

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 72
5392736

BETWEEN CHAD McGOVERN
Applicant
AND SOUTH EASTERN
GEOPHYSICAL LIMITED
Respondent

Member of Authority: Trish MacKinnon
Representatives: Danny Gelb, Advocate for the Applicant
Ian Matheson, Counsel for the Respondent
Investigation Meeting: 12 March 2013 at New Plymouth
Submissions Received: Orally, 12 March 2013
Written, 22 March 2013
Determination: 14 June 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Chad McGovern says his employment was terminated by his employer, South Eastern Geophysical Limited (SEG), on the final day of a seismic survey job in Gisborne on 25 February 2012. Mr McGovern claims he was unjustifiably disadvantaged by his employer's lack of procedure and says his dismissal was unjustifiable.

[2] Mr McGovern had been working for SEG for approximately 7 weeks at the time of his dismissal and says he had an expectation of work from that company for 6 months from the start of his employment. He had returned to New Zealand from employment in Australia on the basis of that expectation.

[3] Mr McGovern seeks lost wages, outstanding holiday pay, interest and compensation for hurt and humiliation. He also asks the Authority to impose various

penalties on SEG for failing to provide him with written terms of employment, and for its failures in respect of holiday pay and provision of wage and time records.

[4] South Eastern Geophysical Limited is a small company, the main business of which is carrying out seismic survey work for oil and gas companies. It is based in New Plymouth. Its New Zealand-based director, Terry Rothery, is Mr McGovern's uncle. SEG says it employed Mr McGovern from time to time from June 2008 on a number of seismic survey contracts it entered into with clients.

[5] SEG says that each period of work undertaken by Mr McGovern was performed under a fixed term employment agreement that he had entered into in June 2008. That agreement provided that the specified daily rate of pay had been calculated with holiday pay included. It says that no holiday pay is owing to Mr McGovern.

[6] SEG says Mr McGovern's employment came to an end because of the expiry of the fixed term work period relating to the Gisborne seismic survey contract work. It says it did not terminate his employment. Alternatively, SEG says that if the Authority determines Mr McGovern's employment was terminated, then it was terminated on the final day of his employment. That was a day on which Mr McGovern failed to turn up to work and he therefore abandoned his employment.

Issues

[7] The issues for determination are:

- (a) What the nature of Mr McGovern's employment relationship was and whether he had a valid expectation of continued employment;
- (b) Whether Mr McGovern:
 - a. abandoned his employment; or
 - b. was dismissed unjustifiably;
- (c) Whether holiday pay was included in Mr McGovern's wages;
- (d) Whether penalties are appropriate; and
- (e) What remedies, if any, are appropriate.

Evidence

[8] Mr McGovern says he had been told by Mr Rothery in November 2011 that there was 6 months' seismic contract work for him if he wanted it, starting January 2012. Mr McGovern was in Australia at the time, and was speaking with his mother, Esther McGovern, by Skype. Mr Rothery, who is Ms McGovern's brother, was visiting at her house when the Skype conversation occurred.

[9] Mr McGovern's current contract in Australia was coming to an end, although he says he could have taken on another contract with the same group if he had wished. He decided, on the basis of the prospect of several months' work, to return to New Plymouth where his family lived. His younger brother also worked for SEG from time to time. Under questioning, Mr McGovern acknowledged that Mr Rothery had not guaranteed him 6 months' work. He had said there was 5 weeks' work for him and the potential for 6 months' work in total.

[10] On the basis of his previous experience of working for SEG, Mr McGovern said he expected to complete the first 5 weeks of work, and then be contacted by telephone by SEG a couple of days before the next contract started.

[11] Mr McGovern had signed a fixed term employment agreement with SEG on 23 June 2008 and worked intermittently in 2008, 2009 and in the first five months of 2010. He was paid only for the employment he undertook and was not paid, and says he did not expect payment, for the periods between the seismic survey contracts he worked on. Mr McGovern told the Authority that, although neither Mr Rothery nor Mr Laurence had specifically told him this, he understood that the terms and conditions of the 2008 employment agreement continued to apply to him for each period of work he subsequently undertook for SEG.

[12] Mr Rothery says that SEG has no full time employees and is not operational on a full time basis. It tenders for seismic survey work and, when successful, it employs workers as required for each particular contract. Requirements vary, but can range from as few as two or four employees up to approximately 40.

[13] Mr Rothery, who does not work full-time for the company himself, says no employee has any guarantee of future work. All are employed on a contract-by-contract basis. One contract can last from 3 days to 3 or more weeks. Mr Rothery negotiates contracts for SEG and employs Daryn Laurence as his field supervisor for

each seismic survey contract. Mr Rothery says he told Mr McGovern in November 2011 that he had secured approximately 5 weeks of seismic survey work, but that there was also the potential for further work after that. He did not guarantee any work to Mr McGovern, but told him to contact Mr Laurence if he was interested in working on the secured 5 week contract.

[14] Mr Laurence gave evidence that he is also employed on a job-by-job basis. He is responsible for the hiring of staff for each seismic survey contract. Once he has been given an outline of the contract and the requirements of the job, he contacts the people he thinks will be right for that particular contract. Mr Laurence has built up a pool of 50 to 60 people who are available for work as required.

[15] Mr Laurence arranges for employees to sign a fixed term employment agreement before they commence their first period of work for SEG. The company does not enter into a new employment agreement with a returning worker for each instance of seismic survey contract employment after that. Both Mr Laurence and Mr Rothery considered it would be administratively too onerous to do so.

[16] While Mr McGovern was working on the Gisborne seismic survey in February 2012, Mr Laurence talked with him about the next job that was coming up. Mr McGovern acknowledged he had not been promised work on that job, but had expected to be contacted by Mr Laurence before the job started to offer him work on it. Mr Laurence acknowledged in the course of the investigation meeting that Mr McGovern would fairly have been under the impression he would be working on the next job.

[17] Mr McGovern says that in the last week of the Gisborne job he told Mr Laurence that he would probably not travel home to New Plymouth with the crew when the job ended. He wished to catch up with a friend he had not seen for some years. He reported Mr Laurence's response as "*Sweet, you'll have to pay for your own way home*".

[18] Mr Laurence's recollection is that Mr McGovern mentioned it as a possibility, not a probability. In addition to telling Mr McGovern he'd be responsible for finding his own way back to New Plymouth, he had asked him to confirm what he intended to do. There was no further discussion between them about the matter in the final week of work.

[19] At the end of the Gisborne seismic survey work, Mr Laurence organised a barbeque and drinks for the workers in accordance with his usual practice. He says he made it very clear to everyone present they were required to be up and ready to return to New Plymouth at 6.00 a.m. the following day. He recalls that Mr McGovern was present and offered to help with the driving. Mr Laurence was surprised at the offer but thought it to be genuine and might ensure Mr McGovern remained sober that evening. He says he told Mr McGovern he could drive the first leg of the trip.

[20] Mr McGovern also recalls making the offer to help with the driving, but says he made it in jest. He thought Mr Laurence was well aware that he had lost his licence and he assumed Mr Laurence appreciated the humour behind his offer. He had decided by this time to remain in Gisborne rather than return to New Plymouth with the rest of the crew. He says he thought Mr Laurence also knew this.

[21] Mr Laurence did not know, and was unimpressed the following morning when Mr McGovern was not at his motel and therefore not available to return to New Plymouth. He says he had not forgotten about the conversation a few days earlier when Mr McGovern had raised the possibility of not returning with the crew. At the forefront of his mind, however, was Mr McGovern's offer of the previous night to assist with the driving. He thought Mr McGovern had let him down and acted irresponsibly.

[22] Mr Laurence drove the whole distance back to New Plymouth, and was clearly annoyed at having to do so. He says he thought about it throughout the first part of the drive. When he reached Taupo, he contacted Mr McGovern on his mobile phone and informed him he was off the payroll forever. Mr Laurence acknowledges that, in hindsight, he should have discussed the matter with Mr McGovern before telling him he was off the payroll.

[23] Mr McGovern's younger brother had also been taken off the payroll as he was not up and ready at 6 a.m. on the morning of the crew's return to New Plymouth, although he had returned with them. He later apologised for letting Mr Laurence down and was employed on subsequent SEG seismic survey contracts. When asked why Mr McGovern was not given the same opportunity to apologise, Mr Laurence said that, unlike his younger brother, Mr McGovern had contacted him by text message rather than by telephone or in person. He had responded that Mr McGovern should talk to Mr Rothery. Mr Laurence remained annoyed that Mr McGovern had

not told him by 24 February 2012 that he would definitely not be returning to New Plymouth with the crew.

[24] Mr Rothery says Mr Laurence reported to him on 25 February 2012 that Mr McGovern had, without notification, failed to turn up for work that day and that his whereabouts were unknown. Mr Rothery said he went to his sister's house to try to find out where Mr McGovern was. While there, he told her Mr McGovern and his brother would not be engaged on future jobs. Mr Rothery says he told Mr McGovern he would not be offered further work when his nephew contacted him some days later.

[25] Ms McGovern's evidence, which was corroborated by that of her husband, Grant Hunter, was that Mr Rothery had told her both her sons had been sacked by Mr Laurence that morning and that Mr Laurence had advised Mr Rothery to inform their mother of this.

What was the nature of Mr McGovern's employment and did he have a valid expectation of work for up to 6 months?

[26] Mr Gelb submitted that the nature of the relationship between Mr McGovern and SEG from January 2012 was different from their earlier relationships. In his view, the fixed term employment agreement entered into between Mr McGovern and SEG on 23 June 2008 had ended in September 2008 when Mr McGovern stopped working on the seismic survey contract that came to an end at that time. The employment agreement contained no provision for rolling over to future work. Mr Gelb considered that contract to be defective as it did not comply with a number of requirements of s. 66 of the Employment Relations Act (the Act).

[27] He argued that each separate contract Mr McGovern worked on after that date, but before 2012, was subject to a verbal fixed term agreement, albeit one that was inconsistent with the provisions relating to fixed term employment under s. 66 of the Act.

[28] The work Mr McGovern performed for SEG starting in January 2012 was, in Mr Gelb's view, determined by the mutual intentions of the parties arising from their Skype conversation of November 2011. There would be an initial guaranteed period of 5 weeks' employment and, if SEG secured seismic survey contracts beyond that 5 weeks, it would offer further work to Mr McGovern to a total of 6 months' work.

For his part, Mr McGovern would commit to working for SEG on those contracts for that period.

[29] In support of this submission, Mr Gelb cited the *Jinkinson*¹ case in which Couch J stated that it was better to look at the obligations assumed by the parties and then decide the true nature of the relationship created.

[30] Mr Matheson submitted that the 23 June 2008 employment agreement remained applicable for all periods of employment undertaken by Mr McGovern for SEG. This included the employment commenced in early January 2012. In support of this submission, Mr Matheson referred to the Termination clause of the agreement which provided, in part:

This employment relationship shall be terminated at the conclusion of the Employer's performance of those parts of its contracts for seismic survey for which the Employee is required.

[31] In Mr Matheson's view, regardless of how Mr McGovern's employment was labelled, whether successive and intermittent periods of fixed term or casual work, he had no guaranteed contractual entitlement to be employed on future seismic survey work.

[32] Mr Matheson differentiated Mr McGovern's situation from that of Ms Jinkinson. He also cited Couch J to support his submission that there was no obligation on SEG to offer Mr McGovern work on future seismic surveys beyond the Gisborne contract that ended on 25 February 2012. He referred to the distinctions between casual employment and ongoing employment pointed to by Couch J in *Jinkinson*².

[33] These included the extent to which the parties had mutual employment-related obligations between periods of work, and whether the employer had an obligation to offer the employee further work which may become available, which the employee had an obligation to accept. Mr Matheson submitted there were no mutual obligations between SEG and Mr McGovern during the lengthy periods between different seismic surveys. Nor were there obligations on SEG to offer work, or on Mr McGovern to accept work, if it were offered.

¹ *Jinkinson v Oceana Gold (NZ) Limited*, [2009] ERNZ 225 at 231

² *Ibid* at 233

[34] Section 66 of the Act sanctions fixed term employment under specified conditions. These include the employer having genuine reasons based on reasonable grounds for the employment ending:

- a. *at the close of a specified date or period; or*
- b. *on the occurrence of a specified event; or*
- c. *at the conclusion of a specified project.*

[35] The employer must advise the employee of when or how his employment will end and the reasons for his employment ending in that way. Section 66 specifies a number of reasons that are not genuine reasons for fixed term employment, none of which is applicable to Mr McGovern's situation with SEG.

[36] The Act provides that if an employer and employee reach agreement that the employee's employment will end in one of the ways referred to above, this must be recorded in their employment agreement. If it is not, this will not affect the validity of the employment agreement between them. However, the employer will not be able to rely on any term agreed with the employee under (a), (b) or (c) in paragraph 34 above if the employee chooses to treat that term as ineffective, either during the employment or after it has ended. That is not part of Mr McGovern's claim and does not affect the validity of the 2008 agreement he entered into with SEG.

[37] That employment agreement is not fully compliant with the requirements of the Act, one example being that it did not specify a commencement date for the first period of work Mr McGovern undertook, regardless of any future work to which SEG intended it to apply. If the agreement was intended to apply to subsequent periods of work, this should have been more clearly stated. There should have been at least some documentation for all subsequent periods of work, referencing the original agreement and containing the location and pay rates applicable to each discrete assignment.

[38] However, I conclude from the acknowledgements made by Mr McGovern in the investigation meeting, that he understood the terms and conditions of the June 2008 employment agreement would apply to each discrete period of work he subsequently carried out for SEG, including the work he commenced in January 2012.

[39] The cover sheet of that agreement describes it as a *Fixed Term Employment Relationship Agreement For Seismic Personal (sic)*. In reality it operated as the base employment agreement for intermittent and defined periods of employment. The

important point is that Mr McGovern understood it to apply to his employment from January 2012. He also understood and accepted that he would not be paid for the periods between the seismic survey work he performed.

[40] I find that Mr McGovern's employment with SEG from January 2012 was covered by the terms and conditions of the 23 June 2008 employment agreement. I also find that he did not have a guarantee of 6 months' work from January 2012. I am satisfied that Mr Rothery did not offer Mr McGovern more than an initial 5 weeks' work, although he told him about the possibility of further work after that, which could result in a total of 6 months' work. There is a significant difference between offering work for which a signed contract has already been obtained, and talking about work that might eventuate if tender negotiations are successful.

[41] However, I also find that Mr McGovern did have a legitimate expectation of being employed on the next seismic survey contract after the Gisborne work ended on 25 February 2012. That expectation came from Mr Laurence, who acknowledged in the investigation meeting it was fair that Mr McGovern would have had the impression he was working on that next job. That impression was gained from discussions between Mr Laurence and Mr McGovern. I accept that Mr Laurence did not give any indication of further work after that next job to Mr McGovern.

Did Mr McGovern abandon his employment?

[42] It is undisputed that Mr McGovern was not available for the return trip from Gisborne to SEG's base in New Plymouth on 25 February 2012, which should have been his final day on that particular assignment. What is in dispute is Mr Laurence's prior knowledge of his unavailability. Mr McGovern told the Authority he was sure Mr Laurence knew on 24 February 2012 that he would not be returning to New Plymouth with the crew the following day. Mr Laurence was adamant that on the basis of Mr McGovern's offer to help with the driving, he expected him to be present and available at 6.00 a.m. to make good on that offer.

[43] I prefer Mr Laurence's evidence on this point. Mr McGovern's written evidence to the Authority refers to his having told Mr Laurence a week earlier that he would probably not travel home with the crew. Mr Laurence heard that as "possibly" not "probably" and asked him to confirm his plans. Mr McGovern made no reference in his written evidence to having done so.

[44] I find that Mr Laurence's mistaken belief that Mr McGovern would be available for the return trip to New Plymouth on 25 February 2012 resulted from Mr McGovern's failure to confirm his plans. It was compounded by Mr McGovern's further failure to realise Mr Laurence treated seriously his offer of assistance with driving duties. Unfortunately for Mr McGovern, his joking offer to Mr Laurence rebounded to his detriment, because Mr Laurence was unaware the offer was not genuine.

[45] I find that Mr McGovern did not abandon his employment. Mistakenly or not, he believed his employer knew, and did not object to, his remaining in Gisborne and not returning with the crew to New Plymouth. I did not get the impression from Mr Laurence that he regarded Mr McGovern's failure to be present on the morning of 25 February 2012 as abandonment of employment. That was a construct on the situation made much later after Mr McGovern had raised his personal grievance.

[46] I am satisfied that Mr Laurence would have soon deduced on the morning of 25 February 2012 that Mr McGovern had decided to stay in Gisborne with friends as he had earlier indicated he was considering.

Was Mr McGovern unjustifiably dismissed?

[47] Mr Laurence's notification to Mr McGovern that he was off the payroll constituted a dismissal. Mr Rothery made it clear in his evidence that the hiring and firing of crew was Mr Laurence's domain. Mr Laurence was therefore acting with the authority of the employer when he dismissed Mr McGovern on the last day of the Gisborne survey job.

[48] The test for assessing whether that dismissal was justifiable requires an objective assessment of whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could do in all the circumstances at the time the dismissal occurred.³

[49] In this instance, the Act requires me to consider the following factors, in addition to any others I consider appropriate:

- a. Whether, having regard to the resources available to the employer, it sufficiently investigated the matter before dismissing Mr McGovern;

³ Section 103A Employment Relations Act 2000

- b. Whether the employer raised its concerns with Mr McGovern before dismissing him;
- c. Whether the employer gave Mr McGovern a reasonable opportunity to respond to its concerns before dismissing him;
- d. Whether it genuinely considered Mr McGovern's explanation in relation to the matter before dismissing him.

[50] Mr Laurence dismissed Mr McGovern in the course of a short conversation by mobile phone. By Mr Laurence's own account he was "*guttet*" that Mr McGovern was not at his motel and ready to help with the driving on the day the SEG crew was returning to New Plymouth. He said it was all he thought about on the 3½ hour drive from Gisborne to Taupo, where he contacted Mr McGovern and told him he was "*off the payroll*". When Mr McGovern asked if it was just for that job, Mr Laurence's evidence was that:

"I said no, it was all over. He asked me what for and I said 'What options have you left me with?' By saying that he was off the payroll I meant that he would not be engaged on future contracts as the Gisborne job had finished."

[51] I conclude that Mr Laurence dismissed Mr McGovern without giving him any opportunity to provide an explanation for his absence that morning. Mr Laurence's continued irritation with Mr McGovern's absence that day resulted in his unwillingness to engage with Mr McGovern on his return to New Plymouth, or to reconsider his decision not to offer him further work. Any opportunity he had to rectify his hasty dismissal of Mr McGovern was thereby lost.

[52] A dismissal in such circumstances does not meet the minimum requirements of natural justice and is not justifiable. In arriving at that conclusion I have taken into account the fact that SEG is a small company that does not employ human resources personnel. Mr Laurence and Mr Rothery both gave evidence of their lack of formal training in that area. Mr Laurence said he had gleaned information from 14 years in the field for SEG and previous employers. I do not consider that lack of training exonerates SEG from its obligation to treat employees fairly and reasonably. There was no evidence to suggest it lacked the resources to obtain the necessary advice about its obligations as an employer.

[53] The defects in the employer's process could not be described as minor, and they did result in Mr McGovern being treated unfairly. Although it was the last day of the Gisborne seismic survey contract, the effect of Mr Laurence's action was to

deprive Mr McGovern of the expectation he reasonably had of one further seismic survey assignment from SEG.

Was holiday pay included in Mr McGovern's wages?

[54] As a general rule employers must pay holiday pay to an employee at the time the employee takes annual holidays⁴. The limited situations in which employers may pay annual holiday pay in an employee's wages are specified in s. 28 of the Holidays Act 2003. They include where the employee is employed on a fixed term agreement to work for less than 12 months, or where the employee works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with annual holidays. Situations where an employee is employed beyond 12 months on a series of fixed term agreements of less than 12 months each are also included.

[55] The payment of holiday pay on this basis must be agreed between the employer and employee in their employment agreement. The annual holiday pay must be an identifiable component of the employee's pay and it must be paid at no less than 8% of the employee's gross earnings.

[56] The 23 June 2008 employment agreement between Mr McGovern and SEG contained the following provision:

The Employee's day rate has been calculated with holiday pay included.

[57] I have already found, in accordance with the acknowledgement made by Mr McGovern in the investigation meeting, that this employment agreement applied to each subsequent period of survey work he undertook for SEG. The question now is whether Mr McGovern's holiday pay arrangements fit within the prescriptive requirements of s. 28 of the Holidays Act.

[58] I consider that the intermittent nature of Mr McGovern's employment with SEG does fit within the episodic work criteria of s. 28 of the Holidays Act. I also find that, by signing the 23 June 2008 employment agreement, Mr McGovern gave his agreement to having holiday pay included in his wages. That requirement of the Holidays Act is also met. That leaves the most problematic requirement for SEG to

⁴ Section 27 Holidays Act 2003

satisfy, which is the requirement that the holiday pay of at least 8% must be an identifiable component of an employee's pay.

[59] It was Mr Gelb's submission that SEG had not paid Mr McGovern holiday pay. In his view the company's payroll records showed that holiday pay was accrued, but not paid out to Mr McGovern at the end of the fixed term agreement or any time later. Mr Matheson asserted that holiday pay was paid to Mr McGovern despite the appearance of accrual in the payroll records.

[60] I have examined the payroll records from 2008. I have also had regard to the clearly expressed intention of the June 2008 employment agreement that the pay rate specified at that time was inclusive of holiday pay. I am satisfied that Mr Matheson's view is correct and that Mr McGovern was paid the 8% holiday pay due to him as part of his fortnightly wages. The way in which SEG's payroll provider has identified the holiday pay component of his wages could be improved. Nonetheless, I find that it does comply with the requirement for holiday pay to be an identifiable component of Mr McGovern's pay.

Penalties

[61] Mr McGovern sought orders for various penalties relating to holiday pay, failure to provide written terms of employment, and failure to provide wage and time records. I have no jurisdiction to award the penalty sought in relation to the Holidays Act and there was no evidence to persuade me that penalties within my jurisdiction to award were appropriate.

Summary of findings

[62] The terms and conditions of Mr McGovern's employment with SEG from January 2012 were those of the employment agreement he had entered into on 23 June 2008, apart from the changes to remuneration that had occurred since the initial period of work he had undertaken under that agreement.

[63] Mr McGovern did not have a guarantee of 6 months' work with SEG from January 2012. He did have a legitimate expectation of being employed on the next seismic survey contract undertaken by SEG after the Gisborne work ended on 25 February 2012.

[64] He did not abandon his employment on 25 February 2012.

[65] Mr McGovern was unjustifiably dismissed on the final day of the Gisborne seismic survey contract.

[66] His holiday pay was paid to him with his wages in accordance with s. 28 of the Holidays Act 2003.

Remedies and contribution

[67] Having determined that Mr McGovern was unjustifiably dismissed, I am required to consider what remedies are appropriate for his personal grievance. He seeks reimbursement of lost wages, compensation for humiliation, loss of dignity and injury to feelings; interest and costs.

[68] I am also required to consider whether Mr McGovern's actions contributed towards the situation that gave rise to his personal grievance and, if those actions so require, reduce the remedies that would otherwise have been awarded accordingly.⁵

[69] Mr McGovern bears some responsibility for not confirming to Mr Laurence before the scheduled day for the crew to return to New Plymouth that he would not be accompanying them. Had he done so, the events that led to his personal grievance would not have occurred, as Mr Laurence had earlier indicated he did not object to Mr McGovern's proposal. It was reasonable for Mr Laurence to require certainty, and it was also reasonable for him to take seriously Mr McGovern's offer to assist with the driving.

[70] That does not alter the fact that Mr Laurence's response of dismissing Mr McGovern was unfair and unreasonable, but it does bring Mr McGovern's actions within the range of contributory behaviour, leading to a reduction of remedies. I assess his level of contribution at 20%.

[71] Mr McGovern gave evidence of having sought alternative employment through the internet and other sources. He was able to obtain some casual work but not able to find permanent employment. His earnings for the 13 week period following his dismissal totalled \$5,892.77.

[72] It was Mr McGovern's choice to remain in Gisborne at the end of the contract, rather than to return immediately with the rest of the crew. However, he was in

⁵ Section 124 Employment Relations Act 2000.

Gisborne for work purposes and his employer should pay for the time taken to return to New Plymouth. This amount is to be reduced by 20% for contribution.

[73] I have found Mr McGovern had a valid expectation of employment on the next seismic survey contract undertaken by SEG, but not on any others beyond that. Evidence given at the investigation meeting was that SEG had seismic survey work for approximately 3 months after the Gisborne work ended. There was no evidence whether the work consisted of one seismic survey contract or several contracts.

[74] This makes it difficult for me to calculate a precise amount to award Mr McGovern as reimbursement for the wages he lost as a result of his grievance, under s. 123(1)(b) of the Act. SEG is to provide evidence to Mr McGovern of the commencement and ending dates of the next seismic survey contract it undertook after 25 February 2012, in order to calculate the wages payable to him in accordance with the determination made below.

[75] Mr McGovern gave evidence of the humiliation and embarrassment he had suffered from the loss of his job with SEG. I accept that he was affected to some degree and I consider an award of \$4,000, less 20% for contribution, to be appropriate.

[76] Interest on the wages component of the awards is to be paid without deduction for contribution from the date of this determination to the date of payment.

Determination

[77] SEG is to:

- a. Pay Mr McGovern one day's pay, less 20% for contribution under s. 123 (1) (b) of the Act.
- b. Provide evidence to Mr McGovern of the starting date and duration of the next seismic survey contract it undertook after 25 February 2012.
- c. Pay Mr McGovern the wages he would have earned if he had worked on that next seismic survey contract, less 20% for contribution, and less the portion of Mr McGovern's earnings of \$5,892.77, if any, that related to the duration of that contract.

- d. Pay Mr McGovern interest on a) and c) above at the rate of 5% per annum calculated from the date of this determination to the date of payment.
- e. Pay Mr McGovern the sum of \$3,200 (without deduction) under s. 123 (1)(c) (i) of the Act.

[78] Leave is given to the parties to return to the Authority if they are unable to quantify the amounts due.

Costs

[79] Costs are reserved.

Trish MacKinnon
Member of the Employment Relations Authority