

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 330  
3211040

BETWEEN SAM DELAHUNTY  
Applicant

AND JOHN WILSON  
ENGINEERING  
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Haley Johnson, advocate for the Applicant  
No appearance for the Respondent

Investigation Meeting: 12 January 2024 by AVL

Submissions and information received: 12 January and up to 22 March 2024 from Applicant

Determination: 7 June 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Sam Delahunty was employed as a welder by John Wilson Engineering Limited (JWE) from 6 October 2021 until he was dismissed by text message on 10 October 2023. JWE is a duly incorporated company with its registered office in Whakatane. John Wilson is the sole director and shareholder.

[2] On 7 October 2023 as Mr Delahunty was getting ready to come to work, he received the following text message from the foreperson at JWE:

dont come in today, stand down and Jwe will make contact on Monday

[3] Mr Delahunty did not respond and said he was shocked but decided to wait to see what happened on Monday. Mr Delahunty says there had been a difference of opinion between him and the foreperson on Wednesday 5 October about the scaffolding on a project JWE was working on. In his view it was a minor disagreement. He said there was no argument just a difference of opinion and he would be surprised if that was the reason for the suspension but that was all he could think of.

[4] On Monday 10 October Mr Delahunty received a second text message before work terminating his employment effective immediately and that he would receive a letter with reasons and a final pay:

Jwe has decided to terminate your employment effectively immediately. Jwe will provide you with a letter out lying [sic] its reasoning and put our final payments together. If you have any questions let us know. You left us no other option unfortunately.

[5] Mr Delahunty responded by text saying he would get his things that afternoon and asked for the termination letter with reasons as well as a copy of his employment agreement to be sent by email.

[6] Mr Delahunty said he assumed the reason why JWE fired him was because of the disagreement about scaffolding but he does not really know which is why he asked for the letter explaining the reasons he was terminated. JWE emailed him an unsigned copy of his employment agreement but not a letter with reasons for the termination.

[7] Mr Delahunty says he would describe the foreperson as a “hot head” and it was not uncommon for him to have differences of opinion with others. There was no follow up with Mr Delahunty about the scaffolding disagreement and no concerns were raised with Mr Delahunty about his performance at JWE. He enjoyed the work at JWE and had anticipated staying with the company for the foreseeable future.

[8] Mr Delahunty’s final pay slip was for the period 3 October to 9 October 2023. His accrued annual holiday entitlement was paid but he was only paid for one day of work that week and claims he should have been paid for the full week and the following Monday when he was terminated.

[9] Mr Delahunty claims the dismissal was unjustified and standing him down from work on 7 October amounts to an unjustified disadvantage. He seeks wage arrears, lost wages, compensation, penalties and costs.

### **The Authority's investigation**

[10] For the Authority's investigation Mr Delahunty lodged a written witness statement and answered questions under affirmation from me. JWE did not participate in the Authority's investigation. No statement of reply or evidence was lodged and there was no attendance at the case management conference or the investigation meeting by AVL.

[11] I am satisfied the statement of problem and notice of investigation and other correspondence was served on JWE's address for service listed on the Companies Office Register. The Authority has the power to proceed if any party without good cause fails to attend and may act fully in the matter before it as if that party had duly attended or been represented.<sup>1</sup> The investigation meeting proceeded on that basis.

### **Test for justification**

[12] The Authority is asked to determine whether Mr Delahunty's dismissal was unjustified. It is required to apply the justification test which is set out in s 103A of the Employment Relations Act 2000 (the Act). In applying the test, the Authority does not determine justification by considering what it may have done in the circumstances. It is required under the test to consider on an objective basis whether the actions of JWE, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[13] The Authority must consider the four procedural fairness factors set out in 103A (3) of the Act. These are whether any concerns about Mr Delahunty were sufficiently investigated and raised with him, whether he had a reasonable opportunity to respond to the concerns and whether such explanations were genuinely considered by JWE before dismissal.

[14] JWE could also be expected as a fair and reasonable employer to comply with the good faith obligations set out in s 4 of the Act. If the dismissal is found to be

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<sup>1</sup> Employment Relations Act 2000, schedule 2, clause 12.

unjustified or if the suspension is found to be an unjustified disadvantage he will be entitled to an assessment of remedies. Remedies may be reduced where blameworthy conduct by the employee contributed to the situation giving rise to the employee's grievance.

[15] No reasons were provided by JWE for either the suspension or the dismissal and no fair process was followed by the employer. A suspension from work without an opportunity to be heard or being provided with the reasons for the suspension and then a summary dismissal by text such as one set out above, means JWE could not have complied with its good faith obligations in the Act or have acted in accordance with the fair and reasonable employer test in s 103A of the Act.

[16] JWE has failed to justify its actions and I find Mr Delahunty's claims to be made out. Mr Delahunty's suspension and dismissal were both unjustified substantively and procedurally. Having been successful with his grievance Mr Delahunty is entitled to consideration of remedies.

### **Wage arrears**

[17] Where there has been a default in payment to an employee of wages an employee may bring a claim for recovery of arrears under s 131 of the Act. Based on Mr Delahunty's evidence he worked a 40-hour week and his last payslip shows he was paid \$35.00 per hour before tax which works out to be \$280.00 per day. The last pay slip confirms his evidence he was paid for one day during the week commencing 3 October 2022. Mr Delahunty says he should have also been paid for the additional days he worked that week (4,5 and 6 October) including the day he was suspended (7 October) and 10 October, the day he was dismissed.

[18] Because Mr Delahunty was either at work or ready and willing to work on those additional days set out above and Monday 10 October when he was dismissed, he is entitled to wage arrears in the amount of \$1,400.00 (gross) for five days.<sup>2</sup>

[19] I also note the employment agreement between the parties provided the employer may terminate employment by providing two weeks' notice. In the circumstances of an unjustified summary dismissal and unjustified disadvantage I

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<sup>2</sup> \$280 x 5 = \$1,400.00

consider it appropriate a further order is made in the amount of \$2,800.00 for payment of wages during the notice period.

### **Compensation**

[20] Mr Delahunty seeks compensation under s 123(1)(c)(i) of the Act. Compensation is claimed for humiliation, loss of dignity and injury to feelings. Mr Delahunty gave evidence about how the way he was treated made him feel. He was confused when he got the first text message standing him down and did not understand why he had been suspended and was not allowed to come into work. Nobody told him what was happening and that felt very unfair. He found it stressful waiting over the weekend to find out what was going on and he was worried about whether he would be paid or not. He was shocked to receive the text message on Monday telling him he did not have a job and felt embarrassed because he knew a lot of people working at that site. He also experienced financial stress necessitating his move to Australia to secure new employment and to ensure he met his financial obligations.

[21] Given my findings above, considering the distress experienced from the unjustified suspension and then an abrupt termination of his employment, and the immediate change in financial circumstances, the impact on Mr Delahunty and the general range of awards in similar cases, I consider an appropriate award for compensation under s 123(1)(c)(i) of the Act, to be \$20,000.00.

### **Lost wages**

[22] Mr Delahunty claimed three months lost wages. There has been difficulty with the provision of further information the Authority needs in order to quantify Mr Delahunty's lost wages. The Inland Revenue (IR) record of earnings has been requested but not provided due to Mr Delahunty working offshore. I reserve the issue of lost wages and intend to timetable that information to come in at the same time as any cost submissions.

## **Contribution**

[23] It is mandatory to consider contribution under s124 of the Act and on the basis there is no evidence of contributing conduct by Mr Delahunty, there was no issue as to contribution.

## **Orders**

[24] John Wilson Engineering is ordered to pay Sam Delahunty:

- (a) wage arrears in the amount of \$4,200.00
- (b) compensation in the amount of \$20,000.00

## **Costs**

[25] Costs and quantum of lost wages are reserved. The parties are encouraged to resolve these issues between themselves.

[26] If the parties are unable to resolve these issues, and an Authority determination is needed, Mr Delahunty may lodge, and then should serve, his IR record for the three month period after his employment ended, together with a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum John Wilson Engineering Limited will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[27] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>3</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>3</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)