

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 212/09
5131097

BETWEEN GERALD GIBSON
 Applicant

AND NIRVANA COACHES
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Alan Taylor for Applicant
 Bill Lawson for Respondent

Investigation Meeting: 31 March 2009 at Rotorua

Submissions Received: 14 April 2009 from Applicant
 17 April 2009 from Respondent

Determination: 29 June 2009

DETERMINATION OF THE AUTHORITY

[1] Mr Gerald Gibson claims he is owed outstanding holiday pay, was disadvantaged in his employment by his employer Nirvana Coaches Limited (Nirvana) and was unjustifiably constructively dismissed from his employment.

[2] Mr Gibson was employed by Nirvana as a Bus Driver in 2002. His position required him to drive two regular school bus routes which involved transporting children to and from school in the mornings and afternoons. Mr Gibson's hours of work for the school bus routes, on average ranged from 15 to 25 hours per week.

[3] In addition to his school bus runs, Mr Gibson provided driving services for a local tourist company on behalf of Nirvana. For this role he initially used the same bus that he had used for the school bus routes. After a while, however, he used a second bus on an ongoing basis and other buses for extraordinary events such as weddings etc.

[4] Mr Gibson says that during his employment he was subject to offensive language from another employee and was being harassed by a parent of two children on his school bus run. He says he signalled these issues to his employer who did nothing to resolve them. These actions form the basis of his claim for unjustified disadvantage. Mr Gibson says he was then left with no option but to resign from his employment, and claims this resignation was in fact a constructive dismissal.

[5] Mr Smith denies the allegations and says that Nirvana had received complaints about Mr Gibsons' conduct while doing the school bus runs and he wanted to discuss these with him in a formal meeting however, before that meeting could take place Mr Gibson resigned from his employment.

[6] The issues for determination are:

- is Mr Gibson due any outstanding holiday pay;
- did Mr Gibson suffer a disadvantage in his employment by an unjustified action of Nirvana;
- was Mr Gibson's resignation freely given, or was it induced by a breach of duty on the part of Nirvana.
- what, if any, remedies should be awarded.

Outstanding holiday pay

[7] Mr Gibson claims outstanding holiday pay for working on 2nd January and 9 April (Easter Monday) 2007. He claims he worked on both days and was paid only at the rate of ordinary time instead of time and a half. Mr Gibson claims interest on the amount owing. Nirvana has not disputed, that the holiday pay as claimed is owing to Mr Gibson.

Nirvana Coaches Limited is ordered to pay to Mr Gibson the sum of \$68.69 gross plus interest at the rate of 4%. Interest is to be calculated from 9 April 2007 until the date at which the outstanding holiday pay is paid.

Disadvantage grievance

[8] Mr Gibson claims he was disadvantaged in his employment by unjustified actions of Nirvana.

[9] I am required to examine the actions of Nirvana in accordance with the statutory test of justification set out at section 103A of the Employment Relations Act. The section states:

For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[10] There is a two step test to establish a disadvantage grievance. Firstly, I must ascertain whether Nirvana's actions disadvantaged Mr Gibson in his employment, and secondly, whether that disadvantage has been shown to be justified or unjustified pursuant to section 103A of the Act (see *Mason v Health Waikato* [1998] 1 ERNZ 84).

[11] Disadvantage alone is not prohibited by law. It must be a disadvantage that is unjustified. If Nirvana establishes justification for its disadvantageous actions, there is no grievance (see *McCosh v National Bank*, unreported, AC49/04, 13 September 2004).

[12] Finally, disadvantage is not identified narrowly and solely in terms of wages and conditions of employment. Rather it broadly considers effects on the total environment of the employee's employment. A claim for disadvantage depends upon an act or omission by an employer causing disadvantageous consequences, not merely an employee's subjective dissatisfaction at their circumstances. (see *NZ Storeworkers IUW v South Pacific Tyres (NZ) Ltd* [1990] 3 NZILR 452; *Bilkey v Imagepac Partners*, unreported, AC65/02, 7 October 2000)

[13] Mr Gibson says the following actions by Nirvana caused his disadvantage:

- failure and refusal to provide support or assistance in resolving the conflict issues with Ms Wiggins;
- failure or refusal to provide support or assistance in resolving the conflict issues with Mr Clarricoats;

- allowing Mr Gibson to be subjected to ongoing harassment and workplace bullying by both Mr Clarricoats and Ms Wiggins relating to the performance of his duties;
- failure to use appropriate processes to deal with complaints made by Mr Clarricoats as they arrived;
- encouraging Mr Clarricoats to take video-film evidence of the applicant at work – with the intention of using this for disciplinary processes;
- making continual derogatory comments suggesting that, because of Mr Gibson’s age and physical health he was not able to do his job as a bus driver – but failing to resolve the issue using the appropriate procedures;
- accusing Mr Gibson of “forging a medical certificate” that the applicant (acting on his own initiative) had obtained in an attempt to resolve Nirvana’s suggestion that Mr Gibson’s health was affecting his ability to drive buses;
- continually contacting Mr Gibson and his wife relating to non-essential work issues during periods he was in hospital recovering from an operation;
- failing to co-operate with ACC to ensure Mr Gibson’s income was not affected during the period he was recovering from an accident to his hand.

[14] In coming to my conclusions with regard to the claim for disadvantage I have considered each of the complaints by Mr Gibson.

Failure and refusal to provide support or assistance in resolving the conflict issues with Ms Wiggins and allowing ongoing harassment and workplace bullying from Ms Wiggins

[15] Mr Gibson told the Authority that he was in charge of the bus transport provided to a local tourist attraction. He says Ms Wiggins, a fellow employee, resented that he had the authority to organise drivers for this charter work and began to challenge that authority.

[16] He told the Authority that when he attempted to arrange for Ms Wiggins to take up a bus run for the charter business he was greeted with a “...blast of rudeness...”

[17] I am satisfied it is more likely than not that Mr Gibson did not have any authority over Ms Wiggins and was not in a position to give her instructions on undertaking runs for the tourist buses.

[18] On 13 September 2007 Mr Gibson provided a written letter of complaint to Mr Smith, about Ms Wiggins, among others. In his letter Mr Gibson states:

Kevin, reverting to the morning run, when Ms P Wiggins arrived and parked behind me Clarricoats went straight to the driver's window, waving the afore-mentioned foolscap sheets, having an animated conversation with her pointing in my direction and laughing. Kevin I reported to you that on a previous occasion when asking Ms Wiggins why a Kaitoa student had been kept on her bus; I was met with tirade of foul and abusive language.

[19] Mr Gibson reminded Mr Smith that he had earlier requested a round table discussion to sort things out with Ms Wiggins but that had not happened. He further advised Mr Smith that he had let things lie in the meantime and had kept a long way away from Ms Wiggins.

[20] Mr Smith did not have a round table discussion with Ms Wiggins and Mr Gibson as he believed such a meeting may exacerbate matters rather than assist in resolving the issues between them. I am satisfied that Mr Smith dealt with Ms Wiggins on an individual basis and that in the circumstances of this case, that was an appropriate action to take.

Failure or refusal to provide support or assistance in resolving the conflict issues with Mr Clarricoats and allowing ongoing harassment and workplace bullying from Mr Clarricoats

[21] In 2006 Mr Gibson began experiencing difficulties with Mr Clarricoats' sons both of whom travelled to and from school on his bus run. After attempting to exert some control over the boys Mr Gibson began receiving notes from Mr Clarricoats who would also ring him to complain to him. Mr Gibson approached Mr Clarricoats and told him "...he was tired of him and his children." Mr Gibson reported this incident to Mr Smith.

[22] In 2007 the problems between Mr Gibson and some of the parents of children on the bus run began to escalate. In May that year Mr Clarricoats made a formal

complaint in writing, about Mr Gibson's conduct as a bus driver. At the same time, another parent, Mrs Arnott also made a written complaint about Mr Gibsons conduct. Mr Gibson received copies of these complaints and provided Mr Smith with a written response.

[23] The day after he provided his written response Mr Gibson completed an incident report form outlining a complaint against Mrs Arnott and advising Mr Smith that he had put his complaint in the hands of the Police. No further action was taken by Mr Smith and for all intents and purposes things appeared to have settled down.

[24] However, in September issues between Mr Gibson and Mr Clarricoats began to spiral. On 10 September Mr Gibson completed an incident report which detailed issues around cars being parked in the bus zone at Ngongotaha School. Ordinarily Mr Gibson would use his horn to encourage parents to move their cars, however, on 10 September Mr Gibson observed Mr Clarricoats' advising drivers not to move until 3.15pm as this was the time the bus zone became operative.

[25] As a result of this incident Mr Gibson contacted the Rotorua Police and the Rotorua City Council. Mr Gibson advised Mr Smith through the incident report that the Council would change the bus time zone to 3.00pm and the Police would arrange for a mufti car to be parked outside the school to observe the parking of parents' cars and the speed at which cars overtook the parked school buses.

[26] On 12 September Mr Gibson completed a second incident report complaining that he was being harassed by Mr Clarricoats and Mrs Arnott. Mr Gibson requested that Mr Smith put a stop to any further harassment.

[27] That same day Mr Clarricoats provided a written complaint regarding Mr Gibsons conduct. This complaint was accompanied by a video clip taken by Mr Clarricoats. At the same time another parent wrote a letter of complaint relating to an incident which had occurred a month earlier which also involved Mr Gibson.

[28] On 13 September Mr Gibson completed a third incident report in which he describes being filmed by Mr Clarricoats. Mr Gibson also outlines an incident whereby Ms Arnott had crossed in front of his bus waving two foolscap sheets of

white paper and laughing at him. Mr Gibson reports that he understood Mr Clarricoats had filmed him on the instructions of Mr Smith.

[29] On 14 September 2007 Mr Gibson wrote a letter to Mr Smith outlining concerns he had about Mr Clarricoats conduct when Mr Clarricoats was driving his car and taking a video of Mr Gibson. Mr Gibson advised Mr Smith he considered Mr Clarricoats actions to be harassment.

[30] The school holidays began on 17 September and Mr Gibson and his wife left on 20 September for a pre-planned holiday in Australia. Before he left on his holiday Mr Gibson visited his doctor on 17 September, who reported Mr Gibson as suffering from stress and would not be fit for work for two weeks.

[31] On 18 September Mr Gibson made a formal written statement of complaint to the Police about Mr Clarricoats harassment of him. In his written statement to the Police, Mr Gibson acknowledges that the March 2006 complaint by Mr Clarricoats had been dealt with by Mr Smith.

[32] With regard to the May incidents, Mr Smith provided Mr Gibson with copies of the complaint letters he received from Mr Clarricoats and Ms Arnott in May 2007. Mr Gibson provided a full response to the complaints and Mr Smith decided no further action would be taken. Mr Smith was entitled to reach that conclusion.

[33] As can be seen from the outline above, in September Mr Smith became inundated with complaints from both Mr Clarricoats and Mr Gibson, against each other. These complaints were coming at Mr Smith on a regular basis. I have considered whether it would have been appropriate for Mr Smith to address the complaints by Mr Gibson before he left on his holiday. I have concluded that it was not possible for him to do so.

[34] By the time the flurry of activity ceased, it was the end of term and Mr Gibson had been put on sick leave. Mr Gibson was also due to leave for a holiday in Australia returning on 8 October.

[35] I am satisfied Mr Smith met with Mr Gibson at the earliest possible time being 9 October. At that meeting two options were suggested for Mr Gibson to consider. In his oral evidence at the investigation meeting, Mr Gibson accepted that the suggestions made by Mr Smith were reasonable.

[36] On 10 October Mr Gibson wrote to Mr Smith stating (verbatim):

I have taken on board your comments about adjusting the time of the school runs, and my decision is to return to my school run starting 10 mins later than has been my practice for the past five years (approx.). This will eliminate my standing time at Ngongotaha School, hopefully avoiding any further harassment. The P.M. run will also be adjusted accordingly which will make me the last bus to arrive on both occasions.

[37] I am satisfied the actions taken by Mr Smith were, in all the circumstances the actions of an employer acting fairly and reasonably.

Failure to use appropriate processes to deal with complaints made by Mr Clarricoats as they arrived

[38] By and large I have addressed this complaint above. However, for the sake of completeness I have considered the evidence with regard to this complaint.

[39] As set out above from the beginning of September 2007 the complaints from both Mr Clarricoats and Mr Gibson began to escalate.

[40] With the school term ending on 17 September and Mr Gibson leaving to go on annual leave, I have accepted that Mr Smith did not have much of an opportunity to deal with these complaints before Mr Gibson returned from his annual leave.

[41] On 9 October Mr Smith did discuss the situation with Mr Gibson and as a result of that meeting it was agreed that the bus times would change so that Mr Gibson could avoid any and all contact with Mr Clarricoats.

[42] Before the new arrangement could be tested Mr Gibson was hospitalised and proceeded on a period of sick leave. He never returned to work and resigned while still on sick leave.

[43] I find Mr Smith took adequate steps to try and resolve the issues for Mr Gibson. It is unfortunate that even though Mr Gibson was no longer at work

complaints continued to be made by Mr Clarricoats to Mr Smith. Those complaints could never be investigated as Mr Gibson did not return to work.

Encouraging Mr Clarricoats to take video-film evidence of the applicant at work – with the intention of using this for disciplinary processes

[44] I am satisfied that while Mr Smith did not encourage Mr Clarricoats to take video evidence of Mr Gibson at work he did set the process in motion through his actions. Mr Smith, in his oral evidence, told the Authority he was concerned about the complaints he was receiving about Mr Gibson and made enquiries of Land Transport NZ. He was advised that unless there was video evidence they would not take any action. Mr Smith passed this information on to Mr Clarricoats.

[45] I find that the action by Mr Smith in passing the information he had received from Land Transport NZ on to Mr Clarricoats, who was already making numerous complaints about Mr Gibson, showed poor judgment on Mr Smith's part. In passing on such information Mr Smith ought to have been aware Mr Clarricoats would use it to bolster his complaints and provide any video footage as proof that Mr Gibson was a bad driver.

[46] I find the action by Mr Smith was not done with any malicious intent nor with the intention of using the video evidence for a disciplinary process. It was however, a poor judgement call on the part of Mr Smith.

Making continual derogatory comments suggesting that, because of Mr Gibson's age and physical health he was not able to do his job as a bus driver – but failing to resolve the issue using the appropriate procedures

[47] This complaint stems from the meeting held at Mr Gibson's home after he returned from Australia. Mr Gibson recalls that the meeting was heated and Mr Smith:

- confirmed he had authorised Mr Clarricoats to take the video filming;
- confirmed Mr Clarricoats was out to get Mr Gibson;
- expressed bewilderment as to why Mr Gibson was still working at the age of 70; and
- wanted Mr Gibson to make other arrangements re the school bus run – i.e. start later in the day in order to avoid having contact with the

parent; and or to give up the school bus work and concentrate solely on the charter bus role;

[48] Mr Smith recalls that the meeting was reasonably amicable and denies making any comments with regard to Mr Clarricoats being out to get Mr Gibson or that he had authorised the video filming.

[49] Mr Smith acknowledges that he noted Mr Gibson was looking very pale. He also noted that once the conversation turned to Mr Clarricoats and Ms Wiggins, his complexion became quite red. Mr Smith says he enquired as to whether Mr Gibson had a blood pressure problem. Mr Smith told the Authority he enquired about Mr Gibson's blood pressure because he thought that is why he had been put off on sick leave in September. Mr Smith also acknowledges that he made a comment about Mr Smith's age but not in relation to his abilities to drive a school bus.

[50] As already set out, Mr Smith then made a couple of suggestions to assist Mr Gibson with the issues he had with Mr Clarricoats both of which would mean he would have little or no contact with Mr Clarricoats when undertaking his school bus run.

[51] Mr Gibson accepted one of the suggestions and confirmed this in writing to Mr Smith the following day. In his letter Mr Gibson does not mention any dissatisfaction with the meeting the previous day. I am satisfied that if Mr Gibson had felt the meeting was as he is now portraying it, he would have raised it in his letter. I have reached that conclusion on the basis that Mr Gibson had, as acknowledged in his letter of 10 October, spoken with his advisors. Further, as demonstrated throughout this matter, Mr Gibson was not slow in raising issues with his employer if he felt strongly about them.

[52] I am satisfied that on the balance of probabilities it is more likely than not that Mr Gibson was feeling unwell on 9 October. He was hospitalised 5 days later and was on sick leave for the next month as he recovered from his operation. Having observed both Mr Gibson and Mr Smith at the investigation meeting I am not persuaded that it was Mr Smith who became heated during their discussions.

Accusing Mr Gibson of “forging a medical certificate”

[53] As already stated, following his return from holiday in Australia, Mr Smith attended at Mr Gibson’s home to meet with him and discuss his return to work following both his holiday and the medical certificate which Mr Gibson had provided before he left on holiday. Mr Smith requested Mr Gibson to provide a medical clearance to show he was fit to return to work.

[54] Mr Gibson attended his doctor on 10 October and was provided with a medical certificate which is in itself an ambiguous document. The certificate states Mr Gibson will be fit to return to work on 15 October, but there is also some handwriting on the document purporting to clear Mr Gibson to drive buses as from 10 October 2007. It is ambiguous because driving buses was Mr Gibson’s work.

[55] To further confuse the situation Mr Gibson wrote to Mr Smith on 10 October and confirmed that he would be returning to duty on 15 October 2007.

[56] On 11 October Mr Gibson made telephone contact with Mr Smith after he had been asked to provide a bus for the tourist charter run. Mr Gibson became upset when Mr Smith raised the issue of the ambiguity in the medical certificate. Mr Gibson says Mr Smith accused him of forging the medical certificate. Mr Smith denies accusing Mr Gibson of forgery.

[57] I find it is more likely than not that when Mr Smith raised the ambiguity in the medical certificate Mr Gibson felt his integrity was being questioned over the certificate and that it was Mr Gibson who raised the question with regard to forgery. This was done in the context of clarifying whether Mr Smith was accusing him of forging the medical certificate.

Continually contacting Mr Gibson and his wife relating to non-essential work issues during periods he was in hospital recovering from an operation

[58] Mr Gibson was admitted to Rotorua Hospital on 14 October. He had suffered an insect bite while in Australia and an operation on his hand was required.

[59] It was only in response to the 12 October letter from Mr Smith inviting Mr Gibson to a disciplinary meeting that Mrs Gibson advised Mr Smith, that her husband

had been admitted to hospital. Mrs Gibson told Mr Smith that Mr Gibson did not want him to know why he was in hospital.

[60] Mr Smith acknowledges that he made telephone contact with Mrs Gibson on 15 October to enquire after Mr Gibson's health and asked that Mrs Gibson keep Mr Smith informed of his progress. This was followed up by a letter from Mr Smith to Mr Gibson.

[61] Mrs Gibson responded on behalf of her husband advising that they were hoping Mr Gibson would be out of hospital the following Monday or Tuesday but that she would advise Mr Smith of his progress when she knew more.

[62] I am satisfied the enquiries made by Mr Smith of Mr and Mrs Gibson was out of concern for Mr Gibson's welfare and not for any ulterior motives.

Failing to co-operate with ACC to ensure Mr Gibson's income was not affected during the period he was recovering from the accident to his hand

[63] Mr Gibson has failed to provide any information to substantiate this complaint.

Conclusion

[64] I find Mr Gibson's claim that he suffered a disadvantage in his employment to be without foundation. It seems to me the ongoing difficulties between Mr Gibson and one or two of the parents of the children who regularly rode on his school bus run were exacerbated by Mr Gibson's responses to matters. For example parents, who were still within the time for parking in the school bus lane, were subject to blasts from Mr Gibson's horn, and he had a propensity for leaving children on the bus while he spoke to other bus drivers. This particular matter was cause for concern by the parents as the children were left on the bus without any supervision.

Constructive dismissal

[65] Mr Gibson has claimed that he was forced to resign from his employment as a result of the inaction by Nirvana over the ongoing harassment and bullying he was experiencing from Mr Clarricoats and Ms Wiggins.

[66] The basis for Mr Gibson's claim for constructive dismissal is that he left as a result of a breach of duty on the part of the employer, which is the third of the three non-exhaustive categories of constructive dismissal referred to by the Court of Appeal in *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 1 NZLR 372.

[67] The conduct amounting to a breach must impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. (*Malik v Bank of Credit and Commerce International SA (in liq)* [1998] AC 20; [1997] 2 All ER 1 (CA)).

[68] In coming to my conclusions under this heading I must determine the following issues:

- did Mr Gibson leave his employment as a result of a breach of duty on the part of Nirvana? and
- if there was a breach, was it sufficiently serious to make it reasonably foreseeable that there was a substantial risk that Mr Gibson would leave his employment?

(Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc [1994] 1 ERNZ 168)

Was the resignation caused by a breach of duty on the part of the respondent?

[69] The breach of duty relied on by Mr Gibson relates to the claims he has made with respect to his unjustified disadvantage claim. I have found there was no disadvantage to Mr Gibson in his employment as a result of those claims. Therefore, it follows that there has been not breach of duty by Nirvana Coaches.

Was the resignation reasonably foreseeable?

[70] Even if I had found there was a breach of duty, I have concluded that a resignation from Mr Gibson was not reasonably foreseeable.

[71] On 9 October 2007 Mr Gibson wrote to Mr Smith and advised him he would be returning to work on 15 October in accordance with his medical certificate. In preparation for returning to work Mr Gibson requested the key to the bus and fuel card.

[72] Mr Smith suspended Mr Gibson on 12 October and invited him to a meeting on 17 October to discuss the complaints he had received from Mr Clarricoats and others. The reason given by Mr Gibson's non attendance was that he had already been admitted to hospital and was to undergo surgery on his hand.

[73] Following that surgery he was on sick leave until 5 November 2007. The meeting was therefore postponed until 6 November. However, on 2 November Mr Gibson attended his doctor once more and was placed on a further 14 days sick leave.

[74] Mr Smith resigned from his employment before the end of his sick leave, on 15 November. The resignation came as a surprise to Mr Smith who had considered the agreement reached on 10 October to have been sufficient to allow Mr Gibson to return to work without the prospect of having to be confronted by Mr Clarricoats.

[75] Have said all that, pursuant to s.160(3) of the Act the Authority has jurisdiction to consider whether Mr Gibson has been disadvantaged in his employment in relation to the suspension.

[76] Clause 25 of the employment agreement allows for suspension on pay, where the employer believes that serious misconduct may have taken place.

[77] On 12 October 2007, Mr Smith suspended Mr Gibson from his employment pending an investigation into the written complaints he had received about Mr Gibson's work performance. Mr Smith highlighted in his letter to Mr Gibson that the issues related to misconduct. At the investigation meeting Mr Smith acknowledged that he had not discussed the possibility of suspension with Mr Gibson nor had he

provided Mr Gibson with the opportunity to provide input into the decision that he be suspended.

[78] While the situation confronting Mr Smith required effective management, Mr Gibson's suspension was not justifiable in my view. The employment agreement between the parties only allowed suspension in situations where the misconduct complained of was "...serious misconduct...". There is nothing in Mr Smith's 12 October letter to indicate that he considered the issues to be more than misconduct. I am supported in my conclusions by the fact that there is no indication in the letter that dismissal was a possible outcome. Further, Mr Gibson was entitled to an opportunity for input before the decision to suspend was taken.

[79] Nirvana has failed to discharge the burden of showing that the action it took in suspending Mr Gibson was what a fair and reasonable employer would have done in all the circumstances at the time it occurred. Nirvana's actions were both procedurally and substantively unjustified. It follows that Mr Gibson has a personal grievance for unjustified disadvantage with respect to his suspension.

Remedies

[80] Mr Gibson was on sick leave without pay at the time of the suspension. His absence was to be covered by ACC and was a non-work related accident. He has therefore lost no wages as a result of the suspension.

[81] Mr Gibson's evidence of hurt and humiliation, while compelling, was related to his claims of disadvantage and not directly related to the suspension. I consider an appropriate award for the disadvantage grievance is the sum of \$1,500.

Summary of orders

- **Nirvana Coaches Limited is ordered to pay to Mr Gibson the sum of \$68.69 gross plus interest at the rate of 4%. Interest is to be calculated from 9 April 2007 until the date at which the outstanding holiday pay is paid.**
- **Nirvana Coaches Limited is ordered to pay to Mr Gibson the sum of \$1,500 pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000 within 28 days of the date of this determination.**

Costs

[82] Costs are reserved. Given that both parties achieved some success in this matter I am of a mind to let costs lie where they fall. However, I encourage the parties to resolve the matter of costs between them. If the parties fail to reach agreement on the matter of costs, they may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority