

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 425
3191699

BETWEEN TANE PUTAANGA
 Applicant

AND MOVE FREIGHT LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
 Alastair Espie and Phillis Goredema, counsel for the
 Respondent

Investigation Meeting: 27 March 2025 in Christchurch

Submissions Received: 31 March 2025 and 23 April 2025 from the Applicant
 17 April 2025 from the Respondent

Date of Determination: 16 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tane Putaanga was employed by MOVE Freight Limited as a Class 5 Driver.

[2] On 28 September 2019 Mr Putaanga suffered a workplace accident when he was unloading a delivery. Mr Putaanga sustained a head injury and was signed off work on ACC.

[3] In February 2020 Mr Putaanga commenced a return-to-work plan. This programme was initially interrupted by Covid-19 lockdowns and various related restrictions. Then at end of June 2020, Mr Putaanga recommenced the return-to-work plan, driving two days per week. This arrangement lasted until December 2021, when issues arose between Mr Putaanga and MOVE Freight relating to Covid-19 workplace restrictions. As a result, Mr Putaanga took annual leave, based on two working days per week.

[4] Whilst Mr Putaanga was on leave MOVE Freight commenced a fitness for work process with him. On 12 May 2022 MOVE Freight terminated Mr Putaanga's employment.

[5] In response to these events Mr Putaanga raised two personal grievances:

(a) An unjustified action causing disadvantage arising out of the workplace accident and allegations that MOVE Freight did not adequately protect him.

(b) An unjustifiable dismissal.

[6] The parties were unable to resolve Mr Putaanga's personal grievances and Mr Putaanga lodged a statement of problem in the Authority

The Authority's investigation

[7] Mr Putaanga lodged his statement of problem in the Authority on 4 October 2022 and a statement in reply was lodged by MOVE Freight on 28 October 2022.

[8] In its statement in reply MOVE Freight raised the issue of whether Mr Putaanga had raised his personal grievances within the requisite 90-day period, as required by s 114 of the Employment Relations Act 2000 (the Act). This issue was dealt with as a preliminary matter. I investigated this and issued my determination on 3 August 2023.¹

¹ *Putanga v MOVE Freight Limited* [2023] NZERA 415.

[9] My determination was challenged, and the Court dealt with the challenge and issued its judgment on 10 June 2024.² The Court held that both of Mr Putaanga's personal grievances were raised in time.

[10] So, this employment relationship problem came back to me to investigate. I investigated Mr Putaanga's employment relationship problem by receiving written evidence and documents, holding an investigation meeting in Christchurch on 27 March 2025 and assessing the written submissions of the parties.

[11] I received witness statements from Mr Putaanga and from Peter Witton and Stephanie Rigger both from MOVE Freight. In my investigation meeting, under oath or affirmation, these witnesses confirmed their statement and gave oral evidence in answer to questions from myself and the parties.

[12] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Unjustified disadvantage

[13] Mr Putaanga's personal grievance for an unjustified action by MOVE Freight that caused a disadvantage to his employment is based on the workplace accident he was involved in.

[14] The accident occurred on 28 September 2019. When Mr Putaanga was unloading pig carcasses a rail in the truck dislodged and he was struck on the right side of his head. Mr Putaanga sustained a head injury and was signed off work on ACC.

[15] Mr Putaanga says MOVE Freight failed to provide him with a safe workplace.

² *Putanga v MOVE Freight Limited* [2024] NZEmpC 99.

[16] MOVE Freight accepts responsibility for this accident in that it concedes it failed to provide Mr Putaanga with a safe workplace.

[17] Mr Putaanga has established a personal grievance for unjustified action causing disadvantage arising out of the workplace accident.

Unjustified dismissal

Issues

[18] The issues for an employment relationship problem based on unjustified dismissal, are:

(a) Was the employee dismissed; and

(b) If so, were the actions of the employer in deciding to dismiss the employee, justifiable?

[19] Mr Putaanga was dismissed by MOVE Freight on 12 May 2022 at the culmination of a process undertaken by MOVE Freight into Mr Putaanga's fitness for work.

[20] The question I must answer for Mr Putaanga's dismissal is, were MOVE Freight's actions in deciding to dismiss Mr Putaanga justifiable. This question applies to both the steps taken by MOVE Freight to reach the decision to dismiss and the reason for the decision.³

[21] Whether MOVE Freight acted justifiably is informed by s 4(1A) and s 103A(3) of the Act, with the underlying test for justification being an assessment of whether an employer's actions were those that a fair and reasonable employer could have taken in all the circumstances. I must be satisfied that MOVE Freight acted as a fair and reasonable employer could whilst meeting the requirements of the Act.

³ *Lal v The Warehouse Limited* [2017] NZEmpC 66 at [30].

[22] An issue arises with justification for a no-fault dismissal based on an employee's fitness for work as the factors set out in the Act do not directly apply. I have addressed this issue before and set out the framework to be applied in these scenarios.⁴ For completeness, I restate my reasoning for the framework.

[23] In *Lal v The Warehouse Limited*, the Court set out a broad framework that applies to a no-fault dismissal based on an employee's fitness for work.⁵ In further cases, the Court worked with the *Lal* framework, applying the principles of s 4(1A) and s 103A(3) of the Act into the particular context of the employment relationship problem to establish the appropriate steps.⁶

[24] Based on all of this I conclude that the steps to address for assessing the justification of MOVE Freight's actions are:

- (a) Did MOVE Freight give Mr Putaanga a reasonable opportunity to recover or at least provide a prognosis of recovery and return to work?
- (b) Did MOVE Freight undertake a fair and reasonable enquiry into Mr Putaanga's incapacity and prognosis for return to work?
- (c) Did MOVE Freight engage appropriately with Mr Putaanga over his incapacity and either a return to work or dismissal?
- (d) Did MOVE Freight fairly consider what Mr Putaanga had to say about any possible return to work before it dismissed him, including balancing Mr Putaanga's needs against the needs of its business?
- (e) As a final step I must then decide if the decision to dismiss Mr Putaanga was substantively justified in the circumstances. Was MOVE Freight's decision to

⁴ *Sheridan v Pact Group* [2025] NZERA 1.

⁵ *Lal*, above n3 at [32] – [36].

⁶ *Idea Services Ltd v Crozier* [2017] NZEmpC 77; *Lyttleton Port Co Ltd v Arthurs* [2018] NZEmpC 9; and *Ancor Flexibles (New Zealand) Ltd v Gillan* [2018] NZEmpC 147.

dismiss Mr Putaanga a decision that a fair and reasonable employer could have come to in the circumstances.

[25] I will consider each of the steps in the framework against the facts; so first I will set out my findings of fact in terms of the process undertaken by MOVE Freight with Mr Putaanga.

What happened?

[26] Mr Putaanga was deemed medically unfit to work immediately after his accident. His injury was covered by ACC and he received ACC earnings related compensation.

[27] Mr Putaanga first attempted to return to work at MOVE Freight in February 2020. Mr Putaanga began this return to work as a passenger in one of the MOVE Freight trucks – Mr Putaanga did not drive and did not load or unload any cargo. This then progressed whereby Mr Putaanga undertook three assisted drives to Timaru. On these trips Mr Putaanga drove with another driver in the truck but did not do any loading and unloading. Then due to Covid-19 restrictions MOVE Freight stopped the return-to-work plan.

[28] Mr Putaanga's return to work then recommenced in May 2020, whereby he completed three assisted drives to Timaru, but on these assisted drives he was able to help with loading and unloading the truck.

[29] From June 2020 Mr Putaanga then began driving unassisted for short duration trips, initially to Timaru and then later to Ashburton, two days per week.

[30] Mr Putaanga continued this return-to-work schedule of two days per week driving unassisted until December 2021. During this time MOVE Freight received medical certificates from ACC that updated his ability to undertake work. These medical certificates consistently recorded that Mr Putaanga was fit to work 11 hours per day for two days per week. The certificates also recorded varying observations about Mr Putaanga's health such as "gets fatigue but coping with this" and "slowly recovering from concussion" and "no lifting or

forceful movements, no heavy physical work, has continuing fatiguability”. MOVE Freight noted during this time that Mr Putaanga was consistently unable to work more than five and a half hours per day before he became fatigued.

[31] Mr Putaanga’s working arrangements lasted until December 2021, when issues arose with MOVE Freight relating to Covid-19 workplace restrictions as well as issues over the wages Mr Putaanga had been paid.

[32] In the end matters were resolved over Mr Putaanga’s wage payments and he agreed to take annual leave for his two working days per week so he would not attend work. The ACC medical certificates issued during this time recorded Mr Putaanga as being fit to work 11 hours per day, two days per week and Mr Putaanga continued to receive annual leave payments from MOVE Freight based on two working days per week.

[33] At this time MOVE Freight had become concerned about the longer-term prospects for Mr Putaanga’s return to work. This was because no progress had been made with increasing Mr Putaanga’s ability to work more hours and MOVE Freight was unsure if it could continue to offer Mr Putaanga just two days of driving per week.

[34] One of the conditions on accepting that Mr Putaanga take annual leave rather than dealing with the issues arising out of the Covid-19 restrictions was that Mr Putaanga would be available for meetings to discuss his fitness to return to work once the Covid-19 restrictions were resolved. So, on 30 March 2022, MOVE Freight sent Mr Putaanga a letter inviting him to attend a meeting about when he might be able to return to full time work. The letter included:

[Mr Putaanga] we do not wish to appear unsensitive, (sic) but we need to talk about the employment relationship. At present, we do not know if and when you will be able to return fully fit and able to resume your duties. You have been a valued member of the team and you know the challenges that face our business on a daily basis. Without knowing your expected return to work date (and we understand that the timing of the recovery is out of your control), we may need to look at ending your employment, due to your inability to work.

However, before that happens, we would like to meet with you so you can share with us any information that could influence our decision. This may include advice from your doctor or any other care provider. To that end, I propose we meet on Thursday 07 April 2022 at 9.00 am. ... Myself and Sarah Powell (MOVE Group People and Culture Business Partner) will dial into this meeting also.

Please do obtain some independent advice around the situation, and we encourage you to have a support person or representative at the meeting should you wish.

We are sorry that we need to discuss this with you at a difficult time, and we hope you understand that no decision has been made. I look forward to when we meet and when you supply us with information on this matter to consider.

I do want to be clear that this is not a performance management or disciplinary process. In this regard, we are not suggesting that your absence is not genuine, however your absence is having such an impact on the business that a formal approach is now required.

[35] The meeting on 7 April 2022 had to be rescheduled as Mr Putaanga had not been able to arrange for a representative to attend the meeting with him. The meeting was rescheduled to 27 April 2022.

[36] This rescheduled meeting did not proceed due to Mr Putaanga's representative being unavailable. The representative was not available until 12 May 2022 and MOVE Freight decided it did not want to wait until then. So, MOVE Freight proceeded to evaluate the information it had regarding Mr Putaanga's fitness for work and based on this it formed a preliminary view about Mr Putaanga's ongoing employment. On 4 May 2022 MOVE Freight sent a letter to Mr Putaanga that stated:

As you know, you have been off work since 28 September 2019 due to a concussion and symptoms associated with this concussion. You have been unable to perform all duties and tasks that you were employed for since this date because of your injury. I understand several return to work plans have commenced previously however none have been completed in full to date.

...

[Mr Putaanga] I believe we have been fair and reasonable and trying to meet with you to discuss your injury and recovery to date. We have tried to be

flexible in meeting however it is my view that you are making it very difficult to do so. We cannot keep your position open indefinitely and as such we feel we are left with no other option but to make a decision on the future of your employment with us, based on the information available.

As such, I believe the below to be relevant:

- You are employed as a full-time permanent class 5 truck driver at MOVE Freight (previously TIL Freight). As a class 5 truck driver, you are required to operate a high standard of vehicle, carry out deliveries, maintain a high standard of health and safety, follow routes and schedules, and communicate with colleagues, managers and customers.
- Your medical certificate states that you suffered a head injury on 28 September 2019. You were initially deemed unfit for all duties and deemed fit for some duties from 10 February 2020.
- ...
- From 27 June 2020 you were cleared to commence unaccompanied driving duties and you moved to a return-to-work plan in which you were paid for any hours worked.
- In March 2021, we were advised that despite you having been medically cleared to work 11 hours two days per week you are in fact struggling to do this and were not working more than 5.5 hours per shift.
- Despite having medical clearance to work 11-hour shifts, you continued to work no more than 5.5 hours per shift until going on annual leave in December 2021.
- At present we do not know when or if you will be able to return to work as a full time driver for MOVE Freight. We also do not know when or what a return to work may look like in the future.
- We have made several recent attempts to meet with you to discuss your injury and return to work however you have made it difficult to do so. ... and believe it unreasonable to continue waiting because your support person could not attend a meeting for another three weeks.

The Driver role at MOVE Freight that you are employed in is a full-time position, and one that requires the incumbent to be able to complete physical tasks at the depot and on customer sites. Due to your inability to perform your duties as a driver since September 2019, your refusal to attend meetings despite adequate notice being

given and being unable to provide us with a plan to return to work in full, we feel that we have been left with no other alternative but to propose to end your employment with MOVE Fuel (sic) by way of medical incapacitation on 12 May 2022.

[37] Mr Putaanga was then invited to a meeting to discuss this preliminary review.

[38] The meeting to discuss the preliminary decision was held on 12 May 2022 and Mr Putaanga attended with his representative.

[39] In this meeting MOVE Freight presented its view on Mr Putaanga's ability to return to work as set out in the letter of 4 May 2022. In response Mr Putaanga said:

- (a) Prior to March 2022 MOVE Freight had never enquired about any rehabilitation he was undertaking, asked about his return-to-work programme or even asked him how he was.
- (b) He believed the sole motivation for the process was for MOVE Freight to terminate his employment.
- (c) There were various inaccuracies in the letter.
- (d) Since the accident he had seen multiple specialists, with the current focus on understanding his balance issues. Surgery had been considered but there was no guarantee it would be successful.
- (e) The main consequence from the accident was that he suffered a head injury that caused him ongoing Tinnitus and balance issues – so for example he could not stand on one leg. These created issues with fatigue but they did not prevent him from driving, which he had been doing. And he was currently seeing a specialist at Burwood hospital about his balance.
- (f) ACC had engaged with him recently over an update to his return-to-work plan so that they could construct a complete programme that could be implemented

consistently. He did not know when this plan would be finalised or what it might say about returning to work on a full-time basis.

[40] There was little discussion in the meeting about Mr Putaanga's current state of health and any prognosis on recovery. Likewise, there was no discussion in the meeting about the return-to-work plan. MOVE Freight simply advised Mr Putaanga that based on what he had explained there was no basis on which they could see him returning to work on a full-time basis and it was left with no option but to terminate his employment.

[41] The termination of Mr Putaanga's employment was subsequently confirmed in a letter dated 12 May 2022.

Did MOVE Freight give Mr Putaanga a reasonable opportunity to recover or at least provide a prognosis for recovery and return to work?

[42] Mr Putaanga's workplace accident occurred on 28 September 2019. Mr Putaanga was cleared to drive unassisted two days per week from June 2020 and did so until December 2021. MOVE Freight started the fitness for work process in March 2022.

[43] In total Mr Putaanga had 2 and a half years of recovery from his accident until MOVE Freight became concerned about his ability to return to work in a full-time capacity. And within this time, he undertook 18 months of unassisted driving on the return-to-work plan.

[44] By March 2022 MOVE Freight had not received a prognosis on Mr Putaanga's recovery time that indicated when he might be able to return to full time work

[45] Overall, there is no issue with the timing of the commencement of the fitness for work process with Mr Putaanga. I am satisfied that MOVE Freight acted as a fair and reasonable employer could in giving Mr Putaanga the time it did to recover and provide a prognosis for a possible return to full-time work (before it commenced the process).

Did MOVE Freight undertake a fair and reasonable enquiry into Mr Putaanga's incapacity and prognosis for return to work?

[46] Whilst MOVE Freight gave Mr Putaanga an opportunity to update it on his medical condition it gave him limited time and, in the end, this was under the auspices of his employment being terminated. Mr Putaanga's engagement in the process was limited by the time available and once a preliminary decision had been made, by his view that dismissal was inevitable. So, the primary avenue by which MOVE Freight could undertake its enquiry was, almost from the outset, severely limited.

[47] When it became apparent in the one meeting MOVE Freight did have with Mr Putaanga that he did not have any medical reports or specialist information available for it, MOVE Freight could have made further enquiries: it could have asked Mr Putaanga what was available; it could have asked about getting access to his medical file and/or ACC file; it could have explored the possibility of Mr Putaanga giving it consent to speak to his doctor or ACC; or it could have requested Mr Putaanga undertake a medical examination with a specialist of their choosing. Other than inviting Mr Putaanga to two meetings to discuss his ongoing employment, MOVE Freight did not do anything else to enquire about Mr Putaanga's medical status.

[48] MOVE Freight was content to base its decision primarily on the ACC medical certificates it had received and reports from staff about Mr Putaanga's work. This was evident in the letters MOVE Freight provided to Mr Putaanga and it appears that it had no real interest in exploring an updated position in terms of Mr Putaanga's injuries and prognosis for a return to work.

[49] MOVE Freight did not act as a fair and reasonable employer could in making enquiries into Mr Putaanga's incapacity and prognosis for his possible return to work.

Did MOVE Freight engage appropriately with Mr Putaanga over his incapacity and either a return to work or dismissal?

[50] MOVE Freight did not act as a fair and reasonable employer could in engaging with Mr Putaanga through its process.

[51] From my perspective there are two main failings, that it did not give Mr Putaanga a proper opportunity to attend a meeting and provide information before it came to its preliminary decision, and it did not consider the updated ACC return to work plan that was pending. Given the extent of Mr Putaanga's injuries, the time given to him until that point and that over time he had been able to do some work, giving him more time in the process to provide information on a possible return to work was appropriate.

[52] In the end, the process became hurried and the actual engagement with Mr Putaanga amounted to one meeting lasting 38 minutes, in which it appeared that MOVE Freight had already made up its mind and all it was looking to do was complete the meeting to be able to confirm Mr Putaanga's dismissal.

Did MOVE Freight fairly consider what Mr Putaanga had to say about any possible return to work before it dismissed him, including balancing Mr Putaanga's needs against the needs of its business?

[53] It is clear that MOVE Freight did not properly consider what Mr Putaanga was able to tell it, other than taking the summary of his injuries and medical status to support its view that he could not return to work. So, for example it did not consider what the current specialist Mr Putaanga was engaged with at Burwood hospital might have to say about his balance and ability to drive nor did it consider what ACC might say in the updated return to work plan.

[54] In many respects the meeting on 12 May 2022 appeared nothing more than a perfunctory step that MOVE Freight needed to take and its decision to dismiss Mr Putaanga had already been made.

Substantive justification

[55] Given the significant defects in the process undertaken by MOVE Freight I cannot conclude that the decision to dismiss Mr Putaanga was one that a fair and reasonable employer could have come to.

[56] I come to this conclusion even though after Mr Putaanga's dismissal the ACC medical certificates provided up until the investigation meeting show that he was not ever cleared to work more than three days per week driving. Given that MOVE Freight required a full-time driver in Mr Putaanga's role and the evidence shows that almost three years later Mr Putaanga could only work 6 hours per day, three days per week, dismissal may have been justified on a business need basis.

[57] Had MOVE Freight followed a full process and considered properly what Mr Putaanga's medical information at that time showed, and properly weighed its business needs against Mr Putaanga's it may well have been able to show that the decision to dismiss was justified.

Conclusion

[58] MOVE Freight unjustifiably dismissed Mr Putaanga.

Remedies for Mr Putaanga's personal grievances

[59] As Mr Putaanga has been successful with two personal grievances, I must consider what remedies he may be entitled to. In this regard, I may award any of the remedies provided for under s 123 of the Act. Mr Putaanga seeks compensation for the humiliation, loss of dignity and injury to his feelings he suffered from MOVE Freight's unjustified actions. And he seeks reimbursement of the remuneration he lost as a result of MOVE Freight's unjustified actions.

[60] Counsel for MOVE Freight says that pursuant to s 317 of the Accident Compensation Act 2001 Mr Putaanga cannot be awarded remedies for harm and loss that directly or indirectly arises from the injury he suffered on 28 September 2019.

[61] I accept this proposition but that does not mean that I cannot award Mr Putaanga any remedies. A distinction can be drawn between the injury Mr Putaanga suffered and the unjustified actions of MOVE Freight.

[62] An award can be made for the emotional and psychological harm caused to Mr Putaanga by MOVE Freight failing to provide him with a safe workplace and unjustifiably dismissing him.⁷

[63] An award can be made for remuneration lost by Mr Putaanga if the loss arises out of the unjustified actions rather than out of his injury. On this point, I conclude that Mr Putaanga cannot be awarded lost remuneration for the unjustified action of failing to provide a safe workplace or the unjustified dismissal. Any lost remuneration for Mr Putaanga arises because he was injured and unfit to work full time for MOVE Freight. This was the basis on which he received ACC earnings related compensation, so he has already received compensation.

[64] Compensation is the only remedy available for Mr Putaanga.

Compensation

[65] Pursuant to s 123(1)(c)(i) of the Act, compensation is awarded to a successful applicant for the humiliation, loss of dignity and injury to feelings that they suffered because of the unjustified actions of the employer.

[66] In making an award for Mr Putaanga I need to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out of the two sets of unjustified actions by MOVE Freight.⁸

⁷ *JCE v The Chief Executive of the Department of Corrections* [2020] NZEmpC 46 at [39].

[67] In terms of the workplace accident, the evidence shows that Mr Putaanga felt let down by his employer at what occurred, he felt (and expressed) that the accident should never have happened as MOVE Freight had been warned. This shows a level of shock, anger, disappointment, and sadness. These emotions were also evident in the way Mr Putaanga described events.

[68] In terms of his dismissal Mr Putaanga expressed disappointment and feeling let down particularly as he had complied with his medical advice and ACC proposals for his return to work. There was a loss of self-worth as Mr Putaanga clearly identified with his work and valued what he did. Although he expected to be dismissed, once the process started, he was still annoyed and angry at the outcome.

[69] Based on this I assess the quantum of compensation for Mr Putaanga to be \$9,000 for the unjustified disadvantage grievance and \$12,000 for the unjustified dismissal.

Contribution

[70] As I have awarded remedies to Mr Putaanga, I must now consider whether he contributed to the situation that gave rise to his grievance.⁹ Having assessed the evidence I conclude that Mr Putaanga did not act in a manner such that his compensation should be reduced.

Summary and orders

[71] MOVE Freight acted unjustifiably in failing to provide Mr Putaanga with a safe workplace and MOVE Freight's actions caused a disadvantage to Mr Putaanga's employment.

[72] MOVE Freight unjustifiably dismissed Mr Putaanga.

⁸ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

⁹ Section 124 of the Act.

[73] In settlement of these two personal grievances MOVE Freight Limited must pay Mr Putaanga \$21,000 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

Costs

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

[75] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Putaanga may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum MOVE Freight will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[76] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹⁰

Peter van Keulen
Member of the Employment Relations Authority

¹⁰ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1