

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 4
3262979

BETWEEN JOSHUA KNOX
 Applicant

AND RECRUIT IT GROUP
 LIMITED
 Respondent

Member of Authority: Davinnia Tan

Representatives: Paul Matthews, advocate for the Applicant
 John Dustow, advocate for the Respondent

Investigation Meeting: 13 November 2024 in Wellington

Submissions received: 22 November 2024 from the Applicant
 25 November 2024 from the Respondent

Determination: 8 January 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Joshua Knox was an employee of Recruit IT Group Limited (RIT)¹ from August 2022 until 2 October 2023 when his role as a Consultant was disestablished effective immediately.

¹ Company number 1874108 (<https://companies-register.companiesoffice.govt.nz/>).

[2] On 26 September 2023, Mr Knox received a meeting invitation at 9:30AM from Kaleb Leeming (one of the three directors of RIT²). There was no prior notification as to what the meeting was about. The meeting took place virtually over Microsoft Teams at 10:00AM and Mr Knox was advised by Mr Leeming that RIT proposed that Mr Knox's role as Consultant and another role in the Wellington branch be disestablished. RIT also has an Auckland branch. Mr Leeming advised that the reasons behind the proposal were due to a loss in revenue for the company. Mr Knox was asked to provide feedback by 1pm on 29 September 2023 and was provided the proposal document after the meeting at approximately 11:45AM. He was told a decision would be communicated to the team at a decision meeting on Monday 2 October 2023.

[3] RIT's letter (which had been incorrectly dated 29 September 2023 and signed by Mr Leeming) provided to Mr Knox on 26 September 2023 confirmed what Mr Leeming discussed with Mr Knox, which was that RIT proposed disestablishing his position of "Consultant" within the Wellington branch because "the branch was no longer profitable" and it was not sustainable to lose "significant amounts of money". The letter stated that the Board's view was that it was "now time" to reduce overheads to minimise the losses.

[4] The letter outlined that the Wellington branch had seven full time employees and one part time employee; however it was the 'Consultant' role which was "no longer sustainable in the current market and situation for the business." Other roles within the Wellington branch were:

- a. General Manager x 1
- b. Managing Consultant x 1
- c. Principal Consultant x 2
- d. Talent Lead x 1
- e. Senior Candidate Consultant (Part Time) x 1
- f. Candidate Consultant x 1

[5] The letter stated that RIT was sitting just under \$400,000.00 under budget for the 2023-2024 financial year and that no final decision had been made. The letter sought

² The other directors of RIT are Benjamin Allen and Brett Bothma (<https://companies-register.companiesoffice.govt.nz/>).

Mr Knox's comment on the proposal and noted that some of the things he may want to consider are any "other avenues or ways we can take to make significant savings quickly that could avoid making this decision." It then stated:

We will need any feedback you wish to provide by 1pm Friday 29 September 2023...It is my intention to make the decision over the weekend and communicate it to you on Monday morning...

[6] The letter also encouraged Mr Knox to seek advice and provided a number for him to call or text if he felt distressed by the contents of the letter.

[7] On 29 September 2023, Mr Knox asked for further information via email to Mr Leeming who replied promptly that same day.

[8] The email exchanges of 29 September 2023 are as follows:

Mr Knox to Mr Leeming at 11:19AM:

Thank you for the opportunity to provide feedback sent through on Tuesday...I have only found myself the time to respond with questions...

... How did you come to decide that the role of Consultant and the role of Team Lead would be disestablished?

... If these roles are disestablished are there other opportunities in the wider business to move to?

... the budget loss of \$400,000 is the actual loss or just what the initial proposed budget suggested. Is there an actual dollar loss to the company or a percentage you can share?

Mr Leeming to Mr Knox at 12:17PM:

Thanks for the feedback...

...we have looked at all 8 positions and unfortunately , the position of Consultant is a position we feel is no longer sustainable in the current market and situation for the business in Wellington. The reasoning for this is around a mixture of customer demand and requirements, coupled with pipeline of work, and the overall cost to maintain that position. The Talent Lead role, is a non-revenue generating position, and currently a supporting role to the revenue and opportunities our sales team brings in. Currently we see that the business in Wellington doesn't have the customer requirements or demand to continually support this function within the Wellington branch.

...Currently we don't have any other opportunities within the business as of right now.
We are \$400K under budget.

[9] Mr Leeming followed up with a phone call to Mr Knox, advising that there had been an error in his email and that the actual loss to the company was \$200,000.00.

[10] Mr Knox then provided a letter to Mr Leeming that day providing some suggestions:

[...] in reconsidering the proposed strategies to regain costs, some suggestions include:

Implementing a temporary suspension of commissions.

Enacting a percentage-based reduction in wages across the organisation.

Eliminating or reducing non-essential expenditures such as staff meals and events.

Restricting travel expenses for higher management.

Encouraging social buy-in for events like Friday drinks.

Minimizing advertising and marketing expenses.

Exploring shared office spaces...to reduce office-related costs.

Reduce license costs...

... regarding my role as a Consultant, I propose transitioning to a hybrid role that involves supporting the team in resource allocation across Wellington and Auckland. It is noted that the Auckland branch has been hiring extra resources and I would happily help in resourcing across offices to minimize unnecessary hiring. Allowing me to maintain my current client relationships...

[11] In a letter dated 2 October 2023, Mr Leeming wrote:

[...] Among your submissions, you highlighted the following:

- You were not aware of the gravity of the branch's financial situation.
- You suggested a temporary suspension of all commission.
- You suggested a companywide reduction in salary.
- Eliminating unnecessary expenditure like staff meals and events.
- Minimizing advertising and marketing expenses.
- Exploring shared office spaces.
- Reducing licensing fees
- You also presented your previous experience with working in a company struggling financially and the ones that emerged stronger are the ones where the leadership made sacrifices to keep the business afloat.

- You also have offered to move to a hybrid model where you could be resourcing on a national basis whilst still maintaining a relationship with your current clients where you are beginning to see a return on that relationship

The Board have taken time to consider your submissions and make the following comments:

- A temporary suspension of commission would not give the required savings. Furthermore, it disincentivises the staff from doing the work to get the company back on track on the basis that they would not be remunerated for their results.

- We have looked at the reduction of some salaries and we have implemented this with certain individuals. Obviously for privacy reasons, I won't detail who. However, any reduction could only be made to the Wellington Branch, so we couldn't achieve the quick reduction in costs via this way. Although we appreciate the sentiment.

- We are certainly going to be reducing/eliminating other unnecessary expenditure. This will include staff meal/drinks, advertising and marketing and licensing fees. However, we need to be able to save or make close to \$30,000-\$50,000 a month. That is why it was important for us to look to cut staff costs as well as the other measures you have highlighted.

- In terms of the leadership making sacrifices to keep the company afloat, the Directors have had to pour significant amount of capital into the branch and have made sacrifices themselves to try and avoid this situation. However, time has come in our view, that we can no longer keep propping up a branch which is losing money in the way that Wellington has been. Furthermore, during the Covid times, our staff were paid 100% of their salary for the first lockdown and then moved to an 80% model with very little income coming in. The Directors had to make significant personal sacrifice to avoid any cuts at that time.

- The Hybrid model is a good suggestion. However, it doesn't resolve the need to make cuts in the branch.

It is for those reasons above that the Board have decided that they will confirm their proposal to disestablish the position of Consultant in the Wellington Branch.

We have then genuinely looked at potential redeployment opportunities within the company. Unfortunately, with the need to make significant reduction costs, there are no current vacancies within the business that we could transition you into.

Because of that, it is with great sadness that your employment will be terminated via redundancy. Your contract gives you 4 weeks' notice. Once a handover is done, we will not be requiring you to work out your notice and you will be paid in lieu of that said notice.

[12] On 2 October 2023, Mr Knox was invited to a meeting at 8:30AM with Mr Leeming and RIT's employment advisor, John Dustow. Mr Knox was told his role would be disestablished effective immediately. Mr Knox was not required to work out his notice period. At 10:30AM that day, RIT advised the team that Mr Knox's role was disestablished and it would no longer be disestablishing the role of the Talent Lead as previously proposed. It was now looking to disestablish the role of Manager Consultant.

[13] On 10 October 2023, RIT posted a social media post on Facebook that it had promoted an employee in its Auckland branch to a Consultant role.

[14] On 12 October 2023, Mr Knox raised a personal grievance with RIT.

The Authority's investigation

[15] For the Authority's investigation written witness statements were provided by Mr Knox, his wife Aimee Knox, and Mr Leeming. Mr Knox and Mr Leeming answered questions under oath or affirmation from me and the parties' representatives. Mrs Knox's statement was taken as read and Mr Dustow had no questions for her.

[16] During the investigation meeting, Mr Leeming agreed to provide the Authority and Mr Knox the Board Minutes from June to September, and documents that he had given to the Board (as referred to in his evidence). He agreed to do so by Friday 15 November 2024. On Friday, three documents were provided with redactions which Mr Matthews opposed. I reviewed the matter and agreed that there was no reason for the redactions for the purposes of my evidence review and asked that the documents be provided in their entirety. On 20 November 2024, the unredacted documents were provided. These documents were not the board minutes. No reason has been provided as to why they have not been provided. To avoid any further delays, I closed the hearing.

[17] All material from the parties was fully considered. However as permitted by s 174E of the Act, this determination has not recorded all evidence and submissions received.

The issues

[18] The issues requiring investigation and determination were:

- (a) Whether Mr Knox was unjustifiably dismissed by RIT by way of redundancy;
- (b) Whether RIT has breached its duty of good faith to Mr Knox under sections 4(4)(c), 4(4)(d); and 4(4)(e) of the Employment Relations Act 2000 (the Act);
- (c) If RIT's actions were not justified (by dismissing Mr Knox), what remedies should be awarded, considering:
 - (i) Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - (ii) Compensation under s123(1)(c)(i) of the Act?
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Knox that contributed to the situation giving rise to his grievance?
- (e) Should either party contribute to the costs of representation of the other party.

Relevant Law

[19] In considering a personal grievance for redundancy the Authority must apply the test of justification set out at section 103A of the Act. The Authority must assess the reasons given to the employee by the employer including the business reasons and decide, on an objective basis, whether the employer's actions were reasonable. Even if a redundancy is genuine, it may be procedurally so flawed that dismissal is unjustifiable. However, if an employer can show the redundancy was genuine and that notice and consultation requirements have been met, the s 103A test may well be satisfied.³

We consider that the appropriate approach to statutory interpretation in this case is the orthodox approach beginning with the words of the section and considering them in

³ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [85].

light of the purpose of the statute. When the words of s 103A are considered in light of the purposes of the statute set out in s 3 and the overarching duty of good faith provided for in s 4, we do not consider that the reference in s 103A to a ‘fair and reasonable employer’ can properly be read down to mean ‘a genuine employer’, in the sense used in *Hale* (an employer not using redundancy as a pretext for dismissing a disliked employee).

[20] The Court of Appeal in *Grace Team Accounting Ltd v Brake*⁴ decided that s 103A meant that the Authority of the Court could not be precluded from inquiring into the substantive justification of a dismissal for redundancy, even where the dismissal was for a genuine business reason. It stated:

In the end the focus of the Employment Court has to be on the objective standard of a fair and reasonable employer, so the subjective findings about what the particular employer has done in any case still have to be measured against the Employment Court’s assessment of what the fair and reasonable employer would (or, now, could) have done in the circumstances.⁵

[21] As to whether a dismissal was for a genuine business reason, the law has adopted the natural and ordinary meaning of the word “redundancy”, requiring that a genuine redundancy is one that is superfluous to the employer’s needs, or in other words, that the position filled by the employee has become superfluous to the needs of the employer.⁶ This was the position of the Court of Appeal in *Grace Team Accounting Ltd v Brake*⁷ when it confirmed that *GN Hale & Sons Ltd v Wellington Caretakers IUOW*⁸ remains good law where it defined what redundancy commonly means.

[22] With regard to consultation, the Court stated in *Simpsons Farms Ltd v Aberhart*⁹,

[...] A fair and reasonable employer must, if challenged, be able to establish that he or she or it has complied with the statutory obligations of good faith dealing in s4

⁴ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494.

⁵ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [84].

⁶ *The New Zealand King Salmon Co Limited v Robert Slotemaker* (2017) NZEmpC 99.

⁷ *Grace Team Accounting Ltd v Brake* [2014] NZCA 541, [2015] 2 NZLR 494 at [47]; *The New Zealand King Salmon Co Limited v Robert Slotemaker* (2017) NZEmpC 99 at [31].

⁸ *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1991] 1 NZLR 151 (CA).

⁹ *Simpsons Farms Ltd v Aberhart* [2006] 1 ERNZ 825 at [65].

including as to consultation because a fair and reasonable employer will comply with the law.

Evidence

Undisputed facts

[23] The following facts were undisputed at the investigation meeting:

- a. Mr Knox was not given prior notice of what the meeting of 26 September 2023 was about;
- b. There had been no prior communication to staff about the proposal to disestablish any roles within RIT or that such a proposal was in contemplation;
- c. Mr Knox was given three days, until 1pm on 29 September 2023, to provide feedback on the proposal to disestablish his role as Consultant and another role on the basis that the business had sustained a \$200K loss;
- d. Mr Leeming had advised that Mr Knox's suggestion of "implementing a temporary suspension on commission" would not achieve the "required savings";
- e. Mr Knox's feedback included suggestions of redeployment within the business, performing a hybrid function that supported both the Auckland and Wellington office;
- f. RIT stated there were no redeployment opportunities anywhere within the business;
- g. Mr Knox was made redundant effective immediately on 2 October 2023;
- h. On or around 10 October 2023, RIT's Auckland Branch posted on social media that it had promoted a staff member in Auckland to the role of 'Consultant'.

Evidence given on Board's rationale and decision-making process

[24] Mr Leeming stated that RIT's business within the Wellington branch had been negatively impacted in 2023 because the use of contractors by Government was slow or slowing down. He stated that the extent of this was uncertain in light of the upcoming election to take place in October 2023 where RIT believed further public sector contract losses would ensue after the general election in light of policies of the opposition party.

[25] Mr Leeming acknowledged that RIT chose not to wait till after the election to make a decision on Mr Knox's redundancy. He said this was because by September 2023 it could no longer wait or sustain further financial losses. Mr Leeming stated that there was increased "anxiety" at the Board level as it was also coming up to its quieter period, being the Christmas holidays. Mr Leeming stated that the Board had been aware of its financial issues about the Wellington market since June; but it had not taken any action, steps, or communicated plans of a restructure or redundancy process because it did not want to cut back on jobs.

[26] However when it did so, Mr Leeming stated that Board had deliberated "extensively" over this issue, particularly when it came to considering redundancy. He also stated that once Mr Knox provided his feedback on the proposal to make his role redundant, the Board discussed and considered it during the weekend, on Friday evening from around 4pm, Saturday, and Sunday afternoon, before it communicated its final decision on Monday morning to Mr Knox.

[27] During the investigation meeting, I noted that there had been a lot of reference to extensive and regular Board meetings, yet no Board minutes had been provided to the Authority to establish the content or extent of those discussions. I noted that typically one would expect Board minutes following each Board meeting.

[28] Mr Leeming then undertook to locate the Board minutes from June 2023 and documents he provided the Board in relation to the redundancy. I adjourned the investigation meeting to allow him time to do so and provide these documents to the Authority. He was only able to provide documents he prepared for the Board, but no Board minutes have been provided to the Authority. However as not all documents were dated, it remains unclear as to when the Board actively began considering redundancy of positions. It would appear, based on these documents, that it only began considering making roles redundant from 20 September 2023.

Documents considered by the Board

[29] In the document titled "RIT Update – August 2023", it noted that the market had been tight with budget restrictions, but there was a desire to retain its senior staff members in Wellington. The document also noted that there were "massive

opportunities” with some “companies” and listed the goals for the Wellington branch for the quarter. There was also financial data, stating “proposed salary reductions” at a total of “18k per month” and “FY Reduction: \$126K (Sept-March). but the document did not specify whether those related to only some or all of the roles in Recruit IT.

[30] In the document dated 20 September 2023 and titled “Discussion Document – Wellington Branch & Recommended Steps”, it was noted that Wellington was underperforming and set out the losses year to date. The document stated operating expenses had to be reduced to move the branch into a profitable state, but that its biggest area were wages/salaries which needed to be reduced.

[31] In the same document and under the heading “Summary of Team and Options to reduce overhead”, it noted that the ‘General Manager’ role had already taken a reduction in salary. It also noted that the Managing Consultant role included responsibilities of a ‘Consultant’, managing Mr Knox, and was the highest paid salary. It also noted there were three consultants whose focus were client relationships and included sales and revenue. This also referred to three staff members in the ‘Candidate Consultant’ team. It noted that two roles needed to be considered, with one being the “largest cost here” and the other which was “part-time”.

[32] This document that stated the following as “proposed options”:

- to disestablish the General Manager role in Wellington, but noted this was not the preferred option if other ones were available due to lack of a leader and the current staff member’s reduced hours;
- to disestablish the Managing Consultant role – noting that the role’s functions could be covered by the General Manager and Consultants and that this would result in a \$10.3K per month saving.
- To disestablish the “Part-Time Candidate Consultant & Josh Knox”, noting that these were the “two lowest costs” but would combine to give a \$10.4K (per month) saving. It then noted “if we lost both individuals, it would have an impact on our ability to respond to when the market does turn around.”
- To disestablish the Principal Consultant role, noting that it would have a detrimental impact on the Wellington business given the individual’s relationship with Wellington businesses. It also noted that the individual’s

position “within the Wellington branch might be untenable” if “the branch doesn’t turn around performance.”

- It recommended that the Managing Consultant role be disestablished and the option to disestablish the part time candidate consultant and Mr Knox’s role was “not viable at this time given how this will impact our delivery team and sales team.”
- Finally it noted that “should the branch financial performance fail to improve, we will need to make additional recommended changes in the below order” which was first to disestablish the part time candidate consultant role and Mr Knox’s role; followed by the general manager role.

[33] In the undated document titled “Wellington Proposal Update & Feedback”, Mr Leeming commended Mr Knox’s work ethic and performance, noting his strong candidate background and that he could act in a Candidate Manager capacity and could continue to be utilised. In that same document, Mr Leeming also noted two other alternative options which were to disestablish two other roles, rather than to disestablish Mr Knox’s role.

[34] Mr Leeming’s evidence was that these documents were presented to the Board, but no further evidence has been provided setting out the Board’s responses to any of the documents.

Submissions

[35] Mr Matthews submitted that RIT’s restructure was substantively and procedurally flawed. He submitted that, as demonstrated by the documents provided by Mr Leeming following the investigation meeting, RIT had “decided on people to make redundant, not positions.” He submitted that there were a number of other flaws in the process that made the dismissal unjustified which were:

- That Mr Knox was not advised prior to being called into a meeting what it was about;
- The initial proposal put to Mr Knox for his feedback did not contain sufficient information, such as the “Discussion Document Wellington Branch & Recommended Steps” that Mr Leeming had provided to the Board, the lack of specificity surrounding the financials (which had only come to light more clearly during the investigation meeting), the fact that RIT had been considering

disestablishing other roles besides the two Mr Knox was told about; and alternative options (which did not require disestablishing Mr Knox's role) that had been set out in Mr Leeming's document provided to the Board only titled "Wellington Proposal Update & Feedback";

- The timeframe for the process was rushed despite knowing of the need to pull back on costs from around April and evidence Mr Leeming gave that the Board had been discussing this issue from June/July 2023;
- No real consideration given to Mr Knox's feedback, including that redeployment was not given proper consideration, noting the fact an Auckland candidate had been promoted to the same title role as Mr Knox a week after he was made redundant; and
- Other resignations which led to savings needed for RIT followed in the timeframe of Mr Knox's notice period which could have meant reinstating him into his role.

[36] Mr Dustow submitted that there were genuine reasons for the redundancy and attributed the financial difficulties to the Government's directions to cut back on spending on external contractors prior to the election of 2023 which were then, as he submitted, perpetuated by the new Government. He submitted this led to uncertainty in the market and was essentially a key driver for RIT's financial woes.

[37] Mr Dustow submitted that Mr Knox knew about this, and that RIT may have been "in trouble"; Mr Dustow considered he had been provided with information and understood he could have asked for more if required. He was given sufficient time to make carefully considered submissions which were considered by RIT "point by point" as to why Mr Knox's suggestions were not viable and "did not simply dismiss his ideas." Mr Dustow stated that the evidence given by Mr Leeming was that the "consultant" role in Auckland had not been a vacant role and the promotion was merely a formality. Mr Dustow submitted that the evidence shows that Mr Knox himself knew of the slow market, the financial loss of around \$200,000.00, that costs were needed immediately, and that his role was "surplus to the requirement in the current market", and that he could have asked for more questions, that he was given sufficient time to respond and while he gave good ideas, they were not practical in the circumstances which was explained by RIT.

Analysis

[38] Having reviewed the evidence, I find that Mr Knox's dismissal by redundancy was not only substantively unjustified, but also procedurally unjustified.

Not substantively justified

[39] RIT has cited financial losses for the reason in dismissing Mr Knox by redundancy. Its primary goal was to establish a certain amount of savings. This was RIT's business reason, but it needed to demonstrate how Mr Knox's role, as a Consultant, became superfluous to its needs. For reasons below, I am not persuaded that it did.

[40] RIT's Wellington clients included many government agencies. Mr Leeming stated that for most of 2023, the Wellington branch was not achieving its targets due to the market slowing down. Mr Leeming stated that Mr Knox was not hitting targets due to this reason, rather than that he was underperforming. He stated that therefore "all jobs were on the table" and the Board had extensive discussions about these roles.

[41] However as indicated above, no Board minutes had been provided to the Authority to support Mr Leeming's evidence. A significant paper trail or other solid foundation of evidence would be an important indicator of whether an employer's decision on redundancy was for genuine commercial reasons.¹⁰

[42] Based on the documents Mr Leeming provided, the evidence did not demonstrate Mr Knox's role as superfluous. These documents instead showed that Mr Leeming had presented to the Board two other "alternative options" which could have avoided disestablishing Mr Knox's role. In a separate document, he also made recommendations which included disestablishing the part-time candidate consultant role and Mr Knox's role, yet the part-time candidate consultant role was not disestablished. It was unclear which document had been presented first to the Board, but in any case, there is no evidence of a rationale, thought process, or the Board's substantive decision-making following the presentation of the options that had been provided for discussion purposes.

¹⁰ *Rolls v Wellington Gas Co* [1998] NZEmpC 138.

[43] I am therefore not persuaded by Mr Leeming's evidence alone that the Board had extensive discussions before deciding to make Mr Knox's role redundant. On this point, Mr Leeming was also unable to articulate the rationale as to how the Board came to the conclusion that the role of 'consultant' was superfluous to its needs apart from a generic reference to needing to find savings and the slow Wellington market. I place little weight on Mr Leeming's evidence on this point.

[44] Mr Knox had been advised that one of the reasons his suggestions were rejected was because none of his suggestions were going to achieve the savings required for RIT. At the investigation meeting, in response to Mr Matthews' cross-examination, Mr Leeming accepted that some of Mr Knox's suggestions may have addressed the monthly savings required, particularly the first 2 bullet points; namely:

[...]

- Implementing a temporary suspension of commissions.
- Enacting a percentage-based reduction in wages across the organisation.

[45] This demonstrates that RIT had not properly established that the redundancy was genuinely superfluous to its needs, when other alternatives presented by Mr Knox which "may" have addressed its financial woes, were not shown to have been properly explored or considered before its decision. Further, when asked why some other roles were retained, Mr Leeming stated that RIT still had an existing client base that needed servicing, but he did not distinguish how the Consultant role would not be required for that purpose, especially given that servicing clients was one of the many identical functions across the different roles.

[46] RIT's decision making throughout the process calls into question the credibility of its redundancy rationale that it was disestablishing roles that were genuinely superfluous to its needs. For example, Mr Leeming stated that RIT decided to disestablish the general manager role instead following a resignation, so it did not disestablish the talent lead role. In response to Mr Matthews' questions, Mr Leeming said he then stepped into the general manager role until early February 2024. When I step back, this leaves me with discomfort around the rationale surrounding the original proposal. It seems decisions to disestablish roles changed rapidly and seemed to lack a sound consistent basis. Furthermore, even if the changes made were justified, there was

a lack of any reliable paperwork to support the rationale of its changes in the decision making.

[47] I was not persuaded that RIT properly considered redeployment in light of its promotion of an Auckland staff member into the same role Mr Knox performed. Mr Leeming defended that the promotion was an administrative exercise (that was common within the industry) to formally change the staff member's title as she had been performing functions of the role already, and she had been earmarked for the role as 'Consultant'. He also stated that the promotion of the Auckland staff member did not come with a pay increase, but acknowledged it was a commissions-based role (whereas her previous role was not).

[48] Mr Leeming's responses to Mr Knox failed to properly address Mr Knox's specific query about redeployment. Mr Knox had queried the possibility of supporting the Auckland office through a hybrid function, but Mr Leeming's response was vague, stating that it was a "good idea" but then saying there were no vacancies within the business.

[49] When I step back, I find that RIT's reasoning for promoting a staff member into the role of 'Consultant' does not stack up when it decided to make Mr Knox's 'Consultant' role redundant a week prior and advised him he could not be redeployed anywhere within the company.

[50] For reasons above, the evidence was lacking to substantively justify RIT's decision to make Mr Knox's role redundant.

Not procedurally justified

[51] I consider that the process RIT undertook was flawed for several reasons.

[52] Firstly, Mr Knox was blindsided by the meeting invitation. There had been no prior communication by RIT that it was even considering redundancy within the company and the invitation was sent on the morning the meeting took place with no indication of what it was about.

[53] Secondly, the proposal letter dated 29 September (but sent 26 September) failed to include sufficient, vital and accurate information for Mr Knox to be able to provide

an informed response, as he had been invited to do so in the letter. For example, financial information mentioned in the letter was not accurate, nor included the monthly savings required which had been identified in one of the documents presented to the Board. It also transpired at the investigation meeting that RIT had a savings figure it hoped to achieve, but this was not communicated to Mr Knox or included in the proposal letter. The proposal letter also did not include information that RIT were looking at other roles beyond the two mentioned in the letter.

[54] Although the crux of RIT's problem was that it needed to cut costs and that was clear in the proposal letter, simply stating the company was "under budget" by \$400,000.00 (which was later corrected to \$200,000.00) did not provide sufficient specificity for Mr Knox to provide meaningful feedback as alternatives to making his role redundant. There was also a glaring inconsistency regarding the amount RIT was looking to save; in its dismissal letter RIT referred to \$30-50K, yet documents considered by the Board only noted a \$10.4K saving by disestablishing Mr Knox's role and another part-time role. This inconsistency was not explained.

[55] Thirdly, and significantly, Mr Knox had been given a mere three days to provide feedback on a proposal to make him redundant. Such timing is disproportionate to the seriousness of the proposal made to Mr Knox. Mr Dustow suggested that Mr Knox could have asked for an extension but did not do so. I find this comment unfairly and incorrectly deflects the obligation onto Mr Knox, when the obligation lies with the employer to put in place a proper process which includes proper timeframes for genuine consultation and decision making.

[56] For reasons above I therefore find that RIT failed in its good faith obligations to genuinely consult Mr Knox under s 4(1A)(c), and that its decision to dismiss Mr Knox for redundancy was unjustified.

Remedies

Lost wages

[57] With respect to wages, s 128(2) of the Act requires the payment of the lesser of a sum equal to lost remuneration or three months' ordinary time remuneration.

[58] In Mr Knox's circumstances, he was able to secure new employment within six weeks following the end of his employment with RIT. He quantifies his lost wages at a total of \$8,653.86, being his weekly salary at \$1,442.31 per week multiplied by six weeks.

[59] RIT submitted that there was "only 1 week" Mr Knox was not paid and that "the other 7 weeks were covered by the notice period and annual leave payouts...that the Applicant has not submitted any IRD records to show he did not receive any other source of income over that time..." and that "there is no case to award lost wages and if there was, it should be limited to 1 week."

[60] As Mr Knox was paid his notice period, I must take this into account and as such quantify his lost wages at a total of \$2,884.62, being two weeks' wages. However RIT is incorrect that annual leave payouts can be taken into account when determining lost wages.

Compensation for humiliation, loss of dignity and injury to feelings

[61] As Mr Knox's unjustifiable dismissal claim by redundancy is made out, he is entitled to compensation for humiliation and injury to feelings pursuant to s 123(1)(c)(i) of the Act. Mr Knox seeks compensation of \$20,000.00 under this head. RIT submitted that should Mr Knox be successful, compensation should be within the range of \$4,000 to \$10,000.00.

[62] I am satisfied that Mr Knox has suffered humiliation and injury to his feelings as a consequence of RIT's unjustified redundancy. Mr Knox described the shock at the "speed" in which the redundancy happened and feeling blindsided and that he had been "singled out". Mr Knox had participated in an unfair process in a very professional, and respectful manner, having done all that was asked despite the extremely short time frame, such as providing feedback and coming up with ideas to help RIT come up with cost savings. However, his efforts were futile. To add insult to injury, the promotion of an Auckland staff member approximately after a week of his termination compounded Mr Knox's humiliation.

[63] I have no doubt that Mr Knox felt humiliated and distressed following a decision to terminate his employment effective immediately after being given three days' notice

of a proposal to do so. Mrs Knox's witness statement described the impact of the sudden redundancy on Mr Knox, including the stress and anxiety, with three dependent children and the pressure of finding alternative employment quickly before the Christmas break. As the Employment Court stated in *Pyne v Invacare NZ Ltd*¹¹, in the context where harm arises from an employee's expectation of job security, "an employee is entitled to expect that their employment will not be terminated without proper justification – this is what the personal grievance framework is intended to preserve."¹²

[64] Having balanced the evidence against current trends in both the Court¹³ and the Authority, I consider \$18,000 appropriate.

Contributory conduct

[65] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded. There are no issues of contribution.

Orders

[66] For the reasons set out above, I consider that Mr Knox's claim of unjustifiable dismissal (by redundancy) has been made out. Accordingly, I order Recruit IT Group Limited to pay Mr Joshua Knox within 28 days of the date of this determination:

- a. \$2,884.62 (lost wages); and
- b. \$18,000.00 (compensation).

Costs

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

[68] If they are not able to do so and an Authority determination on costs is needed Mr Knox may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum RIT would then have 14 days to lodge any reply memorandum.

¹¹ *Pyne v Invacare NZ Ltd* [2023] NZEmpC 179.

¹² *Pyne v Invacare NZ Ltd* [2023] NZEmpC 179 [at 45].

¹³ *Pyne v Invacare NZ Ltd* [2023] NZEmpC 179; *GF v Customs* [2023] NZEmpC 101; *Pact Group v Robinson* [2023] NZEmpC 173.

Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[69] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.¹⁴

Davinnia Tan
Member of the Employment Relations Authority

¹⁴ See www.era.govt.nz/determinations/awarding-costs-remedies.