

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 385
5425717

BETWEEN

JOBANJIT KAUR
Applicant

AND

PETROCHEM GROUP
PARTNERSHIP T/A CALTEX
ALBANY
Respondent

Member of Authority: Robin Arthur

Representatives: Arunjeev Singh, Counsel for the Applicant
Bharat Parshotam, Counsel for the Respondent

Investigation Meeting: 15 and 16 May 2014

Determination: 17 September 2014

DETERMINATION OF THE AUTHORITY

- A. Petrochem Group Partnership (PGP) acted unjustifiably in how it went about making its decision to dismiss Jobanjit Kaur.**
- B. Within 28 days of the date of this determination PGP must settle Ms Kaur's personal grievance by paying her the following sums, which have been reduced by 50 per cent due to conduct by her that contributed to the situation giving rise to her grievance:**
- (i) \$4070 in reimbursement of wages and other money lost; and**
 - (ii) \$2000 as compensation under s123(1)(c)(i) of the Employment Relations Act 2000.**
- C. Costs are reserved.**

Employment relationship problem

[1] On 17 June 2013 Jobanjit Kaur was dismissed from her job as a shift supervisor at a petrol station operated by Petrochem Group Partnership (PGP) under the 'Caltex' brand in Albany. PGP's operations director Sanjai Bagia made the decision to dismiss her. He did so because he believed Ms Kaur lied to her site manager about why she was finishing work early on 13 June 2013 and then lied to Mr Bagia about other events that day. Mr Bagia decided Ms Kaur had not told him the truth about whether she was contacted by, and then met with, the daughter of a customer who had made a complaint some weeks earlier about an incident involving Ms Kaur. He said Ms Kaur's actions had "*potential to bring the business ... into serious and major disrepute*".

[2] Ms Kaur accepted she had told Mr Bagia about a call from a woman wanting to meet her about the customer's complaint but denied telling him that she had met the woman or that the woman had asked for money. She said Mr Bagia had unfairly called her to a meeting on the evening of 13 June, at which she was suspended, and then unfairly dismissed her at a disciplinary meeting on 17 June. She said she was not properly notified about the nature of the meetings, the prospect of dismissal or the opportunity to bring a support person or representative. She also said Mr Bagia did not give her a fair opportunity to explain what had happened.

[3] PGP insisted Mr Bagia fairly investigated the concerns raised about what Ms Kaur had said and done on 13 June and then reasonably reached a decision to dismiss her for serious misconduct. It said PGP had no option but to dismiss her because of her "*constantly changing recollection of events and vague explanations*".

Issues and investigation

[4] Section 103A of the Employment Relations Act 2000 (the Act) requires an employer investigating its concerns about an employee's conduct – such as those Mr Bagia had about Ms Kaur – to do so in a way that meets the objective standard of "*what a fair and reasonable employer could have done in all the circumstances at the time*". In that way the law requires an employer to be fair in what it does, how it does it and what it decides, even when the worker may be 'in the wrong'. The burden of that obligation is balanced, in part, by the requirement of s124 of the Act for the

Authority to then also take account of an employee's actions in bringing about the situation of which she or he complains. If that assessment identifies sufficiently blameworthy conduct by the employee, remedies that would otherwise be awarded are reduced (or even totally removed).

[5] Where an employee's actions are said to have amounted to serious misconduct warranting dismissal, the employer must have had either clear evidence upon which a reasonable employer could safely have relied or must have carried out reasonable inquiries which left the employer, on the balance of probabilities, with grounds for believing that the employee was at fault and the employer must have honestly held such a belief.¹ Those reasonable enquiries must include a sufficient opportunity for an employee to answer the employer's complaint. The evidence relied on by the employer need not reach the level of proof beyond reasonable doubt but must be as convincing in its nature as the charge of serious misconduct is grave.²

[6] I considered the issues for determination under the following headings:

- (i) Assessment of witness credibility
- (ii) The events of 13 and 17 June
- (iii) The fairness of Mr Bagia's inquiry
- (iv) Ms Kaur's conduct
- (v) Remedies and reduction for contributory conduct
- (vi) Costs

[7] For the investigation, written witness statements were lodged by:

- Ms Kaur
- Sanjeev Kumar, her personal partner and the manager of another petrol station operated by PGP
- Vanessa Walker, the customer who had made the complaint about Ms Kaur in May 2013
- Mr Sanjai Bagia (referred to throughout this determination as Mr Bagia)
- Dipak Bagia, a director of PGP and brother of Mr Bagia
- Amit Rana, the site manager of the Albany petrol station at which Ms Kaur worked

¹ *Airline Stewards & Hostesses IUOW v Air New Zealand Ltd* (1990) ERNZ Sel Case 985 at 993 (CA).

² *Honda NZ Ltd v NZ (with exceptions) Shipwrights etc Union* (1990) Sel Cas 855, 858 (CA).

- Pramod Acharya, another shift supervisor at the Albany station, who was called in early to work on 13 June 2013 so Ms Kaur could leave by 2pm.

[8] At the Authority's investigation meeting on 15 May 2014 each witness, under oath or affirmation, answered questions from me and the parties' representatives. By telephone conference on 16 May the representatives gave closing submissions about the evidence and issues for determination.

[9] As permitted by s174 of the Act this determination has not set out all the evidence and submissions received but has stated findings of fact and law, expressed conclusions on the issues necessary to dispose of the matter, and specified orders made as a result.

(i) Assessment of witness credibility

[10] In considering conflicting evidence from Ms Kaur, Mr Bagia and other witnesses, findings in this determination were reached on a common sense assessment about what was more probable, and allowing for the 'natural human frailties' of the witnesses attempting to recall conversations and events that occurred many months earlier.³ There were very few reliable and corroborated documents generated at or around the time of relevant events that assisted in that assessment.

[11] The accounts of events given by Ms Kaur and Mr Bagia about conversations in which they both took part were so starkly different that a finding of credibility was necessary to resolve what evidence to rely on in making this determination.

[12] I found Mr Bagia's evidence more credible, and have generally preferred it, because he made candid admissions about the procedural inadequacies of some of what he had done, his evidence was consistent on important points with that of Ms Walker and Mr Kumar, and he had no apparent motivation to 'make up' an account different from that of Ms Kaur about their conversations. Significantly, I considered, Mr Bagia's response to Ms Walker's complaint about Ms Kaur showed that he had previously demonstrated a positive and supportive attitude towards Ms Kaur. In an

³ *The Salad Bowl Limited v Amberleigh Howe-Thornley* [2013] NZEmpC 152 at [4]-[5].

email written to Ms Walker a few weeks before the events of 13 June he had described Ms Kaur as a “star” amongst employees, unassuming, gentle, friendly and well-liked.

[13] I found Ms Kaur’s evidence less credible because parts of her account of what happened on 13 June seemed unlikely and would have required me to accept that, in their evidence to the Authority, Mr Bagia lied about what she told him in their telephone conversation that day and Mr Rana and Mr Acharya both lied about what she had told them separately that day about why she needed to leave work early. Her explanations also changed during the course of not only Mr Bagia’s inquiry but also during the Authority investigation and she gave no compelling reason that she had not given those accounts earlier.

(ii) The events of 13 and 17 June 2013

[14] Mr Bagia’s concerns about Ms Kaur’s conduct arose in the following way. Around 4pm on the afternoon of 13 June he rang Mr Rana about an operational matter at the Albany station. In the course of that conversation Mr Rana asked how Ms Kaur’s meeting with Dipak Bagia had gone that afternoon. Mr Bagia said he did not know about any such meeting and would check with Dipak Bagia. Dipak Bagia told Mr Bagia he did not have a meeting with Ms Kaur that day. Mr Bagia then rang Mr Rana back to ask for more details about what Ms Kaur had said. Mr Rana said that around midday on 13 June Ms Kaur took a call on the office phone at the Albany station. She then told him that the call was from Dipak Bagia who wanted her to come to the head office (in Epsom) at 3pm to apologise in person to the customer who had complained about her. Mr Rana told Ms Kaur that he thought the complaint was resolved earlier but Ms Kaur said the customer required a personal apology. At Ms Kaur’s request Mr Rana then arranged for another staff member, Pramod Acharya, (who had been due to start work at 4pm) to come in by 2pm so she could leave then and get to the head office meeting by 3pm. Mr Acharya arrived soon after 2pm and spoke briefly with Ms Kaur before she left.

[15] Mr Acharya’s evidence to the Authority investigation was that Ms Kaur told him she was to leave work to see Dipak Bagia and to make a personal apology to the lady who had made a complaint against her. It was not information available to Mr

Bagia before he dismissed Ms Kaur because he had not spoken to Mr Acharya about it. It did, however, for the Authority investigation, corroborate Mr Rana's account of the reason Ms Kaur gave him for leaving early that day.

[16] After hearing Mr Rana's story on 13 June Mr Bagia telephoned Ms Kaur. She was not free to talk to him then but called him back soon after, around 5pm. Mr Bagia then asked why Ms Kaur had left work early that day. He said she told him that she was contacted by an unknown woman wanting to meet at the shopping mall in Albany. She said the woman told her not to tell anyone about it. Mr Bagia said Ms Kaur told him that she went to the mall at 2pm and waited for an hour. Ms Kaur said that at 3pm she met and talked with a girl who claimed to be the daughter of Ms Walker. She said the girl demanded Ms Kaur apologise to Ms Walker 'face-to-face' and that Ms Kaur or Caltex should give her "*something tangible to move on*". Mr Bagia said he then told Ms Kaur that what she had recounted to him was a very serious matter, that she should not have met with the girl, and that she should report the matter to the Police as the conversation had included what he called a suggestion of bribery. Ms Kaur's later evidence confirmed that, before the telephone conversation ended, she told Mr Bagia that she would contact the Police.

[17] Mr Bagia then telephoned Mr Kumar whom he knew was Ms Kaur's boyfriend. Their respective accounts of the ensuing conversation were more or less similar. Mr Kumar said he told Mr Bagia that he had picked up Ms Kaur from the Albany station around 2pm and dropped her off in the city near her home at about 2.30pm. Mr Kumar had then driven to PGP's head office where he had a meeting with Mr Bagia at 3pm.

[18] Mr Bagia told Mr Kumar what Ms Kaur had told him about the calls from the unknown woman and the meeting at the Albany shopping mall. Mr Kumar told Mr Bagia that he did not know anything about those events but suggested Mr Bagia meet with Ms Kaur to talk about what happened and to clear up any misunderstanding. Mr Bagia agreed and asked Mr Kumar to bring Ms Kaur to the Albany station at around 7pm that evening. Mr Bagia then arranged for Mr Rana to be at the meeting.

[19] After Ms Kaur and Mr Kumar arrived at the station, Mr Bagia first talked separately in the office with Ms Kaur. He asked her to explain what had happened earlier that day. Mr Bagia's evidence was that Ms Kaur repeated her earlier

explanation with two differences – firstly, she said that the girl had also rung her on the previous day and, secondly, that she had not met and talked with the girl at the mall. He said Ms Kaur could not explain why her story had changed from the earlier account but she repeated several times that it was a “*misunderstanding*”.

[20] Mr Bagia then met separately with Mr Rana and Mr Kumar who each confirmed their earlier accounts of what they knew. Mr Bagia then spoke to Ms Kaur and Mr Kumar together and told Ms Kaur she was suspended on full pay for serious misconduct. He arranged to meet again with her on 17 June.

[21] Before the 17 June meeting Mr Bagia contacted Ms Walker and asked if her daughter may have contacted Ms Kaur. Ms Walker, as she confirmed in her own evidence to the Authority, was surprised by the query as she did not have a daughter. She had a stepdaughter, now aged 19, who did not live with her and who Ms Walker believed had no knowledge of the incident with Ms Kaur that she had complained about.

[22] The incident referred to occurred on 22 May. At around 11.40am Ms Walker bought some food at the Albany station’s café counter. As she was leaving the premises, a staff member, later identified as Ms Kaur, had pointed a ‘Stanley knife’ box cutter at her and said “*give me your lunch*”. When Ms Walker replied “*what*”, she said Ms Kaur had said “*just joking*” and put the cutter down. Ms Kaur was stocking shelves at the time and had the cutter to open boxes of stock. In response to an email complaint from Ms Walker, Mr Bagia had investigated the incident and offered apologies on behalf of the station and Ms Kaur, whom he said was also prepared to apologise in person or in writing to Ms Walker. Ms Kaur confirmed she had later signed a letter of apology to Ms Walker. Ms Walker said she had received a letter of apology in the post. She said she had then regarded the matter as “*done and dusted*” and, as far as she was aware, no family member or other friend was or would have been involved in the kind of activity Ms Kaur described. In the context of all the evidence available in this matter I concluded that was, as a matter of probability, likely to be correct.

[23] On 17 June Mr Bagia met with Ms Kaur. She came to the meeting alone. He told her about his discussion with Ms Walker and his view of discrepancies in Ms Kaur’s account of the events of 13 June. He asked for any further explanation from

her. Ms Kaur told him that it was simply a misunderstanding, although she did not say what that misunderstanding was or how it had occurred.

[24] Mr Bagia then decided to dismiss Ms Kaur. He had her wait while he prepared a letter terminating her employment. The letter stated she was dismissed for incidents “*equating to serious misconduct*” as they had “*potential to bring the business and the company into serious and major disrepute*”. Those incidents were said to be, firstly, asking for an early finish due to a call from Dipak Bagia to see him urgently about a customer complaint and, secondly, telling Mr Bagia that she had met the complainant’s daughter. He described her account of both incidents as “*untrue*” and with potential to harm the business. The letter also stated that if Ms Kaur could provide Mr Bagia with clear evidence of harassment by the complainant’s daughter, he would “*revisit*” her employment status with PGP.

[25] In the account of events Ms Kaur gave to the Authority she denied telling Mr Rana about a call from Dipak Bagia. Instead she said that she left work at 2pm on 13 June only because she felt unwell and Mr Rana had suggested she could leave early. She denied that, during her phone conversation with Mr Bagia on 13 June, she told him she went to the shopping mall and met the girl. On that basis she also denied she had changed anything in her story when she spoke again with Mr Bagia in the evening at the Albany station. She said that in both conversations with Mr Bagia that day he had asked her questions but would not listen to her answers or explanations. And talking about their meeting on 17 June, Ms Kaur said Mr Bagia asked her only one question – whether she had any explanation for lying to him – but had not listened to her answer.

(iii) Were Mr Bagia’s concerns fairly investigated?

[26] In answer to questions during the Authority investigation meeting Mr Bagia accepted there were defects in how he went about his investigation and decision to dismiss Ms Kaur. That was an appropriate concession because the evidence confirmed a number of aspects of what he did, and how he did it, failed to meet the requirements of the test of justification set by s103A of the Act.

[27] The most significant of those occurred in the period from the point at which Mr Bagia suspended Ms Kaur, on full pay, at the end of the meeting on 13 June and

up to the start of their meeting on 17 June. Mr Bagia's evidence confirmed that during that time his concerns deepened about the prospect that Ms Kaur had lied to Mr Rana and him on 13 June. As a result the prospect that he would dismiss Ms Kaur, if she did not have a satisfactory explanation on 17 June, became stronger. He did not, however, provide any notice (formal or informal) to Ms Kaur of that prospect prior to the meeting.

[28] Mr Bagia confirmed that PGP had the resources necessary to seek external human resources or legal advice on what to do but he had only talked to Dipak Bagia about the situation and how to handle it.

[29] The evidence of Ms Kaur and Mr Kumar suggested neither had really understood the 17 June meeting was a disciplinary meeting, the real prospect that she could be dismissed at it, and whether she might need a representative to assist her in responding to the seriousness of the situation. In that sense Mr Bagia did not meet the requirement of s103A(3)(c) of the Act to give Ms Kaur a reasonable opportunity to respond to his concerns before dismissing her. His actions, in that respect, were unjustified.

[30] However I have not accepted Ms Kaur's allegations that calling her to a meeting on the evening of 13 June and then suspending her at the end of it were also unjustified actions by Mr Bagia. Mr Kumar, not Mr Bagia, proposed the meeting. It was a prompt and pragmatic attempt to find out and sort out what had happened. When Mr Bagia, at the end of the meeting, arranged for Ms Kaur to stay off work until 17 June he – as confirmed in the evidence from her and Mr Kumar – described it as because they “*needed to take a break from each other for a while*”. Ms Kaur did not object to the idea. While formally it was a ‘suspension’, it was also both an appropriate ‘cooling off’ period and an opportunity for Mr Bagia to seek and check relevant information (which he did by calling Ms Walker about whether someone she knew might have contacted Ms Kaur). In the circumstances, those actions were practical and justified.

[31] I also concluded that Mr Bagia, contrary to Ms Kaur's allegations, did not fail to meet another element of the statutory test – the requirement to genuinely consider her explanation in relation to the allegations about what she had said and done before deciding to dismiss her. Mr Bagia's evidence was that he was concerned from his

conversations with Ms Kaur on 13 June that she was being subjected to some form of harassment by an unknown third party and that some kind of telephone call or meeting may well have occurred for Ms Kaur to have reacted as she had. I have preferred his evidence over that of Ms Kaur on whether he retained an open mind to that prospect when he again sought her explanation at the 17 June meeting.

[32] In making his assessment of her explanations he was entitled to take account of his own observations of her conduct in what she had told him in their two conversations on 13 June – and particularly his recall of the differences in what she had said happened.⁴

[33] However the inadequacies in the arrangements Mr Bagia made for the 17 June disciplinary meeting were more than minor defects in ensuring Ms Kaur was treated fairly in responding to his concerns. Better informed on what might happen if her explanation was not satisfactory, Ms Kaur would have been able to reflect properly on her position and may have provided some better, more plausible or possibly corroborated explanation. She (or a representative) could have proposed Mr Bagia do more to check the veracity of her account of receiving phone calls by, for example, seeking telephone records to check the timing of calls. She might have offered an admission of providing incorrect information, which may or may not have then resulted in the same disciplinary outcome (depending on what she might say in mitigation for her actions and how Mr Bagia viewed that). In the absence of the opportunity to properly prepare and respond I could not conclude Mr Bagia, on PGP's behalf, met the standard of what a fair and reasonable employer could have done in all the circumstances at the time. Ms Kaur established her personal grievance on those grounds.

(iv) Ms Kaur's conduct

[34] While Mr Bagia's inquiry was procedurally flawed, the evidence at the Authority investigation suggested some real foundation to the concerns he had and the conclusions he drew. It was relevant to whether the findings and the decision he made were within the range of responses that a fair and reasonable employer could have made in all the circumstances at the time. It was also relevant to the question of

⁴ *Walker v Firth Industries* [2014] NZEmpC 60 at [45] and *Allen v C3 Limited* [2102] NZEmpC 124 at [25] and [27]

contributory conduct that the Authority must consider under s124 of the Act in awarding any remedies.

[35] In her evidence to the Authority Ms Kaur advanced two explanations for events on 13 June that were different to those she gave to Mr Bagia, either on 13 June or 17 June.

[36] Firstly, she said that the arrangement for her to leave work by 2pm on 13 June was proposed by Mr Rana because she felt ill. She was absent from work three days earlier with flu or heavy cold-like symptoms but had worked on the previous two days.

[37] Secondly, she suggested Mr Rana, not her, had caused the situation and gave two possible reasons for him doing so. One was that she said his English was poor and he may have misunderstood some earlier conversation with her about having resolved Ms Walker's complaint with Dipak Bagia, which Mr Rana then wrongly recounted to Mr Bagia as having occurred on 13 June. The other was that Mr Rana had a grudge against her because, some time earlier, she had complained to Mr Bagia when Mr Rana had changed her roster and that Mr Rana also knew she also had information that she might disclose to Mr Bagia about an alleged irregularity in Mr Rana's stocktaking at the Albany station. Ms Kaur advanced no evidence for either reason apart from her own assertions and speculation.

[38] Neither explanation was convincing, particularly as both could readily have been given by her to Mr Bagia on 13 and 17 June but were not. The belated appearance of both explanations added weight to Mr Bagia's description of Ms Kaur changing her stories on 13 June when she talked to him about the phone calls from the unknown young woman.

[39] In her evidence to the Authority investigation Ms Kaur maintained that she had received the phone calls but insisted she had not told Mr Bagia about then going to the mall and meeting the unknown young woman. The plausibility of her account of receiving phone calls was, I considered, very low for this reason – she and Mr Kumar confirmed that, while they were alone together driving from Albany to the central city (between 2pm and 2.30pm) on 13 June, Ms Kaur had not told Mr Kumar anything about getting those calls. If such strange and unsettling calls had occurred, it

was likely she would have told her personal partner something about them, either then or later as they drove to the evening meeting with Mr Bagia. Both Ms Kaur and Mr Kumar were clear that they had not discussed the calls on either occasion.

[40] I concluded the most likely explanation for what happened was that Ms Kaur did feel unwell and wanted to leave work early on 13 June. She was unwell earlier in the week and was also upset about news that her father in India was ill and undergoing an operation that day. In that situation she may well have invented a supposed meeting at head office as a reason to give Mr Rana for an earlier release from work. In her oral evidence she described herself as “*pretty much concentrated*” on her concerns about her father on 13 June and said she was “*not physically or mentally well that day*”. There was no evidence to indicate that she had told Mr Bagia about those concerns.

[41] In the circumstances Mr Bagia could reasonably have believed – and honestly did believe – that Ms Kaur had misled Mr Rana and him about what had happened that day. A fair and reasonable employer could have concluded she had lied to Mr Bagia and that, in telling what he called “*calculated lies*”, Ms Kaur so seriously damaged the trust and confidence he could have in her that dismissal was an option open to the employer. However such a conclusion was only open to an employer who had conducted a fair investigation of its concerns – which as concluded earlier in this determination – PGP had not done.

(v) Remedies and reduction for contributory conduct

[42] The scope of remedies for Ms Kaur’s personal grievance was limited by two factors. Firstly, the requirement that fixing compensation must reflect the likelihood that, had a proper procedure been followed, Ms Kaur would have been dismissed.⁵ Secondly, s124 of the Act required remedies to be reduced for blameworthy conduct by her that contributed to the situation giving rise to her grievance.

[43] Allowing for adjustments made on those grounds, explained below, I concluded Ms Kaur should be awarded \$4070 under s123(1)(b) of the Act in reimbursement of lost wages and other money lost and \$2000 as compensation under s123(1)(c)(i) of the Act.

⁵ *Waitakere City Council v Ioane (No 2)* [2005] ERNZ 1043 at [28] (CA).

Wages and other money lost

[44] The total period of loss for the assessment of lost wages was from 18 June to the end of September when Ms Kaur began a new job earning more than she received in her former job with PGP. From that 14 week period two weeks may be deducted to allow for earnings from three weeks of part-time work Ms Kaur did in September. I was satisfied from her evidence about job applications that she had made reasonable endeavours to seek work in the period of loss claimed. Those endeavours were impeded, in part, by visa restrictions that took until August to have changed (and would not have been necessary but for her dismissal). Based on her wages of \$595 for the week ending 9 June 2013 I calculated her lost wages as totalling \$7140.

[45] She was also entitled to be reimbursed for some of the costs incurred in immigration agent fees for an application to convert her work visa to a partnership visa. It was a cost she would not have incurred but for her dismissal. Ms Kaur claimed \$1500 but I was not satisfied the invoices established all that cost related solely to the necessary elements of the application. I assessed \$1000 as a fair amount to reimburse her for that money lost as a result of her grievance.

Compensation for humiliation, loss of dignity and injury to feelings

[46] Ms Kaur provided a doctor's letter and some prescription forms indicating that, in the weeks immediately following her dismissal, she was prescribed anti-depressive medication and had reported suffering poor appetite, tremors and insomnia as a result of a "*lot of stress and anxiety*". Mr Kumar also gave evidence that in the three days between 13 and 17 June Ms Kaur cried a lot and could not sleep. He also said she told him many times that she felt insulted, blamed and humiliated by how Mr Bagia had treated her.

[47] On the basis of that evidence I concluded \$4000 should be awarded as compensation under s123(1)(c)(i) of the Act. In setting that sum I considered the general range of awards, the requirement that compensation under this head should be modest, and excluded any amount for distress or upset that Ms Kaur felt as a result of concerns about her father's ill-health and her family in India.

Contribution

[48] A significant reduction of remedies was required due to the extent to which Ms Kaur's conduct had contributed to the situation giving rise to her grievance.

[49] On the basis of my conclusions that she most likely misled her site manager about her reason for leaving work early on 13 June and then gave Mr Bagia two different accounts about the telephone calls and what she had done, she was, to a significant degree, the author of her own misfortune.

[50] Although it was not information available to Mr Bagia at time he decided to dismiss her, Ms Kaur's alternative and additional explanations given in evidence to the Authority (about being too sick to work and Mr Rana having mistakenly or deliberately given Mr Bagia incorrect information about her reason for leaving) increased doubt about the credibility of her accounts and supported the conclusions Mr Bagia had drawn about her in his own, albeit imperfect, inquiries.

[51] But for the flaws in how Mr Bagia had gone about dealing with his concerns about Ms Kaur, there was a strong likelihood he would have been justified in dismissing her. If that were the case, the reduction of her remedies would have been 100 per cent. However as there was a failure by PGP in how it went about dealing with her, I concluded a reduction of 50 per cent of the remedies awarded to Ms Kaur was sufficient to address her blameworthy conduct while also requiring PGP to bear some burden of redress to her for its actions that failed to meet the statutory standard set by s103A of the Act.

(vi) Costs

[52] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Ms Kaur may lodge (and then should serve on PGP) a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum PGP would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted. If the Authority is asked to determine costs, the parties could

expect any such award to be on the usual daily tariff basis, unless particular circumstances or factors required an adjustment upwards or downwards.⁶

Robin Arthur
Member of the Employment Relations Authority

⁶ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.