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Hakes v NZEG OP Limited (Christchurch) [2018] NZERA 1067; [2018] NZERA Christchurch 67 (14 May 2018)

Last Updated: 25 May 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2018] NZERA Christchurch 67
3015873
3016093

BETWEEN SHIREE HAKES (3015873) Applicant

A N D NZEG OP LIMITED Respondent

BETWEEN STEPHEN HAKES (3016093) AND NZEG OP LIMITED

Respondent

Member of Authority: Helen Doyle

Representatives: Chrissie Gordon, Advocate for Applicant

No appearance for Respondent Investigation Meeting: 3 May 2018 at Christchurch Submissions Received: 3 May 2018 from Applicant

Date of Determination: 14 May 2018

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

A. Shiree Hakes was unjustifiably dismissed from her employment with NZEG OP Limited.

B NZEG OP Limited is ordered to pay to Shiree Hakes:

(i) The sum of \$1,900 gross being reimbursement of the lost wages under [s 123 \(1\)\(b\)](#) of the [Employment Relations Act 2000](#) (the Act)

(ii) The sum of \$13,500 without deduction being compensation under [s 123 \(1\) \(c\) \(i\)](#) of the Act.

(iii) The sum of \$1,475 being costs and \$71.56 being reimbursement of the filing fee.

C. Stephen Hakes was unjustifiably dismissed from his employment with NZEG OP Limited.

D NZEG OP Limited is ordered to pay to Stephen Hakes:

(i) The sum of \$13,500 without deduction being compensation under [s 123 \(1\)\(c\)\(i\)](#) of the Act

(ii) The sum of \$1,475 being costs and \$71.56 being reimbursement of the filing fee.

Employment relationship problem

[1] Shiree Hakes and her husband Stephen Hakes worked for NZEG OP Limited (“NZEG”) which was formerly known as NZ Equipment Group Limited at its Auckland branch in 2015. NZEG has two branches in New Zealand. One is in Auckland and the other in Christchurch.

[2] In or about July 2015 Mr and Mrs Hakes were offered positions at the Christchurch branch of NZEG. Mrs Hakes was offered the position of parts specialist. Mr Hakes was offered the position of workshop manager.

[3] Mr and Mrs Hakes accepted the positions offered and transferred from the Auckland branch to the Christchurch branch in September 2015. They say that they were unjustifiably dismissed from their positions with NZEG in early 2017 for reason of redundancy. Their last working day was 24 March 2017 when they elected to be paid out in lieu of notice.

[4] Mr and Mrs Hakes seek reimbursement of lost wages, compensation and a contribution towards costs from NZEG.

[5] Separate applications were lodged by Mr and Mrs Hakes in the Authority. During a telephone conference with the Authority on 14 February 2018 and Ms Gordon it was agreed that the investigation of the claims of Mr and Mrs Hakes would be investigated consecutively. The respondent was advised of the telephone conference but failed to attend. The dismissals arise out of the same factual

background but have with some individual circumstances. Dealing with both matters in the same determination with reference to individual circumstances where necessary prevents the unnecessary repetition which would occur with separate determinations.

Statement in Reply

[6] In its statements in reply NZEG say they undertook a genuine restructuring and that the redundancy is genuine and the process accorded with the employment agreements and the requirements of fairness. NZEG refer to ongoing restructuring over a period of 2 ½ years to recover from poor trading and loss of profit.

Identity of the Company

[7] The Authority received a memorandum from the advocates for Mr and Mrs Hakes on 10 October 2017. It advised that NZEG had changed its name from New Zealand Equipment Group Limited. The number of the company on the company register is 2449270. The memorandum provided that as at 9 October 2017 the company with that number had changed its name to NZEG OP Limited. It was further noted that a separate and duly registered company 6424056 which was previously named NZEG OP Limited had as of 9 October 2017, changed its name to NZ Equipment Group Limited. The memorandum provided that the applicants continued their claims against the registered company 2449270 which had recently changed its name to NZEG OP Limited.

[8] During the telephone conference on 14 February 2018 this matter was discussed and by agreement with Ms Gordon the name of the respondent was amended in both applications to NZEG OP Limited (formerly known as NZ Equipment Group Limited). That was to reflect the change in name only.

No appearance by or on behalf of NZEG at the investigation meeting

[9] Although NZEG lodged a statement in reply in respect of both Mr and Mrs Hakes’ employment relationship problems there was as already set out no participation at the Authority directions conference held on 14 February 2018. Further there was a failure to comply with the timetabling direction made for lodging and serving statements of evidence and documents by the respondent.

[10] I am satisfied from the administration file that NZEG was served with the notice of direction following the telephone conference and the notice of investigation meeting. The file reflects that following the telephone conference on 14 February

2018 the CEO of NZEG Paula Evans advised the Authority Officer dealing with the matters that she had been unwell but was happy to engage in a phone conference should there be the opportunity to respond. Ms Evans had lodged the statements in reply for both files and the address for service included her email address.

[11] The file reflects that the Authority officer dealing with the matter responded to Ms Evans by email advising that the telephone conference had taken place earlier and directions were made concerning progression of the matters. The Authority officer attached a copy of the notice of direction and notice of investigation meeting and advised that Ms Evans refer to the notice of direction for the next steps in the matter.

[12] At or about the same time the Authority officer took steps to serve on NZEG at its registered office, which is the same address as its address for service, a copy of the notice of direction and investigation meeting. Nothing further was heard from Ms Evans until 26 March 2018 when she advised the representative for the applicants and the Authority officer that she wished to be removed from any further communications in relation to the matter as she no longer represented NZEG. Ms Evans copied in a lawyer and advised that he was counsel for the owner of NZEG, David Lee. The company register shows

that Mr Lee is one of two directors of NZEG.

[13] The Authority officer then wrote to the counsel referred to in Ms Evans' email asking that he confirm whether he is acting on behalf of NZEG and whether he had copies of the relevant documents including statements of problem and reply, notice of direction, notice of investigation meeting and the statements of evidence from Mr and Mrs Hakes. The Authority officer did not receive any response to that email.

[14] On the day of the investigation meeting the Authority delayed its commencement time for ten minutes to see if there would be an appearance on behalf of the respondent. There was none. On the basis that there was no good cause advanced as to why the respondent failed to attend or be represented the Authority proceeded under clause 12 of schedule 2 to the [Employment Relations Act 2000](#) ("the Act") to hear evidence from the applicant.

The test of justification and relevant case law

[15] The Authority has been asked to determine whether Mr and Mrs Hakes were justifiably dismissed. In those circumstances it is required to apply the justification test which is set out in [s 103A](#) of the Act. 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 NZEG and how it acted were what a fair and reasonable employer could have done in all the circumstances.

[16] The Court of Appeal in *Grace Team Accounting Limited v Judith Brake*¹ confirm that the clear words of the justification test in [s 103A](#) in a redundancy termination require the Employment Court [and Authority] to determine on an objective basis whether the employer's actions and how it acted were what a fair and reasonable employer would have done. The test that the Authority will have to apply in the current matter before it is whether the employer's actions and how it acted were what a fair and reasonable employer **could** have done.

[17] The Court of Appeal in *Grace Team* emphasise the importance of addressing the genuineness of a redundancy and stated:²

Having said that, however, we do not dismiss the importance of the Employment Court addressing the genuineness of a redundancy decision. If the decision to make an employee redundant is shown not to be genuine (where genuine means a decision was based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of [s 4](#) of the Act have been duly complied with, that could be expected to go a long way towards satisfying the [s 103A](#) test. In the end the focus of the Employment Court has to be on the objective standard of a fair and reasonable employer, so the subjective findings about what the particular employer has done in any case still have to be measured against the Employment Court's assessment of what a fair and reasonable employer would (or, now, could) have done in the circumstances.

[18] A fair and reasonable employer could also be expected to comply with statutory and contractual obligations and therefore provisions in Mr and Mrs Hakes'

individual employment agreements may be relevant. [Section 4](#) of the Act requires

¹ *Grace Team Accounting Limited v Judith Brake* [2014] NZCA 541 at [84].

² Above n 1 at [85]

parties to an employment relationship to deal with each other in good faith and these obligations include a requirement to consult when making employees redundant. There should also be information provided which is relevant to the continuation of the employee's employment about a decision which will or is likely to have an adverse effect on continuation of an employee. The employee should have an opportunity to comment on that information.

[19] There should not however be pedantic scrutiny of the process but rather an emphasis of substantial fairness and reasonableness. The key element of procedural fairness in the context of a proposed redundancy is the provision of relevant information and active consultation before a final decision is made – *Stevens v Hapag-Lloyd (NZ) Limited*.³

The issues

[20] The issues for the Authority to determine in this matter are as follows:

- What did the individual employment agreements provide in the event of redundancy?
- Was there a genuine basis for restructuring and review?
- Did NZEG follow a fair and reasonable process including an assessment as to whether:

(a) there was adequate consultation about the new structure of the organisation? and

(b) there was adequate information provided under [s 4](#) of the Act?

- Was the decision a genuine redundancy decision?

- If the dismissals are found to be unjustified then what remedies are Mr and Mrs Hakes entitled to and are there issues of mitigation or contribution?

3 *Stevens v Hapag-Lloyd (NZ) Limited* [2015] NZEmpC 28 at [60].

The Employment Agreements – Shiree Hakes/Stephen Hakes

Mrs Hakes

[21] Mrs Hakes could not recall being provided with or signing an employment agreement. Attached to the statement in reply in relation to Mrs Hakes' claim was an unsigned agreement with her name typed on the signature page. Ms Evans has signed the employment agreement.

[22] There is also an email attached to the statement in reply dated 14 August 2015 from Ms Evans to Mrs Hakes which purports to send the employment agreement. When I put that email to Mrs Hakes she said the address the email was sent to was not her email address, which is completely different.

[23] For current purposes it is not particularly material whether the agreement was signed. It is enough to set out that if the agreement attached to the statement in reply constituted the terms and conditions of employment that applied to Mrs Hakes then the focus should fall on clause 27 of the agreement. That clause pertains to the payment of notice in the event of a redundancy and is one month or payment in lieu of notice. The clause provides there will be no right to any compensation for redundancy. There is no process set out in the employment agreement about what would happen in the event of a redundancy which was not a contracting out situation where issues of employee protection may apply.

[24] Mrs Hakes' agreement needs to be considered along with the letter she was given by way of an offer to the position in Christchurch. That letter set out the normal working hours, and a salary for 25 hours per week at \$19 per hour of \$24,700. The letter also provided that there was flexibility to turn the role into a salaried fulltime position or increase hours once Mrs Hakes had settled into Christchurch. There was also reference to a profit share bonus structure which was currently in development although the evidence supported that never came to fruition.

Mr Hakes

[25] Mr Hakes accepted that he was provided with an employment agreement. There is no process in his employment agreement relating to a redundancy situation but the notice period is also one month or payment in lieu thereof.

[26] Mr Hakes was also given a letter of offer for the position of workshop manager. It provided that he was to receive a base salary of \$70,000 together with a company vehicle valued at \$24,360 and an employer contribution to KiwiSaver meaning a total package of \$97,000 which was reflected in his letter of offer as total fixed remuneration of \$97,190.80. There was also a profit share bonus structure referred to in Mr Hakes' offer however that also did not come to fruition. Mr Hakes was also paid an after-hours call-out fee of \$100 on urgent jobs.

Was there a genuine basis for review/restructuring?

[27] The nature of the employment with NZEG involved Mr and Mrs Hakes undertaking work for three companies. The first company was NZ Compact Machinery Limited for sales and servicing of Wacker Neuson light construction equipment. Mr Hakes' work tended to focus on the Wacker Neuson light construction equipment. The second company was Nationwide Equipment Limited for sales and servicing of Takeuchi Excavators and Nifty Life access equipment and the third company was Power Plant Supplies Limited for sale and servicing of generators and pumps.

Staff structure on arrival at the Christchurch branch

[28] When Mr and Mrs Hakes commenced employment at the Christchurch Branch in September 2015 the previous parts person was still employed. He was subsequently made redundant in January 2016. Mrs Hakes described the situation as somewhat awkward as she was employed to carry out many of the duties he had been undertaking before he was made redundant. The remaining staff consisted of a salesperson and an apprentice mechanic. Both the salesperson and the apprentice had left employment by the end of 2016 and Mr and Mrs Hakes were left for a period of time to run the Christchurch Branch as the only employees. Another sales person was then appointed in early 2017 and that is a matter I will return to.

Broad duties of Mr and Mrs Hakes

[29] Mr Hakes managed the workshop including initially the training and support of the apprentice mechanic. He worked on a wide range of light civil construction equipment.

[30] Mrs Hakes undertook a wide range of duties in her role of parts specialist. She would assist with general sales and parts sales. She also answered phone calls including for Auckland and Christchurch branches, undertook administration, warranty claims and helped out in the workshop. Mrs Hakes operated the forklift to load customers purchases and equipment. She was sometimes left to run the branch alone when Mr Hakes was asked to return to the Auckland branch to cover for the Auckland mechanic or assist with other work. There were other such occasions when she would run the branch when the sales person was out of town and Mr Hakes was out doing on-site jobs.

Start of the review process 16 March 2017

[31] On 16 March 2017 Mr and Mrs Hakes were each given a letter which had the subject "Christchurch Branch restructuring." It was signed by Ms Evans in her capacity as Chief Executive Officer. It provided that due to the ongoing poor performance of Nationwide Equipment Limited, NZEG were looking at reviewing the business' future structure and focus. Areas that were being looked at included profitability, increases in sales and service, productivity of the workshop, reviewing the ownership model including potentially introducing a partner into the business and reviewing the overheads of the organisation including reviewing the current staff structure and expenses.

[32] The letter concluded with a statement that Ms Evans would be able to give direction on the future business structure and focus after her meeting with the bank on

21 March 2017 and that she would plan a trip to the Christchurch branch to discuss on

22 March 2017.

[33] There had been a letter similar to that provided on 16 March 2017 given to Mr Hakes on 23 November 2015 which referred to a review but no outcome was communicated about what the review was or how the matters of concern were to be addressed.

[34] Mr and Mrs Hakes said that throughout their period of employment in Christchurch Ms Evans and Mr Lee referred to financial and performance concerns about the company. There was reference by Ms Evans to needing to attend the bank

to resolve some issues on a reasonably regular basis. Another matter that indicated to

4 Common ground letter incorrectly dated 16 March 2015

the Hakes' that all was not well was the fact that there was no stock to fulfil the orders. Mrs Hakes said that she would do her best to keep sales up with buyers wanting to purchase machinery but the company did not fulfil the orders in a timely manner. In or about October 2016 the business of Power Plant Supplies Limited was sold.

[35] Mrs Hakes recalled with some obvious distress a telephone meeting with her and Mr Hakes and Mr Lee on 30 November 2016. During that call Mrs Hakes said that Mr Lee was "yelling" that the South Island branch is going backwards and losing \$15,000 in revenue and that they had to come up with some ideas. He asked, Mrs Hakes recalled, whether he should bring in a manager. The call ended and Mrs Hakes said that she was upset so she wrote an email recording what had been said. After the call she said that Ms Evans telephoned and apologised for Mr Lee's behaviour.

[36] Mr and Mrs Hakes said that although there were frequent conversations about the need to increase profitability and cut cost they were not told directly that their jobs were at risk. The evidence supports some additional focus on the financial situation after November 2016.

[37] I accept that the evidence supported growing concerns about the profitability of the company and its financial performance. Concerns appeared from the evidence to increase after November 2016. There was in all likelihood, I find, a reasonable basis for the review and restructuring that commenced with the letter on 16 March

2017.

Did NZEG follow a fair and reasonable process before making the applicants redundant?

[38] After the letter of 16 March 2017 there were separate meetings with Mr and Mrs Hakes and Ms Evans on 22 March 2017. Mr Hakes had his meeting first on the morning of 22 March 2017.

Mr Hakes' meeting

[39] Mr and Mrs Hakes both went in to meet with Ms Evans after she arrived at the branch on 22 March 2017. They understood that Mr Hakes would be spoken to first and Mrs Hakes wanted to support him. Mrs Hakes said that Ms Evans told her that

she was doing her meeting next and Ms Evans asked Mrs Hakes to leave which she did.

[40] Mr Hakes was provided with a letter that advised his position of workshop manager had been made redundant. The letter stated that the redundancy was effective from 26 May 2017 and the salary package remained in place until that date. The new structure was set out in the letter for the South Island branch. There was a South Island Regional Manager and advice that the new salesperson had been appointed to that role. The other remaining position was a mechanic reporting to the South Island Regional Manager. The remuneration package for the mechanic position was set out. In the event that Mr Hakes did not take up the offer of the position of mechanic then the letter advised the option to work through until 26 May and look for new employment or if he wished to leave immediately then the salary would be paid until 30 April 2017. The letter said counselling and/or career advice assistance would be offered.

[41] Mr Hakes said that he left the meeting feeling upset and distraught. He said he could not understand why the new salesperson had been appointed to the South Island Regional Manager role instead of Mrs Hakes. Interestingly, Mr Hakes saw Mrs Hakes as a more suitable person for appointment than he would have been. He had to then attend an appointment to service a vehicle off site. Mrs Hakes could tell that the meeting had not gone well as she said he looked shocked and upset. She then went into her own meeting.

Mrs Hakes

[42] Mrs Hakes was also given a letter. It set out that her position of parts assistant (specialist) had been made redundant effective from close of business 26

May 2017. The new structure was set out as in Mr Hakes' letter. The options for Mrs Hakes were set out to work the time until 26 May or leave immediately and be paid out in full to 26 May 2017. The letter offered counselling and/or career advice assistance. References were also promised.

[43] Mrs Hakes said that she became distressed in the meeting and was given an option to go home. Ms Evans called Mrs Hakes an Uber. Ms Evans offered to ask a hire firm if they could take Mrs Hakes on but Mrs Hakes said she understood that company was not in a position to take anyone on. Mrs Hakes said that she understood

from the meeting that her parts role was to be undertaken in Auckland. Mrs Hakes was unaware of the new structure for the branch until that meeting.

Was there adequate consultation about the new structure of the organisation?

[44] The positions that Mr and Mrs Hakes held of workshop manager and parts specialist no longer existed in the new structure. The new role in the structure of South Island Regional Manager was filled by the salesperson who had been appointed to his sales role in or about January 2017. Although the letters given to Mr and Mrs Hakes on 22 March 2017 referred to the salesperson's responsibilities increasing as a result of the restructure, objectively assessed, the role of South Island Regional Manager was a new role which absorbed not only sales but Mr Hakes' role and parts of Mrs Hakes' role.

[45] There was no consultation about the new structure or who would be selected for the South Island Regional Manager's role. It was simply presented as a fait accompli that the new employee had been selected for the role at the meetings on 22

March 2017 when Mr and Mrs Hakes were advised that their positions were

redundant. I accept Ms Gordon's submission that the first letter in the process of 16

March 2017 supported Mr and Mrs Hakes' belief that information about the future business structure of the Christchurch branch would be available on 22 March 2017 for discussion at the planned meeting. That did not occur. Rather the meeting on 22

March was simply to advise Mr and Mrs Hakes' positions had been made redundant.

[46] Both Mr and Mrs Hakes believed that Mrs Hakes would have been able to undertake the South Island Regional Manager because her role was more than simply parts sales and had evolved to include aspects of overall management of, and sales at, the Christchurch branch. I do not find that the fundamental elements of consultation required under s 4 of the Act were met by the process adopted by NZEG. While it was acceptable for NZEG to have a working plan about what the structure would look like, the obligations of consultation required an open mind with a readiness to change and even start again.

[47] If there had been sufficiently precise information about the proposed business structure provided so as to give Mr and Mrs Hakes an opportunity to provide a view they could have put forward that the South Island Regional Manager role was a position that Mrs Hakes could perform and that she had already been performing

aspects of the role. Discussion could and should have taken place about the selection criteria for the South Island Regional Manager role. Had there been an open minded consultation about the new structure and selection Mrs Hakes may have been able to apply for the new management role.

[48] Offering redeployment by way of the mechanics role is the action of a fair and reasonable employer in a redundancy process. Mr Hakes said in his evidence that he had difficulties with working under the salesperson who was appointed to the South Island Regional Manager role. If there had been proper consultation, a fair selection process and an attempt to address any concerns Mr Hakes had then he may have accepted the offer of redeployment to the mechanics position. I find that there was fundamental unfairness with the lack of any meaningful consultation about the new structure and the lack of provision of relevant information.

[49] It was also unfair not to advise Mr and Mrs Hakes they could have a support person at the meeting on 22 March 2017. It was particularly unfair not to let Mr Hakes have Mrs Hakes present as a support person at his meeting and to ask her to leave.

[50] Whilst the offer of counselling and career advice assistance was an action of a fair and reasonable employer, Mrs Hakes said that after the meeting on 22 March she had no further contact with Ms Evans and her telephone calls to Ms Evans went unanswered. She said that when she sent an email to Ms Evans saying that she wanted to take the option of leaving early Ms Evans did not respond. Although Ms Evans had referred to CV assistance and references, nothing happened about that.

[51] The contractual notice requirements were complied with and indeed notice was in excess of the one month requirement particularly in Mrs Hakes' case.

[52] The process however viewed overall did not satisfy the requirements of fairness and good faith and therefore did not meet the test under s 103A (3) of the Act.

Was the decision a genuine redundancy decision?

[53] The positions of Mr and Mrs Hakes did not continue in the new structure. To that extent I conclude that there was a genuine redundancy situation. The focus falls then on the fairness of the process and selection of positions for disestablishment, redundancy and redeployment.

[54] I have found that the actions of NZEG in failing to properly consult and provide information about the new structure and the selection process were seriously flawed and fundamentally unfair. It was not what a fair and reasonable employer could have done in all the circumstances. The test for justification is not met as a result notwithstanding the redundancy was genuine.

[55] Mr and Mrs Hakes have made out their personal grievance claims of unjustified dismissal and they are each entitled to consideration of remedies.

Remedies *Mrs Hakes Lost wages*

[56] Mrs Hakes elected to leave her employment early and was paid through to 26

May 2017 by NZEG. She was successful in obtaining other employment in July 2017 although the exact date of that was unknown. Inland Revenue records were provided to confirm there were no earnings before about mid-July. Ms Gordon clarified the claim as four weeks loss of wages within the 13 weeks following dismissal.

[57] I have considered whether, even if the process had been fair with proper consultation Mrs Hakes would have been dismissed in any event. Two roles still remained at the Christchurch branch and Mrs Hakes could see no reason why she would not have been considered for appointment to the South Island Regional Manager role because she had already been undertaking aspects of that role for some time. I am simply unable to conclude with any degree of certainty that had the process of consultation and selection been fair and in accordance with good faith obligations Mrs Hakes would still have been made redundant.

[58] I find that Mrs Hakes is entitled to be reimbursed for lost income for a period of thirteen weeks from the date of termination. Mrs Hakes' final day of work was 24

March 2017, taking the 13 week period through to the week commencing 23 June

2017. Reimbursement is sought at the hourly rate of \$19 per hour for 25 hours per week. That is \$475 gross per week for a period of four weeks.

[59] I order NZEG OP Limited to pay to Shiree Hakes the sum of \$1,900 gross being reimbursement of lost wages under [s 123\(1\)\(b\)](#) of the [Employment Relations Act 2000](#).

Compensation

[60] Mrs Hakes said that she was completely devastated by the news that her position was to be made redundant. She said that she was not expecting that to occur at the meeting and that she felt embarrassed and "duped" by what had happened. She referred to concerns that the salesperson was employed a few weeks before the redundancy simply to replace her. She

felt that had happened with the previous parts employee when she was employed. Mrs Hakes said she and her husband had made the significant decision to shift to Christchurch away from family and friends with their three children with a view that it was a great opportunity. There was a sense of shame about telling friends and family that she had been made redundant.

[61] Mrs Hakes expressed concerns about getting another role and her confidence was damaged for a period of time. In her written evidence she said that it took about six weeks for her to stop “freaking out” about the whole thing and to get another job. I accept that Mrs Hakes was devastated by her dismissal, concerned about her financial situation as the family income had stopped and her confidence was damaged. She also harboured feelings of unfairness about the lack of consultation and information about the structure and selection decisions. I have weighed the extended notice period that was paid out as this reduced immediate financial concerns and enabled a period away from work for coming to terms with the loss of her position and job searching. In all the circumstances I am of the view that an award for compensation needs to reflect that. A suitable award is \$13,500.

[62] I order NZEG OP Limited to pay to Shiree Hakes the sum of \$13,500 without deduction under [s 123 \(1\)\(c\)\(i\) of the Employment Relations Act 2000](#).

Contribution

[63] I do not find that Mrs Hakes contributed towards the situation that gave rise to the personal grievance and there is no reduction to the remedies set out above.

Mr Hakes

Lost Wages

[64] There is no claim for lost wages for Mr Hakes as he was able to obtain other employment albeit at a lower rate but for more hours.

Compensation

[65] In assessing compensation I need to consider whether it is limited to the process that has been found to be unfair or whether it is compensation for the loss of a job. A point of difference to Mrs Hakes’ situation is that Mr Hakes was offered a redeployment option. As set out earlier there was no consultation about the structure. Had there been proper consultation including about the selection process with an opportunity to understand the structure and raise any concerns or suggestions he had then I am unable to say with any certainty that Mr Hakes would not have accepted a redeployment opportunity. Mr Hakes said that he felt he had somehow been demoted by being offered the mechanics role but with proper consultation and an understanding of selection such concerns could have been addressed. The income level if such a role had been accepted was comparable to what he had been receiving as workshop manager.

[66] Mr Hakes described that he felt his world was crashing down and that he had left friends and family in Auckland. He felt like the whole restructure had been pre-planned with the new employee having been hired to take over and that he did not know about it. Mr Hakes said that he was too ashamed to tell friends and family what had occurred and there were concerns about how the family was going to survive. He took the first job he was offered which had erratic hours and he did not get to spend as much time with his family making him feel like an inadequate father.

[67] Mr Hakes said that he is a quiet person who keeps his emotions to himself. I accept that is how he presents. Mr Hakes said that he has lost his sense of who he is and questions his abilities because he has lost confidence and respect for himself.

[68] I accept that the dismissal was devastating for Mr Hakes and had a significant effect on him. He clearly feels a sense of unfairness and mistrust about what occurred. That sense of disillusionment clearly remains with him. Mr Hakes had relocated his family to Christchurch and had to move quickly to obtain other less

satisfactory employment. I do weigh with what I accept was a significant level of distress and a flawed process the extended notice period including an option to work on the existing salary until 26 May 2017 with time to look for other employment or be paid out until 30 April 2017. In all the circumstances I find a fair award is \$13,500.

[69] I order NZEG OP Limited to pay to Stephen Hakes the sum of \$13,500 without deduction under [s 123 \(1\)\(c\)\(i\) of the Employment Relations Act 2000](#).

Contribution

[70] I do not find that Mr Hakes contributed to the situation that gave rise to his personal grievance. There is to be no reduction to the remedies awarded.

Costs

[71] The investigation meeting was able to be concluded in about three hours for both claims. In accordance with the daily

rate of \$4,500, that would be a starting point for a total award for costs of \$2,250 or \$1,125 for each claim. Ms Gordon urged an increase to the full daily tariff to reflect preparation for two matters. I am of the view that would be excessive. I do however accept that preparation for two claims that are not absolutely identical does support some adjustment upwards from the starting point. I note in that respect that Ms Gordon did preparation that was particularly helpful to the Authority on earnings. I find that there should be an increase of \$350 for costs for Mr and Mrs Hakes from the starting point of \$1,125 to reflect that there were two claims and they each had some separate features that would have increased costs and should be recognised.

[72] There is to be an award of costs for Mrs Hakes in the sum of \$1,475. Mrs

Hakes is also entitled to be reimbursed for her filing fee in the sum of \$71.56.

[73] I order NZEG OP Limited to pay to Shiree Hakes the sum of \$1,475 for costs and reimbursement of her filing fee in the sum of \$71.56.

[74] There is to be an award of costs for Mr Hakes in the sum of \$1,475 together with reimbursement of his filing fee in the sum of \$71.56.

[75] I order NZEG OP Limited to pay to Stephen Hakes the sum of \$1,475 being costs together with reimbursement of the filing fee in the sum of \$71.56.

Helen Doyle

Member of the Employment Relations Authority

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