

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 208
3064173

BETWEEN CRAIG OWEN
 Applicant

AND ROCKET LAB LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Sam Houliston, counsel for the Applicant
 Elizabeth Coates and Charlotte Joy, counsel for the
 Respondent

Investigation Meeting: 10 February 2020

Submissions and Further 6 March 2020 from both parties
Information Received: 24 April 2020 from the Respondent
 18 May 2020 from the Applicant
 25 May 2020 from the Respondent

Date of Determination: 19 May 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Mr Owen's qualifications

[1] Craig Owen is an experienced engineer. He holds trade and advanced trade certificates in automotive engineering, a mechanical engineering certificate from the Auckland Institute of Technology, and a Bachelor of Engineering from the University of Auckland.

Mr Owen's previous employment

[2] In late 2016 Craig Owen, his wife and two children moved back to New Zealand after having lived for 15 years in the United Kingdom. At that time Mr Owen had around 30 years in automotive/motorsport engineering in New Zealand, Australia, South Africa and the United Kingdom. The roles Mr Owen held over this time required high performance and attention to detail.

Rocket Lab

[3] Rocket Lab Limited (Rocket Lab) is an aerospace manufacturer and a small satellite launch service provider. It has put a number of satellites in space for commercial and government small satellite providers. Rocket Lab is headquartered in California. In September 2018 Rocket Lab had approximately 80 employees based in the United States and almost 400 employees based in New Zealand.

Offer of employment

[4] In November 2017 Mr Owen applied for the role of Design Engineer with Rocket Lab. Rocket Lab offered Mr Owen an interview for a position in its Vehicle Test Team instead.

[5] During Mr Owen's interview for a position in the Vehicle Test Team, Rocket Lab questioned him about his management experience. Mr Owen said that as an experienced race engineer he had previous responsibility for managing the mechanics' workloads, but apart from that he had limited people management experience.

[6] Rocket Lab offered Mr Owen the Vehicle Test Manager role. Mr Owen signed an individual employment agreement on 22 January 2018 and he was given a written position description for his Vehicle Test Manager role. Mr Owen started work for Rocket Lab as its Vehicle Test Manager on 7 February 2018.

Vehicle Test team

[7] Prior to Mr Owen taking on the role, Rocket Lab had experienced problems with staff retention in its Vehicle Test team. Mr Owen said it was clear to him that the company was stretched in terms of its output versus expectations, with everyone adopting a 'fire fighting' approach. It was a fast paced, rapidly growing and time sensitive environment.

[8] Mr Owen was not given an induction, training or a handover when he started work for Rocket Lab. Instead he was simply expected to ‘get on with it’.

[9] Mr Owen was told that he had Rocket Lab’s full support to do whatever he wanted to with the Vehicle Test team, meaning he was free to mould it as he thought fit. Because Mr Owen had been part of successful teams in which the managers had given a large amount of autonomy to staff, that was the approach he decided to adopt.

Unilateral change in role

[10] On 12 November 2018 Rocket Lab unilaterally changed Mr Owen’s role from Vehicle Test Manager to Senior Vehicle Test Engineer. Apart from the change in role, and position description, Mr Owen’s existing terms and conditions of employment were unchanged.

[11] This role change was presented to Mr Owen as a *fait accompli*, so there was no discussion with him about it. The change meant that he would no longer be responsible for management duties, enabling him to focus on the technical responsibilities of vehicle testing.

[12] Mr Owen was given a replacement job description for the Senior Vehicle Test Engineer role. He was also told that despite his role having changed, the status quo regarding management duties would continue until a new Vehicle Test Manager had been appointed.

Dismissal

[13] On 19 February 2019 Brandi Drew, Director of Rocket Lab’s People and Culture team, unexpectedly called Mr Owen into a meeting with her and Rocket Lab’s then New Zealand based Senior People and Culture business partner.¹

[14] Mr Owen was not told what the meeting was about, nor was he provided with an agenda or any documentation. Mr Owen assumed the meeting was to discuss the latest iteration of a “*Roles and Responsibilities*” document that Rocket Lab has been drafting. Mr Owen attended the meeting by himself.

¹ This individual has since left Rocket Lab’s employ.

[15] However, it turned out that the purpose of the meeting was to dismiss Mr Owen, with immediate effect, due to “*on-going performance concerns.*” No further information or documentation was provided to him.

[16] After dismissing Mr Owen, Ms Drew presented him with a settlement agreement that required him to compromise any claims he had against Rocket Lab in return for a \$10,000 payment under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act). Mr Owen declined to sign the settlement agreement.

Personal grievance

[17] On 14 March 2019 Mr Owen raised a personal grievance for unjustified dismissal and requested a statement of reasons for his dismissal in accordance with s 120 of the Act.

Reason for dismissal

[18] On 15 March 2019 Rocket Lab provided Mr Owen with an unsigned document containing a one sentence “*reason for dismissal*”, that said he was dismissed “*due to continuous concerns relating to his performance*”.

Mr Owen’s claims

[19] Mr Owen claimed:

- (a) Rocket Lab’s dismissal was procedurally and substantively unjustified;
- (b) Rocket Lab breached the contractual performance management procedure set out in clause 13 of his employment agreement;
- (c) A penalty for the breach of his employment agreement;
- (d) That some or all of any penalty imposed be paid to him instead of the Crown;
- (e) Indemnity costs to reflect the cynical and brazen breaches of his employment agreement.

[20] Mr Owen also sought:

- (a) A determination that Rocket Lab’s workplace conduct or practices were a significant factor in the personal grievance; and

- (b) Recommendations from the Authority to Rocket Lab concerning the action it should take to prevent similar employment problems occurring.

Rocket Lab's response

[21] The decision to dismiss Mr Owen was made by Peter Beck, Rocket Lab's founder, Chief Executive Officer and Chief Technical Officer. Mr Beck said he lost trust and confidence in Mr Owen as a result of Mr Owen's:

- (a) Negligent record keeping;
- (b) Failure to follow proper engineering processes and poor performance regarding lock issues;
- (c) Continued work on lock issues, after being instructed not to, reflecting a general attitude where he would not comply with Rocket Lab's directions or policies/procedures.

[22] Mr Beck viewed these performance concerns as presenting significant safety risks to the business, so he decided that Mr Owen should be dismissed. He informed Ms Drew of that, and she carried out the dismissal.

[23] Rocket Lab's submissions acknowledged that it should have run its dismissal process differently, but it maintained that Mr Owen's dismissal was nevertheless still substantively justified because Mr Beck had "*massively lost confidence*" in Mr Owen.

[24] Rocket Lab also submitted that;

- (a) Mr Owen should not be entitled to any remedies because it was highly unlikely that the employment relationship would have been a long term one;
- (b) Mr Owen's contribution to the events that gave rise to his dismissal was so significant that no remedies should be payable;
- (c) If remedies were to be awarded, then they should be reduced by 25% on the grounds of contribution;
- (d) There was no basis for a penalty to be imposed on it; and

- (e) Mr Owen's dismissal was a "one off", so it was not necessary for the Authority to issue a recommendation under s 123(1)(c)(i) of the Act to prevent similar employment relationship problems occurring in future.

Issues to be determined

[25] The Authority is required to determine the following issues:

- (a) Was Mr Owen's dismissal justified?
- (b) If not, what if any remedies should Mr Owen be awarded?
- (c) Should a penalty be imposed on Rocket Lab?
- (d) If yes, should some or all of any penalty imposed be paid to Mr Owens?
- (e) Should the Authority issue a recommendation to Rocket Lab about its workplace conduct or practices?
- (f) Is Mr Owen entitled to indemnity costs?

Was Mr Owen's dismissal justified?

Statutory justification test

[26] The justification test in s 103A of the Act requires the Authority to objectively determine whether Rocket Lab's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time Mr Owen was dismissed.²

[27] Assessment of Rocket Lab's decision to dismiss Mr Owen is based on the information that was available to Rocket Lab at that time.

[28] A fair and reasonable employer is expected to comply with its statutory good faith obligations in the Act and with each of the four procedural fairness tests set out in s 103A(3) of the Act. Failure to do so is likely to fundamentally undermine an employer's ability to justify its actions.

[29] Section 103A(4) of the Act allows the Authority to consider other appropriate factors, such as an employer's compliance with its own policies/procedures and with its contractual obligations.

² Section 103A(2) of the Act.

[30] Section 103A(5) of the Act prevents the Authority from determining that a dismissal was unjustified solely on the grounds of minor process defects that did not result in the employee being treated unfairly.

Did Rocket Lab comply with its statutory good faith obligations?

[31] Section 4(1A) of the Act requires the parties to an employment relationship to be “*active and constructive*” in establishing and maintaining a productive employment relationship in which they are, among other things, “*responsive and communicative*”.

[32] Section 4(1A)(c) of the Act requires an employer proposing to make a decision that may have an adverse impact on an employee’s continued employment, to provide the employee with access to information relevant to its decision and an opportunity to comment on that information before a final decision is made.

[33] Rocket Lab clearly breached the statutory good faith obligations it had to Mr Owens under sections 4(1A)(b) and 4(1A)(c)(i) and (ii) of the Act.

[34] Rocket Lab failed to engage with Mr Owen in an active or constructive manner. He was not given a performance review despite having worked for Rocket Lab for a year. He was never told his on-going employment was in jeopardy. He was not told what criteria he had to meet or why Rocket Lab considered he had not met such criteria. He was not given an opportunity to improve or to provide an explanation in response to Rocket Lab’s performance concerns.

[35] Rocket Lab failed to give Mr Owen access to any information about the concerns it had about his performance or its view that dismissal was the only way its concerns could be appropriately addressed.

[36] Mr Owen did not know who the decision maker was, or what information the dismissal decision was based on. Mr Owen had no opportunity to comment on, or respond to, the concerns or to influence the decision to dismiss him before it had been made.

[37] These were very serious breaches of good faith. Mr Owen was deprived of knowing or understanding the concerns Rocket Lab had and therefore of any opportunity to address the matters that resulted in his dismissal.

Were Rocket Lab's breaches of good faith intended to undermine Mr Owen's employment agreement?

[38] Clause 11 of Mr Owen's employment agreement dealt with termination of employment. Clause 11(b) addressed misconduct and provided that Mr Owen could be dismissed without notice for serious misconduct or gross negligence. It also stated that he could be suspended on pay where such allegations were being investigated by Rocket Lab

[39] Clause 13 of the employment agreement dealt with performance management. It provided that Rocket Lab could monitor Mr Owen's performance on an on-going basis and had the right to conduct annual performance reviews of him. It also set out the specific process Rocket Lab had to follow if it had concerns about Mr Owen's performance, which included a two stage warning process.

[40] Clause 13 stated:

Performance management

We shall monitor your performance on an ongoing basis and may conduct formal reviews every 12 months. In the case of poor performance we will give you two clear opportunities to improve with a written warning on each occasion. In the event you again fail to meet reasonable performance standards within the required timeframe, and we remain dissatisfied with your performance, we will be entitled to immediately terminate your employment. Payment in lieu of notice may be at our discretion.

All discussions on performance will be conducted openly and honestly with due consideration being given to explanations provided by you. You shall be afforded the opportunity of being represented or assisted by a person of your choice and in discussion the outcome of which may include the possibility of disciplinary action. If a warning is issued it will detail the way in which your work is or continues to be unsatisfactory, the corrective action you are required to take, the timeframe within which such improvement is to take place and identify the action which will be taken if you do not improve to our satisfaction within that timeframe.

[41] Rocket Lab made no attempt to comply with the requirements of clause 13 regarding the various matters that resulted in his dismissal. Rocket Lab had not engaged in a formal performance management process and it failed to give Mr Owen an annual performance review.

[42] Rocket Lab's actions must have been intended to undermine Mr Owen's employment agreement because it made no attempt to comply with the contractual requirements it had set itself regarding performance management.

[43] Instead Rocket Lab appeared to have deliberately calculated that it was better for it to ‘buy off’ Mr Owen by offering him \$10,000 for not enforcing his legal rights rather than taking any steps to comply with the performance management process set out in his employment agreement.

Did Rocket Lab comply with its contractual obligations to Mr Owen?

[44] A fair and reasonable employer is expected to comply with its contractual obligations. Rocket Lab identified in clause 13 of the employment agreement the standards it required itself to meet regarding performance matters. It then completely ignored those requirements.

[45] Clause 13 was a plainly worded clause that was easy to understand. It would have been straightforward for Rocket Lab to comply with it. Rocket Lab’s failure to do so therefore appeared to be deliberate.

[46] Mr Owen’s performance was not monitored. Nor was it ever formally reviewed. Rocket Lab did not “*openly and honestly*” discuss the performance concerns it had with Mr Owen before it dismissed him.

[47] Mr Owen was not given any warnings, whether verbal or written, before being dismissed, contrary to the two-stage warning process clause 13 required.

[48] Rocket Lab failed to give Mr Owen details of:

- (a) The way in which his work was considered to be unsatisfactory;
- (b) The corrective action he was required to take;
- (c) The timeframe for improvement; or
- (d) The action it would take if he did not improve to its satisfaction within the specified timeframe.

[49] Mr Owen was not told what performance standards he had not met or why Rocket Lab held that view. He was therefore deprived of any opportunity to discuss whether the standards and timeframes Rocket Lab measured him against were reasonable or not.

[50] Rocket Lab did not explain to Mr Owen why it was so dissatisfied with his performance or why it was considering dismissing him. Because Mr Owen was not given any information about the specific performance concerns that had put his employment in jeopardy, he did not

have anything to respond to, meaning Rocket Lab did not consider any explanations Mr Owen may have had.

[51] Mr Owen was also deprived of the opportunity of being represented or assisted/supported, either before or during the disciplinary meeting on 19 February 2019, by a person of his choice.

[52] Rocket Lab demonstratively breached all of the contractual obligations it had set for itself in clause 13 of Mr Owen's employment agreement.

Did Rocket Lab comply with the four procedural fairness tests in s 103A(3) of the Act?

[53] Section 103A(3) of the Act sets out four minimum procedural fairness tests that employers are expected to comply with when disciplining or dismissing an employee.

(i) Section 103A(a) of the Act

[54] Rocket Lab is a large high profile company that has significant resources available to it. It operates both in the United States and New Zealand. The 19 February 2019 meeting at which Mr Owen was dismissed had human resources advisors present from both jurisdictions.

[55] If anyone from Rocket Lab had reviewed Mr Owen's employment agreement before dismissing him, it would have been obvious that Rocket Lab had not "*sufficiently investigated*" the allegations (performance concerns) before dismissing Mr Owen.

[56] Ms Drew told the Authority that she spoke to Mr Beck but did not receive any documentation regarding his concerns. There was no objective analysis of Mr Beck's subjective decision to dismiss Mr Owen.

[57] Although Rocket Lab had the contractual right under clause 11(b) of the employment agreement to suspend Mr Owen while investigating allegations of serious misconduct or gross negligence, it did not do so.

[58] Instead Rocket Lab dismissed Mr Owen without any investigation, in breach of its obligations under s 103A(3)(a) of the Act.

(ii) Section 103A(b) of the Act

[59] The concerns Mr Beck had that led to Mr Owen's dismissal were not appropriately lock issues raised with Mr Owen. While Mr Beck did speak to Mr Owen about various lock issues, Mr Beck did so as part of his investigation into apparent lock related failures. Mr Owen therefore did not know when these discussions occurred that Mr Beck held him (Mr Owen) responsible for such matters.

[60] Mr Beck never discussed any of his concerns within the context of a disciplinary process or formal performance management or monitoring process. These concerns were also never even raised as part of an annual performance review.

[61] Rocket Lab breached its obligations under s 103A(3)(b) of the Act, because it failed to raise its specific performance concerns with Mr Owen before it dismissed him.

(iii) Section 103A(3)(c) of the Act

[62] Because Rocket Lab failed to raise its performance concerns with Mr Owen, it deprived him of any opportunity to respond to the matters of concern.

[63] Rocket Lab therefore breached its obligations under s 103A(3)(c) of the Act, by depriving Mr Owen of a reasonable opportunity to respond to its concerns before he was dismissed.

(iv) Section 103A(3)(d) of the Act

[64] Because Rocket Lab failed to give Mr Owen any opportunity to respond to its performance concerns, it did not have the benefit of any explanations he would have provided.

[65] Mr Owen did not accept that his performance was deficient or that he was responsible for, or should have been held responsible for, the concerns that Mr Beck told the Authority had led to Mr Owen's dismissal. This was therefore not a straightforward matter where Mr Owen's explanation would have made no difference to the ultimate decision.

[66] Rocket Lab breached its obligations under s 103A(3)(d) of the Act, by failing to consider Mr Owen's explanation to its concerns, because it did not give him any opportunity to explain or respond.

Consideration of other appropriate factors – s 103A(4) of the Act

(i) Breach of Employment Policy

[67] After Mr Owen's dismissal, and in response to a request from his lawyer, Mr Owen was provided with a copy of Rocket Lab's "*Employment Policy*".

[68] Rocket Lab's responsibilities are identified in clause 1.1 of that policy. These included (among other things) treating employees fairly and properly and providing training and instruction as necessary for the safe, efficient and proper performance of their duties.

[69] A fair and reasonable employer is expected to comply with its own policies and procedures. However, Rocket Lab failed to do so.

[70] Rocket Lab did not treat Mr Owen fairly or properly. It failed to give him any training or instruction about how he was to perform his duties/responsibilities, what policies or procedures he had to comply with, or about how and when he should use the online 'Redmine' risk management system.

(ii) No opportunity to speak to the decision maker

[71] Mr Owen was not given an opportunity to speak to Mr Beck (the decision maker) about the matters of concern before he was dismissed.

[72] When Mr Owen sought an explanation for his dismissal during the meeting on 19 February 2019, Ms Drew was unable to explain what the performance concerns were, when they arose, or what information/evidence had led to his dismissal. That was unfair.

(iii) Dismissal was predetermined

[73] Mr Owen's dismissal was clearly predetermined and it was a unilateral decision.

[74] Mr Owen had been locked out of Rocket Lab's systems while he was meeting with Ms Drew. He was presented with a settlement agreement during the dismissal meeting, and offered "*distress compensation*" before he had even raised a personal grievance claim.

(iv) No bonus

[75] Rocket Lab's assertion that Mr Owen should have known that he could have been dismissed for poor performance because he was not paid a discretionary bonus is not accepted.

[76] Mr Owen was never told that Rocket Lab's decision to not pay him a bonus was an indication that his on-going employment was at risk. He cannot reasonably have been expected to know that.

(v) Supplier issue

[77] On 14 December 2018 Mr Beck was copied an email from a member of the manufacturing team that identified "*a communication error*" had caused stock to be sent back to a supplier. Mr Beck asked the sender of the email what the error was. The sender of the email advised Mr Beck that an unnamed Rocket Lab employee had given the supplier incorrect information.

[78] Mr Beck concluded that it was Mr Owens who had communicated the incorrect information to the supplier. Mr Beck reached that conclusion without asking the sender of the email to identify the person who had given the supplier incorrect instructions, without asking the supplier to identify the person, and without first asking Mr Owen about it.

[79] That was unfair and unreasonable because Mr Beck, as the decision maker, was adversely influenced by information that Mr Owen was not even aware of, much less had an opportunity to respond to.

(vi) Concerns previously raised by management?

[80] Rocket Lab claimed "*numerous concerns had been raised with him by management*". The only two managers who spoke to Mr Owen were his own manager Mr O'Donnell, and Mr Beck. Neither Mr O'Donnell, nor Mr Beck, in their discussions with Mr Owen invoked or even referred to clause 13 of Mr Owen's employment agreement.

[81] Mr Beck's discussions with Mr Owen were inquiries related to his investigation of lock related issues. They involved general inquiries to understand what had occurred, they were not put to Mr Owen as poor performance concerns about him. These inquiries Mr Beck made of Mr Owen about technical matters could not fairly or reasonably have put Mr Owen on notice

that Mr Beck considered Mr Owen's performance to be unsatisfactory or that his on-going employment was in jeopardy.

[82] Mr O'Donnell had a conversation with Mr Owen on 3 September 2018 about performance concerns that related to failures during testing of high value components and slow delivery of testing systems required for the upcoming launch. Mr O'Donnell subsequently emailed Mr Owen later that day with expectations and agreed deliverables.

[83] This was an informal discussion that would have been a prelude to any formal performance management process. It did not comply with the requirements of clause 13 and could not reasonably have put Mr Owen on notice that his on-going employment was in jeopardy.

[84] While Rocket Lab's unilateral variation in November 2018 of Mr Owen's role from Vehicle Test Manager to Senior Vehicle Test Engineer removed his management responsibilities, the new role more closely aligned with his experience and expertise. The change was not presented as a poor performance issue but instead as a way for Mr Owen to be able to focus more on the technical aspects of his role.

[85] That change in role was intended to resolve concerns Rocket Lab had about Mr Owen's management of the Vehicle Test team, so if Rocket Lab had other (i.e. not team management related) performance concerns then it could and should have raised those with Mr Owen at that time. Rocket Lab's failure to do so suggested that the role change in November 2018 had resolved its concerns.

Was Mr Owen's dismissal implemented in a procedurally fair manner?

[86] The way in which Rocket Lab dismissed Mr Owen was extremely unfair.

[87] Rocket Lab failed to comply with even the most basic and widely understood principles of procedural fairness. It breached all four of the procedural fairness tests identified in s 103A(3) of the Act. It also breached minimum statutory good faith requirements, its own contractual obligations and its Employment Policy.

Does s 103A(5) of the Act apply?

[88] Section 103A(5) of the Act prevents a finding of unjustified dismissal solely due to minor process defects that did not result in the employee being treated unfairly. However that limitation does not apply in this case.

[89] The process defects that occurred were very serious and resulted in substantial unfairness to Mr Owen. Accordingly, section 103A(5) of the Act therefore does not bar the Authority from determining that Mr Owen's dismissal was unjustified.

Was Mr Owen's dismissal substantively justified?

[90] Rocket Lab claimed that even though it did not follow a fair or proper process, it still had good reasons for dismissing Mr Owen. The Authority did not agree that a fair and reasonable employer could have reached that conclusion.

(i) Was Mr Owen negligent?

[91] During the investigation meeting Mr Beck sought to categorise Mr Owen's poor performance as negligence. However, the evidence the Authority reviewed did not support Mr Beck's view that Mr Owen had been negligent.

[92] Justification is to be assessed at the time of the dismissal. At the 19 February 2019 dismissal meeting, and in the written statement of reasons issued under s 120 of the Act, the reason Mr Owen was given for his dismissal was performance concerns, not negligence.

[93] Likewise, Rocket Lab's Statement in Reply filed on 3 July 2019 did not identify negligence as the reason for his dismissal. It reiterated what Mr Owen had previously been told, namely that he was dismissed as a result of serious concerns Rocket Lab had about his performance.

[94] After hearing and testing all of the available evidence, which included information that was made available for the first time many months after Mr Owen's dismissal, the Authority concluded that Rocket Lab had failed to establish, on the balance of probabilities, that it was justified in concluding that Mr Owen had been negligent.

(ii) Allegations of poor record keeping

[95] Record keeping was part of both of Mr Owen's job descriptions and an important part of both of Mr Owen's roles. There was a material conflict between the parties regarding the adequacy of Mr Owen's record keeping, particularly regarding testing matters.

[96] Mr Beck claimed that Mr Owen's standard of record keeping was lower than what a junior engineer/university student would have kept. Mr Beck also claimed that Mr Owen acknowledged to him (Mr Beck) after Flight 3 that he (Mr Owen) had not been keeping adequate records. Mr Owen denied these claims.

[97] Mr O'Donnell said that Rocket Lab had a basic minimum template for test engineering that everyone was meant to fill out as they performed tests. Although Mr O'Donnell claimed that Rocket Lab had spoken to "*all senior technicians about expectations for recording their work,*" Mr Owen denied he had received such information.

[98] The Authority preferred Mr Owen's evidence about that because it considered that Mr O'Donnell's evidence was too generalised. Mr O'Donnell did not identify who had communicated the template information to Mr Owen, exactly what had been communicated or when and how it had been communicated to him.

[99] Mr O'Donnell did not say that he personally knew Mr Owen had received the template or how he knew that. Nor did Mr O'Donnell provide any evidence such as an email, memo, induction checklist, or written instructions/guidance to show that Mr Owen had received appropriate information about the use of the template. If the template was as critical as Mr O'Donnell claimed, then the Authority expected Rocket Lab to have documented its expectations and communications to staff about it.

[100] Mr Owen told the Authority that he believed that his record keeping had been appropriate based on what he knew at the time. Mr Owen explained how, because he was left to his own devices regarding record keeping, he devised a system, which he thought was acceptable in light of his previous experience.

[101] Mr Owen kept his own handwritten notes, which he then later transcribed into a spreadsheet. He also used an electronic notepad as his log. Mr Owen said that other people who knew what they were looking at would have understood these notes. Mr Owen said that

had he not been dismissed then he would have transcribed his handwritten records into an electronic format.

[102] Mr Owen acknowledged he needed to ensure accurate records were made and that people needed to know where he was at with the testing. However he believed that the records that were necessary were captured in other areas of the business, outside of his own written notes.

[103] Mr Owen said he had not been given any induction, training or instruction by Rocket Lab regarding record keeping. The Authority accepted that evidence because Rocket Lab failed to produce evidence to the contrary.

[104] After Mr Owen gave detailed evidence during the Authority's February 2020 investigation meeting about his record keeping, Rocket Lab subsequently located some of Mr Owen's notes/records. Both parties then filed further evidence about these notes/records. Mr Owen pointed out that he had been dismissed before he had a chance write up his handwritten notes, so the records provided to the Authority did not provide the full picture.

[105] Mr Beck decided to dismiss Mr Owen without first even asking to see, or reviewing Mr Owen's actual notes/records, and without actually discussing his (Mr Beck's) specific record keeping concerns with Mr Owen. Rocket Lab's adverse view about Mr Owen's record keeping was therefore based on Mr Beck's subjective opinion and not on an objective analysis of the available material.

[106] Mr Owen had been employed for over a year when he was dismissed. If Mr Owen's record keeping was so poor that Rocket Lab concluded dismissal was necessary, then why had Mr Owen's manager, Mr O'Donnell, not previously invoked the clause 13 performance management process? Also, if Mr Beck believed that the Mr Owen's record keeping was at student level why did Mr Beck never raise that as a concern?

[107] Rocket Lab's failure to have done so undermined its claim that dismissal for poor record keeping was substantively justified, despite the lack of procedural fairness. Although Rocket Lab had a year to have reviewed, monitored and addressed any record keeping concerns it may have had, but it had done nothing.

[108] At the very least, clear instructions about when records had to be made, what records had to be kept, by who, and how and where they were to be stored needed to have been given to Mr Owen before a fair and reasonable employer could have concluded that dismissal for poor record keeping was appropriate.

[109] The Authority considered that any record keeping deficiencies that occurred arose as a result of Rocket Lab's failure to put adequate processes in place and/or to monitor the success of such processes and/or to advise Mr Owen of what was required of him regarding record keeping.

[110] A fair and reasonable employer also could not have concluded that there were inadequacies with record keeping that justified dismissal without first reviewing the records in question.

[111] The Authority accepted Rocket Lab's evidence that the (subsequently discovered) records Mr Owen made in the course of his employment were not easy to understand and could not easily be traced by those who were not familiar with them.

[112] Mr Beck's concern that the written material kept by Mr Owen did not give Rocket Lab the ability to easily reconstruct any data or testing information was also valid. However, as a result of their discussions regarding the various lock issues that had occurred as far back as November 2018, Mr Beck was aware that Mr Owen kept his notes in a loose format.

[113] If that was not acceptable to Rocket Lab then Mr Beck could and should have formally raised his concerns with Mr Owen and/or given him instructions regarding his record keeping and/or reviewed the processes that were being used by Mr Owen to identify any areas that were deficient or needed to be dealt with in a different manner.

[114] Failure to take any of these steps, at the time, undermined Rocket Lab's subsequent claim that its record keeping concerns involved serious safety issues that substantively justified dismissal.

(iii) Performance regarding the locks

[115] During Flight 3 one lock of the four locks, that connect stage one and stage two of the rocket together while it ascends through the Earth's atmosphere, did not separate out cleanly from stage one before the engine on the rocket's second stage ignited. This caused unexpected

disturbance in stage two of the launch process. Mr Beck said it could have (but did not) result in the failure of the launch vehicle.

[116] Failure of a launch vehicle would have had serious consequences for Rocket Lab. Failure would have subjected it to investigations by United States and New Zealand governing bodies. All flights would be grounded while the root cause was found and remedied.

[117] Mr Beck held Mr Owen responsible for this Flight 3 lock issue because;

- (a) Mr Beck said Mr Owen had been working on the locks for 12 months;
- (b) Mr Beck was not aware of anyone else who had been working on the locks; and
- (c) Mr Owen was the team manager and the most senior engineer on the project.

[118] Mr Owen disagreed that he was responsible for the Flight 3 lock issue. He pointed out that Rocket Lab had not provided evidence that established that the Flight 3 locks had been responsible for the anomaly. Mr Owen also noted that the documents Rocket Lab did disclose were for stage two locks, while Mr Beck's oral evidence had referred to a stage one lock as having caused the anomaly.

[119] Mr Owen said that Mr Beck was confused about what locks he (Mr Owen) had been working on. Mr Owen had been working on locks for Flight 5, not Flight 3.

[120] Mr Owen was investigating problems with Flight 5 that related to why the locks were not passing the acceptance test. The Flight 5 locks had components from a different manufacturer than the locks that had previously been supplied for Flight 3.

[121] The Flight 3 and Flight 5 lock issues were therefore different issues, involving different components, and were at a different stage in the launch process. Mr Owen could have explained that to Mr Beck, if Mr Beck had asked about it before dismissing Mr Owen.

[122] Mr Owen's evidence was that he was not involved in the Flight 3 lock issues. The work on the Flight 3 locks and their installation on the test vehicle was undertaken and completed by the Vehicle Test team, before Rocket Lab had employed him.

[123] Mr Owen also pointed out that he did not do any of the acceptance testing for the locks on Flight 3. Documentation produced by Rocket Lab showed that the acceptance testing for Flight 3 had been undertaken by members of the Production Sub-Assembly team. That aligns

with Mr Owen's evidence that other Rocket Lab teams – such as Production and Quality Control – were responsible for the Flight 3 lock issues.

[124] The Authority accepted Mr Owen's submission that delay of the launch of Flight 3 and the return of the test vehicle to Rocket Lab premises, did not make Mr Owen responsible for work carried out on the vehicle before he had started work for Rocket Lab.

[125] Rocket Lab also sought to fix blame on Mr Owen after it belatedly (subsequent to the Authority's investigation meeting) located records that showed Mr Owen had signed off on the final Flight 3 acceptance testing documentation.

[126] However, Mr Owen cannot reasonably be blamed for signing off the acceptance testing documentation that had been produced by the Production Sub-Assembly team, after he had checked that the lock tests completed by this other team had met the relevant acceptance test criteria.

[127] Mr Owen's sign off of the acceptance testing confirmed that the results recorded by the Production Sub-Assembly team were within acceptable bounds. That was factually correct and not disputed by Rocket Lab.

[128] Mr Beck was the person who was investigating the Flight 3 anomaly, not Mr Owen. If Mr Beck had wanted Mr Owen to become more involved in the Flight 3 issues, to take specific remedial actions regarding the Flight 3 locks, then he (Mr Beck) could and should have informed Mr Owen of that. It was unfair for Mr Beck to not say anything to Mr Owen and then later use that as a reason for his dismissal.

[129] The Flight 3 anomaly occurred on 11 November 2018, and Mr Owen was not dismissed until 19 February 2019. That indicated Rocket Lab did not view this as a serious concern when these issues arose, because it waited more than three months to take any steps to address its concern.

[130] Rocket Lab's attempt to attribute all of the blame for the Flight 3 anomaly to Mr Owen was unfair and unreasonable in light of the available information.

(iv) Failure to follow instruction

[131] Mr Beck said that the final straw that caused him to lose trust and confidence in Mr Owen, and decide that he had to be dismissed, was Mr Owen's failure to comply with Mr Beck's instruction to cease all work on the fairing locks.

[132] Mr Beck claimed that Mr Owen had not listened to, or followed, a clear instruction, which in Mr Beck's mind reflected a general attitude of someone who would not comply with Rocket Lab's directions or policies/procedures. Mr Beck said that was an unacceptable risk for the business, and was the final straw that caused Mr Owen to be dismissed.

[133] Mr Beck claimed that on 16 January 2019 he instructed Mr Owen not to work on locks any further as his work was deemed a risk to flight. Mr Beck said he subsequently found out that Mr Owen had still been working on the locks, because he had been on a CAD (design software system) redesigning the locks and was still experimenting with flight hardware and flight lock systems.

[134] This occurred after the fairing lock failure in January 2019 when Mr Beck had asked Mr Owen to show him his work but claimed Mr Owen said that he had not written down the process that he had used.

[135] Mr Owen denied that he had been instructed to cease working on any of the fairing locks, and said that if he had been given that instruction, then he would have followed it.

[136] Mr Owen said Mr Beck only told him that another member of the Vehicle Testing team [H] would be responsible for the fairing locks. Mr Owen said he was not surprised to hear that, because it was already H's project, so Mr Beck was simply confirming the status quo. Mr Owen did not consider that what Mr Beck had said changed the current position or was an instruction not to do any work on locks in future.

[137] Mr Beck emailed Mr Owen on 18 January 2019, after the alleged 'instruction'. The entire email said "*I have requested [H] be in charge of the fairing lock programme through to resolution*". H was junior to Mr Owen and in Mr Owen's mind had already been responsible for the fairing locks programme.

[138] The Authority did not accept Mr Beck's claim that his email to Mr Owen was an instruction that made it clear that Mr Owen was not to undertake any work at all on locks. The email did not actually say that.

[139] The content of the email aligned more closely with Mr Owen's account of what was discussed regarding the fairing locks, namely that H would be responsible for them going forward.

[140] The Authority resolved this conflict in the evidence in Mr Owen's favour. That is, it was more likely than not that there was no clear instruction to Mr Owen for him to cease work on the locks. If the instruction was as important as Mr Beck said it was, the Authority expected the email to have clearly recorded that, and it did not.

[141] Mr Owen cannot have been expected to know from the email Mr Beck sent him that he had been given an instruction not to do any work at all on locks. The Vehicle Testing team was dealing with the fairing lock issue. Regardless of who was in charge of the lock issues, Mr Owen remained a part of that team. If Mr Beck had intended to restrict or change Mr Owen's normal contractual duties then it was up to Mr Beck to have made that clear to Mr Owen. That did not occur.

[142] In the absence of a clear instruction not to do any more work on the locks, a fair and reasonable employer could not conclude that Mr Owen had failed to comply with a lawful and reasonable instruction. Even if the instruction had been given (which was not accepted) it still would not have justified dismissal without warning.

(v) Redmine tickets

[143] Redmine is an electronic ticketing system that Rocket Lab used for internally notifying and escalating risk issues, particularly issues that could negatively impact on any flight.

[144] Any employee within Rocket Lab can log an issue by creating a ticket within Redmine. Once a ticket has been raised then it goes into a review process with each new risk ticket being reviewed by the Risk Review Board, which then determined whether the risk is acceptable or required mitigation or elimination.

[145] Mr Beck said that Mr Owen should have raised a ticket in Redmine regarding the locks. Mr Owen said it was not his responsibility because the ticket would have been raised by the

person who did the report that concluded that there had been a lock fault. That appeared to have been Mr Beck.

[146] Mr Beck said that any testing failures should have been recorded in Redmine. He expected Mr Owen to have been the biggest contributor to Redmine regarding lock separations, because the lock is a driving factor in the launch vehicle. Mr Beck therefore expected Mr Owen to have written hundreds of Redmine tickets to identify lock issues.

[147] Mr Owen said he had a Redmine ticket to direct people to where his information was stored because he did not consider that Redmine was the place to store testing information. Mr Owen had not received any training or induction that contradicted his view about that or any instructions or guidance that contradicted the way that he had been using Redmine.

[148] Mr Owen said he did not check Redmine for Flight 3 information because he did not expect it would have been contained there. Mr Beck disagreed and said he expected Mr Owen to access the information or investigation reports regarding Flight 3, to ensure he had full information given his testing role and looking ahead to Flight 4.

[149] However, Rocket Lab must have known that Mr Owen was barely using Redmine. Mr O'Donnell and Mr Beck both accessed Redmine, so they could have easily seen that Mr Owen's use of it was far less than they expected or required.

[150] Mr Beck must have known as far back as November 2018, while investigating the Flight 3 anomaly, that Mr Owen had not recorded the lock issues in Redmine. However that was not raised with Mr Owen as a concern, either by Mr Beck or Mr O'Donnell, at that time.

[151] Rocket Lab had ample time between the 11 November 2018 initial Flight 3 investigation and Mr Owen's dismissal on 19 February 2019 to have addressed his use of Redmine. If the use of Redmine was an important part of his role, then Rocket Lab was required to ensure that Mr Owen knew what was expected of him. It failed to do so.

[152] The way in which Mr Owen used or did not use Redmine could not reasonably be viewed as a substantive justification for his dismissal because Rocket Lab did not make its expectations regarding the use of Redmine clear to Mr Owen.

(vi) Safety concerns

[153] Rocket Lab operates in a safety sensitive industry. Mr Beck believed that Mr Owen's poor testing and record keeping processes posed an unacceptable risk to the business.

[154] Mr Beck decided that Mr Owen's performance deficiencies, specifically deficiencies in process or record keeping, and his alleged failure to comply with Mr Beck's instruction to cease work on the locks, raised safety concerns that created significant and unacceptable risks for Rocket Lab.

[155] Mr Beck said he was concerned about future failures during subsequent flights and had lost confidence that Mr Owen would follow simple instructions given to him. Mr Beck said it was not reasonable or feasible to have Mr Owen supervised at all times, nor should such supervision have been necessary of someone who had a senior engineering role.

[156] Mr Beck said he dismissed Mr Owen because he had to be able to work autonomously and unsupervised. Mr Beck said he did not trust Mr Owen to operate in accordance with professional engineering record keeping standards, or to abide by instructions.

[157] That was not a conclusion that a fair and reasonable employer could have reached in all the circumstances. Rocket Lab failed to search for examples of Mr Owen's work records, both in hard copy and electronic form before it dismissed him. This demonstrated that Mr Beck could not have been relying on a particular failure in Mr Owen's record keeping when Rocket Lab dismissed him.

[158] The Authority did not accept Rocket Lab's evidence or submissions that Mr Beck and/or Mr O'Donnell appropriately engaged with Mr Owen regarding the importance of record keeping and following internal processes.

[159] If record keeping and/or internal processes were discussed with Mr Owen, then that was not done in a way that could have fairly or reasonably put him on notice that he was not meeting Rocket Lab's expectations or requirements, to the extent that his on-going employment could be in jeopardy.

[160] The records Rocket Lab located after the Authority's investigation meeting showed that Mr Owen had duly noted testing conditions as 'variance from standard' and recorded the subsequent results. Mr Owen's contemporaneous test results, his conclusions and a full report

with the tabled results would have followed sometime after the testing, had he not been unexpectedly dismissed, as his practice was to transcribe his notes to electronic form once he had finalised them.

[161] Rocket Lab failed to provide documentary evidence to establish what its “*reasonable expectations*” or its “*normal process*” was regarding record keeping. There were no standard operating procedures, written instructions, guidance or training logs about this requirement. A fair and reasonable employer could not dismiss Mr Owen, without warning, for not observing record keeping standards that he was never adequately informed about.

[162] Mr Owen’s evidence, that he had been working with others in the business, including the software team, to establish a database for the documentation and recording of testing, was unchallenged. Such activities demonstrated that Mr Owen was aware of the importance of record keeping and, at the time of his dismissal, was proactively taking steps to improve Rocket Lab’s record keeping processes.

(vii) Loss of trust and confidence

[163] Rocket Lab asked the Authority to conclude that Mr Owen’s dismissal was substantively justified because Mr Beck believed that Mr Owen could not be trusted to perform his work safely. Mr Beck considered that Mr Owen’s work methods fell well short of what was expected of him.

[164] Although the Authority recognised the safety sensitive nature of Rocket Lab’s business, the issues that resulted in Mr Owen’s dismissal were not such that it was open to a fair and reasonable employer to have dismissed him, without prior warning.

[165] The totality of the evidence produced to the Authority established that Mr Owen was in fact keeping records regarding the processes he had used, in accordance with information he had gleaned from colleagues, or had otherwise (by virtue of his own prior experience in motorsport engineering) determined were appropriate.

[166] Rocket Lab knew that Mr Owen was not experienced in its industry. It was therefore up to Rocket Lab to ensure that it had appropriate processes and procedures in place to enable Mr Owen to successfully perform the two roles he had, and that Mr Owen knew what was required of him. Rocket Lab’s own Employment Policy recorded that expectation of itself.

[167] Although record keeping deficiencies could potentially provide a substantive justification for a dismissal, if record keeping is a crucial part of the employee's role, it cannot do so in this case because of the absence of training, guidance or instructions on what record keeping was required.

[168] Rocket Lab was responsible for any deficiencies in record keeping that may have occurred, because it failed to clearly communicate what was required to Mr Owen, and it also failed to monitor the success of the processes that it believed it had in place. Record keeping concerns had not been formally raised with Mr Owen, so he never had a chance to address them.

[169] Rocket Lab was unable to establish that Mr Owen had a history of failing to meet performance expectations because there was no performance review, no performance monitoring, no performance management process undertaken and no prior warnings regarding his performance. Nothing suggested Mr Owen was someone who would not have adhered to standards or procedures once he had been made aware of them.

[170] The evidence Rocket Lab produced to the Authority would have been available to it, had it made reasonable enquiries prior to dismissing Mr Owen in February 2019. However, it failed to obtain this material before dismissing Mr Owen. Neither Mr Beck, as the decision maker, nor Mr Owen had reviewed or considered all of the relevant information before Mr Owen was dismissed.

[171] Mr Owen did not accept that his performance was unsatisfactory, or that he was incompetent, or negligent. Furthermore, he was prevented from providing any explanations that would have addressed Rocket Lab's concerns before he was dismissed. No information was provided to Mr Owen and no concerns were raised in a way that indicated his on-going employment was in jeopardy.

[172] Rocket Lab failed to make reasonable enquiries into the various matters of concern. Rocket Lab's lack of investigation meant it did not have sufficient information to fairly or reasonably conclude that serious misconduct had occurred, that the trust and confidence inherent in the employment relationship had been fundamentally undermined or that dismissal of Mr Owen was within the range of reasonable responses available to it to address its performance concerns.

[173] Even if Rocket Lab did have serious concerns about Mr Owen's performance, its complete disregard for any of its contractual and statutory obligations to him fundamentally undermined its ability to establish that it had good reasons for losing trust and confidence in him.

Findings

[174] Rocket Lab's actions, and how it acted, were not what a fair and reasonable employer could have done in all the circumstances at the time Mr Owen was dismissed.³

[175] Rocket Lab failed to establish that Mr Owen's dismissal was nevertheless still substantively justified even though it had failed to comply with its obligations under s 103A(3) and s 4(1)(A) of the Act. The purpose of a fair and proper process is to help the employer arrive at a fair and reasonable outcome.

[176] Rocket Lab predetermined Mr Owen's dismissal without investigating its concerns at all and without considering all of the relevant information that would have been available to it, had it complied with its good faith and procedural fairness obligations. Rocket Lab breached all of its statutory and contractual obligations to Mr Owen as well as the standards it had set itself in its Employment Policy.

[177] Rocket Lab was therefore objectively unable to meet any of the requirements of the statutory justification test, as set out in s103A(2) of the Act.

[178] Accordingly, the Authority has determined that Rocket Lab's dismissal of Mr Owen was procedurally and substantively unjustified.

What, if any, remedies should be awarded?

Did Mr Owen appropriately mitigate his loss?

[179] Rocket Lab's submission that Mr Owen failed to appropriately mitigate his loss did not succeed.

³ Section 103A(1)-(3) of the Act.

[180] Rocket Lab failed to produce credible evidence that put Mr Owen's mitigation of loss in issue. Rocket Lab failed to show that Mr Owen had acted unreasonably or that he had unnecessarily narrowed his search for roles.

[181] Although there is high demand in New Zealand for individuals with engineering skills, many of these are jobs with Rocket Lab, so the nature of comparative roles available for experienced engineers outside of that was limited. Rocket Lab did not identify any vacancies it claimed Mr Owen should have, but did not, apply for.

[182] Rocket Lab is a high profile employer in New Zealand, and it dismissed Mr Owen for poor performance. That was likely to have made Mr Owen's search for new employment more difficult than it would have been for other employees who were not in that situation.

[183] Mr Owen had never been fired before so his dismissal numbed and shocked him. He said he had remained shell-shocked during the remainder of February and all of March 2019.

[184] Mr Owen explained how Rocket Lab's one line response to his lawyer's request for written reasons for his dismissal, that stated he was dismissed because of "*continuing concerns relating to his performance*", had a very detrimental effect on his ability to get his head into hunting for another job. That was understandable in the circumstances.

[185] Mr Owen started searching for a new job in late March. He updated his CV and registered with Tradestaff. He also registered on the Seek website and set up a job search for mechanical engineering roles in Auckland.

[186] Mr Owen was sent weekly updates and he checked the website each day to see what roles were available. Some of the roles despite being in the 'engineering' category, were not suited to his skills or experience, or were outside of Auckland.

[187] Mr Owen described scanning the Trade Me jobs on a daily basis and he spoke to a former employer to get the word out that he was looking for work. Mr Owen's experience centred on motorsport, apart from his short experience with Rocket Lab. Mr Owen said that when he was hunting for new employment he found that employer's wanted relevant experience.

[188] However, Mr Owen did not limit himself to seeking jobs in motorsport and was willing to look anywhere for work, as long as it was as a mechanical engineer or designing role, that

he felt he could do. Mr Owen said he applied for every role that came up which was potentially suitable for him. Of all the jobs he applied for, he had only one positive response. The first job he was offered he accepted.

[189] Mr Owen satisfied the Authority that he had taken appropriate steps to mitigate his loss.

What lost remuneration should Mr Owen be awarded?

[190] Mr Owen's was unemployed for 29 weeks and six days, which is rounded up to 30 weeks for the purposes of assessing lost remuneration.

[191] Mr Owen sought reimbursement of his actual lost salary in accordance with s 123(1)(b) of the Act. This amounts to \$65,000 gross (30 weeks salary) or \$75,000 gross, less the \$10,000 gross he received for four weeks' pay in lieu of notice.

[192] The Authority agreed with Mr Owen that this is an appropriate case in which to exercise its discretion under s 128(3) of the Act to award Mr Owen his actual loss, namely \$65,000 gross lost remuneration.

[193] Rocket Lab's submission that the Authority should not award more than the three months ordinary time remuneration pursuant to s 128(2) of the Act does not succeed. Nor does its claim that a counterfactual analysis meant it was highly unlikely that there would have been a long term employment relationship had Mr Owen not been dismissed.

[194] The issues that Rocket Lab were concerned about were ones that would have been well within Mr Owen's capability to have remedied, had they been properly brought to his attention and had he be given adequate training and appropriate instructions about what was required of him.

[195] The Authority did not consider it likely that Mr Owen's employment would not have continued past 16 September 2019 had he not been dismissed. The Authority's view was that if Rocket Lab had managed Mr Owen's performance in accordance with clause 13 of his employment agreement it was more likely than not that he would have addressed the issues of concern.

[196] Within 30 days of the date of this determination, Rocket Lab is ordered to pay Mr Owen \$65,000 gross under s 128(3) of the Act to compensate him for the actual remuneration he lost as a result of his unjustified dismissal.

What distress compensation should Mr Owens be awarded?

[197] The Authority heard from Mr Owen and his wife about the personal effects of his unjustified dismissal and accepts that it has had a profoundly adverse effect on his life and wellbeing.

[198] Mr Owen gave up a long and successful career in motorsport to take up employment with Rocket Lab in February 2018, working in a pressured environment with a commitment to getting the job done on time.

[199] Mr Owen's wife described how he was so committed to meeting Rocket Lab deadlines that he put his work before his family, in order to do so, working long hours under pressure. She described the shock they experienced when he was unexpectedly dismissed. Mrs Owen said that while Mr Owen's work was clearly challenging, the thought that he could be dismissed had never crossed their minds.

[200] Mrs Owen corroborated her husband's evidence about how challenging the days and months that followed Mr Owen's dismissal were for him, them as a couple and for their entire family.

[201] Mr Owen's mood was adversely affected and that impacted his day-to-day activities, sleep and overall wellbeing.

[202] The manner in which Mr Owen was dealt with by Rocket Lab was extremely stressful and humiliating for him. He was abruptly dismissed, and given no information about the reasons why, he was deprived of any opportunity to respond to the alleged performance concerns, and was improperly pressured to compromise his claims against Rocket Lab for a derisory amount. His employment was ended immediately and he was escorted off the premises in front of other staff.

[203] Mr Owen described the difficulties he experienced following his dismissal with compelling corroboration from his wife. The Authority has given due weight to that evidence. The Authority also acknowledges that an award distress compensation is not to be used to punish an employer, because it must be linked to evidence about the non-financial effects dismissal had on the employee.

[204] Accordingly, within 28 days of the date of this determination, Rocket Lab is ordered to pay Mr Owen \$30,000 under s 123(1)(c)(ii) of the Act to compensate him for the humiliation, loss of dignity and injury to feelings he suffered as a result of his unjustified dismissal.

Should remedies be reduced on the grounds of contribution?

[205] Having determined that Mr Owen was unjustifiably dismissed, the Authority is required by s 124 of the Act to determine whether Mr Owen engaged in blameworthy conduct which contributed to his unjustified dismissal and if so, to reduce remedies accordingly.

[206] The Employment Court in *Goodfellow v Building Connexion Limited T/A ITM Building Centre*⁴ held that in order for s 124 of the Act to apply, an employee's actions must be causative of the outcome (namely the dismissal in this case) and blameworthy.

[207] Blameworthy conduct must be proven on the balance of probabilities. The Authority may consider conduct or behaviour that is wider than just actions related to the successful personal grievance, meaning that the Authority may have regard to the relevant history of the employment relationship.⁵

[208] Rocket Lab's submissions identified the following four factors as culpable/blameworthy conduct that should result in reduction in any remedies that were awarded to Mr Owen, namely:

- (a) Mr Owen's lack of adherence to basic record keeping procedures;
- (b) Mr Owen's vagueness when questioned about his work and testing by Mr Beck;
- (c) Mr Owen should have known that there were issues with the locks before Flight 3 and should have raised those issues through appropriate channels – and should have been able to provide documentation to support work that was being done by the Vehicle Testing Team on the locks;
- (d) Mr Owen should have followed instructions to cease work on locks after the failure in January 2019.

[209] Rocket Lab said that the cumulative effect of the matters identified above resulted in significant loss of trust and confidence in Mr Owen's ability to do his job and its conclusion

⁴ [2010] NZ EmpC 82 at [49].

⁵ *Spotless Services (New Zealand) v Morrison* [2006] ERNZ 1043 at [83] – [86].

that Mr Owen's approach to his work presented an unsurmountable risk to Rocket Lab's business.

[210] Rocket Lab therefore submitted that Mr Owen's contribution should result in a 25% reduction in any remedies awarded to him.

[211] The Authority carefully considered Rocket Lab's submissions about contribution but concluded that the evidence failed to establish, to the required standard of proof that Mr Owen engaged in blameworthy conduct that contributed to his dismissal.

[212] Accordingly, the remedies Mr Owen has been awarded should not be reduced, under s 124 of the Act, on the grounds of contribution.

Should a penalty be imposed on Rocket Lab?

Penalty requirements

[213] Section 135(2)(b) of the Act provides that a maximum penalty of up to \$20,000 may be imposed on a company or corporation.

[214] Mr Owen sought that a penalty be imposed on Rocket Lab under s 4A(b)(ii) of the Act for its breaches of good faith, on the basis that these failures were intended to undermine his employment agreement.

[215] It is important that a penalty be imposed to signal disapproval of Rocket Lab's actions and to discourage it from engaging in such behaviour in future. It is also necessary to send a clear message to other employers that acting in this way, namely blatantly ignoring good faith and undermining an employment agreement, is likely to attract a penalty.

[216] Rocket Lab had two of its Human Resources advisors in the meeting on 19 February 2019. Neither of them had a copy of Mr Owen's employment agreement in front of them. Each of them should have, at the very least, have reviewed Mr Owen's employment agreement prior to the dismissal meeting. Doing so would have made it obvious that no attempt had been made to comply with clause 13 of the employment agreement.

[217] Rocket Lab completely ignored the process it had set out to address performance concerns, because not one of those requirements had been adhered to. Instead of preparing

documentation relevant to its alleged performance concerns, Rocket Lab prepared a record of settlement, before a grievance had even been raised.

[218] Mr Owen was not only caught off guard by his abrupt dismissal but he was put under immediate and significant pressure to compromise any claims he may have had against Rocket Lab, in circumstances where he was understandably shocked, distressed, unsupported and unrepresented. This is high-handed conduct that needs to be strongly discouraged.

[219] Rocket Lab would not have immediately offered to compromise any claims Mr Owen may have had against it, if it was not already aware that it was in breach of its legal obligations to him.

[220] Instead of starting a performance management process, Rocket Lab appeared to have made a cynical calculation that it would be worth avoiding all of its employment law obligations by paying Mr Owen \$10,000.

[221] The way Rocket Lab dealt with its performance concerns was not just a breach of its good faith obligations but it also fundamentally undermined Mr Owen's employment agreement. Rocket Lab's actions effectively deprived Mr Owen of any of his contractual and statutory protections.

[222] The Authority finds that a penalty needs to be imposed to punish Rocket Lab for its wrongdoing.

Penalty considerations under section 133A of the Act

[223] Section 133A of the Act sets out the matters that the Authority must have regard to when imposing a penalty. These include:

- (a) The s 3 object of the Act;⁶
- (b) The nature and extent of the breach;⁷
- (c) Whether the breach was intentional, inadvertent or negligent;⁸
- (d) The nature and extent of any loss or damage suffered due to the breach;⁹

⁶ Section 133A(a) of the Act.

⁷ Section 133A(b) of the Act.

⁸ Section 133A(c) of the Act.

⁹ Section 133A(d) of the Act.

- (e) Whether the adverse effects of the breach have been mitigated;¹⁰
- (f) The circumstances of the breach including the vulnerability of the employee;¹¹
- (g) Whether the entity involved in the breach has previously engaged in any similar conduct.¹²

[224] Rocket Lab's actions were in breach of the section 3 objects of the Act because;

- (a) It failed to comply with its obligations of trust and confidence and good faith behaviour towards Mr Owen;¹³ and
- (b) The way in which it acted is a stark example of the inherent inequality of power in employment relationships. Rocket Lab elected to ignore its legal obligations and instead attempted to pay Mr Owen off.

[225] Rocket Lab engaged in a brazen and blatant breach of its good faith obligations in a way that completely undermined the contractual obligations it had set itself in Mr Owen's employment agreement.

[226] This was an example of a powerful employer intentionally abusing its inherent power in a way that caused significant detriment to an employee.

[227] The lack of any attempt by Rocket Lab to comply with the clause 13 performance management processes, and the simultaneous production of a record of settlement at the dismissal meeting, signify that Rocket Lab's breaches were deliberate and intentional.

[228] Although Mr Owen has been awarded remedies for his unjustified dismissal, the breaches of good faith and fundamental undermining of his employment agreement are different issues, which he has not been compensated for.

[229] Mr Owen is not someone who is classed as a vulnerable employee. However the abrupt termination of his employment did put him and his family in a financially vulnerable position.

[230] Rocket Lab has not previously had a penalty imposed on it for breaches of good faith or of an employment agreement.

¹⁰ Section 133A(e) of the Act.

¹¹ Section 133A(f) of the Act.

¹² Section 133A(g) of the Act.

¹³ Section 3(a)(i) of the Act.

[231] The fact that Rocket Lab entered into the dismissal meeting on 19 February 2019 with a pre-prepared record of settlement demonstrated that it must have known that Mr Owen could have pursued legal action against it regarding the way he had been treated.

[232] The way in which Mr Owen was presented with a record of settlement was viewed by the Authority as a concerted attempt by Rocket Lab to conceal its improper actions by pressuring Mr Owen into accepting a nominal payment in exchange for confidentiality and comprising of his employment claims.

[233] This indicated a particular callousness and calculation by Rocket Lab that led the Authority to conclude it was not merely acting as a naive operator, unaware of its legal obligations. Rocket Lab engaged in a high handed and deliberate attempt to deprive Mr Owen of the basic protections he had under New Zealand law for the minimal payment of \$10,000.

[234] Accordingly, a penalty of \$3,000 is imposed on Rocket Lab under s 4A(b)(ii) of the Act to punish it for the multiple breaches of good faith it engaged in that seriously undermined Mr Owen's employment agreement.

Should some or all of the penalty imposed be paid to Mr Owen?

[235] Under s 136(2) of the Act, the Authority may order some or all of any penalty to be paid to any person.

[236] Mr Owen has suffered significantly as a result of Rocket Lab's breaches of good faith and undermining of his employment agreement. That particular harm has not otherwise been remedied or compensated for. It is therefore appropriate that \$2,000 of the \$3,000 penalty that has been imposed on Rocket Lab be paid to directly to Mr Owen.

[237] Rocket Lab must pay the remaining \$1,000 of the \$3,000 penalty into the Crown Bank account.

Should the Authority issue a recommendation to Rocket Lab about its workplace conduct or practices?

[238] Mr Owen has asked the Authority to make a recommendation to Rocket Lab under s 123(1)(ca) of the Act.

[239] Section 123(1)(ca) of the Act provides that where the Authority has found that any workplace conduct or practices were a significant factor in a personal grievance, recommendations may be made to the employer about the actions it should take to prevent similar employment relationship problems occurring in future.

[240] Rocket Lab said that a recommendation was not necessary because it has now acknowledged its process deficiencies (it did not do so in its statement in reply) and since Mr Owen's dismissal, has improved its internal Human Resources expertise. Rocket Lab submitted that there was no evidence of established "*workplace conduct or practices*" that were a significant factor in the personal grievance. It submitted that Mr Owen's situation was a "*one off*".

[241] That is not accepted. Rocket Lab dealt with Mr Owen's November 2018 role variation in the same unilateral way that it dealt with his dismissal in February 2019. There was no fair or proper process around this role change, and the removal of management responsibilities was presented to Mr Owen as a *fait accompli*, in the same way his dismissal was a *fait accompli*.

[242] This demonstrated that Rocket Lab had previously engaged in similar workplace conduct and practices, namely, making decisions that materially affected an employee's employment without consulting them. That approach to employment issues needs to cease.

[243] However, despite these observations, the Authority was not satisfied that a formal recommendation was necessary as this determination has put Rocket Lab on notice of the need to adhere to its statutory and contractual obligations to its employees.

[244] Rocket Lab has also been represented by experienced counsel, so the Authority is confident that Rocket Lab has now been properly informed of its legal obligations to employees in New Zealand.

[245] The imposition of a penalty on Rocket Lab for its breach of good faith, and the associated undermining of Mr Owen's employment agreement, should strongly encourage Rocket Lab to in future comply with its employment law obligations. Failure to do so would likely attract increased penalties.

[246] In these circumstances the Authority has declined to exercise its discretion to issue a formal recommendation to Rocket Lab.

Is Mr Owens entitled to indemnity costs?

[247] Mr Owen's claim for indemnity costs does not succeed.

[248] This matter does not meet the legal threshold for the imposition of indemnity costs. The concerns Mr Owen has about the manner in which Rocket Lab has conducted itself can be appropriately addressed (if necessary) by an application of the Authority's usual notional daily tariff based approach to costs.

[249] The parties are encouraged to resolve costs by agreement. However, if that is not possible, then Mr Owen has 14 days within which to file a costs application with Rocket Lab having 14 days within which to respond.

[250] This matter should be treated as involving a two-day investigation meeting. While a one day investigation meeting was held in February 2020, that was adjourned part heard. The second day of the investigation meeting did not occur due to the Covid-19 lockdown.

[251] As a result of that, the Authority and parties agreed that this matter should be completed by way of an 'on the papers' investigation that dealt with the communications, new documents, evidence, other material and submissions that arose subsequent to the February 2020 investigation meeting.

[252] The parties are invited to identify any conduct that they say has increased their legal costs together with any other factors they want considered when the Authority assesses costs.

Summary of outcome

[253] Rocket Lab's dismissal of Mr Owen was substantially and procedurally unjustified. Within 30 days of the date of this determination, Rocket Lab is ordered to pay Mr Owen:

- (a) \$65,000 gross lost remuneration under s 128(3) of the Act;
- (b) \$30,000 distress compensation under s 123(1)(c)(ii) of the Act;
- (c) \$2,000 of the total \$3,000 penalty that was imposed on Rocket Lab for its breach of its good faith that undermined Mr Owen's employment agreement.

[254] Rocket Lab had a penalty of \$3,000 imposed on it under s 4A(b)(ii) of the Act. Rocket Lab is ordered to pay the Crown bank account \$1,000 of that total \$3,000 penalty within 30 days.

[255] The Authority declined to:

- (a) Issue a recommendation to Rocket Lab under s 123(1)(ca) of the Act; or
- (b) Award Mr Owen indemnity costs.

Date of Determination

[256] The Authority recognises that this determination has been released outside of the three months' statutory timeframe specified by s 173C(3)(b) of the Employment Relations Act 2000 (the Act). The Authority apologises to the parties for this delay.

[257] The Chief of the Authority has granted an extension to the statutory timeframe, in recognition that this delay was occasioned by exceptional circumstances, in accordance with s 174C(4) of the Act. The exceptional circumstances are that the Presiding Member was incapacitated for many months as the result of an accident/injury.

Rachel Larmer
Member of the Employment Relations Authority