

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 481  
3345240

BETWEEN	LORRAINE KAPURUBANDARAGE DON Applicant
AND	APPROACH ARCHITECTS LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	Hayley Johnson for the Applicant Simon Liu as the Respondent
Investigation Meeting:	5 May 2025 at Auckland
Submissions received:	12 May 2025 from the Applicant 12 May 2025 from the Respondent
Determination:	6 August 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Ms Lorraine Kapurubandarage Don was employed by Approach Architects Limited (Approach) on 17 July 2023. The parties agree that her employment was terminated by way of redundancy on 16 April 2024. Ms Kapurubandarage Don raised a personal grievance claim that the redundancy was both procedurally and substantively deficient. She says that the decision was not made fairly as it was based on performance concerns that were not discussed with her, was not for genuine reasons and the process was proposed and completed in one day.

[2] Ms Kapurubandarage Don says that she was bullied and actions by the company led her to resign during her redundancy notice period. These breached the good faith obligations required of her employer.

[3] Approach denies the claims made by Ms Kapurubandarage Don. It says that she resigned in the initial discussions, then accepted redundancy with notice and it was her choice to resign during her notice period.

[4] Approach further claim that Ms Kapurubandarage Don breached clause 14 of her employment agreement as she used its intellectual property in work she was undertaking for another entity.

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

[5] Material discussed during mediation was initially sent to the Authority by Mr Liu. This was removed by the Authority, not seen by the Member and this was confirmed to the parties at the investigation meeting.

[6] An interpreter was provided for the investigation meeting.

[7] For the Authority's investigation written witness statements were lodged from:

- a. Ms Kapurubandarage Don, applicant,
- b. Mr Kavish Egodade, Ms Kapurubandarage Don's husband,
- c. Mr Simon Liu, office manager and
- d. Ms Sofia Wang, director.

[8] All witnesses answered questions under oath or affirmation from me and the parties' representatives. As key employment dates and specific project material was not available at the meeting, Mr Liu was asked to provide this by 8 May 2025 and then for written submissions to be sent to the Authority on 12 May 2025.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

## **The issues**

[10] The issues identified for investigation and determination were initially detailed in a direction to the parties of 21 March 2025. Upon receipt of the parties' documentation other elements were identified as part of the employment relationship problem so these were discussed with the parties and explored at the investigation meeting.

[11] Approach's claim for breach of contract by Ms Kapurubandarage Don was not presented as a counterclaim. However, it was identified in the statement in reply. It was accepted as an issue for determination and was discussed during the investigation meeting.

[12] The issues for determination and investigation are therefore:

### *Personal grievances*

- (i) Whether Approach's actions regarding Ms Kapurubandarage Don's termination of employment by way of redundancy and/or other actions by the employer during her employment resulted in an unjustified dismissal and/or unjustified disadvantage under s 103 of the Act.
- (ii) If Approach Architect's actions were not justified (by disadvantaging and/or dismissing Lorraine Kapurubandarage Don), what remedies should be awarded, considering:
  - (a) Lost wages (subject to evidence of reasonable endeavours to mitigate her loss); and
  - (b) Compensation under s123(1)(c)(i) of the Act.
- (iii) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Kapurubandarage Don that contributed to the situation giving rise to her grievance?

### *Unpaid wages and interest*

- (iv) Is Ms Kapurubandarage Don owed arrears of wages for her final pay and, if so, what is owed?
- (v) If arrears are owed, should interest be awarded and should Approach be liable to a penalty under s 4 of the Wages Protection Act 1983 (the WPA) and, if so, what amount?

### *Good faith obligations*

- (vi) Did Approach breach its duty of good faith in the way it carried out the redundancy process? If so, should a penalty be imposed?

### *Breach of contract*

- (vii) Did Ms Kapurubandarage Don breach clause 14 of her employment agreement?

### *Penalties and costs*

- (viii) Should either party contribute to the costs of representation of the other party?
- (ix) Should penalties be awarded?

## **Background**

[13] Approach is a small architecture studio based in Auckland. Ms Chengyan (Sofia) Wang is sole director and actively works in the business. Her husband Mr Simon Liu is office manager. The company undertakes building and resource consent work and have two teams that each focus on aspects of this work with some crossover as needed.

[14] Ms Kapurubandarage Don applied for a role at Approach in May 2023 and began work as an architectural graduate on 17 July 2023 reporting to Mr Andy Wang as Senior Designer. When Ms Kapurubandarage Don started, she was working on the building consent work with Mr Wang. As she was a graduate this allowed more intense supervision and management than Ms Wang could provide on the resource consent side.

[15] Mr Wang resigned and left Approach in March 2024. As there was nobody to adequately supervise a new graduate, Ms Kapurubandarage Don said that she was briefly moved across to work with Ms Wang doing resource consents. Even though Mr Wang was not employed by Approach, he agreed to provide supervision for Ms Kapurubandarage Don from outside the business. This supervision was intermittent and was agreed separately with Approach as he owed some hours to the business.

### *Redundancy process*

[16] On the morning of 16 April 2024, Ms Wang verbally informed Ms Kapurubandarage Don that there would be a review meeting that afternoon. The meeting was held at 4.00 pm with Ms Wang and Mr Liu. At this meeting, Ms Kapurubandarage Don says that Ms Wang told her that she was inefficient in her employment and as Mr Wang (as her senior and mentor) had resigned, her role was going to be made redundant.

[17] Mr Liu confirmed that, other than one passing comment by text from Ms Wang, no other conversations about the potential end of her employment took place with Ms Kapurubandarage Don.

[18] At 6.43 pm that evening, Ms Kapurubandarage Don was advised by email from Mr Liu that her employment was terminated with the required 12-week notice period. Her last day of employment was to be 8 July 2024. The email said:

“As discussed this afternoon, I am writing to formally notify you of the termination of your employment with us. Your last day of employment will be 8th July 2024, and this serves as the 12 weeks’ termination notice period. We appreciate your understanding of our current situation. With the departure of your senior, Andy, we unfortunately do not have additional resources to provide you with the necessary support that is essential to your work. During this notice period, you are welcome to utilize your accrued leave for interviews or other personal matters ....

[19] Initially Mr Wang submitted that Ms Kapurubandarage Don resigned during the meeting on 16 April 2024. He later said that Ms Kapurubandarage Don changed her position the day after the meeting and expressed a preference to resign, citing concern that another redundancy would negatively affect her employment history. However, she replied by email on 19 April 2024, confirming that she would accept the redundancy instead. Ms Kapurubandarage Don disputes this recollection of events and says that she did not resign until 12 May 2024, with her last day as 10 May 2024.

### *Resignation*

[20] After 16 April 2024, Ms Kapurubandarage Don continued to work her notice period until she fell ill on 9 May 2024. Mr Liu requested a medical certificate for her absence on 10 May 2024 as he doubted the genuineness of her illness. Mr Liu then questioned the medical certificate provided and asked to speak to Ms Kapurubandarage

Don's doctor. She denied permission so Mr Liu declined her application for sick leave. The employment agreement provides that a medical certificate may be requested after three days. This was "the final straw" for Ms Kapurubandarage Don and she resigned by email with immediate effect on 12 May 2024 stating "...due to the harassment and unpleasant working environment created by you whilst I am on my notice period, I feel like I have no choice but to resign."

[21] Ms Kapurubandarage Don raised a personal grievance on 15 May 2024. The parties' differences were not resolved in mediation and proceeded to an Authority investigation.

### **Relevant Law**

#### *The statutory test of justification*

[22] Ms Kapurubandarage Don's personal grievances about her dismissal and disadvantages said to have occurred during her employment, must be assessed against the statutory test of justification set out in s 103A of the Act. This test requires the Authority to objectively consider the actions of Approach deciding to terminate Ms Kapurubandarage Don's employment by way of redundancy. Those actions are measured against what a fair and reasonable employer could have done in all the circumstances at the time.

[23] The mutual good faith obligations must also be considered. Both parties have an obligation to be active, constructive, responsive and communicative in the employment relationship.<sup>1</sup> As the impact of redundancy would likely result in the termination of Ms Kapurubandarage Don's employment, Approach is also required to consider their obligations under s 4(1A)(c) of the Act to provide access to relevant information and to give Ms Kapurubandarage Don an opportunity to comment on that information before the decision is made.

[24] The Act is also clear that a dismissal for redundancy will not be found to have been unjustified solely because of defects in the process, unless those procedural flaws were more than minor and resulted in the employee being treated unfairly.<sup>2</sup>

---

<sup>1</sup> Employment Relations Act 2000, s 4(1A)(b).

<sup>2</sup> Employment Relations Act 2000, s 103(5).

## *Mixed motives*

[25] Principles also developed in case law confirm that the employer must make its decisions for genuine business reasons, not for any ulterior purpose of removing someone regarded as unpopular or unsuitable for other reasons. Applying the statutory test of justification in a redundancy situation, the Court of Appeal said:<sup>3</sup>

If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is 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. ...

[26] The law recognises the reality that some restructuring processes and redundancy decisions will occur in situations where the employer also has concerns about an employee's performance or conduct. As noted in the recent Authority decision in *Brown v TPS New Zealand Limited*:<sup>4</sup>

– the employer bears the burden of persuading the Authority that the reasons were genuine and those reasons were the predominant motive or reason for dismissal on the grounds of redundancy. If, on the evidence, this burden is met, the dismissal will be justified, if carried out in a fair manner. If the predominant motive was some other reason, reached without the employee having a fair opportunity for input before negative conclusions about them were reached, the dismissal will be unjustified. An indicator of whether a redundancy was for genuine commercial reasons is whether the employer can show “a significant paper trail or other solid foundation of evidence demonstrating its consideration of a reorganisation.

[27] These good faith obligations also require an employer to consider what alternative positions may be available and consult with the employee. This does not place any obligation on the employer to find an alternative position, it is an obligation to consider and explore.<sup>5</sup>

## **Analysis and Findings**

*Was the redundancy decision made for genuine business reasons?*

---

<sup>3</sup> *Grace Team Accounting v Brake* [2014] ERNZ 129 at [85].

<sup>4</sup> *Brown v TPS New Zealand Limited* [2025] NZERA 125 at [79].

<sup>5</sup> *NZ Steel Ltd v Haddad* [2023] NZEmpC 57 at [81] and [84].

[28] On the basis that Ms Kapurubandarage Don's employment ended by way of redundancy, the substantive justification for this decision must be established.

[29] Mr Liu and Ms Wang gave three reasons for making Ms Kapurubandarage Don's position redundant. Firstly, it is a small company and with Mr Wang's departure there was nobody available to provide Ms Kapurubandarage Don with the supervision and support she needed. Mr Wang was supporting Ms Kapurubandarage Don on an *ad hoc* supervision basis after leaving Approach which was not sustainable in the long term.

[30] Secondly, the company had less work at that time and therefore could not sustain both Ms Kapurubandarage Don's role and the licensed building consent role that Mr Wang was doing. Ms Kapurubandarage Don was not licensed so her ability to take over this work was limited. In a small company, with a number of resignations occurring at the time of Mr Wang's departure and the lack of a licensed building consent person, I accept there was a genuine reason for considering the sustainability of Ms. Kapurubandarage Don's position.

[31] Lastly however, both Mr Liu and Ms Wang said that Ms Kapurubandarage Don could not work independently and fell short of Approach's expectations. Work was taking her too long to complete and her performance wasn't where it needed to be. The problem is that Ms Wang and Mr Wang did not share their concerns with Ms Kapurubandarage Don. Mr Liu, Mr Wang and Ms Wang met in October 2023 and discussed her work performance and Mr Wang had raised concerns. They then documented that discussion but this information was not fed back to Ms Kapurubandarage Don and the documented report was not made available to her. As a result, Ms Kapurubandarage Don said that she thought she was performing well with her work and was made permanent after a six-month trial period. As a result, she perceived the harsh comments made by Ms Wang as bullying behaviour rather than comments made to an underperforming employee.

[32] Recognising that mixed motives can exist;<sup>6</sup> it is for the Authority to determine whether the genuine business circumstances or performance were the predominant

---

<sup>6</sup> As discussed at [25] to [27] above.

factor in Approach's decision to make Ms Kapurubandarage Don's position redundant. Looking at Approach specifically:

- a. In a small company if one senior person leaves it may not be practicable to maintain a junior role that requires more support than the company has resources to provide. Ms Kapurubandarage Don was a recent graduate and needed support. To leave Ms Kapurubandarage Don without a supervisor adversely affected her own professional development.
- b. Ms Wang also hoped that Ms Kapurubandarage Don would be able to move into the more complex area of resource consents but was not assured that she had the best skill set to move into that role either without more support.
- c. If performance was the primary driver for the redundancy decision, then Approach had an opportunity to terminate Ms Kapurubandarage Don's employment in October 2023 during her trial period. It chose to keep investing in her skill development.

[33] On the information before the Authority, I conclude that the reasons for the redundancy were genuine. The departure of Mr Wang and the ability to support a junior role given the business's now much-reduced size was the predominant motive or reason for dismissal on the grounds of redundancy. As the substantive burden is met, the dismissal will be justified, if carried out in a fair manner.

*Was the redundancy process carried out in a fair manner?*

[34] Discussions in the meeting of 16 April 2024 are important. If the parties had fairly negotiated a redundancy for Ms Kapurubandarage Don then this ends the matter. However, the parties agree on the timing of events on 16 April 2024 but do not agree what was discussed at the meeting.

[35] Mr Liu's evidence was inconsistent. Initially he and Ms Wang both claimed that Ms Kapurubandarage Don resigned during the meeting and then later accepted redundancy after taking advice so the letter was "only confirming what she had agreed".

[36] I do not accept Mr Liu's recollection of events at that meeting for three reasons:

- a. The 6.43 pm email sent to Ms Kapurubandarage Don giving notice of redundancy makes no reference to any discussion of resignation.
- b. Mr Liu said that the meeting on 16 April 2024 was a proposal discussion. He said the letter was supposed to be a summary of the meeting and asking for Ms Kapurubandarage Don's feedback. It did not reflect this because it was written by ChatGPT. Asking for feedback is consistent with a discussion about redundancy, not resignation.
- c. Even if Ms Kapurubandarage Don discussed resignation (which is doubted), an intent to resign is not the same as a resignation. There was no evidence of a resignation offered by Ms Kapurubandarage Don.

[37] Turning to other considerations of process, there is no evidence of a proposal put to Ms Kapurubandarage Don with an opportunity for her comment or consideration of alternative positions. She was told of the meeting in the morning and by 6.43 pm the same day she was given notice of termination of employment. The letter is written as formal notification of the end of Ms Kapurubandarage Don's employment and does not refer to feedback or 'propose' anything. It is reasonable to conclude that the recipient of the letter would consider this as notice of the end of their employment.

[38] Approach maintain that they did explore alternatives for Ms Kapurubandarage Don's employment after Mr Wang's resignation, but this was not feasible due to skill alignment issues, her past performance, and the structure of our project teams. Once they established that no other options were available, they proposed her role be made redundant. Unfortunately they did not involve Ms Kapurubandarage Don in those discussions.

[39] I conclude that it was not a fair and reasonable process undertaken by Approach as required by section 103A of the Act for the following reasons:

- a. Ms Kapurubandarage Don was a junior employee who was taken by surprise by a meeting held with less than one day's notice and without the opportunity to have any support person present.
- b. She was not provided with any opportunity for feedback or documentation to support the reasons for the redundancy. According to Mr Liu she should have known that the company had less work at that time. Even if she had all relevant information, the employer's obligation

- to give the employee information about the proposed decision is only half of the employer's statutory obligation under s 4(1A)(c) of the Act.
- c. There is also an obligation to provide an opportunity to comment on the proposed decision before it is made. This did not occur.
  - d. Section 103A(3) requires me to consider the resources available to the employer. To the facts as found, I agree with Ms Kapurubandarage Don's representative that the failings were so fundamental that they do not excuse even a small employer. There was little if any cost to meet the requirements of good faith in this process.
  - e. The actions of Approach did not meet the statutory requirements of good faith outlined in s 4(1A)(b) of the Act. Approach discussed Ms Kapurubandarage Don's performance, decided it was wanting and predetermined the redundancy decision. There was no opportunity for genuine consultation and Ms Kapurubandarage Don was unaware of any issues with her performance.

[40] The defects in the process were more than minor and resulted in a procedurally unfair process for Ms Kapurubandarage Don. Applying the test of justification at s 103A of the Act, a fair and reasonable employer could not have dismissed Ms Kapurubandarage Don in the way that it did.

*Was there bullying causing unjustified disadvantage?*

[41] From July 2023 through to March 2024, Ms Kapurubandarage Don was largely working on building consents. She says that in March she moved across to work on resource consents with another senior member of Approach, Ms Wang and she began feeling belittled and bullied at work by her. Ms Wang denied that Ms Kapurubandarage Don worked on resource consents.

[42] Of the examples given by Ms Kapurubandarage Don, the comments focused on the quality and speed of the work done by Ms Kapurubandarage Don and were described as 'passing comments'. Ms Kapurubandarage Don felt that this was more than Ms Wang having a 'bad week' and it was affecting her professional confidence and "work-life".

[43] In the absence of any company policy, I relied upon the definition of bullying outlined by WorkSafe New Zealand in their good practice guide to Preventing and Responding to Bullying at work: PCBU<sup>7</sup>

Workplace bullying is: repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.

- Repeated behaviour is persistent (occurs more than once) and can involve a range of actions over time.
- Unreasonable behaviour means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating, intimidating or threatening a person.
- Bullying may also include harassment, discrimination or violence.

[44] Ms Wang challenged the credibility of Ms Kapurubandarage Don's examples as inconsistent with the actual project records and internal workflows. As an example of this inconsistency, Ms Wang said she was involved in the resource consent side of the business and would not comment on a ladder detail as it would not be part of resource consent-stage documentation. It would only arise during detailed design or the building consent phase and this was Mr Wang's work. She did have concerns about Ms Kapurubandarage Don's ability to do resource consents and provided her with feedback on her work.

[45] Prior to her application to the Authority, Ms Kapurubandarage Don did not raise her concerns with anyone in the company. She decided (without basis) that Mr Liu and Mr Wang would not take any action. She did not raise her concerns with other colleagues and confirmed that none of them raised concerns with her. As explored with Ms Kapurubandarage Don at the investigation meeting, this also meant the company were unaware of her concerns and were not given the chance to take any appropriate action.

[46] There was no substantive evidence provided to satisfy the Authority that any actions of Ms Wang constituted bullying of Ms Kapurubandarage Don. If there were legitimate concerns about Ms Wang these needed to be raised with her employer even if that was difficult to do. Ms Kapurubandarage Don's claim for unjustified disadvantage is therefore unsuccessful and it follows that there is no breach of contract by failing to provide a safe workplace.

---

<sup>7</sup> 782WSNZ-2489-Preventing-Bullying-at-Work-GPG-v12-7-FA-LR.pdf .

*Decision to resign*

[47] Despite not being pleaded until submissions, Ms Kapurubandarage Don confirmed in the investigation meeting that it was not the redundancy process that caused her to resign but “ongoing harassment, as highlighted by how they had handled my recent sick leave”. As a result of the “harsh and inappropriate treatment by Simon (Liu)” Ms Kapurubandarage Don decided she could not work there any longer and resigned with immediate effect.

[48] Ms Kapurubandarage Don’s representative also claimed constructive dismissal. If this is the case, it is prudent to consider if the employer’s conduct crossed the line from being inconsiderate and causing unhappiness for the employee to repudiatory conduct that gave the employee no choice but to resign. If so, then this would be constructive dismissal.<sup>8</sup>

[49] Ms Kapurubandarage Don did not raise any concerns regarding Mr Wang’s conduct towards her. Having already determined that there was no substantive evidence to suggest bullying by Ms Wang, I examined Mr Liu’s conduct regarding Ms Kapurubandarage Don’s absence on 9 and 10 May 2024. There were no examples provided of “harassment” by Mr Liu or Mr Wang. The absence was not managed well by Mr Liu but falls well short of a finding of repudiatory conduct by the employer. Ms Kapurubandarage Don did not like the suggestion that she was not being truthful or was not sick enough. That said, the error was one day of sick leave incorrectly declined.

[50] I accept Mr Liu’s evidence that he declined the leave because he wanted to ask questions about the medical certificate and within the DingTalk system he needed to decline the leave so they could have those discussions. If the medical certificate was genuine and gave him the dates he needed, then Ms Kapurubandarage Don could reapply for the leave and he would have approved it. Ms Kapurubandarage Don’s claim for constructive dismissal is declined.

---

<sup>8</sup> *Wellington Clerical IUOW v Greenwich* (1983) ERNZ Sel Cases 95 at 104.

### *Other disadvantage grievance*

[51] Although Ms Kapurubandarage Don's disadvantage claim related to the alleged bullying and a safe workplace was not successful, the Authority is not bound to treat a matter as being a matter of the type described by the parties, and may, in investigating the matter, concentrate on resolving the employment relationship problem, however described.<sup>9</sup> In this case it is appropriate to address all Ms Kapurubandarage Don's grievance claims as a claim for unjustified disadvantage relating to other actions by the employer.

[52] Approach evaluated Ms Kapurubandarage Don's performance in October 2023 and again in April 2024 and did not raise these concerns with her until the day it gave her notice of termination of her employment. For Ms Kapurubandarage Don, "hearing they had concerns about my performance as well as that I was going to be made redundant made me speechless." Acting as it did, Approach actively eroded the fundamental base of the employment relationship and breached its duty of good faith to Ms Kapurubandarage Don. The specific examples of bullying behaviour given by Ms Kapurubandarage Don during the investigation did not constitute bullying but do make more sense when armed with the knowledge that Ms Wang was not satisfied with Ms Kapurubandarage Don's performance.

[53] I conclude that Ms Kapurubandarage Don's perception of bullying was in part caused by Approach's failure to communicate its performance concerns at all over an extended period. This failure combined with a failure to undertake a fair process during the decision to terminate her employment had a detrimental effect on Ms Kapurubandarage Don. Accordingly, her grievance is successful under s 103(1)(b) on these grounds.

### **Unpaid wages and interest**

[54] Approach has paid Ms Kapurubandarage Don up to 30 April 2024. It declined paying her for the period 1 to 10 May 2024 on the basis that Ms Kapurubandarage Don did not fulfil her obligations attending work and completing handovers. Considering the employer obligations in the WPA there was insufficient evidence to show any

---

<sup>9</sup> Employment Relations Act 2000, s 160(3).

reasons for non-payment, therefore within 21 days of the date of this determination Approach is ordered to pay Ms Kapurubandarage Don:

- a. Unpaid wages for 1 May 2024 to 8 May 2024 (6 days) totalling \$1,273.85 gross;
- b. Sick leave (if leave entitlement available) for 9 and 10 May 2024 totalling \$424.62; and
- c. Outstanding accrued annual leave entitlements to 10 May 2024.

[55] It is appropriate where a person has been deprived of the use of money to make an award for interest. Interest is to be calculated from the date the sum became due and when it was paid in full. Approach is also ordered to pay interest on the unpaid wages within 21 days of the date of this determination. This interest is payable in accordance with schedule 2 of the Interest on Money Claims Act 2016 and has been calculated using the calculation tool available on the Ministry of Justice website.<sup>10</sup>

[56] As Ms Johnson has noted, this non-payment is in breach of the WPA, however in the circumstances I do not consider any penalty for this breach is appropriate.

### **Good faith relating to the service bonus payment**

[57] Had Ms Kapurubandarage Don's employment continued through to 17 July 2024, she would have been eligible for a service bonus payment. She alleges it was a breach of good faith for Approach to initiate a redundancy process with notice to finish one day prior to the eligibility date for that service bonus payment.

[58] While Ms Kapurubandarage Don is aggrieved that she missed out on the payment, this was not a breach of good faith. Approach communicated the bonus and eligibility criteria clearly in her employment agreement at commencement of her employment and Ms Kapurubandarage Don resigned two months prior to the bonus eligibility date. There were genuine business reasons for ending Ms Kapurubandarage Don's employment and no obligation to make any bonus payment where eligibility criteria were not met.

---

<sup>10</sup> <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

## **Intellectual property obligations**

[59] Approach submitted that a review of internal files in March 2025 and queries from clients raised concerns that Ms Kapurubandarage Don was working for another consulting company and using templates which were the intellectual property of Approach and in breach of the intellectual property clause in her agreement.

[60] Significant information was provided to the Authority during the investigation and in further submissions showing plans for several sites that used the Approach template and were not work undertaken by Approach. However, on the basis of the information presented to the Authority, there was insufficient evidence to conclude that Ms Kapurubandarage Don was responsible for the misuse of that intellectual property. Ms Kapurubandarage Don did not refer to the specific file found on her computer but submitted that the work in question was in a shared drive and others could have accessed her user account. Approach was unable to verify that Ms Kapurubandarage Don was the only person with access to those files and that Ms Kapurubandarage Don was the person who sent them. A breach of her contract was not established and this claim is unsuccessful.

## **Remedies**

[61] As a personal grievance for unjustified dismissal has been established, I now turn to consider what remedies Ms Kapurubandarage Don is entitled to in terms of those provided for under the Act.

### *Compensation under s 128 of the Act*

[62] Ms Kapurubandarage Don seeks compensation for hurt & humiliation and lost wages. In terms of s 128 reimbursement under the Act, Ms Kapurubandarage Don made the decision to resign eight weeks before the end of her notice period and this must be factored into any reimbursement considered.<sup>11</sup> Ms Kapurubandarage Don appropriately mitigated her lack of salary and gained other employment in June 2024.

[63] I accept that the reasons for making Ms Kapurubandarage Don's position redundant were genuine but the process was procedurally flawed and the flaws were more than minor. However, a more thorough consultation process with proposed

---

<sup>11</sup> Employment Relations Act 2000, s 124.

outcomes and consideration of options for alternative positions would not have seen Ms Kapurubandarage Don stay at Approach. I consider that one extra week of lost wages to allow for a timelier process is appropriate. This amounts to \$1061.53 gross plus holiday pay of eight percent on that amount.

*Compensation under s 123 of the Act*

[64] Ms Kapurubandarage Don gave evidence that she resigned because of the alleged bullying and/or harassment by Ms Wang and Mr Liu both before and after 16 April 2024 not because of deficiencies in the redundancy process.

[65] Compensation is appropriate as:

- a. Ms Kapurubandarage Don was unjustifiably disadvantaged by Approach's failure to communicate its documented performance concerns since October 2023 and then to make comment on these concerns simultaneously with the redundancy discussion.
- b. Ms Kapurubandarage Don established her unjustified dismissal grievance due to the failure by Approach to conduct a fair process including an opportunity to comment on the redundancy decision before it was made and to involve her in considering any alternative positions. The decision was pre-determined before the meeting.

[66] On the basis of both grievances, Ms Kapurubandarage Don is awarded \$5,000 under s 123(1)(c)(i) of the Act.

[67] Section 124 of the Act also requires me to consider whether Ms Kapurubandarage Don contributed to the situation that led to her personal grievance. Ms Kapurubandarage Don never raised any concerns about bullying or harassment with her employer prior to her notice of redundancy and the allegations were unsubstantiated. Ms Kapurubandarage Don's decision to resign on 11 May 2024 was not as a result of repudiatory conduct by the employer - it was her own decision.

[68] While the redundancy process was not carried out in a fair manner, Approach did provide Ms Kapurubandarage Don with her extended contractual notice period. As Ms Kapurubandarage Don's various grievances raised relating to disadvantage related to bullying, failure to provide a safe place and her constructive dismissal grievance were

not made out, Ms Kapurubandarage Don contributed to her grievance claim by not speaking up about her workplace concerns. She reached her own conclusions and while they may have been true, Approach was not provided with an opportunity to know about those concerns or to address them.

[69] For these reasons, the amount awarded under s 123 of the Act is reduced by 15 percent for contributory conduct. Approach is therefore required to pay \$4,250 within 21 days of this determination.

[70] Relevant to contribution in relation to the lost wages claim, Ms Kapurubandarage Don also had an obligation to give notice to her employer and failed to do so, therefore no further award for lost wages is awarded.

### **Penalties**

[71] Ms Kapurubandarage Don has also claimed penalties for a breach of good faith relating to the redundancy process. I agree with Ms Kapurubandarage Don that Approach did not act in good faith in her employment. As to any quantum of penalty, it would not be in the interests of justice to award a significant penalty on top of a compensatory award.

[72] Referring to the comments of Chief Judge Inglis in *Pyne v Invecare New Zealand Ltd*<sup>12</sup> compensatory awards and penalties serve different purposes. The latter is to penalise the defaulting party, although may have a compensatory element.

[73] Based on the compensatory amount awarded above, it is hoped that the payment recognises the importance of good faith and similarly acknowledges the impact of that breach on Ms Kapurubandarage Don. No penalty is awarded for the breach.

### **Orders**

[74] Within 21 days of the date of this determination Approach Architects Ltd is ordered to pay Ms Kapurubandarage Don:

- a. Unpaid wages for 1 May 2024 to 8 May 2024 (six days) totalling \$1,273.85 gross;

---

<sup>12</sup> *Pyne v Invecare New Zealand Ltd* [2023] NZEmpC 179 at [54].

- b. Sick leave (if leave entitlement available) for 9 and 10 May 2024 totalling \$424.62;
- c. Any outstanding accrued annual leave entitlements to 10 May 2024;
- d. Interest on \$1,273.85 from 13 May 2024 until the date of payment;
- e. \$1,061.53 gross plus holiday pay of eight percent on that amount as lost wages; and
- f. \$4,250 for compensation under s 123(1)(c)(i) of the Act.

### **Costs**

[75] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[76] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Kapurubandarage Don may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, Approach then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[77] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>13</sup>

Helen van Druten

Member of the Employment Relations Authority

---

<sup>13</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).