

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 153
5521072

BETWEEN STEVEN HAMILTON
Applicant

AND ADVANCE INTERNATIONAL
CLEANING SYSTEMS (NZ)
LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: Jenny Beck, Counsel for Applicant
Jiwa Nadan, Advocate for the Respondent

Investigation Meeting: 15 June 2015 at Dunedin

Submissions received: On the day

Further evidence received: 27 July 2015 and 30 September 2015

Determination: 13 October 2015

DETERMINATION OF THE AUTHORITY

- A. Steven Hamilton was unjustifiably dismissed and unjustifiably disadvantaged.**
- B. Advance International Cleaning Systems (NZ) Limited must pay Steven Hamilton:**
- (i) \$6,957.53 gross lost wages and**
 - (ii) \$8,000.00 compensation for humiliation, loss of dignity and injury to his feelings.**
- C. Costs are reserved and a timetable has been set.**

Employment relationship problem

[1] Mr Hamilton worked as the Branch Sales Manager of the Dunedin branch of Advance International Cleaning Systems (NZ) Limited (Advance) from November 2012 until his position was disestablished by way of redundancy. Mr Hamilton says that the dismissal was substantively and procedurally unjustified. He says that Jiwa Nadan, Advance's Managing Director, had pre-determined the outcome. He also says that on 19 December 2013 he was unjustifiably disadvantaged by having to finish immediately and not work out his notice period.

[2] Mr Nadan says that the redundancy was genuinely necessary for financial reasons, that the process was fair and the company acted in good faith.

[3] Mr Hamilton claims lost wages, compensation for hurt and humiliation and legal costs.

Factual background

[4] On 9 August 2013 Brian Young, National Sales Manager, sent Mr Hamilton an email enclosing his incentive plan from 1 July 2013 to 30 June 2014. On 10 September 2013 Mr Hamilton received an email from Advance's Sales Co-ordinator that Mr Young had confirmed that Mr Hamilton was *on track for your incentives*. Mr Hamilton took that to mean that budgeted sales for July and August had been exceeded.¹

[5] On 16 August 2013 Mr Nadan emailed Mr Hamilton that he needed to reduce the amount of stock held in the branch. Mr Nadan also said he could see some improvements but that:

sales remain low compared to cost deployed in the region. On current sales we are over staffed by at least 1 person and how you wish to address this.

[6] Mr Hamilton replied on the same day that he was surprised to hear the branch was over-staffed and said that Mr Nadan had told him previously that with the loss of

¹ It is not disputed that in July 2013 the budgeted sales target of \$104,147 was exceeded by \$508.04, in August 2013 the budgeted sales target of \$102,476.00 was exceeded by \$18,653.60 but in September 2013 the budgeted sales target of \$100,805 was not met with sales of only \$86,284.17 being made.

a staff member a few months earlier the current levels of sales could sustain the current staff. He asked if the goal posts had moved.

[7] Mr Nadan does not appear to have answered that query.

[8] On 8 October 2013 Mr Nadan emailed Mr Hamilton about a number of things including the disappointing performance of one of the sales representatives, Mr D, and Mr Hamilton's continued support for him. He also wrote that the September month sales were below target and the whole quarter:

was short of the mark ... with the resources and plans deployed expected better result...
Sales staff: you have 3 senior sales people (includes you) however, the sales are relevant to what would be expected of 2 effective sales (sic) in such circumstances.

[9] Mr Hamilton replied on 8 October:

According to my incentive figures I actually achieved the branch sales requirement. I queried this a few weeks ago with Enes and Brian and they confirmed that my incentive figures were correct.
But you keep referring that (sic) we haven't achieved results and according to my incentive we did.
There is some difference between the figures you are talking to me about and the incentive figures I have been achieving.

[10] Again Mr Nadan does not appear to have replied to Mr Hamilton or produced the figures he was working from.

[11] On 12 November 2013 Mr Nadan sent Mr Hamilton a draft 90 Day Plan/Goal for the branch asking him to amend it to suit the Otago business suggesting a 90-day target of \$360,000 for the Dunedin Branch. At that point the finalised budget for the three months of November and December 2013 and January 2014 was a total of \$328,619.

[12] Advance says the budgeted sales figures for October and November 2013 were not met and it decided it needed to do something to cut costs in the Dunedin branch, as it had earlier signalled to Mr Hamilton. Mr Hamilton agrees that the budgeted October 2013 sales figure was not met but says it exceeded the October 2012 results. In addition, he says that the Dunedin branch had recently acquired a new national account that the customer wanted to be managed from Dunedin.

[13] In October or November 2013 Advance transferred the Alexandra and Central Otago business from the Dunedin branch to the Queenstown branch after Mr Hamilton had earlier successfully argued to retain the Alexandra business within his branch. Mr Hamilton estimates the Alexandra region had represented approximately 10% of the Dunedin branch's sales and 1/3 of Mr D's area. Mr Nadan says that decision was justified by the shorter distance Queenstown sales people had to travel to cover that area.

Mr Nadan's December 2013 visit

[14] Mr Nadan visited the Dunedin branch regularly and usually Mr Hamilton collected him from the airport. However, on 4 December 2013, expecting Mr Hamilton to be in Invercargill, Mr Nadan arranged for another staff member to collect him and bring him to the office. In fact, Mr Hamilton's plans had changed and he was in the office that day. Mr Nadan used Mr Hamilton's office and had private meetings with each staff member one-by-one before meeting with Mr Hamilton at the end of the day.

[15] Mr Hamilton says that before he got to meet with Mr Nadan a number of staff members told him that Mr Nadan was asking questions about him. He says that when he met with Mr Nadan he was not told that there was a possibility of redundancy or that the branch was losing too much money. He says Mr Nadan commented that the atmosphere in the branch was very tense and Mr Hamilton told him why he considered it to be that way. He outlined problems with inter-staff relationships and a performance problem with one of the staff that he had taken steps to manage.

[16] Mr Hamilton says Mr Nadan told him the two sales staff had been very loyal to him but that he *had pages* from the other two staff.

[17] Mr Nadan says that at the meetings he told each staff member that *branch sales were not in keeping (sic) and the branch could not keep current costs in place.*

[18] Mr Nadan and Mr Hamilton agree that the possibility of Mr Hamilton's role being made redundant was not discussed at the meeting. Mr Hamilton does not remember the issue of branch sales and/or costs being the emphasis or main theme of the meeting.

[19] Mr Hamilton says at the end of the day out in the carpark Mr Nadan approached him and said that he had lost respect for him and for his role. Mr Hamilton says that was because he had an affair with a staff member. Mr Nadan had been informed of it by the staff member² involved and some staff members from the Dunedin branch that day. Mr Hamilton considered that should not have affected Mr Nadan's view of how he did his work. Mr Nadan denies the carpark incident and says he only found out about the affair some days later.

[20] Mr Nadan agreed that he did not ask any staff to come up with ideas of how money could be saved because *usually a sales representative cannot advise on that and wouldn't know*. Neither did Mr Nadan ask for views on how sales income could be increased.

[21] Mr Nadan says that on 5 December 2013 he had a meeting with Advance's senior management team and discussed the Dunedin branch. The management team concluded that either branch sales had to greatly increase or costs had to be reduced by about \$70,000 - \$80,000 per annum while maintaining the existing level of business. Mr Nadan says they proposed to reduce costs by disestablishing the branch manager's role with Mr Nadan managing the branch from head office.

[22] On 5 December 2013 Mr Nadan rang Mr Hamilton. They disagree about what was said. Mr Nadan says he rang to personally let Mr Hamilton know that a redundancy consultation period, affecting his job, was about to commence and later that day he followed up with the emailed redundancy proposal document.

[23] Mr Hamilton says Mr Nadan informed him that his role as branch manager was being disestablished and that he would manage the branch himself from Auckland. Mr Hamilton says that he told Mr Nadan disestablishing his position did not make sense and that instead Advance should consider making Mr D's role redundant because he was *performing the least overall and had just lost 1/3rd of his area* to the Queenstown branch. However, Mr Hamilton says Mr Nadan told him he was not looking at anyone else's role.

² From another branch

[24] Mr Hamilton agrees that Mr Nadan told him he would send him the consultation document however, he was confused by that as he was sure his position had already been disestablished.

[25] The proposal document stated:

You will be aware the Dunedin Branch has not been performing to a satisfactory level. The sales continue to track significantly behind budget.

The current structure in Dunedin is not financially sustainable due to the cost of the current resources and the lack of sales growth to date...

It is important that the processes of Account Management and Business Development are robust and tightly managed. This means they must be efficient in terms of cost and effectiveness where respective staff perform the required duties.

One way to achieve the above is to divide up what needs to happen amongst individuals and ensure responsibilities and KPIs are clearly defined for each person. It is for this reason that I am consulting you about the possibility of disestablishing the existing Sales Manager role that you currently hold and moving existing current clients in your portfolio to the remaining Sales Account Managers and customer service personnel.

[26] The document proposed that Mr Hamilton should give written feedback by 9 December and that the final decision on the new structure would be made and communicated to Mr Hamilton on 11 December with his last day to be 10 January 2014.

[27] On 6 December Mr Hamilton requested an extension of time to allow him to seek legal advice and then give his feedback. He was given until 13 December 2013. In that same email Mr Hamilton requested a profit and loss statement or statements for the previous twelve months, *since I have never been supplied a copy.*

[28] On 13 December Mr Hamilton's then lawyer, Ms Wilson, wrote to Mr Nadan asking for information about comparable branches and why Advance was only considering disestablishing the Dunedin branch manager's role. She noted that Dunedin's gross percentage was the fifth highest in the country and that its sales were consistently closer to budget than many other branches. She pointed out its performance was negatively affected by the transfer of its Alexandra clients and the attributing of some of its completed sales to the Queenstown branch.

[29] Ms Wilson also wrote that Mr Hamilton believed that the decision to disestablish his position had already been made because recently Mr Nadan had excluded him, as manager, from discussions with Mr D about his performance and targets.

[30] Mr Nadan replied on 16 December 2013 that the proposal to restructure had not been taken lightly and:

This is a business decision based on current sales revenue for the region on a normalised basis, KPI run rates, activity pipe lines and sales plans forward.

[31] In response to the concern about managing Mr D, Mr Nadan said that Mr Hamilton had previously been very supportive of Mr D. However, since Mr Nadan's last visit and discussions with staff about branch performance and results Mr Hamilton had *taken an about turn* on Mr D, and Mr Nadan thought that the reasons for that were personal. This issue had not previously been raised with Mr Hamilton.

[32] Mr Nadan also raised a concern that Mr Hamilton had discussed the proposal document with other staff members and he thought that morale and spirit in the team was suffering *due to confidential information being shared*. I note that the proposal did not say that its content was confidential. At the investigation meeting Mr Nadan said that he thought Mr Hamilton should have known it to be confidential.

[33] Mr Nadan's letter did not provide any information to Ms Wilson on other branches and no financial information was provided on the Dunedin branch. He stated Advance aimed to make the final decision by 18 December and communicate it to Mr Hamilton that day, with Mr Hamilton's last day to be 17 January 2014 if the proposal went ahead.

[34] No answer was given to Ms Wilson or Mr Hamilton about Mr Hamilton's 6 December request for profit and loss statements.

[35] On 17 December 2013 Ms Wilson wrote to Mr Nadan again asking for information about the financial performance of the various branches. She asked for the reason that the sales manager position was being disestablished, as opposed to any other position in the branch. Ms Wilson asked for better information, including clarification of the Dunedin branch KPIs, and said without being able to compare

those with the financial performance of other branches Mr Hamilton was not in a position to undertake a financial analysis of the proposal.

[36] Ms Wilson stated that Mr Hamilton did not breach any confidence in discussing the proposal with other staff and did so to get feedback on whether the branch could operate effectively without a sales manager. She requested Advance to *step back from disestablishing Steve's position at this time.*

[37] Mr Nadan replied on 18 December stating that financial performance information from other branches was not relevant. He said that Waikato, Bay of Plenty and Queenstown branches had 4 or fewer sales staff and comparable sales to Dunedin and that Mr Hamilton would have known that from previous discussions.

[38] He also said that previously Mr Hamilton had maintained the need for the branch staff in their current roles despite having:

...been party to several of the discussions and communication over an extended period regarding delivery of sales results for this branch and resources deployed.

However, I note that was before he was told that the branch was doing so badly that his position may have to be disestablished.

[39] Mr Nadan wrote that he remained open to alternative ideas or suggestions but that so far he had not received any reasons why disestablishment of the role was not essential. He said Advance would take into account Mr Hamilton's responses so far but if he had anything further to add he should do so by 4 pm that day.

[40] Ms Wilson replied that the financial performance of other branches was extremely relevant as Mr Hamilton contended that he was being made redundant because of dissatisfaction with his performance rather than any genuine business need. Ms Wilson pointed out that as far as Mr Hamilton knew the Waikato or Hamilton branch had the same number of staff and staff structure but smaller sales volumes.

[41] On 19 December 2013 Mr Nadan telephoned Mr Hamilton and told him he was being made redundant. He also emailed Mr Hamilton a letter, dated

18 December, confirming the proposal to disestablish the sales manager role and giving him notice that his last day would be on 17 January 2014.

Determination

The law on redundancy

[42] The decision whether to make redundancies is part of the management prerogative. It is not for the Authority to substitute its judgment for that of the employer. Although an employer may assert the decision was for genuine business reasons, the Authority may still review the decision to determine whether it, and how it was reached, were what a fair and reasonable employer could have done in all the relevant circumstances.³

[43] Advance can only satisfy the objective test of what a fair and reasonable employer could have done if it met its statutory good faith obligations to Mr Hamilton in how it went about making the decision to disestablish his position. Advance's decision about his role would have or was likely to have an adverse effect on the continuation of his employment. Therefore, Advance had to be active and constructive in providing Mr Hamilton with all relevant information about what it proposed to do and give him a real opportunity to comment on that information before any decision was made.⁴

[44] In addition I need to take into account s.103A(3) of the Act as far as it is relevant to the issue of redundancy. That requires that Advance put its proposal to Mr Hamilton, give him a reasonable opportunity to provide his views on it and genuinely consider his views before deciding to make the branch manager's position redundant.

Did Advance act as a fair and reasonable employer could have done in all the circumstances in making Mr Hamilton redundant?

Was the redundancy substantively justified?

Was the process fair?

[45] Advance's business rationale for its decision to disestablish the branch manager's role has been challenged on a substantive basis as well as on the basis that it was procedurally unfair.

³ *Rittson-Thomas t/a Totara Hills Farm v Davidson* [2013] NZEmpC 39 at [53] – [54]

⁴ Section 4(1A)(b) and (c) and s.4(4)(d) and (e) of the Employment Relations Act 2000 (The Act).

[46] Mr Hamilton was not supplied with the Dunedin profit and loss statement that he requested on 6 December 2013 before his position was made redundant. There apparently were none at that time although he was not informed of that.

[47] Mr Nadan did not provide Mr Hamilton with any documents, such as financial records, that he and the senior management team had considered when putting together the proposal or in confirming the proposal.

[48] Some financial information was supplied at the investigation meeting on the basis that it remain confidential to the parties, the Authority and Mr Hamilton's counsel and that copies would not be retained by Mr Hamilton once the submissions were made. I have made reference to those documents in making this determination. However, I note that they were not supplied to Mr Hamilton during the consultation period and some, such as the profit and loss statement, did not exist when Advance was considering whether or not to make the branch manager's role redundant.

[49] There was no financial information provided to Mr Hamilton during the consultation period at all. Ms Wilson specifically requested information about other branches and clarification of the Dunedin branch KPIs that were said by Mr Nadan not to have been met. That information was not supplied. At the investigation meeting Mr Nadan said that he believed he *was not at liberty to supply financial information to a third party*, meaning Ms Wilson. Plainly that is incorrect. However, if he believed that to be the case he did not address why he did not believe he should supply relevant financial information to Mr Hamilton directly.

[50] I consider that was at least in part because of Mr Nadan's view, expressed in correspondence to Ms Wilson and repeated at the investigation meeting, that Mr Hamilton should have known what the financial position was because he was the branch manager and had seen all the figures to date. However, that presupposed Mr Hamilton knew which figures were being used, which he did not because he was not told.

[51] After the redundancy decision had been made and after a request from Ms Wilson, Mr Nadan agreed to provide notes from the meetings held on 4 December 2013 with all the staff at the Dunedin branch. These were never provided to Ms

Wilson, to Ms Beck or to the Authority. When questioned about that at the investigation meeting Mr Nadan gave inconsistent responses. I was left with the impression that there had been notes but that Advance had decided not to provide them to Mr Hamilton for these proceedings. I am of the view that is because they were more likely to support Mr Hamilton's view that there were some staff complaints about him which at least in part contributed to Advance's decision to disestablish his role.

[52] Although Advance considers that Mr Hamilton did not make any alternative proposals during the consultation period directed at saving Advance money it is clear that on 5 December he suggested that Mr D's role could be disestablished instead of the branch manager's role. Advance does not appear to have given serious consideration to that suggestion. Or if it did it did not communicate its reasoning for focusing only on the branch manager's role to Mr Hamilton during the consultation period.

[53] At the investigation meeting Mr Nadan disclosed that Advance believed it needed to save \$70,000 to \$80,000 per year and the simplest and quickest way of achieving that was to disestablish the branch manager's role for which Mr Hamilton was paid \$60,000 plus incentives. However, Mr Hamilton was not even told the annual amount Advance needed to save during the consultation period.

[54] The lack of information supplied to Mr Hamilton, and to the Authority, and the lack of clear and demonstrable reasoning for the branch manager's role being disestablished as opposed to any other role brings into question the genuineness of the decision to disestablish the branch manager's role. That is particularly so when Mr Nadan found out about Mr Hamilton's affair on his visit to the branch on 4 December, or shortly thereafter, which gave him a negative view of Mr Hamilton's character. In addition, Mr Nadan's intervention and direct management of Mr D without raising any concerns with Mr Hamilton about his management of Mr D contributes to my conclusion that while there may have been some business need for the Dunedin branch to save money it is more likely than not that the decision to consider the branch manager's role alone for redundancy was for mixed motives.

[55] Advance did not act as a fair and reasonable employer could have acted in all the circumstances throughout the consultation and in making its decision to

disestablish the branch manager's role. The breaches of fair process were not minor and did result in Mr Hamilton being treated unfairly. Therefore, Mr Hamilton's dismissal was unjustified.

Was Mr Hamilton also unjustifiably disadvantaged?

[56] Mr Hamilton says on 19 December he told a friend who came into the store, who was also a customer, that he was struggling as he expected to be made redundant that day. He says he also told a sales representative from another store that he might be made redundant. That was because the sales representative mentioned that his business might have a role coming up.

[57] On 19 December 2013 at 3.38 pm Ms Q, one of the customer service staff, emailed Mr Nadan that Mr Hamilton had been late to work on several days in December and *Steve was telling people all day today that he was being made redundant*. She listed four people and the businesses they worked for.

[58] It is clear that is what precipitated Mr Nadan to act as follows. He rang and left a voice message for Mr Hamilton telling him that instead of working out his notice period he was to leave immediately. He later sent an emailed letter stating that Advance was disappointed to hear he had been telling customers coming in that day that he had been made redundant. Mr Nadan wrote it was *disturbing* and said Mr Hamilton had shown a:

lack of professionalism and care ... As such we ask that you respectfully complete a handover of all company material in your possession including and not limited to any company IP in your possession.

I have asked Kayla and Barry to complete the aspect on behalf for the business today by close of business today.

[59] Mr Hamilton was asked not to contact any Advance customers *in any related matter to the business or personal* and that *the staff are also left alone in this respect*.

[60] Mr Hamilton tried to access his work email that day but was unable to do so.

[61] Mr Hamilton says on 20 December 2013 he went into work to clear out his desk and hand over all Advance equipment that he had. He says he was *guarded* by Barry who sat in his office while he cleared his desk and followed him when he went

to the toilet. He says Ms Q ignored him. Mr Hamilton says he felt bad that he could not even say goodbye to the two sales staff who were out of town or notify people at other branches he dealt with that he had been made redundant.

[62] Mr Nadan says that Mr Hamilton was not disadvantaged by being sent home to wait out his notice period because he was paid for that time yet not required to work. He says his action was justified because he was worried that Mr Hamilton would damage the business by telling clients he had been made redundant. He also says that Advance gave Mr Hamilton one month of paid notice as opposed to the two weeks he was entitled to under his individual employment agreement (IEA).

[63] Mr Hamilton's IEA provided that in cases of redundancy he would be given two weeks' notice of termination. Advance was able to pay him in lieu of such notice. However, Mr Hamilton says the method of being effectively sent away immediately was unjustified. He was not asked for his explanation but Mr Nadan immediately accepted what the customer service representative had emailed him and decided to send Mr Hamilton home. Mr Hamilton says that he was extremely humiliated and embarrassed by what he characterised as *being treated like a criminal* on 20 December and that being so close to Christmas made it worse. He also says that he had no idea that the fact of his redundancy was supposed to be kept confidential within the organisation. He says he was trying his best to obtain other work as soon as possible.

[64] Again, s.103A(3) of the Act applies. Advance was required to investigate its allegation that Mr Hamilton told clients about the redundancy, raise its concerns about that with Mr Hamilton and give him a reasonable opportunity to respond to the allegation and then take his explanation into account before deciding whether to immediately send Mr Hamilton home. None of these steps were taken. The breaches of fair process were not minor and did result in Mr Hamilton being treated unfairly.

[65] A fair and reasonable employer could not have acted like Advance did in all the circumstances without going through a fair process. In addition, Advance had not sought to agree with Mr Hamilton how the redundancy proposal or the fact of his redundancy would be announced or communicated to the other branch staff or to customers. Advance had not sought to hold Mr Hamilton to any confidentiality once

the decision was made. Mr Hamilton was unjustifiably disadvantaged by how he was treated on 19 and 20 December 2013.

Remedies

[66] Having decided that Mr Hamilton's personal grievances are proved I need to consider what remedies are due to him.

Lost wages

[67] Section 123(1)(b) of the Act allows me to provide for the reimbursement by Advance of the whole or any part of wages Mr Hamilton lost as a result of his grievance.

[68] Section 128(2) of the Act provides that I must order the Advance to pay Mr Hamilton the lesser of a sum equal to his lost remuneration or to 3 months' ordinary time remuneration. Since Mr Hamilton earned some income over the three months after his dismissal I need to award his actual lost remuneration for the three months after his dismissal.

[69] Because I am not satisfied, despite some information about sales budgets not being met, that the only viable solution for the Dunedin branch was to disestablish the Dunedin branch manager's position, I consider that it is reasonable that Mr Hamilton receive lost remuneration for the three month period.

[70] Mr Hamilton's date of redundancy from Advance was 17 January 2014. I accept that Advance gave Mr Hamilton a longer than contractually required notice period but the end of that period is the date from which the three months runs. Three months after that date was 18 April 2014. I need to calculate what Mr Hamilton would have earned from Advance over that period and subtract what he actually earned.

[71] Mr Hamilton earned \$60,000 gross per annum in salary from Advance, or \$1,153.85 per week x 13 weeks = \$15,000.⁵

⁵ \$14,999.9999

[72] Mr Hamilton adequately mitigated his losses by gaining at least part-time employment early in the New Year. Once he was employed he continued looking for better paid work which he finally secured in March 2014.

[73] Mr Hamilton earned \$1,524.00 from K J Bailey Limited, \$2,227.00 from Elite Fitness Equipment Limited and \$953.00 from Dick Smith Electronics; a total of \$4,704.00 to the end of March 2014. In addition, he earned \$3,338.47 from Dick Smith up to 18 April 2014. Over the three months he earned \$8,042.47 gross. When that is subtracted from \$15,000 it leaves \$6,957.53 gross that Mr Hamilton lost as a result of his personal grievance.

[74] I do not consider this a suitable case in which to exercise my discretion to award further lost wages than for three months.

Compensation

[75] Mr Hamilton claims compensation for humiliation, loss of dignity and injury to his feelings. Mr and Mrs Hamilton's evidence was that Mr Hamilton was stressed, and worried about how to provide for his family, including his pregnant wife and later their newborn daughter. He was embarrassed and had trouble sleeping. The evidence establishes that Mr Hamilton suffered injury to his feelings, humiliation and a loss of dignity warranting an award of compensation under s.123(1)(c)(i) of the Act.

[76] I have not taken into account the added stress Mrs Hamilton suffered during the latter stages of her pregnancy and in the early days of their daughter's life as Mr Hamilton's claim is a personal one.

[77] In assessing the amount of compensation to award I consider it reasonable to assess the effects of the unjustified disadvantage and the unjustified dismissal together as they were so closely connected. After considering Mr and Mrs Hamilton's evidence I consider that the unjustified disadvantage somewhat increased the level of humiliation and stress Mr Hamilton would have suffered in any event because of the unjustified dismissal and consider an award of \$8,000 to be reasonable compensation.

Costs

[78] Costs are reserved. The unsuccessful party is usually expected to pay a reasonable contribution towards the other party's legal costs. The parties are invited to agree on the matter of costs.

[79] If they are unable to do so the party seeking costs shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The other party shall have 14 days from the date of receipt of the memorandum in which to file and serve a memorandum in reply.

[80] In order to assist the parties I can indicate that the Authority is likely to adopt its notional daily tariff based approach to costs. The daily tariff is \$3,500 per day. The investigation meeting took one day. The parties are therefore invited to identify any factors which they say should result in an adjustment to the notional daily tariff, such as *Calderbank* offers.

Christine Hickey
Member of the Employment Relations Authority