all and it denied that there had been any deliberate and dominant intent to remove master planning from Mr Cox's responsibilities. Indeed, Green Island Club contended that Mr Cox knew or ought to have known that his role and responsibilities would change with time and that insofar as there was any change of the sort Mr Cox contended, it was a change which he either accepted or at least condoned.

[25] Green Island Club points to the fact that Mr Cox was actively involved in the introduction of Titan to the project and certainly based on the evidence of Mr Radovonich, Mr Cox was *excited about Titan's involvement* and the fact that (the project) *now has improved financial security and a partner with project development experience*.

[26] Mr David Littlefair, who became general manager of Green Island Club, gave evidence of *weekly department head meetings ... with up to 12 heads of department in attendance, David Cox being one of them*. This reference is to the period prior to the introduction of Titan as a joint venture partner.

[27] In the lead up to the initiation of the new joint venture arrangement, strictly speaking the period between the execution of the heads of agreement in relation to the joint venture and the commencement of the joint venture arrangement proper, Mr Littlefair said in his evidence that Mr Cox was actively involved in meetings with the new incoming joint venture partners and that he continued to be responsible for *development matters*. Mr Littlefair says in his evidence that *the main focus was on development* (Mr Cox's portfolio) and that Mr Cox had several meetings with Mr Radovonich in this period regarding development budgets. The documents before the Authority support that contention.

[28] There was a meeting on 27 September 2005 for instance at which the minutes disclose Mr Cox was present and which resulted in Mr Cox assuming a project development/management role.

[29] Once the joint venture proper had formally commenced, there was a management committee constituted as part of the new structure. Mr Cox was not a member of the management committee but the evidence discloses that Mr Cox, like a number of other senior employees involved in the project, was an invited attendee to those meetings. At the first meeting of the joint venture management committee on 15 November 2005 for instance, there was a discussion about Mr Cox's role, amongst other things. The decision was taken that Mr Cox would look after existing development of the resort and that Mr Radovonich would look after new development. Mr Littlefair states in his evidence that there was no objection to this arrangement by Mr Cox and the minutes support that contention.

[30] For his part, Mr Cox contended in his evidence that up until the departure of Mr House as Chief Executive in May 2006, he (Mr Cox) effectively drove the master planning process although he acknowledged in his oral evidence that Mr House *signed off on it*. Mr Littlefair and Mr Radovonich both thought that Mr House was responsible for the master planning process using a team approach but relying heavily on Mr Cox. For instance, Mr Littlefair has this to say in his brief of evidence:

Rob House managed and led the whole master planning process with the assistance of David Cox and utilised the extensive knowledge that David Cox had of the resort.

[31] The job description which Mr Cox prepared in January 2005 does not refer to the master planning process and Mr Cox acknowledges that is the case.

[32] However, Mr Cox contends that the elements of the master planning process are all referred to in his job description.

[33] Looking at this earlier part of the employment history, I am satisfied on the evidence before the Authority that although Mr Cox may not have been solely or definitively responsible for the master planning process up to and including calendar 2005, he was nonetheless intimately involved and, under the direction of Mr House as Chief Executive Officer, effectively drove the master planning process.

[34] However, I am equally satisfied, on the basis of the evidence before the Authority, that once the joint venture arrangement with Titan developed traction at the end of calendar 2005, a change starts to become apparent. I do not accept Mr Cox's evidence that this change was unexpected; the evidence is plain that in the period from the introduction of the joint venture partner Titan through certainly until the

resignation of Mr House as Chief Executive Officer, Mr Cox was involved in meetings and discussions with the joint venturers which entitles Mr Littlefair to reach the conclusion he does, that Mr Cox knew or ought to have known about the consequences of the joint venture arrangement from the numerous meetings that he attended.

[35] In particular, I accept Mr Littlefair's evidence (supported by the documentary trail), that Mr Cox attended meetings with the joint venturers at which his role was discussed and agreed in circumstances where one would

have expected that, if he had objections to make, he would have made them. Mr Littlefair said that he made no objection and the minutes support that conclusion.

[36] Indeed, Green Island Club makes the point that the first written complaint about the alleged diminution of work was by a letter dated 5 October 2006 from Mr Cox's solicitors, Duncan Cotterill. Until that time, it is clear from the evidence before the Authority that Mr Cox did not formally raise any concern about an employment relationship problem and even at an informal level, the evidence suggests that he was principally concerned with **volume** of work rather than the nature of it.

[37] I accept that a combination of the departure of Mr House as Chief Executive Officer and the growing involvement of the joint venturers Titan changed the dynamics in the workplace for Mr Cox. This would have been from May 2006 onwards. The sort of dominant role which Mr Cox would have had up until Mr House's departure changed significantly once Mr House left the business. But even Mr Cox himself accepts that under the new order, he (Mr Cox) was not excluded by Mr Radovonich but Mr Cox contended in his oral evidence that he became *reactive not proactive* in respect of master planning issues.

[38] The question is whether that is a breach of Mr Cox's employment agreement and/or an unjustified action causing disadvantage or not. On the evidence before me, I prefer the view of Green Island Club's witnesses that Mr Cox knew about the involvement of Titan, participated in the early structural meetings of the joint venturers, understood his role and certainly did not publicly quarrel with it. I do not consider that Mr Cox has satisfied me that he somehow had a monopoly over master planning and that the arrival of the joint venturers proceeded to strip that away from him.

[39] I reach that conclusion because, first, I do not accept that the evidence discloses that Mr Cox was indeed principally responsible for master planning. I think the evidence suggests that until May 2006 Mr House was the person responsible for master planning and Mr Cox assisted him in that work but was not ultimately responsible. Certainly, there was a change when Mr House left but I find that the evidence I heard makes it clear on the balance of probabilities that Mr Cox knew about those changes and at no stage demonstrated any aversion to the changes. The only evidence that was adduced about Mr Cox's willingness to quarrel with his employers was around the volume of work or quantity of it, rather than the nature of it, and that is an issue I will need to consider shortly.

[40] The difficulties which Mr Cox particularly complains about became more apparent with the passage of time. For instance, Mr Cox makes the claim that immediately after the departure of Mr House, Titan suspended his involvement in the master planning process. That view of matters is denied by Titan.

[41] Titan's evidence is that, partly because of the cashflow issues and partly for other reasons germane to the business cycle, it had lost confidence in the master planning process being driven by Mr House and that was, it is alleged, one of the reasons why Mr House left the project. Titan's evidence is that it sought a fresh approach.

[42] This is consistent, to some extent, with Mr Cox's own evidence. Mr Cox said in his evidence that in July 2006 he discovered by chance that a landscape architect called Francis Whittaker had been engaged to assist the driving of the master planning process for Green Island Club. According to Green Island Club's witnesses (and Mr Radovonich particularly), the involvement of Mr Whittaker and others was precisely to provide the fresh approach to the master plan which they considered necessary.

[43] While Green Island Club did not want to exclude Mr Cox per se, it did feel that he had become closely aligned with Mr House and his master plan and, given they wanted a fresh approach, it is accepted that Mr Cox was not specifically involved. There is debate about whether Mr Cox was at least told what was happening; Mr Radovonich claims to have told Mr Cox that Francis Whittaker was being engaged to assist in the development of the master plan but Mr Cox denies getting that message.

[44] Consistent with Green Island Club's position on this matter, Mr Radovonich acknowledged that prior to Mr House's departure, Mr Cox would have been involved in all master planning meetings but that after Mr House left and Titan determined to take a fresh look at the master plan, Mr Cox was not involved in all master planning meetings. Having said that, the evidence available to the Authority supports the view that Mr Cox was involved in some master planning meetings, although Mr Cox said that he felt *excluded from discussions*.

[45] Mr Radovonich also confirmed that there were no *one on one* meetings with Mr Cox about his role changing. Titan assumed that Mr Cox would understand his role was developing in a different way as a consequence of Mr Cox's continuing involvement in some of the group meetings which the minutes disclose he was physically present at.

[46] Mr Radovonich also made the observation in giving his oral evidence that he would have expected Mr Cox to raise issues in those meetings if he was unhappy with the way in which his role was changing; Mr Radovonich said that there were never any comments from Mr Cox to that effect and that the only complaints he received from Mr Cox were about volume of work and not about the nature of it.

[47] Even Mr Cox himself, in his own evidence, confirms that he made no objection to the changes in the project after Mr House left. For instance, at a meeting with Mr Radovonich on 18 July 2006 (about two months after Mr House left), Mr Radovonich confirmed to Mr Cox that he (Mr Radovonich) was in charge of the master planning process and Mr Cox agreed in his evidence that he raised no objection to that statement.

[48] Even after Mr House left and Mr Littlefair was effectively in charge of Green Island Club, there were weekly head of department meetings at which Mr Cox was physically present and one would have expected him to raise concerns (if he had any) during one of those meetings, or even to use that meeting as an opportunity to seek a private meeting with either Mr Littlefair or Mr Radovonich in order to advance his concerns. It is plain from the evidence that no such step was taken by Mr Cox.

[49] It follows from the foregoing that I am not satisfied the evidence discloses that Mr Cox was responsible for master planning in the first place, nor stripped of it subsequently in the second place. I think the factual position is that Mr Cox was

heavily involved with the master plan when Mr House was in office, that the management structure changed significantly when Mr House left, that those changes were amply signalled during management meetings in which Mr Cox participated and that there was no objection from Mr Cox to that change at any time until his lawyer's letter of 5 October 2006.

[50] Had Mr Cox felt that his position had been somehow eroded by the changes, as a senior employee of Green Island Club, it is not unreasonable to expect that he would raise those concerns with his employer. He did not do so. That being the position, it seems a little late in the day to raise issues some months after the event, long after Green Island Club has any realistic opportunity to put matters right.

What then was Mr Cox's role?

[51] I am satisfied on the evidence I heard that Mr Cox's role was, properly speaking, one of project manager and that the nature of his duties are fundamentally as set out in para.8 of the affidavit of Mr Scott Sanders who was Managing Director of Green Island Club until December 2004. Another version of the job description is that drafted by Mr Cox himself. Both lists of tasks contemplate a pretty functional approach revolving around the delivery of actual services and component parts required to meet the requirements of the wider master plan.

[52] Green Island Club says that it is in the nature of things that such a role will have fluctuating work volumes. Certainly it is the case that Mr Cox complained regularly about the shortage of work for him, at least from the middle of 2006 onwards.

[53] In effect, the core of his claim is that Green Island Club has whittled away at his work such that in the end he was left with no alternative but to resign his position.

[54] I have already made a finding that Mr Cox's central claim about the loss of the master planning function is simply not made out. However, it is very clear that Mr Cox made frequent complaints about the shortage of work from the middle of 2006 onwards and while I have found that he was not solely responsible for the master planning function and therefore cannot be said to have been deprived of that work, it may still be the case that Green Island Club has, by depriving him of other work properly within his ambit as a project manager, caused a disadvantage to Mr Cox by the unjustifiable action or series of actions in removing work from him.

[55] However, I am not satisfied, on the evidence I heard, that the more general claim is made out either. I accept that project management, by its very nature, is subject to various fluctuations and that there can only be discrete projects to manage when the overall plan for the resort requires those matters to be attended to. In periods of consolidation, or where there are pauses required because of funding restraints, it is axiomatic that there will be less work than would otherwise be the case.

[56] The short point is that Mr Cox has not satisfied me that the fluctuation in work volumes was anything other than a normal consequence of the ebb and flow of business activity in this kind of development. I am not persuaded that there is anything sinister about the change which Mr Cox draws attention to.

[57] Having said that, it is absolutely clear that there does seem to have been some reduction in the volume of work available to Mr Cox to do. As I indicate above, I am satisfied that the principal reason for that is the effect of the business process. There may well be other explanations. Green Island Club advanced the proposition that Mr Cox could have been more proactive in finding gainful work to do.

[58] However, given my finding that I do not consider there is anything sinister in Mr Cox's absence of work, I do not need to take Green Island Club's contention any further. I am satisfied on the balance of probabilities that there was no unjustifiable action causing disadvantage nor breach of Mr Cox's employment agreement.

The possible redundancy

[59] On 16 August 2006, Mr Littlefair spoke with Mr Cox about the possibility of Mr Cox's position being surplus to Green Island Club's requirements. There was discussion between the parties on a number of occasions from that date forward down to 27 September 2006 at which date Mr Littlefair advised Mr Cox that Green Island Club had decided not to make Mr Cox's position redundant at all.

[60] In the course of the various exchanges between the parties, Mr Cox accused Green Island Club of *reallocating* his duties to other people in advance of the redundancy and amongst other things referred to a newsletter issued under the hand of Mr Littlefair himself referring in glowing terms to the master planning team but excluding any reference to Mr Cox.

[61] It is very clear from the evidence that the way in which Green Island Club managed the redundancy issue was the determining factor in Mr Cox instructing his solicitors to write to Green Island Club raising an employment relationship problem. In the circumstances, it is difficult to not have some sympathy for Mr Cox's position.

[62] In the context of his belief that he had an absence of gainful work, he is then confronted with the prospect of his position becoming surplus to his employer's requirements after 14 years' service, and then within five weeks of that date to be advised that his position will not in fact be redundant and that he can continue with *the status quo*, a status quo which involves limited access to work.

[63] Mr Cox might be forgiven for thinking that his employer had simply decided that it would be cheaper to retain him on salary rather than have to confront the payment of redundancy compensation. Indeed, at the investigation meeting, witnesses for Green Island Club confirmed that a factor in the decision not to proceed with the redundancy, was the cost of redundancy compensation in Mr Cox's individual employment agreement.

[64] However, employer parties must be given some latitude to run their businesses, and in particular, to structure their businesses in ways that advantage them provided, in so doing, they do not breach the rights of their employees. Green Island Club was entitled to contemplate making Mr Cox's position redundant and then resile from that after considering the matter.

[65] Of course, one of the matters Green Island Club had to consider was the representations of Mr Cox himself who, on the evidence I heard, wanted nothing more than to continue in his employment. By dint of the decision taken by Green Island Club, although perhaps for different reasons, he got his wish.

[66] Mr Wilson, counsel for Mr Cox, urges on me the proposition that Mr Cox has effectively been put into a position which is radically different from the position that he previously occupied and Mr Wilson cites case law in that regard. I have given earnest consideration to those submissions and studied the case law referred to.

[67] I do not think that submission can be supported by reference to the facts. Mr Cox was, in my view, simply returned to his pre-existing role and not to a fundamentally different role. Certainly he has insufficient work to do; but he had

insufficient work to do before the putative redundancy also. In every factual respect it is true to say, as Mr Littlefair did, that the *status quo* was maintained.

[68] In those circumstances then, I am not persuaded that Green Island Club has acted unjustifiably to Mr Cox's disadvantage.

The amendment to the employment agreement

[69] A final matter that needs to be considered is the question of Mr Cox being required to sign an amendment to his employment agreement. On 20 March 2007, Mr Cox was asked to sign an amendment to his employment agreement and he refused to do this on the basis that he considered (correctly as it happens) that the amendment had the effect of removing rights that he had with respect to redundancy compensation.

[70] His evidence, which I accept, was that he was pestered by the solicitors acting for Green Island Club about his failure to sign the amendment and that event was, in effect, the last straw in his relationship with Green Island Club and so he resigned his position very much under protest by letter dated 10 April 2007.

[71] I am satisfied that this episode was badly handled by Green Island Club. Indeed, Mr Littlefair in his evidence before the Authority accepted as much. He said in answer to a question from me that he now accepted that the document that Mr Cox was asked to sign *did in fact prejudice his position* and that he (Mr Littlefair) *forgot about the redundancy clause in Mr Cox's agreement* and thus Mr Cox's response was *perfectly rational*.

[72] In my opinion, this episode precipitated Mr Cox's decision that he had no alternative but to leave the workplace. The facts disclose this as a good example of the *breach of duty* cases, where an employer's breach of its obligations to an employee is such as to leave the employee with no other action than to leave.

[73] What is more, every employer in engaging with its employees, accepts an implied term to act fairly and honourably and not to mislead or deceive. The conduct adopted by Green Island Club in attempting to persuade Mr Cox to sign documents which had the effect of removing from him redundancy compensation to which he would otherwise have been entitled, is unfair, misleading and deceptive,

notwithstanding Mr Littlefair's subsequent acknowledgement that the matter was badly handled.

[74] There is, too, a statutory obligation of good faith pursuant to Section 4 of the Employment Relations Act which specifically alludes to conduct which misleads or deceives as being a breach of good faith.

[75] The cumulative effect of the inappropriate actions of Green Island Club was to breach its statutory obligation to act in good faith toward Mr Cox, to breach the implied term to act fairly and reasonably toward him and to constitute a constructive dismissal of Mr Cox in the particular circumstances of this case.

Determination

[76] Mr Cox has been constructively dismissed from his employment by reason of the inappropriate pressure that Green Island Club put on him to accept revised terms and conditions of employment which removed from him a valuable benefit to which he was entitled. By the same action, Green Island Club breached the statutory obligation to act in good faith and the implied term of fair and reasonable treatment. Mr Cox is entitled to remedies.

[77] I consider an appropriate award of compensation under [Section 123 \(1\)\(c\)\(i\) of the Employment Relations Act 2000](#) will deal with the good faith and implied term breaches as well. That being the position I direct that Green Island Club is to pay to Mr Cox the sum of \$9,000 in compensation.

[78] In addition, Mr Cox is entitled to recover his lost wages which I accept amounts to \$21,342.99.

[79] Green Island Club is also to reimburse Mr Cox the \$70 filing fee.

Costs

[80] Costs are reserved.

James Crichton

Member of the Employment Relations Authority

