



Employment Court of New Zealand

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Nelson v Katavich [2016] NZEmpC 48 (3 May 2016)

Last Updated: 13 May 2016

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2016\] NZEmpC 48](#)

CRC 13/2013

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

BETWEEN MIA NELSON Plaintiff

AND TONY WAYNE KATAVICH First Defendant

AND HALDEMAN LLC Second Defendant

Hearing: 7, 8, 9, 10 and 11 September 2015 and 14, 15, 16 and 17 March

2016

(heard at Nelson)

Appearances: L Acland and E Riddell, counsel for the plaintiff

T Katavich and K Pou, representatives for the defendants

Judgment: 3 May 2016

JUDGMENT OF JUDGE A D FORD

Introduction

[1] The plaintiff, Ms Mia Nelson, claimed that on 6 June 2011 she began working for the first defendant, Mr Katavich, personally, in his Invercargill office. She was subsequently relocated to the business office in Stoke, a suburb of Nelson. Ms Nelson further alleged that on 21 May 2012 she was demoted from the managerial position she then held; that on 15 June 2012 she was suspended from her work and 11 days later, on 26 June 2012, she was dismissed altogether. Ms Nelson brought proceedings in the Employment Relations Authority (the Authority) claiming that all the actions described were unjustified actions giving rise to personal

grievances. She sought remedies under the [Employment Relations Act 2000](#) (the

MIA NELSON v TONY WAYNE KATAVICH NZEmpC CHRISTCHURCH [\[2016\] NZEmpC 48](#) [3 May 2016]

Act) and made late application for the imposition of a penalty for alleged breaches of the duty of good faith. Mr Katavich denied the allegations and asserted that Ms Nelson was employed by the second defendant, Haldeman LLC.

[2] In a determination dated 19 February 2013, the Authority found that Ms Nelson had originally been employed by Facts and Information LLC, a limited liability company incorporated in Nevada in the USA.¹ The Authority recorded that Facts and Information LLC changed its name on 6 October 2011 to Haldeman LLC (Haldeman) but there is agreement in the pleadings that the name-change occurred on 10 June 2011. On 4 July 2012, Haldeman was registered under [Part 18](#) of the

[Companies Act 1993](#) to carry out business in New Zealand. The Authority concluded that at all material times Ms Nelson's

employer was Haldeman, and not Mr Katavich personally. It noted, however, that Mr Katavich was "essentially the principal of Haldeman LLC (known in the US as the managing member)".²

[3] The Authority rejected Ms Nelson's grievance based on her alleged unjustified suspension, because it had not been pleaded in her statement of problem, but it upheld her unjustified disadvantage grievance in respect of her demotion as well as her claim of unjustified dismissal. By way of relief, Ms Nelson was awarded a total of \$18,791.74 on account of lost wages, including arrears of wages and holiday pay, and \$17,000 as compensation for hurt and humiliation. The claim for a penalty was declined as was a counterclaim by Haldeman for an amount of

\$3,725.98 which was said to be the pro-rated claw-back of a \$10,000 "*encouragement payment*" made to Ms Nelson when she moved from Invercargill to Nelson at the beginning of May 2012.³ In a subsequent determination dated

11 June 2013, the Authority awarded Ms Nelson the sum of \$3,500 as a contribution towards her legal costs.

[4] On 19 March 2013, Ms Nelson filed a non-de novo challenge to the

Authority's conclusion that Haldeman was her employer and on the same day

Haldeman challenged the Authority's determination that Ms Nelson had been

¹ *Nelson v Katavich* [2013] NZERA Christchurch 35.

² At [54].

³ At [92].

unjustifiably dismissed as well as the remedies awarded. Haldeman also sought a stay of execution pending the outcome of the challenge in this Court.

[5] A number of interlocutory matters then came before the Court which were dealt with in a judgment and various minutes as follows: 25 March 2013, Chief Judge Colgan; 24 April 2013, Judge Perkins; 9 May 2013, Judge Couch; 20

May 2013, Judge Couch; 18 June 2013, Judge Couch; 19 July 2013, Judge Couch;

3 February 2014, Judge Couch; 4 March 2014, Judge Couch; 6 May 2014, Judge

Corkill; 13 August 2014, Judge Corkill; 29 September 2014, Judge Corkill;

24 October 2014, Judge Corkill; 19 December 2014, Judge Corkill;

16 February 2015, Judge Corkill; 24 February 2015, Judge Corkill; 23 June 2015, Judge Corkill.

[6] I do not intend to traverse all of the interlocutory matters I have referred to. Most of the more recent minutes related to issues involving disclosure of relevant documentation. Early on, however, Ms Nelson took enforcement action in the District Court and was successful in recovering the amounts she had been awarded in the Authority. Haldeman's application for a stay of execution was, therefore, not pursued. Also at an early stage, Judge Couch ruled that as the two sets of proceedings effectively challenged the whole of the Authority's determination they were to be consolidated as one and the hearing was to proceed on a de novo basis. Ms Nelson has not pursued the claim based on her alleged unjustified suspension.

Background

[7] The hearing generated 915 pages of transcript and involved the production of a considerable amount of documentation. Mr Katavich personally represented the defendants and competently handled the cross-examination of the plaintiff's witnesses. He was ably assisted by Ms Pou who led Mr Katavich through his own examination in chief. Largely because of the unusual nature of the defendants' business; the number of corporate entities involved at different stages and other issues which arose around the time of the dismissal and subsequently (many of which were of marginal relevance), the background to the case is somewhat

complex. I will endeavour to summarise it, however, before turning to consider the sequence of events that resulted in the termination of Ms Nelson's employment.

The business

[8] Mr Katavich told the Court that, while he was still in his early 20s working in the computer business in Auckland, he happened on the idea of starting a radio station. He described the radio industry in those days as a "closed club" but he was successful in establishing a low-power radio station in the Auckland suburb of Blockhouse Bay. He described how other people from around the country heard about his success and became interested in replicating what he had been able to achieve. That, in turn, led him into the business of selling information about radio stations online. As part of the service provided, he would supply clients online with information regarding relevant legislation, regulations and the equipment

needed to set up a radio station. He later relocated to South Taranaki where he was able to obtain a commercial-strength frequency band which, as he put it, was something that would have been beyond his budget in Auckland.

[9] Mr Katavich said that in this way he was involved in setting up approximately 15 radio stations throughout New Zealand. As his business grew, he began to realise that there was a worldwide demand for his internet services and he began to receive requests from people in other countries such as the USA, Australia and the United Kingdom for advice on setting up radio stations. He described how it was necessary for him to carry out a great deal of research into what was involved because, in Mr Katavich's own words, "developing a radio station is a very, very technical, very technical area and there is a lot of legislation there and the rules are quite different [for] each country."

[10] As his business grew, Mr Katavich and his wife, Ms Heather Crowe, moved to different centres such as Marton, Kawerau and Opotiki. In July 2009, they moved to Nelson. At the time of the events giving rise to this litigation the business was based in the Nelson suburb of Stoke, but around the same time Mr Katavich was engaged in the construction of a new purpose-built office complex in the small community of Wakefield, approximately 25 kilometres south of Nelson. One of the witnesses called on behalf of the defendants, former employee Ms Nicole Hines

(now a Property Manager), described the Wakefield office as "very massive", modelled on the White House in the United States. In front of the building is a bronze statue of former American president, Mr Richard Nixon.

[11] From radio stations, Mr Katavich began to develop his online business by selling information through various websites on other diverse subject matters such as the oil industry in the USA, mining in Australia and child adoptions. Mr Katavich would research the particular activity and then provide "tailored" advice to clients on the subject. He described to the Court how, in order to bolster his understanding of the mining industry in Australia, he travelled to Perth and underwent a course on underground mining at the Central University of Technology. He also studied a report published by Lifeline Western Australia on the perils faced by miners working in remote areas. From sources such as these, Mr Katavich was able to put together an information package for New Zealanders interested in entering what he referred to as "the lucrative Australian mining industry". He stressed to the Court that his company did not offer or guarantee jobs in the mining industry but it provided useful background information for prospective workers in the industry and, if required, it would also assist in the compilation of personal curriculum vitae. These were some of the various activities Mr Katavich was involved in at the time Ms Nelson joined the business in Invercargill in June 2011.

The Invercargill job

[12] Ms Nelson is an American citizen. She moved to New Zealand in 2010 with her New Zealand partner, Mr Joshua Dean, whom she had met in the USA. She is now a permanent New Zealand resident. Ms Nelson told the Court that at the end of April 2011, when the couple were living in Invercargill, she saw and applied for a job advertised on Trade Me described as "Writer / Researcher – Invercargill Based". She received an email response on 4 May 2011 from Mr Katavich's wife, Ms Heather Crowe, setting up a meeting for the following day at the Kelvin Hotel in Invercargill. The opening paragraph of Ms Crowe's email read:

Hello Mia

Just confirming your interview tomorrow for the trainee writer office role advertised on Trademe for the company Facts and Information. We adjusted the job title so it more accurately describes the tasks the successful

candidates will be performing. If you are no longer interested in the role please let us know.

...

[13] Ms Nelson was shortlisted for the job and, following a further interview, she received a letter from Mr Katavich dated 25 May 2011 offering her "a Writer and Researcher role" commencing on Monday, 6 June 2011. Mr Katavich enclosed with his letter a draft individual employment agreement which Ms Nelson duly signed and returned. The agreement described the employer party as "Facts and Information, LLC".

[14] On 9 May 2011, Mr Katavich emailed Ms Nelson details about the position she had applied for. Mr Katavich explained in that email:

We have 7 staff working from our Nelson office and we envisage rotating some of us down to Invercargill for a week or so at a time for the first month.

... Thereafter I imagine we would make regular trips south to work from the office.

[15] Mr Katavich then provided an "indicative job description" which I refer to because there was some conflicting evidence about the exact nature of Ms Nelson's duties:

1) Writing multiple variations of promotional text, each page to be 2-3 paragraphs in length and for each project we may require between say

50-200 pages. The page topic will be slight variations of each other, and it is important not to repeat yourself word for word. The ability to use different

'angles' and wording for each topic will be essential

...

2) Researching and writing reports on new topics of interest. We anticipate coming to this office armed with the new subjects we want to publish on. We will then work through the idea, and develop a plan for how the new publication will look; what content will be in it, the angles it will take, etc, based on specific scenarios. Then the next task is to research and prepare the report, based on these specifications and workings.

3) In order to promote our publications, we need some additional basic search engine optimisation work to be completed. This is link work, which involves identifying websites that are willing to link to our own, thereby cross-promoting our publications. This is essentially a repetitive process involving contacting other website owners to request a link, and following up to ensure this occurs.

[16] In that same email, Mr Katavich made reference to another matter which assumed some significance at the hearing. He stated:

Other information:

Back in March 2010 I was the subject of a seriously defamatory attack by a

New Zealand current affairs program. On 31 March 2011 the New Zealand Broadcasting Standards Authority in decision number 2010-064 upheld a complaint lodged on my behalf by the company attorney. The specific finding was that TV3 breached the fairness provision, and that 'Campbell Live treated Mr Katavich unfairly by implying he was a criminal and a fraudster', 'TV3 appears to have no evidence to that effect'. The BSA ordered TV3 to pay me legal costs of \$2000.

In mid March 2011, defamation proceedings relating to these broadcasts and associated web-pages were filed in the Nelson High Court against TVWorks Ltd and MediaWorks NZ Ltd, and we are seeking significant damages.

The allegations were essentially TV3 figuring that $2 + 2 = 7$ and no other media picked up on the story because there simply isn't a story, just TV3 jumping to an idiotic conclusion that will cost them a great big bundle of money in court.

[17] Ms Nelson appeared to make good progress working at the defendants' Invercargill office. At the end of July 2011, Mr Katavich offered her a position in the Nelson office as his personal secretary, suggesting she might be able to commute on a weekly basis from Invercargill but Ms Nelson declined. He also floated the idea of Mr Dean taking up a position with the company, involving website maintenance and other activities. In an email dated 29 July 2011, accepting Ms Nelson's desire to remain in Invercargill, Mr Katavich stated:

... Nevermind though we appreciate your exemplary work down there and I am certain as we continue to grow the Invercargill operations we can give you additional responsibilities and oversight there.

The move to the Nelson office

[18] Ms Nelson's work obviously continued to impress Mr Katavich. On

30 September 2011, he sent an email to Haldeman's Nelson staff confirming that

Ms Nelson had been appointed 'Manager'. The email stated:

Subject: looking after yello

Our Invercargill office has performed admirably since its establishment, and in recognition of this, Mia was made Manager a few months back. Now that

Kylie will be soon working from home in the Bay of Plenty we are wanting to now extend Mia's role to look after the Nelson office as well. This is a natural extension and I am certain she will perform it admirably.

Mia's US connection has been also incredibly helpful in completing the establishment of a sales facility in the states – and has directly contributed to the spike in sales we are starting to see from this week. Her official title is that of 'Manager' while I get lumbered with the terrible title of 'Managing Member'.

Mia shall be toddling up to Nelson next week to familiarise herself with the operations here. There are a number of issues that she will be working on during this time, for instance:

– providing additional sales training, establishing targets and ensuring targets are met

– streamlining the orders process and likewise, establishing targets and

ensuring targets are met

Her list of items to work through invariably comes from me, and she acts with my authority, so instructions need to be followed. I am expecting a pleasant shakeup which will lift the performance of everyone in the Nelson office, and enhanced performance invariably leads to enhanced paycheques.

Tony

[19] The evidence was that there was one other person who worked alongside Ms Nelson in the Invercargill office and in September 2011, around the time of Mr Katavich's email, Mr Dean, Ms Nelson's domestic partner, was also employed in an IT support role.

[20] Ms Nelson was reluctant to leave Invercargill. The main problem was that Mr Dean was a student at the Southern Institute of Technology and they did not want to live apart. Ms Nelson said in evidence, which I accept, that she felt "very pressured" to make the move. In this regard she referred in particular to an email she had received from Mr Katavich dated 12 March 2012 which commenced:

Subject: thoughts

some deliberation points:

– I do not recall a situation where I have dismissed someone without good reason, and where you wouldn't have presumably disposed of them yourself. I have dismissed 3 people, one person for presenting drunk at the office during her first week, cassie for her various well-documented deficiencies, and the fat thing from about 4 years ago for having her father come in and abuse Heather and I at length. In comparison, the certain negative staff member continues at work despite my misgivings, because they perform adequately.

...

I fear this is a very significant decision to make with very large ramifications. I would suggest – and would in fact be willing to pay for this

– for you to find a suitable therapist to discuss the matter with, to be a

sounding board and provide impartial guidance. Tony

[21] Earlier, on 8 March 2012, Mr Katavich had emailed Ms Nelson making observations on her domestic arrangements and offering her an attractive monetary package for moving to Nelson. The email concluded:

I believe this is jolly generous considering your remuneration in the past and present. To borrow from Nixon: 'we have been generous in the past, and we will be generous again in the future'. I believe you executing your duties in Nelson will allow [the] company to further develop, and for you to continue to enrich yourself – both professionally and monetarily.

[22] In reference to the suggestion Mr Katavich had made to consult with a "therapist", Ms Nelson, who is a student of psychology completing a post-graduate diploma, said in evidence, "I know that that was just a jab at my trying to say that I was not thinking straight about the situation because I wasn't agreeing with the offer."

[23] Despite her misgivings, Ms Nelson did agree to accept the financial package offered and relocate to Nelson. She signed a new individual employment agreement on 16 April 2012. The employer party was named as "Haldeman LLC, the "Employer"". Ms Nelson's position was described as: "The Employee is being employed in a Special Projects Role."

The relevant facts

Ms Nelson's position

[24] Ms Nelson commenced her duties in the Nelson office on Monday,

30 April 2012. She told the Court that she managed the employees while "Mr Katavich worked from an accommodation rental at Brightwater near Nelson (about 30 – 40 minutes away from the Stoke office)." She described the rental as a single cottage with a living room and kitchen downstairs and two bedrooms upstairs.

[25] Mr Katavich denied that Ms Nelson was ever the manager in the Stoke office. It was his evidence that on 26 April 2012, four days before Ms Nelson commenced working at the Stoke office, Haldeman had employed Ms Kate Warrender to manage and look after the staff.

[26] In reference to the "accommodation rental" Ms Nelson had referred to, Mr Katavich explained that during that particular period in time they had around

13 staff all trying to work from what he referred to as "increasingly cramped office space in Stoke". At the same time he was engaged in building the new office complex in Wakefield. For this reason, he decided to lease space to use as a remote office in the country about 10 minutes away from the new office location in Wakefield. The "remote office", as it was referred to throughout the hearing, was close to Mr Katavich's home which was convenient but, as he put it, "most importantly it was peaceful and quiet there and I could get my work done without constant interruptions and noise."

[27] Although Ms Nelson's position was not described in her employment agreement as "Manager", I am satisfied that at all material times she was, in fact, Manager of the staff at the Stoke office. Persuasive independent evidence on this issue was given by Mr Katavich's own witness, Ms Hines. In cross-examination Mr Acland, counsel for the plaintiff, had asked Ms Hines whether she recalled a particular staff barbecue (which I refer to in the next section of this judgment) and he asked the witness whether she could "recall anything changing for Ms Nelson after that barbecue took place?" Ms Hines replied, "Um, yeah, the, the whole employment with Mia as a staff manager changed after the barbecue". When asked what happened, Ms Hines said:

A. She was, ah, like moved into a, I think we, we got told that she was moving into a, more of a website roll or something and then Kate would be our new staff manager and, um, Nicole Watson would look after all the payroll and leave requests.

[28] The matter was then followed up by Mr Katavich in the following exchange in re-examination:

Q. You said that Ms Nelson was employed in a staff management role in - when she was working in the Nelson office, what do you, what do you base that on?

A. Well she was the one that at the beginning of the day, um, it didn't always happen, but sometimes she would come in and say to us okay, you're doing this job today, you're doing this job, this is the things we need to focus on, um, and if there was ever any, ever, sorry, any messages to ever come from you they came from Mia.

[29] Mr Katavich then asked the witness whether she could recall when

Ms Warrender started working in the Nelson office and Ms Hines replied:

A. I don't remember when she started but I re - it was after the barbecue she took over as staff manager.

[30] I found the evidence given by Ms Nelson and Ms Hines on this issue to be entirely credible. It was consistent also with the duties listed in the job description for Ms Nelson's Special Projects Role, which included: "Assisting with the management of staff as required" and "Assisting with payroll". It was also consistent with statements made by Mr Katavich himself in the emails referred to in paras [36] and [37] below.

The barbecue

[31] The barbecue Ms Hines was referring to in evidence marked the beginning of the end for Ms Nelson in her association with the defendants. It was held after work on Friday, 18 May 2012. It was part of a leaving party for another employee, Ms Bettina Koessler, who handled the accounts and worked from an office in the Stoke premises which she shared with Mr Katavich. The barbeque was being held at "Laura's house" because Laura had a spa pool. On the morning of 17 May 2012, Ms Nelson received an email to all employees from Ms Koessler which read:

Subject: Friday Night

Hey all

I mentioned to you last week about a BBQ/Dinner that Laura was going to have at her place this Friday night. Details below:

From 6pm onwards

...

BYO and Bring a plate of food to share

Also bring your bathing suits as there is a Spa!!!!!!

Please let me know if you do plan to come (all good if you [can't] make it) Hope to see you all there

Bettina

[32] Laura had worked at the Stoke office for a short period of time before resigning. Ms Nelson said her understanding was that Laura had left because she didn't like the job. Mr Katavich said that she had left on "bad terms". In all events, Ms Nelson told the Court that she "went to the BBQ/ dinner and had a good time".

The alleged demotion

[33] Ms Nelson then described in evidence what happened when she turned up for work on the morning of Monday, 21 May 2012 following the barbecue on the previous Friday evening:

20. When I arrived at work on Monday morning I saw that my office had been cleaned out. Literally everything had been taken out of my office and put elsewhere. The framed pictures on the wall had been removed. So too had the couch, the side table, the trash bin; and the extra chairs. The only things left in my office were the desk, a chair, a phone and a laptop computer.

21. The Stoke office consisted of five separate office-rooms each with a glass wall facing into the entrance foyer so everyone could see that my room has been completely emptied. In addition to that, my desk had been turned around to face towards the wall at the back of the office – so that my back would be facing the glass wall to the foyer. It was basically turned into a cell and positioned so as to put me in a dunce hat corner.

[34] Ms Nelson added:

22. I felt humiliated. I was new to the office and still getting to know the others well. Everyone was talking about it and I didn't know what it was about or why it was in this state at the time. I guessed that something was obviously up, but I didn't know what or why.

[35] That same morning, Ms Nelson received an email from Mr Katavich instructing her to drive out to Brightwater and meet with him at the remote office. When she arrived, Mr Katavich asked her to sit down in the living room and he told

her that he had heard about an event that had taken place which he had not been invited to. At first, Ms Nelson did not know what he was referring to but then she realised that it was the Friday night barbecue. She told the Court:

25. Mr Katavich was anxious and he was speaking to me in a way that I felt was telling me off. He told me to write down a list of the names of everyone at the party and then leave to go back to the Stoke office. I followed that instruction and wrote down what I could remember. Before I left I tried to explain to Mr Katavich that nothing happened at the party. I couldn't work out what he was concerned about and I guessed he was just upset [at] having been left out and paranoid that people had spoken about him behind his back. I tried to tell him there was nothing said for him to worry about. I don't think he really listened or accepted what I said. Then I left.

[36] Shortly after 11.00 am on that same morning, Ms Nelson received an email from Mr Katavich in these terms:

Subject: decision making

Mia

You failed to disclose to me, when you had ample advance warning, that a company gathering was planned to be held at a disgruntled former staff member's house, who left on bad terms of her own making, and to which all the staff were invited. This is an area of responsibility that falls to you – I ought have been alerted to this rather than intentionally kept in the dark, when it should have been abundantly clear to you that the venue and host for a company event for my staff was utterly inappropriate.

This was a major error of judgement. I require good judgement in staff who are to work closely alongside me. I no longer believe you are ready for

'assisting with the management of staff as required', as is detailed in your contract, so I will not require you to undertake these duties any longer.

You need to focus on your projects, namely standardising the rest of the sites with australia-mining. ...

I cannot underline enough how disappointed I am in your decision making over this critical issue. I am doubtful whether I can again have confidence that you will give me wise counsel, so in future I will seek counsel from other staff on substantive issues.

Tony

[37] Later that same day, Mr Katavich sent an email to all his staff covering three matters. The first two issues related to the activities of certain radio stations and he prohibited staff from listening to the stations he identified which were owned by Mediaworks who, he pointed out, he was suing in "a multi-million-dollar defamation

claim". The third matter he raised related to the barbecue and Ms Nelson. That part of the email stated:

...

3. As a matter of decorum and professional courtesy, I am aware a company event of sorts transpired on Friday evening to which some knucklehead(s) omitted to invite me. A repeat will see the culprit(s) Christmas bonus withdrawn, and a

declaration of elephant month. It was a serious error of judgement that [led] to existing staff members being hosted at the house of a disgruntled former staff member who left under bad terms, and in idiotic circumstances of her own making. I have not previously elaborated on the circumstances surrounding her departure but given the events of Friday will do so now:

Laura signed a contract to work for a specific wage rate. We paid her this wage rate for all the hours that were due. Upon receiving her second payslip, she resigned without providing the required notice and walked out of the office, throwing a splendid tantrum in the process. In a series of childish emails, she tried to claim she had not agreed to work for the rate specified in the contract she had signed, and that she had apparently stated during the interviews she said she was not prepared to work for this rate. The claims were a nonsense, neither I, Mia or Bettina had any recall or notes about her expressing unease about her pay rate – if she had made a fuss in the interview she wouldn't have been offered the role – and of course if she was not happy with the rate, why on earth sign the contract. There is a sensible way to go about these things – and there is the way of the spoiled brat. Several of you have approached us about pay rates and this been dealt with in a cordial, adult way. Others have not approached me and in some instances I have increased pay on my own volition to recognise effort, and this pay adjustment process is nearing completion.

In any case, given this it ought to be abundantly clear to anyone with the above detailed prior knowledge of the matter, that having a company function hosted at the house of a disgruntled former staff member was a monumentally stupid idea. Due to this event occurring and me not being alerted by the staff member tasked with planning of this nature, from now on Mia will be focusing on standardising all our websites. Because this work requires concentration, I ask that no-one disturb her in her office unless it is break time.

From today, I will have Kate look after you lot, she will be the point of contact for training and support. Watson will however look after leave requests, payroll etc.

Tony

[38] On Monday evening, 21 May 2012, Ms Nelson sent the following email response to Mr Katavich:

Subject: Re: decision making

Hi Tony,

As we spoke about earlier, I understand an issue has arisen in regards to Bettina's farewell party, due to it being held at Laura's house, which has resulted in me being demoted and Kate installed in my place. It has not been a month since my relocation, and it seems you already regret the move and I assume you will take steps to reverse it. As I am already in debt with the move (we still haven't found renters for our home which we quickly moved out of), this will place me further in debt and I really have no desire for that to happen.

I attended the party on Friday night as I told you this morning. The evening held no conspiracy against the company or yourself, and was quite uneventful. It was just as described, a farewell to Bettina from her co-workers which included Laura as she was quite recently a co-worker. I think a large factor that played into the party being held at Laura's is that she is the only person with a hot tub.

You have known me for about a year now, and until this weekend trusted me as an employee and as an advisor – it seems strange that you would decide that your judgement of me until now was in error and all must be undone due to one mistake. It further surprises me that you would replace me with a completely fresh employee – trusting confidential knowledge and the safety of the company to a stranger (Kate). An effective manager should be liked, and if they are not liked they must be respected. If neither of these prerequisites are met then they will fail. Kate is somewhat disliked, and does nothing to gather respect.

A manager of employees must be able to associate with them in an easy manner to be aware of all happenings and indeed be able to manage them. My attending staff gatherings does just that - I am involved directly with the employees and can know all goings on and respond/report appropriately. If anything had conspired at Bettina's farewell party that would have put the company at risk, I most certainly would have reported it to you directly – if not for my unwavering loyalty and honesty, then due to my livelihood depending on the company.

Regards, Mia

[39] At 8.13 pm the same evening, Mr Katavich emailed his response:

Subject: Re: decision making

I do not regret you moving to the Nelson office, I regret you failed to disclose to me, when you had ample advance warning, that a company gathering was planned to be held at a disgruntled former staff member's house, who left on bad terms of her own making, and to which all the staff were invited.

I have no intention or ability to reverse your move. I want you – as I want all the staff – to be productive and to execute their

duties in the best interests of the company. A good step for you would be to knuckle down on the work I

have set, which provides you the opportunity to work hard and to prove your abilities with.

Your comments about Kate are unhelpful. I strongly urge you to get along with her in the office and to keep your personal opinions to yourself.

Tony

[40] In unchallenged evidence, Ms Nelson told the Court that after the email exchange just referred to there was increasing tension between her and Mr Katavich and she was not allowed to carry on doing the managerial work she had been carrying out. Her previous duties in that regard were carried out by Ms Warrender. Ms Nelson's duties were mainly confined to working on the websites. On

24 May 2012, Ms Nelson asked Mr Katavich if they could go to mediation to discuss her demotion and resolve the tension between them. Mr Katavich responded that there was no issue to address in that regard because she had not been demoted and so mediation was not needed.

The new rules

[41] On 28 May 2012, Mr Katavich emailed to staff a document entitled

"Haldeman LLC Policies and Procedures – version 1 – effective from

28 May 2012". The document dealt with a number of different matters under the headings: computers; sickness; music/radio listening privileges; answering the phone; place, time of work and breaks; pay, distractions and work output; company events; cleanliness; in case of internet outage; responsibilities to ensure these policies and procedures are followed.

[42] There was no evidence that Mr Katavich had consulted with his staff, Ms Nelson in particular, regarding any aspect of the new rules. Clause 14.1 of Ms Nelson's individual employment agreement provided that any variation to the agreement had to be in writing signed by both parties. Ms Nelson said that she did not agree with the new work rules. The particular provision in the new rules which gave rise to the next development in the case was cl 5 which I set out in full:

5. Place, time of work and breaks

5.1 Your place of work is the desk at which the phone bearing your name sits atop. Unless it is your break time, you should be sitting at your own desk

performing your duties for the company. No-one except Kate should be in any one else's office unless it is break time for everyone in that office. At all other times, if you need to communicate use the phone instead of strolling over.

5.2 Avoid sending emails where practicable. Pick up the phone and talk with whoever you need to talk with, emails are time-consuming and prone to causing confusion.

5.3 If you are on a break, you shouldn't be sitting in any office where someone else is working, as this is distracting.

5.4 An audio reminder will play in the reception area to denote the beginning and end of breaks. You need to be back working at your desk once the audio prompt finishes playing. The audio also features Richard Simmons sharing some messages and thoughts.

[43] Ms Nelson felt that this rule in particular was aimed at herself. She explained that previously the staff had walked around and helped each other with their computer work. She would help them at their desk or they could come to her but under the new rules Kate was to take over her role and, as Ms Nelson put it, "everybody else had to stay in the office which didn't make a whole lot of sense anyway because she had only just started working there and had no experience doing those sorts of things with them. So she wasn't very helpful for them." Ms Nelson described the audio prompts at the beginning and end of breaks as "almost demeaning" like the ringing of the bell for schoolchildren at the end of playtime.

[44] In all events, within a short period of time Ms Nelson was accused of failing to comply with [rule 5.1](#).

The first disciplinary letter

[45] On 14 June 2012, Mr Katavich handed Ms Nelson a letter which stated:

Hello Mia

We are going to meet at 8.30am tomorrow, Friday 15 June 2012 in the Stoke office and I would encourage you to have a witness or support person present. This person can verify what happens at the meeting. Your witness can be any one of your choosing and they are there to observe. The meeting will be a disciplinary meeting to discuss alleged misconduct.

Specifically the allegation concerns apparent failure to comply with the following company policy on the afternoon of 13 June 2012:

5.1 Your place of work is the desk at which the phone bearing your name sits atop. Unless it is your break time, you should be sitting at your own desk performing your duties for the company. No-one except Kate should be in anyone else's office unless it is break time for everyone in that office. At all other times, if you need to communicate use the phone instead of strolling over.

This allegation requires an explanation from you. You will be given every opportunity to put your side and whatever you say will be given due consideration before any decision is made.

This matter is serious and could result in disciplinary action being taken against you.

Yours faithfully

Tony W. Katavich

Managing Member – Haldeman LLC

[46] Ms Nelson sent Mr Katavich an email on the same night stating that she would not be able to attend the disciplinary meeting called for the following morning as she had decided to seek legal advice and may be supported by a solicitor at the meeting.

The second disciplinary letter

[47] At 11.30 am on the morning of Friday, June 15 2012, Mr Katavich sent Ms Nelson an email raising new issues and requiring her to leave the office immediately. The contents of this email consumed a considerable amount of time at the hearing and although it is somewhat lengthy, I now set it out in full:

Subject: Re: Disciplinary Meeting: Mia

I understand you told other staff about the disciplinary meeting scheduled for today. It appears you do not understand discretion as these matters are best dealt with **privately** rather than with other staff aware of what is transpiring.

However though since you decided to tell the other staff of your predicament, I have become aware of other deeply troubling issues which will require further investigation:

1) that you allegedly may harbour neo-nazi views and have brought these views into the workplace when on company business, thus damaging the company's reputation. Nazism is an abominable slur on humanity and what you believe in yourself is a matter for your conscience, however evidence has come to light that these views were brought into the office and used in

relation to company blogs which are publicly available, and in the procurement of supplies for the company, which if this allegation is proven, caused serious damages [to] the company's reputation

Specifically: that you set up an email address 'hitlerhates babies@gmail.com' and then used the password for this company account as

'ilovehitler'

This account was then used to setup company blogs at the likes of wordpress.com etc

You then used this same email address and password combination to make payment at a competitor's website for supplies I had requested you order.

2) that you allegedly falsified elements of your resume when originally applying for the role

The second issue I recall you advised me of this yourself a little while back and it has been troubling me for some time. I need to know exactly what

was falsified on your resume and what is accurate. To assist with this investigation you can provide references or accompanying documentation to

confirm the previous employment and credentials you claimed in your resume. Alternatively the other option is for you to sign a disclosure permitting us have an independent company provide a background check in

the US to confirm the veracity of your resume.

These issues which have come to light are very serious in nature and if proven they could amount to serious misconduct, which could result in dismissal. It is imperative that the company thoroughly investigate these matters.

I propose scheduling a disciplinary meeting to discuss the above alleged serious misconduct, and also the earlier allegation giving rise to the meeting scheduled for today. I would suggest Monday 18 June and would appreciate your legal counsel if you are going to engage one, or otherwise you, advising availability on that date.

Given the seriousness of the above, as per our phone discussion earlier with you proposing suspension, I have considered your views and believe suspension to be the appropriate course of action.

In the meantime, **you are now suspended and are to leave the office immediately**. All company property is to be left in the office, including the laptop computer and charger, all papers in your possession, the company credit card, and also the login and password to access the company credit card through citibank online.

Tony

[48] After receiving the above letter, Ms Nelson left work that day and did not return.

The dismissal

[49] Ms Nelson then consulted a lawyer, Mr Acland, who became her counsel in the case. On 18 June 2012 Mr Acland emailed Mr Katavich confirming that he had received instructions to assist Ms Nelson in relation to the proposed disciplinary meeting. His email then stated:

...

To assist me in preparing for the disciplinary meeting can you please provide me with copies of the following:

- Details/copies of information (emails/witness statements etc) on which you base your concern about Mia's alleged neo-Nazi views

and her having brought those views into the workplace?; and

- Mia denies any falsification of her resume. Can you please provide me with detail on your specific concerns which you say may be serious misconduct?

Once I have received this information and spoken about it with Mia I will be in a position to attend and meaningfully engage in a disciplinary meeting. I can meet at short notice (say 24 hours) once that information is made available.

Finally, given that we now act for Mia can you please correspond with us directly and not with Mia.

Regards

[50] Ms Nelson told the Court that Mr Katavich responded to Mr Acland's request by enclosing a copy of one email dated 23 April 2012 which was part of an exchange of emails that day between herself and Mr Katavich. It was on the strength of that email that Mr Katavich alleged that Ms Nelson harboured Nazi views. Ms Nelson was able to produce the complete email exchange she had with Mr Katavich at the time which confirmed that he had knowledge that she had created the "hitlerhatesbabies@gmail.com" email address and "ilovehitler" password and in his response email he had stated that "you need to use a work friendly password in future". Ms Nelson made the point that the email exchange took place on

23 April 2012 but it had not been raised with her as a disciplinary problem until

15 June 2012.

[51] Mr Katavich provided no additional information in relation to the alleged falsification of Ms Nelson's resume other than what he had stated in his email of

15 June 2012, set out in [47] above.

[52] The disciplinary meeting was held on 25 June 2012 at the office of the law firm acting for the defendants at the time. Those in attendance were Ms Nelson, her lawyer, Mr Acland, and her partner Mr Dean. Mr Ross McKechnie was the lawyer representing the defendants. Mr Katavich did not attend the meeting personally but he was connected by telephone speaker-phone. To Mr Acland's knowledge, Mr Katavich recorded what transpired at the meeting and in his evidence Mr Katavich referred to a transcript of part of the recording.

[53] Ms Nelson said in evidence:

59. The meeting ended without me really understanding for what purpose Mr Katavich had wanted it. I recall he did not accept what I said about the email address and he did not ask about my resume other than to require me to sign a form giving my consent for him to do background searches on me in the United States (which I refused).

[54] The following day, 26 June 2012, Mr Katavich sent a letter to Ms Nelson terminating her employment. The letter

commenced:

Dear Mia

I have heard and considered at length of your responses to the allegations of serious misconduct discussed during the disciplinary meeting that occurred yesterday.

Haldeman LLC considers the issue serious enough to justify termination of your employment contract, and this occurred effective from 8am on

26 June 2012.

...

[55] Ms Nelson returned to Invercargill and obtained a position working for the Invercargill City Council. She commenced working for the council on 25 July 2012.

Legal principles

[56] Whether or not a dismissal or other action is justifiable must be determined in every case, on an objective basis, by applying the test in subs (2) of [s 103A](#) of the [Employment Relations Act 2000](#) (the Act) which provides:

103A Test of justification

...

(2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

(3) In applying the test in subsection (2), the Authority or the Court must consider–

(a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and

(b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and

(c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and

(d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

...

[57] In addition to those factors, the Court may, under subs (4) consider other factors it thinks appropriate. Subsection (5) provides that the Court must not determine a dismissal or an action to be unjustifiable solely because of defects in the process followed by the employer if those defects were minor and did not result in the employee being treated unfairly.

[58] There is also an important obligation on parties to an employment relationship imposed under [s 4](#) of the Act which requires them to deal with each other in good faith. They must not do anything either directly or indirectly to mislead or deceive each other or that is likely to mislead or deceive each other. Relevantly, that provision states:

4. Parties to an employment relationship to deal with each other in good faith

(1) The parties to an employment relationship specified in subsection (2)–

(a) must deal with each other in good faith; and

(b) without limiting paragraph (a), must not, whether directly or indirectly, do anything–

(i) to mislead or deceive each other; or

(ii) that is likely to mislead or deceive each other. (1A) The duty of good faith in subsection (1)–

(a) is wider in scope than the implied mutual obligations of trust and confidence; and

(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and

(c) without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of the employment of 1 or more of his or her employees to provide to the employees affected–

(i) access to information, relevant to the continuation of the employees' employment, about the decision; and

(ii) an opportunity to comment on the information to their employer before the decision is made.

Discussion

The employer

[59] Before turning to consider the alleged misconduct allegations, I need to determine who, in fact, was Ms Nelson's employer at the time the claimed grievances arose. Mr Acland properly conceded that when an employee puts the identity of the employer in issue, as is the position in this case, then the onus of proving the identity of the employer rests upon the employee. [Section 5](#) of the Act states:

5 Interpretation

...

employer means a person employing any employee or employees;

and includes a person engaging or employing a home worker.

[60] This important preliminary matter can be disposed of in relatively short order. It is a factual issue. In his well reasoned determination, the Authority Member considered the various submissions that had been advanced by Mr Acland on the point, concluding that there was nothing to prevent an unregistered overseas company being an employer and he could see no cogent evidence that convinced him that Mr Katavich was ever Ms Nelson's employer personally. I respectfully agree with that analysis of the position.

[61] When Ms Nelson applied for the job that had been advertised on Trade Me, she received the email response referred to in [12] above from Mr Katavich's wife

confirming that the employer was the company Facts and Information and the individual employment agreement she signed later that same month defined the employer as, "Facts and Information LLC". Although the matter was not canvassed in evidence, I suspect that, as an American citizen, Ms Nelson would not have been put off in any way by the use of the letters "LLC" in the company's title which is a USA specific form for identifying a limited liability company.

[62] One of the documents produced was an email exchange between Ms Nelson and Mr Katavich which took place on 16 June 2011, some 10 days after she had commenced work. Mr Katavich had written to Ms Nelson sending her the form to complete if she wanted to "opt out of Kiwisaver". Ms Nelson responded "And should I put "Facts & Information LLC" as the Employer, or "Haldeman LLC"?" Mr Katavich responded, "Haldeman LLC as employer – IRD no is (number stated)". The background to this exchange was not canvassed in evidence but it would seem that early on in her employment Ms Nelson was made aware that Haldeman LLC was taking over from Facts and Information LLC and she obviously had no objection to this development. In all events, Ms Nelson could have been under no illusion that her employer was not Mr Katavich personally.

[63] Mr Acland made an alternative submission, based on the plaintiff's pleadings, that if Mr Katavich was not Ms Nelson's employer then "her employer was a New Zealand resident trust called Plantation Trust which traded as Haldeman LLC". The Authority expressed some reservations about this proposition on the basis that it had not had access to the deed of trust relating to the Plantation Trust. The deed of trust dated 31 August 2010, naming Mr Katavich as "the Settler" was produced at this hearing. The IRD number referred to in [62] above was, in fact, the IRD number for the Plantation Trust. Without complicating this judgment unnecessarily by going into further details in relation to the corporate structure involved, and the reasons behind it, I accept this alternative claim advanced on behalf of Ms Nelson. For his part, Mr Katavich agreed that Ms Nelson's employer could properly be described as the Plantation Trust trading as Haldeman LLC. If it becomes necessary, leave is granted for an application to be made to the Court for a separate order to this effect.

The demotion

[64] Ms Nelson claims that on Monday, 21 May 2012, following the staff barbecue on the Friday night, her role in the Nelson office was changed unilaterally to her disadvantage and that this action on the part of her employer was unjustifiable. Details of the changes made and the way in which they disadvantaged Ms Nelson are covered in [33] to [40] above.

[65] Mr Katavich claimed that Ms Nelson had never been appointed manager of the Nelson office and, therefore, there had been no demotion. He also claimed that the removal of the personal items and rearrangement of the office furniture which Ms Nelson described in [33] above, were actions he had taken to accommodate a new staff member, Claudia, who was starting work on the Monday morning. He said that the furniture was rearranged "so that the other staff working could keep an eye on the new person's work to ensure they remain on task.

[66] I found that explanation completely unconvincing. The evidence given by Ms Hines, referred to in [27] above, coupled with Ms Nelson's evidence and the statements made by Mr Katavich in his own emails on the subject leave no room for doubt that Ms Nelson was disadvantaged in her employment by having her managerial or supervisory duties taken away from her as a direct result of her attendance at Ms Koessler's farewell barbecue.

[67] The issue then becomes whether the employer's actions in this regard were justified in terms of the statutory test of justification. At the hearing, Mr Katavich did not attempt to justify his actions but his defence was presented on the basis of the claims made in [65] above, namely that Ms Nelson simply had not been demoted in any way. I have rejected that defence. It would appear, however, that the justification advanced at the time for the employer's actions was that set out in Mr Katavich's email of Monday, 21 May 2012, referred to in [36] above, namely, that Ms Nelson had not told him she was going to the house of a disgruntled former employee and he considered that to be a major error of judgment.

[68] The evidence was that Ms Nelson had been working at the Stoke office for approximately three weeks only at the time of the barbecue. She had nothing to do

with organising the barbecue or the venue. It was a farewell barbecue for another staff member, Ms Koessler, and it was Ms Koessler who had arranged for it to be held at Laura's house because Laura had a spa pool or "hot tub". It was a private function held outside work hours. There was no evidence that Ms Nelson had any knowledge that Laura had left the firm on bad terms. I accept Ms Nelson's evidence that in deciding to attend the barbecue, she saw it as an opportunity to socialise with and get to know the Stoke office staff.

[69] It is questionable how far an employer can legitimately become involved in an employee's activities outside the workplace without infringing upon the employee's privacy rights. The matter was touched upon by Judge Couch in *Salt v Fell*:⁴

... The extent to which an employee's activities outside of working hours and outside the workplace may be taken into account by the employer was discussed by the Court of Appeal in *Smith v Christchurch Press Co Limited* [2000] NZCA 341; [2000] 1 ERNZ 624; [2001] 1 NZLR 407 (CA). At para 25 the Court noted a submission that the categories of cases in which the employer can be said to have a legitimate interest in conduct outside the workplace must be very limited in the interests of restricting intrusion into employees' private lives and said:

That is fair comment, but we are not persuaded of any need for categories of conduct as suggested. Such situations can be so variable. Nevertheless there must be a clear relationship between the conduct and the employment. It is not so much a question of where the conduct occurs but rather its impact or potential impact on the employer's business, whether that is because the business may be damaged in some way; because the conduct is incompatible with the proper discharge of the employees' duties; because it impacts upon the employer's obligations to other employees or for any reason it undermines the trust and confidence necessary between employer and employee.

[70] Having regard to this authoritative statement; the statutory test of justification and the facts surrounding the barbecue, as I have found them to be, I simply do not consider that a fair and reasonable employer could have taken the retaliatory action Mr Katavich took against Ms Nelson because of her attendance at that function.

[71] It transpired that subsequently Mr Katavich was told that the ongoing litigation with TV3 was one of the matters that had been discussed by staff at the

barbecue and Mr Katavich said in evidence that "recently" he found out that

⁴ *Salt v Fell* [2006] NZEmpC 49; [2006] ERNZ 449 at [56].

Ms Nelson had made offensive comments about himself and his wife suggesting to other staff present that he was secretly gay and his wife Heather was a "trophy wife". When that proposition was put to Ms Nelson in evidence, she frankly replied: "I probably did. We did joke about these things pretty regularly. I would not deny that." When Mr Katavich asked his own witness, Ms Hines, whether there had ever been any discussion in the office about those matters, Ms Hines replied, "Yes, there were jokes made about that. I won't lie about that."

[72] I accept that Mr Katavich found those particular remarks offensive and I accept that, as a general proposition, there may be circumstances where statements of that ilk, made by a senior employee away from the workplace, could be seen as undermining the statutory duty of good faith in an employment relationship. Mr Katavich did not know about those particular remarks, however, at the time he removed Ms Nelson's managerial responsibilities; and they cannot therefore be raised subsequently in order to seek to justify his actions.

[73] Quite apart from the substantive aspects of this particular grievance, there were serious procedural defects in the way Mr Katavich went about disciplining Ms Nelson following her attendance at the barbecue. First, before he had even spoken to her, he demeaned Ms Nelson on the Monday morning by turning her desk to face the wall and making the other changes to her office furniture which she gave evidence about. Then he required her to go and see him at the remote office without her having any inkling as to why she had been given this instruction. The email referred to in [36] above which Mr Katavich sent Ms Nelson setting out his concerns about her attendance at the barbecue the previous Friday evening should have been sent to Ms Nelson before the interview so that she had a reasonable opportunity to consider Mr Katavich's concerns and respond in a timely way as envisaged in [s 103A\(3\)\(c\)](#) of the Act.

[74] For the above reasons, I uphold Ms Nelson's disadvantage grievance.

The dismissal

[75] There were three claims of serious misconduct levelled at Ms Nelson which ultimately culminated in her dismissal.

The work rules

[76] First, was the allegation made by Mr Katavich in his letter of 14 June 2012, referred to in [45] above, that she had failed to comply with cl 5.1 of the company policy. She was summoned to attend a disciplinary meeting at 8.30 am the following morning. The alleged misconduct was described in these terms:

...

Specifically the allegation concerns apparent failure to comply with the following company policy on the afternoon of 13 June 2012:

5.1 Your place of work is the desk at which the phone bearing your name sits atop. Unless it is your break time, you should be sitting at your own desk performing your duties for the company. No-one except Kate should be in anyone else's office unless it is break time for everyone in that office. At all other times, if you need to communicate use the phone instead of strolling over.

This allegation requires an explanation from you. You will be given every opportunity to put your side and whatever you say will be given due consideration before any decision is made.

This matter is serious and could result in disciplinary action being taken against you.

[77] As noted above, the company policy referred to was not part of Ms Nelson's employment agreement. It had been introduced unilaterally by Mr Katavich on

28 May 2012 and Ms Nelson felt that cl 5.1 was deliberately directed at herself. All that apart, the letter of 14 June 2012 did not specify in what respects, Ms Nelson was alleged to have committed the serious act of misconduct.

[78] When Ms Nelson responded to Mr Katavich pointing out that she would be unable to attend the disciplinary meeting the following morning as she had decided to seek legal advice, she heard nothing more from Mr Katavich regarding that particular complaint. As Mr Acland submitted, once Mr Katavich learned that Ms Nelson was obtaining legal advice on the matter, he dropped the complaint regarding the work rules altogether and came up with two other new allegations of

alleged serious misconduct on Ms Nelson's part which needed investigation. Mr Acland submitted that Mr Katavich's actions in this regard were all consistent with his having predetermined after the barbecue incident that Ms Nelson's employment had to be terminated.

[79] The fact that the alleged misconduct relating to the work rules was not investigated or taken any further by Mr Katavich, either at the disciplinary meeting or in the course of the litigation which followed, does lend strong support to Mr Acland's submissions in this regard and calls into question Mr Katavich's good faith over the whole process. If the alleged work-rule incident was not taken any further, Ms Nelson was entitled to ask rhetorically why it was raised in the first place.

The curriculum vitae

[80] The letter from Mr Katavich setting out the allegation of serious misconduct in relation to Ms Nelson's resume appears at [47] above. Relevantly, the letter states:

...

2) that you allegedly falsified elements of your resume when originally applying for the role

The second issue I recall you advised me of this yourself a little while back and it has been troubling me for some time. I need to know exactly what

was falsified on your resume and what is accurate. To assist with this investigation you can provide references or

accompanying documentation to

confirm the previous employment and credentials you claimed in your resume. Alternatively the other option is for you to sign a disclosure

permitting us [to] have an independent company provide a background

check in the US to confirm the veracity of your resume.

[81] The allegation did not specify any false information which was said to be contained in Ms Nelson's curriculum vitae and the short explanation as to why such details were not provided is that Mr Katavich had no evidence of any such falsehood. The background to the allegation was contained in the following passage in Mr Katavich's evidence:

41. Shortly after she began working in the Nelson office I remember Ms Nelson and I were walking from the front of the office towards the back and we were discussing customer resumes. As we walked she ventured in passing that half of her resume was made up. At the time I

thought it was maybe a stupid thing to say for the sake of it and I

didn't ask anything of it.

[82] In her evidence, Ms Nelson vehemently denied having told Mr Katavich that she had falsified any elements of her resume. Her account of the office discussion Mr Katavich referred to is recorded in the following passage from the transcript of the disciplinary meeting on 25 July 2012:

[Mr Katavich]: Well can I interject here. Mia do you deny that you told me you had falsified elements of your resume

[Ms Nelson]: I do deny that. I said we were having an exact conversation about new employees and you said that 'Oh a lot of applicants [unintelligible] don't write what is actually, don't do what is actually on their resume, they just make it'. And I said: 'Yeah a lot of people do that, they do exaggerate a bit. When I was younger I used to say for example, that rather than having a minimal experience with Microsoft word I might just say that I am excellent with Microsoft word'. They exaggerate things a bit. But that was never an intention to say that my resume that I had given you was falsified in any way.

[83] The same passage from the transcript taken at the disciplinary meeting records that Mr Katavich's lawyer asked for consent to retain a personal verification company to make enquiries in the USA about the accuracy of Ms Nelson's CV but Mr Acland was not prepared to give his consent. It transpired that the issue which arose later in relation to Ms Nelson's resume was concerned with a reference she had made regarding employment with "John Casablanca".

[84] The resume Ms Nelson had presented to Facts and Information dated

30 April 2011 was produced in evidence. The covering letter commenced:

I write to express interest in your available research position. I would like to offer my skills as a Concierge at the Tacoma General Hospital and an environmental restoration worker through the Washington Conservation Corps in Washington State in the United States of America. I also worked voluntarily at New Avenues for Youth (NAFY) in Oregon and at the Tacoma Art Museum in Washington. These positions focused on group coordination, planning, and learning programs. In these positions I received experience in:

- Environmental restoration (i.e. water quality management, research).
- Therapeutic group coordination (i.e. anger management, drug counselling).
- Event planning (i.e. art shows, holiday celebrations, fundraising).
- Cataloguing (i.e. billing, marketing, security, filing, faxing, phone lines).
- Personal assistance (i.e. scheduling, escorting, information, typing).

I also have qualifications that may be helpful in this position such as:

- Associates of Arts: Emphasis on Psychology (Graduation 2012).
- Computer literacy (i.e. Word programs, 65wpm, APA standard formatting)

...

[85] The one-page accompanying resume was compiled under five headings, namely: "Objective"; "Education"; "Qualifications"; "Employment"; "Volunteer Work". The relevant entries under Employment stated:

Employment

HealthCare Parking Systems of America

Concierge

Greeting, Directing, Mobility Assistance, Patient and Visitor

Relations, First Aid.

April '10 - August '10

John Casablanca

Photography Assistant

Equipment Operation, Cataloguing, Data Entry, Scheduling Model

Coordination.

February '10 - August '10

...

Volunteer Work

Tacoma Art Museum

Art Resource Centre Librarian

Cataloguing, Community Interaction and Education, Records, Event coordination.

May '09 - August '10

[86] It can readily be seen from the dates provided that Ms Nelson was engaged in three areas of work during the same time period.

[87] It appears that sometime after Ms Nelson's dismissal, Mr Katavich instructed an investigator in Washington State who made enquiries and ascertained that Ms Nelson was never an employee at John Casablanca. An affidavit from the investigator dated 28 March 2013 was produced. The investigator also noted that the name of the modelling agency had been misspelt by Ms Nelson as "Casablanca" instead of "Casablancas". Affidavits dated 20 March 2013 and 9 October 2013 to the

same effect from Ms Paula Kelly, a Talent Scout and former Vice President of

Casablancas, before it closed in 2013, were also produced.

[88] In evidence, Ms Nelson told the Court that while she was living in Seattle between February and August 2010 she worked as a photography assistant. On Sundays she worked for Mr Jackson Powell and in that capacity she took photographs for the modelling agency, John Casablancas. The only photography work she did for Mr Powell was work for John Casablancas.

[89] One of the documents produced was an email which Ms Nelson sent to

Mr Jackson Powell on 3 April 2013 which read:

Hello Jackson,

I'm not sure if you remember me, but I worked for you on Sundays at John Casablancas in Renton back in 2010 as your assistant before moving to New Zealand. I'm trying to provide references for my previous employment, and was just wondering if you could verify that I worked for you back then? You don't have to provide a letter of recommendation if you don't want to, just a verification that I did work for you would be helpful.

I hope all is going well for you and that you found yourself another handy assistant :)

[90] Mr Jackson Powell responded by email on the same day:

Hello Mia, of course I remember you! You [are] the reason why I have given up looking for another assistant, no one has come close to the consistent quality of your work and how well you were able to work with clients. Needless to say if you ever find yourself back in the N.W. on this continent love to work with you again. I wouldn't hesitate to write a letter of recommendation, please provide a time frame when we worked together. Hope all is well with you,
Sincerely
Jackson Powell

[91] I accept Ms Nelson's evidence relating to her involvement with

John Casablancas. It was also confirmed in oral evidence given by her former partner Mr Dean.

[92] There can be no question that an employee who falsifies his or her resume in a material respect so that it becomes a contributing factor in the employee obtaining the position applied for runs the very real risk of having their employment summarily terminated for a serious breach of the fundamental duty of good faith prescribed in [s 4](#) of the Act. Whether some lesser embellishment of a resume is serious enough in any given case to warrant such a drastic consequence will depend upon the circumstances.

[93] In the present case, Ms Nelson was asked in cross-examination by Mr Katavich why, in her resume, she had not given "the long winded explanation" she gave in evidence, namely, that she worked as a photography assistant for Mr Powell who took photographs for John Casablancas. Ms Nelson replied:

A. I can't provide all of that in a resume, the point of a resume is to be succinct and give direct and clear examples of kind of what you did as an employee or showing your skills and if I were to write everything long winded it wouldn't be a very good resume in my opinion. But the reason I do it this way is so that we can discuss these things and someone can say, 'Can you tell me what your role was as Game Staff or Department of Ecology and give me clarification on those roles,' and had you done that, I most certainly would've clarified more as much as you would have wanted.

[94] There are two important aspects to the claim that Ms Nelson provided false information in her resume in relation to her photography work for John Casablancas. First, what was stated in the resume was not, and Mr Katavich did not claim it to be, a contributing factor in her being awarded the job she had applied for. Photography was not a prerequisite for the position. Indeed, photography had absolutely no relevance to the "Writer/Researcher" role Ms Nelson was applying for - this was confirmed in evidence from Ms Hines. Secondly, and more importantly, under the statutory test of justification, a dismissal can only be justified on the basis of what was known to the employer at the time the termination decision was made. There was no evidence that Mr Katavich had any background information relating to Ms Nelson's work for John Casablancas until many months after Ms Nelson's dismissal.

[95] For these reasons I have concluded that, in so far as the dismissal decision was based on Ms Nelson's alleged serious misconduct in falsifying her resume, Haldeman's actions were not those which a fair and reasonable employer could have taken in all the circumstances at the time and the dismissal, therefore, did not meet the statutory test of justification.

Neo-Nazi views

[96] The other allegation of serious misconduct which Mr Katavich raised in his email of 15 June 2012 convening the disciplinary meeting was the allegation that Ms Nelson harboured neo-Nazi views and brought those into the workplace, thereby damaging the company's reputation. When Mr Acland asked for details of this allegation, Mr Katavich forwarded him the one email dated 23 April 2012 from Ms Nelson to Mr Katavich using the username "hitlerhatesbabies@gmail.com" and the password "ilovehitler". It transpired, however, that was only one of several emails exchanged between Ms Nelson and Mr Katavich on the same day relating to that subject matter.

[97] Before proceeding, it is necessary to understand more about Ms Nelson's role with Haldeman.

[98] The Court heard considerable evidence about how websites can be manipulated in order to achieve a desired result. Website rankings can be boosted, for example, through a process sometimes referred to as "link farming" which, as I understand it, involves linking other websites to manipulate the way in which Google's ranking-algorithm works. In the same way, negative comments can be controlled by artificially lowering the Google search-result ranking of the website containing the undesirable critical information. There are a number of ways in which such an outcome can be achieved. One example given in evidence was by writing nonsense articles and blogs containing key words, which the target website also contained.

As Ms Nelson explained it, using, as an example, the target website, "australia-mining scam":

97. ... Because our nonsense blogs had a greater link endorsement if somebody Google searched the words 'australia mining scam' all they would get was a search result list of our nonsense blogs and not the website containing the critical comment.

[99] Another method was by using a USA law called the Digital Millennium Copyright Act (DMCA). This process involves posting on the target website written content and then making a DMCA request to Google to have the alleged breach of copyright material removed. More often than not, in the face of such a request, the target website would take down the whole web-page containing the critical

comment. Other examples were also provided such as using an anonymous email address to post on the target website personal information, such as a bank account or credit card number, and then complain to the website's moderator that the information was personal and violated the rules of the website. The website would then have to remove the thread of content or shut down the whole page which would achieve the goal of removing the criticism. Ms Nelson was shown all these methods of manipulating websites by Mr Katavich, along with others such as "writing fake lawyers' letters to threaten people with legal action unless they removed content that was critical of Mr Katavich or his business."

[100] The evidence was that following what Mr Katavich referred to as the serious defamatory attack on him by TV3, which followed on from a program that had aired on the Channel 9 Network in Australia, the company began to receive a significant increase in complaints from disgruntled consumers. One of Ms Nelson's jobs was to minimise the effect on the company's operations of any such negative Internet comment. She told the Court:

92. My day-to-day role was to try and control what the internet said about Mr Katavich and his businesses so that: 1) his websites would rank highly on Google's search result pages and; 2) negative or critical comment against Mr Katavich and his websites would not be seen on the Internet.

[101] In relation to the email in question containing Ms Nelson's alleged "neo-Nazi views", Ms Nelson told the Court that this was part of an attempt by Mr Katavich to manipulate Google search results. She said that there was a competitor who was ranking more highly in Google results than his company and he was intent on decreasing the ranking of the competitor's website. The way he sought to do that was by purchasing a product from the competitor which would give him access to the competitor's website. Once he obtained such access he could then manipulate the website to decrease its Google ranking but, throughout this process, it was important that Haldeman LLC and Mr Katavich remain anonymous.

[102] Against that background, Ms Nelson explained the exchange of emails on

23 April 2012. First, at 2.43 pm, Mr Katavich emailed Ms Nelson: "can you forward through the report muck from (name of competitor's website). Ms Nelson

responded: "Report muck? Not sure what you mean ...". Mr Katavich replied: "e-book we bought from him for \$35 should be available to download from stupid members section". At that point, Ms Nelson sent Mr Katavich the email with the "ilovehitler" password containing the email address that had been used to become a member of the competitor's website. Then, at 4.45 pm, Mr Katavich sent a rather lengthy email to Ms Nelson telling her how to lower the competitor's rankings. Ms Nelson told the Court that, "it was a star ranking and he wanted to put in a bunch of rankings that were negative, that way it would lower the website on Google."

[103] In his 4.45 pm email to Ms Nelson, Mr Katavich said:

this is how we balls up (competitor's website)

in firefox go to tools / options / advanced / network click on settings

tick 'manual proxy settings' set to

access usproxy tv port:80

hit OK

next close firefox, open it again and go to <http://whatismyipaddress.com/>

you should be prompted for a username password:

use tony@themulcher.co.nz

codooloness

it should come up showing a US IS / region / country. if it shows NZ go no further

if US you are now more anonymous and he will think some douchebag in the states was musing with him

now go to:

<http://workontherigs.com/download/7248639/?>

[item=1&cbreceipt=Ry95FELS&time=1335135376&cbpop=447347F2&cbaffi=O&cname=Mia+Marie+Nelson&cemail=hitlerhatesbabies%](http://workontherigs.com/download/7248639/?item=1&cbreceipt=Ry95FELS&time=1335135376&cbpop=447347F2&cbaffi=O&cname=Mia+Marie+Nelson&cemail=hitlerhatesbabies%40gmail.com&ccountry=US&czip=68136)

[40gmail.com&ccountry=US&czip=68136](http://workontherigs.com/download/7248639/?item=1&cbreceipt=Ry95FELS&time=1335135376&cbpop=447347F2&cbaffi=O&cname=Mia+Marie+Nelson&cemail=hitlerhatesbabies%40gmail.com&ccountry=US&czip=68136)

Username:

john smith

Password: ilovehitler

(you need to use a work friendly password in future)

this is where we need tens of email addresses, hopefully ones setup previously and not tied to the company?

so register again using different email addresses on his site using that same activation code and do the email verification thing

then login and go to the homepage and rank him 1 repeat until his rating is about 2

[104] I have set out Mr Katavich's email in full because it puts the lie to the allegation that Ms Nelson had committed an act of serious misconduct and damaged the company's reputation by her reference to Hitler. There was no expression of shock or outrage when Mr Katavich learned that Ms Nelson had created the "ilovehitler" password. On the contrary, Mr Katavich instructed Ms Nelson to use the password for the exercise she was required to undertake, simply making the observation that in future she needed to use a work friendly password.

[105] The evidence was that this email exchange had not been made available to Mr Acland by Mr Katavich prior to the disciplinary meeting but it was available to the Court only because Ms Nelson had taken a copy of her email exchanges with Mr Katavich when she left the firm. Against that background, in his closing submissions, Mr Acland submitted that the allegation of serious misconduct in relation to this matter was a "manipulation of facts", in that "at all material times, Ms Nelson, who is 21 years of age, was acting under Mr Katavich's instructions". Mr Acland submitted that Mr Katavich knew everything about the Hitler address and password back in April 2012 but "he needed to pretend to others at the time of the dismissal that it had only recently come to his knowledge and he pretended to be shocked by it."

[106] I respectfully agree with those submissions. Ms Nelson impressed me as an intelligent young woman and I have no difficulty in accepting her evidence and her assertion that she did not harbour neo-Nazi views as claimed. In the same way that he manipulated competitors' websites, Mr Katavich seemed to have no scruples about manipulating the facts of this case to create a false and misleading ground for

Ms Nelson's dismissal. I have little difficulty in concluding that the employer's actions in this regard were not the actions a fair and reasonable employer could have taken in all the circumstances at the time and for that reason, Ms Nelson's dismissal was unjustified.

Remedies

[107] Turning to remedies, Mr Acland submitted that as the Authority's awards in respect of arrears of wages, holiday pay and lost wages have been paid to Ms Nelson, the only issue for the Court to determine is the claim for compensation on account of humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act. For the record, however, as this is a de novo challenge, I confirm and agree with the findings and awards made by the Authority in respect of lost wages and holiday pay. Also for the record, I reject the rather confusing counterclaims made by the defendants.

[108] For hurt and humiliation, the Authority awarded Ms Nelson \$2,000 in respect of the unjustified demotion and \$15,000 in respect of the dismissal. However, the

\$15,000 was split into \$7,500 for the dismissal itself and \$7,500 on account of post-dismissal actions against Ms Nelson. In relation to the award of \$7,500 for the dismissal, the Authority stated:5

Ms Nelson presented as a level headed and determined young woman, and I got the impression that her distress was, to a degree, alleviated by her sense of injustice at her treatment. For those reasons I do not believe that a significant sum should be awarded, especially as Ms Nelson had not been employed by the respondent for particularly long.

[109] With respect to the Authority Member, I had the opportunity to observe Ms Nelson's demeanour in the witness box over a number of days and I did not detect that her distress over the injustice she had suffered at the hands of Mr Katavich had been diminished in any way. On the contrary it seemed to me that, if anything, her sense of hurt and injury to feelings was made more pronounced by the way in which the defendants had conducted their case, in particular, the way in which they

continued to deny any wrongdoing and sought to justify their

post-dismissal conduct. For the record, as this Court noted in *Mega Wreckers Ltd v Taafuli*, the level of compensation payable is not dependent upon the length of service but upon the way in which the employer's unjustified actions or dismissal have impacted upon the employee.⁶

[110] Ms Nelson seeks an increase in the award for hurt and humiliation from

\$15,000 to \$30,000. I accept that Ms Nelson suffered significant hurt and humiliation over the way in which her demotion and subsequent dismissal were handled. She had rather reluctantly left her partner in Invercargill and relocated to Nelson. She was still getting to know the Nelson staff. After the barbecue all the furnishings were removed from her office, her desk was turned to face the wall and, as Mr Acland accurately expressed it, she was placed "in a dunce hat corner". In this way she was made to feel totally humiliated in front of the staff she was supposed to be managing.

[111] There then followed the issuance by Mr Katavich of the new work rules which did not comply with Ms Nelson's employment agreement and were directed at further humiliating her in the eyes of other staff. She was unjustifiably accused of serious misconduct in relation to those rules, but that claim was not pursued at the disciplinary meeting because Mr Katavich was astute enough to realise that the allegations he had made simply would not stand up to scrutiny once Ms Nelson had indicated that she was bringing a solicitor to the disciplinary meeting.

[112] Contrary to all notions of good faith, Mr Katavich then set about creating two other fictitious allegations of serious misconduct which he also knew were unfounded. He was not interested in hearing or considering Ms Nelson's response to the allegations. He treated her with disdain by not even turning up to the disciplinary meeting. He proceeded to terminate Ms Nelson's employment but in truth that decision had been predetermined following the barbecue. His subsequent actions resulting in Ms Nelson's dismissal were played out as a farce.

[113] Ms Nelson's evidence about the significant distress and humiliation she sustained throughout the disciplinary and dismissal process was convincing and fully corroborated by the evidence of her former partner, Mr Dean.

[114] I will not prolong this judgment by going into details of the voluminous additional evidence presented to the Court in support of Ms Nelson's claim for an increase in the compensation award as a result of Mr Katavich's post dismissal conduct. Instead I will attempt to summarise that evidence based on the helpful breakdown provided by Mr Acland in his closing submissions. There can be no question that the Court is entitled to increase an award for non-economic loss to reflect serious consequences to an employee of an employer's post-dismissal

conduct.⁷ Mr Acland detailed the following matters:

(a) *The unsolicited reference:*

After her dismissal, Ms Nelson moved back to Invercargill and obtained employment with the Invercargill City Council. Ms Nelson had told the recruitment agency about her ongoing case against Mr Katavich but, for obvious reasons, she did not use him as a reference. She commenced working for the Council on 25 July 2012. On 31 August 2012, Ms Nelson received an email from Human Resources enclosing a 'reference', dated 2 August 2012, that had been sent to the Human Resources website address from Mr Katavich. The HR officer confirmed that the Council had not requested any reference from Mr Katavich. Mr Acland correctly described the so-called reference as "highly offensive". It said that Ms Nelson's "work approach can become very destructive in an office environment". It stated that Ms Nelson had been dismissed "following serious issues of serious misconduct, including:"

1. The use of Nazi language through communications with the public. One atrocious example of this was 'I love hitler'.
- 2) Making unauthorised access of, and interfering with a company bank account.
3. Allegedly falsifying elements of her resume when she originally applied for the role with the company.

⁷ See *Strachan v Moodie t/a Moodie & Co* [2012] NZEmpC 95, (2012) NZELR 216, at [129].

I am satisfied that the 'reference' was completely unsolicited. It was designed by Mr Katavich to cause Ms Nelson maximum hurt and humiliation in her new job. The allegations relating to the company's bank account had never been raised before.

(b) *The Disputes Tribunal claim:*

On 6 August 2012, Mr Katavich filed a claim against Ms Nelson in the Disputes Tribunal at the Nelson District Court for recovery of a "pro-rata deduction" of the \$10,000 encouragement payment paid to her to relocate from Invercargill to Nelson. I have no doubt that service of the Disputes Tribunal proceedings on Ms Nelson at her workplace at the Invercargill City Council

would have been deliberately staged to again cause her maximum embarrassment and humiliation in her new work environment. In any event, as Mr Acland correctly submitted, the matter was clearly an employment matter.

(c) The private investigator:

At the end of August 2012, Mr Katavich hired a private investigator to travel to Invercargill and threaten Ms Nelson and Mr Dean to drop the personal grievance or Mr Dean's company would be sued in the High Court. A police job-sheet was produced confirming that Mr Dean had made a complaint to the Invercargill Police about harassment by the private investigator who was acting on behalf of Mr Katavich.

(d) High Court proceedings:

On 29 October 2012, Mr Katavich and Haldeman, through their then solicitor, issued proceedings in the High Court against Ms Nelson, Mr Dean and a company owned by Mr Dean, making claims for breaches of the [Fair Trading Act 1986](#) and claims of injurious falsehood and defamation. The claim was based on what Mr Acland correctly described as "baseless allegations" relating to various emails which Ms Nelson had produced as part of her job with Haldeman, including the "[hitlerhatesbabies@gmail](#)" email. The plaintiffs sought against

Ms Nelson a total of \$800,000 in general and special damages; \$60,000 in exemplary damages along with an injunction. The proceedings were served on Ms Nelson two days before the Authority mediation was scheduled to take place. After the proceedings had been running in the High Court for some two years, it was discontinued by the plaintiffs.

(e) The Authority investigation:

The private investigator who had travelled to Invercargill on Mr Katavich's behalf and harassed Ms Nelson and Mr Dean appeared at the Authority mediation on behalf of the defendants and the Authority investigation meeting while Mr Katavich failed to attend.

(f) Legal aid:

A letter was produced from a Grants Officer at the Ministry of Justice to Haldeman dated 3 July 2013 confirming that a complaint made by Haldeman about Ms Nelson's eligibility for legal aid purposes had been investigated and "not substantiated". Ms Nelson explained in unchallenged evidence that initially she had received legal aid assistance for this proceeding and for her defence of the High Court defamation proceedings but Mr Katavich had written to the Ministry of Justice "several times" trying to get her grant of legal aid withdrawn. Ms Nelson's entitlement to legal aid ended on 18 December 2013 when she no longer met the financial threshold.

(g) Law Society:

Ms Nelson told the Court that the same private investigator who had harassed her and Mr Dean in Invercargill wrote twice to the Law Society "writing as an employee of Haldeman LLC" making complaints about her lawyer to try and stop Ms Nelson having legal representation. Mr Katavich had also written two similar letters to the Law Society.

(h) Private prosecution:

On 9 April 2013, Mr Katavich attempted to commence a private prosecution against Ms Nelson by filing information at the Nelson District Court. He alleged that Ms Nelson had obtained her position of employment by deception contrary to the [Crimes Act 1961](#). On

11 April 2013, Judge Zohrab concluded that it was inappropriate for a summons to be issued because the summary of facts failed to disclose criminal offending. Mr Katavich then filed an application in the High Court for judicial review of the Nelson District Court's decision not to issue a summons, alleging errors of fact and law and a denial of natural justice. The judicial review proceedings were discontinued and

Ms Nelson sought costs following the discontinuance.⁸ Justice Dobson awarded Ms Nelson costs and disbursements totalling \$10,391.

(i) USA investigations:

Mr Acland highlighted the way in which, after Mr Katavich had terminated her employment, he instructed private investigators to "rake over Ms Nelson's life in the USA".

(j) Bribery:

Sometime after her employment was terminated, Ms Nelson and her domestic partner, Mr Dean separated. Mr Dean gave evidence that after their relationship ended, he received an email from Mr Katavich offering him a reward for information that Ms Nelson's resume was false or about any defamatory postings she may have made on the Internet about him. The email

in question, dated 17 June 2014, was produced. It read:

Mr Dean

I understand Ms Nelson is no longer your domestic partner. I am seeking information relating to the claims made on Ms Nelson's resume and additionally details relating to postings made on the (website address given). Any information you provide which

8 This history of the litigation is taken from the judgment of Justice Dobson in the High Court in

Katavich v The District Court at Nelson [\[2015\] NZHC 956](#).

results in a Court finding that Ms Nelson's resume was false and/or that she made postings about myself on the (named website) would be deserving of a reward of \$5000 cash payable to yourself.

I am quite happy for a formal agreement to be drawn up at my cost to set in place this arrangement.

Tony Katavich

Haldeman LLC

[115] The email shows that in June 2014, two years after Ms Nelson's dismissal, Mr Katavich was still trying to find evidence to back up the false resume allegation which had formed a key part of his dismissal decision.

[116] While an award under [s 123\(1\)\(c\)\(i\)](#) of the Act is to compensate for emotional harm and not to punish a defendant, I can confidently say that rarely, if ever, has this Court been confronted with such a protracted array of post-dismissal actions and threatened actions aimed at coercing a dismissed employee into abandoning their employment claim. There can be no other explanation for Mr Katavich's sustained campaign of intimidatory conduct. His actions cannot be condoned in any way. They amount to the worst form of bullying. They were designed to cause maximum hurt and humiliation to a former employee who was seeking to pursue her statutory remedies following an unjustifiable dismissal. Mr Acland described Mr Katavich's conduct as "shocking". Ms Nelson described it in these terms:

From all of these things Mr Katavich had done, and continued to do, I feel enormous pressure to drop everything and try and get as far away from Mr Katavich as possible. I have felt constantly pressured by Mr Katavich. I am scared of him and what he is capable of.

[117] Ms Nelson seeks a total of \$30,000 as compensation under [s 123\(1\)\(c\)\(i\)](#) on account of distress, humiliation and injuries to her feelings. In all the circumstances, I am satisfied that her claim has been fully made out. If anything, the amount sought is relatively modest. Under this head of relief, I award the full amount claimed of

\$30,000.

Contribution

[118] Under [s 124](#) of the Act, where the Court determines that an employee has a personal grievance, it must in determining the nature and extent of the remedies, consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and, if those actions so require, reduce the remedies that would otherwise have been awarded accordingly.

[119] After its detailed review of the facts, the Authority found no grounds for reducing the remedies available to Ms Nelson and Mr Katavich has advanced no evidence in the hearing before me which would require the Court to reach a different conclusion. Therefore, I do not order any reduction in the remedies awarded to Ms Nelson on account of contribution.

Conclusions

[120] Ms Nelson succeeds in her claim and is awarded the amounts ordered by the Authority on account of arrears of wages, holiday pay and lost wages arising from her dismissal. She is also awarded the sum of \$30,000 as compensation under [s 123\(1\)\(c\)\(i\)](#) of the Act. Any payments already made pursuant to the Authority's determination are to be off-set against this award.

[121] The awards are made against the second defendant Haldeman LLC but, as noted in [63] above, leave is granted, if necessary, for a judgment to be entered against The Plantation Trust trading as Haldeman LLC.

[122] Ms Nelson is entitled to costs but any award of costs would need to recognise that the plaintiff did not succeed in establishing that Mr Katavich personally was her employer. If the issue of costs cannot be agreed upon, then Mr Acland is to file and serve submissions within 21 days and Mr Katavich will have 21 days from the date

of service in which to file submissions in reply.

Judgment signed on 3 May 2016 at 11.50 am

A D Ford

Judge

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