

NOTE: An order at paragraph [1] of this determination prohibits some information from publication

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 462
3162981

BETWEEN	RDJ Applicant
AND	SGF Respondent

Member of Authority:	Robin Arthur
Representatives:	Jessica Heinstman, counsel for the Applicant Rachel Webster, counsel for the Respondent
Investigation:	8 and 9 December 2022 in Hamilton
Determination:	21 August 2023

DETERMINATION OF THE AUTHORITY

Order prohibiting publication of names

[1] The employment relationship problem addressed in this determination was intertwined with ongoing conflict between the applicant and the director of the respondent company over parenting arrangements for the youngest of their three children, now aged 10. Because family proceedings over those arrangements were continuing and there was a sufficiently serious risk to the child's privacy, the names of the child, the applicant, the company, its director, two other witnesses and one other person referred to in the evidence are prohibited from publication in relation to this

determination.¹ This order is made under clause 10 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[2] This determination uses identifying initials also used in a preliminary determination.² The applicant is referred to as RDJ, the respondent company as SGF and its director as ZEL. RDJ's present partner is referred to as Ms E. SGF's general manager is referred to as Mr F. A third person – who was a friend of ZEL, was employed by SGF and later married ZEL – is referred to as Ms G.

Employment relationship problem

[3] RDJ and ZEL jointly owned SGF for several years before their personal relationship ended and they separated in 2016. This separation included RDJ ending his financial interest in the business. SGF is now owned by a trust in which ZEL is a 1 per cent shareholder and its sole director. The other shares are held by the trust for the benefit of their three children, aged 20, 19 and 10.

[4] While ZEL was recovering from a mental health breakdown in 2019 she and RDJ discussed him returning to work for SGF's business. RDJ was familiar with the work and could more easily arrange time for caring for their children. ZEL was not working in the business at the time so RDJ's work was to be managed on a day-to-day basis by Mr F.

[5] Under the terms of his written employment agreement RDJ was employed as a property manager from 4 November 2019 on an annual salary of \$58,000. Three other staff worked with RDJ and Mr F in SGF's office. In April 2020 the office was moved from a central Hamilton location to some rooms in ZEL's house located in a city suburb. A lockable door separated the office from ZEL's personal residence.

[6] While ZEL was not involved in SGF's day-to-day operation she and RDJ continued to have ongoing contact over family matters. They sometimes talked about those matters during working hours. Their discussions included disagreement about future living arrangements for their youngest daughter.

[7] In October 2020 ZEL moved to Blenheim. Her new personal partner lived there and she planned to set up a business in the town. ZEL took the youngest daughter with

¹ *Erceg v Erceg* [2016] NZSC 135 at [2]-[3] and [13] and Family Court Act 1980 s 11B(3).

² *RDJ v SGF* [2022] NZERA 484.

her when she moved but RDJ successfully applied for an “uplift” order requiring the child to be returned to Hamilton. Their dispute over the care arrangements continued through the following months with ZEL travelling backwards and forwards between Blenheim and Hamilton to spend time with their daughter.

[8] Around this time ZEL also arranged for an old friend, Ms G, to start working for SGF as a property manager. During the working week Ms G lived in ZEL’s house where SGF’s offices were located. In February 2021 ZEL and Ms G married but, according to SGF’s statement in reply, they had “never been a couple nor lived together as a couple”. In her oral evidence ZEL described their marriage as an expression of support between two women who were raising children together. ZEL remained in her relationship with her Blenheim-based personal partner, who was a cousin of Ms G.

4 November meeting

[9] On 4 November 2020 ZEL asked RDJ to meet at her house to talk about parenting arrangements. Although he was at SGF’s offices on those premises at the time RDJ did not want to talk there about family matters. At his request they instead met at a café. RDJ was accompanied by his own new partner, Ms E. ZEL was accompanied by a friend. The discussion became heated and ended badly. A photo in the evidence showed a bite mark and bruise on Ms E’s arm. ZEL confirmed in her oral evidence that she had bitten Ms E during that café meeting. ZEL had later gone to a Police station to report her own actions and subsequently received Police diversion.

[10] On arrival at work a day or two after that event RDJ noticed some items had been placed on the windowsill of a room in ZEL’s house that he walked past to get to the office. He described the items as a samurai sword, a gun and “adult toys”. RDJ complained to ZEL that he felt threatened by those items and they were removed by the following day. In her evidence to the Authority investigation ZEL said the items had been placed there as a joke between her and Ms G. She described the gun as a ‘slug gun’ RDJ had previously borrowed and used for target practice. She denied any intention to threaten RDJ by placing those items on the windowsill.

11 November meeting

[11] On 11 November, while RDJ was at work at SGF’s offices, ZEL called him into a meeting. Ms G was present. RDJ said he thought the meeting was about a work matter but ZEL wanted to talk about parenting arrangements. The discussion became

heated with RDJ shouting, hitting the table and slamming the door as he left the room. Mr F was in a nearby office room at the time. In a note he said he had written the following day, Mr F said he overheard RDJ yelling and had heard two loud bangs after RDJ went outside. He believed the sound was RDJ hitting the fence with his fists.

[12] On 16 November ZEL sent RDJ, Mr F and Ms G an email saying that, while Mr F would continue to be the first point of contact, she had “stepped back into the business as managing director” and would “actively implement strong time management procedures”.

Disciplinary meeting

[13] In the following week RDJ was called to a meeting with a consultant who provided human resources support services to SGF. A letter sent to RDJ informing him of the meeting said he would be asked to respond to a complaint about his behaviour towards ZEL at work which, if proved, could be seen as serious misconduct and result in his dismissal. After interviewing RDJ the consultant wrote him a further letter, dated 7 December 2020. The letter said ZEL had agreed no further action should be taken about the concerns raised with him. It said the consultant has found that events in the personal relationship of RDJ and ZEL had “understandably directly impacted their workplace relationship and the actions of both parties have led to this current breakdown in communication”. It said ZEL had agreed to his recommendations that all work relations were to be “kept strictly professional”; all personal communications were to be kept strictly to after work hours; and contact on any personal matter was “to use a third party or email”.

Complaint and restructuring process

[14] In the following two months RDJ and ZEL had little workplace contact but on 24 February 2021 Mr F reported to SGF’s human resources consultant that RDG had told him he was not enjoying the job and the workplace environment anymore. Mr F reported RDJ had said he would not resign but “would need a payout” to change jobs, “so he would either get made redundant or fired and bring a personal grievance to get a payout”.

[15] On 25 February 2021 ZEL and Mr F received a written complaint from SGF’s second-biggest customer. The customer complained about RDJ’s work and demanded he be removed from working on her portfolio of properties. At the beginning of the

next working week, on 1 March, ZEL sent RDJ an email telling him of the complaint and telling him to reassign all communication and maintenance issues on those properties to Ms G. RDJ responded by email: “Sweet thanks, not a problem”.

[16] On 3 March 2021 ZEL sent a further email calling RDJ, Ms G and Mr F to a meeting on 5 March to discuss what she called a “restructure follow-up”. In her oral evidence ZEL said that, following resignation of the office administrator, she was looking at plans for the property managers to do more of their own administrative work and to change the salary structure, allowing an opportunity to make more money through business development (that is by securing more properties to manage).

Resignation

[17] RDJ responded to the meeting invitation four hours later with an email announcing his resignation to ZEL and Mr F:

I would like to inform you that I am resigning from my position as Property Manager for [SGF]. My last day of employment will be 31.03.2021. Thank you for the opportunity to work for and with you guys. I wish [SGF] all the best moving forward.

Personal grievance

[18] In the personal grievance he later raised about the end of his employment RDJ said his resignation was a constructive dismissal resulting from “incidents of bullying and inappropriate behaviour perpetrated by [ZEL]” which meant he “no longer felt comfortable on the worksite and felt that he had no option but to resign”.

[19] His personal grievance also raised allegations about how he was treated during his one month notice period which he said amounted to instances of unjustified disadvantage. These included declining his application to take the third and fourth weeks of the notice period as “domestic violence leave”. Leave he took during that fortnight was instead coded in SGF pay records as unpaid sick leave.

[20] RDJ had made arrangements to return his work vehicle and telephone on 19 March but Mr F and Ms G came to his home a day earlier to collect those items. While at his house Ms G also served RDJ with a trespass notice from the address which was the site of both SGF’s offices and ZEL’s private residence.

[21] For his grievances RDJ sought an award of lost wages and compensation for humiliation, loss of dignity and injury to his feelings.

[22] SGF denied RDJ was unjustifiably disadvantaged or constructively dismissed. It said his resignation was really a reaction to learning the company would investigate the formal complaint made about his work by its second largest customer. It denied there were grounds for him to be granted domestic violence leave. SGF admitted RDJ was served with a trespass notice but denied this was trespassing him from the worksite.

Issues

[23] The issues for resolution were:

- (a) Did the circumstances of RDJ's resignation amount to a constructive dismissal?
- (b) Was RDJ unjustifiably disadvantaged during the notice period?
- (c) If SGF is found to have acted unjustifiably (in disadvantaging and/or constructively dismissing RDJ), what remedies should be awarded to him, considering:
 - Lost wages; and
 - Compensation under s123(1)(c)(i) of the Act?
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by RDJ that contributed to the situation giving rise to his grievance?
- (e) Should either party contribute to the costs of representation of the other party?

The Authority's investigation

[24] RDJ, ZEL, Ms E and Mr F provided written witness statements. They each attended the Authority investigation meeting and, under affirmation, answered questions from me and the parties' representatives. The representatives also gave closing submissions about the facts and relevant legal principles.

[25] As permitted by s 174E of the Act this determination has stated findings of fact and law and expressed conclusions on issues necessary to dispose of the matter. While the written and oral evidence of the witnesses, relevant background documents and the representatives' closing submissions have been closely considered in preparing this determination, it has not recorded all evidence and submissions received. This

determination has been issued outside the usual statutory period as the Chief of Authority decided exceptional circumstances existed for the delay.³

Constructive dismissal

[26] RDJ submitted that how his employment ended fell within one or both of two recognised legal categories whereby a resignation may be held to really amount to a dismissal caused by how the employer has treated the employee. He submitted, firstly, that how ZEL treated him was deliberately designed to coerce his resignation. Secondly, he submitted that how ZEL acted towards him while he was an employee of SGF breached the company's duty to treat him fairly and it was foreseeable he would resign rather than put up with that situation.

[27] The description of the context already given shows that, as ZEL's counsel submitted, there were blurred lines between the relationship of ZEL and RDJ as ex-spouses and co-parents and the relationship between the legal entity of the company as employer, RDJ as its employee and ZEL as managing director.

[28] Although this determination has not set out more detail of the evidence given about what was said and done by both parents as the dispute over family matters developed, a close review of those details did not support a conclusion that ZEL's actions were sufficient to confirm there was a deliberate course of conduct designed to force RDJ's resignation from his employment with SGF.

[29] ZEL's actions in November however, by using her role and control in the employment relationship to pursue her concerns about personal family matters, did breach reasonable limits on what could properly be addressed in and through the workplace. RDJ was unfairly pressured while at work to take part in discussions that should have been confined to outside of work hours. This breached the duty of fair treatment owed to him as an employee and so amounted to an unjustified disadvantage.

[30] This was, effectively, the same conclusion reached by the human resources consultant ZEL had commissioned to conduct a disciplinary inquiry in late November 2020. The consultant did not support ZEL's point of view at that time. Instead, he identified a need for a better understanding of personal and professional boundaries. His letter of 7 December, as RDJ and ZEL both accepted in their respective evidence,

³ Employment Relations Act 2000, s 174C(4).

made it clear that ZEL had to respect those lines. RDJ, in his oral evidence, accepted that in the months that followed what he called “the work stuff” had stopped although tensions remained over “the personal stuff”.

[31] ZEL’s actions on SGF’s behalf of informing RDJ of a customer complaint in February 2021, and of an intention to investigate it, did not amount to a breach of duty. There was no evidence SGF had actively courted the complaint. And, even if RDJ did resign in response to news of the complaint, his emailed response, saying “sweet thanks, no problem”, indicated no concern from him about it at that time.

[32] Neither was the prospect of some restructuring of the work arrangements, as foreshadowed in ZEL’s 3 March email, shown to be a breach of SGF’s duties to RDJ. The prospect of any such changes was not even mentioned in RDJ’s personal grievance letter or subsequent statement of problem.

[33] While RDJ, and ZEL both remained deeply dissatisfied by the discord over family matters, the evidence did not support a conclusion that RDJ’s resignation from his position with SGF was caused by sufficiently proximate breaches of duty to him as an employee. In those circumstances, it could not be held as reasonably foreseeable to SGF that RDJ would resign for the reasons that he later gave. His resignation may have been motivated by personal weariness about the family dispute but that was not a reason for which responsibility ultimately rested with the legal entity of SGF as his employer.

Unjustified disadvantage

[34] RDJ was, however, unfairly treated during the notice period by how his leave application was dealt with and by how he came to be served with a trespass notice.

[35] RDJ said he spent the first two weeks of his notice period largely on his own in the SGF office as Mr F and Ms G were mostly out doing their work. He had no property management work to do but wrote “a few emails” and prepared inspection reports for Mr F and Ms G.

[36] On 17 March RDJ sent an email to Mr F, who was still his direct manager, stating he would “be taking domestic violence leave” from 18 March to the end of his notice period on 31 March. This email did not give any reason for the leave but said that “due to ongoing issues that directly involve the managing director of [SGF], [ZEL]

I am unable to discuss this matter with [her]”. He also asked that ZEL not contact him “on all other work-related matters until this issue has been resolved”.

[37] RDJ’s email also said he would return company property by Friday, 19 March but if the car was needed before then, to contact him to arrange that.

[38] Mr F responded the next day with a one-line email: “Could you please provide proof that you qualify for Domestic Violence Leave”. RDJ replied that providing proof was “quite tricky” but he was “willing to talk to a third party, outside of the [SGF] business to give more evidence if needed”. He attached copies of text messages he had received from ZEL and a photograph of the bite mark on Ms E’s arm. He wrote that ZEL had physically assaulted him in the past and “most recently she attacked my partner in a public place and was charged with common assault for this”. He also said he had received abusive phone calls, messages and visits from her. While he said he would be happy to talk to a third party about his reasons, his email ended by stating he did not believe ZEL could handle the issue in a fair and impartial manner.

[39] Mr F responded by, again, saying he required proof that RDJ was “the victim of domestic violence”. He also wrote that he was “aware that there is a police investigation currently in progress”.

[40] From Mr F’s oral evidence at the Authority investigation it became clear ZEL was directly involved in assessing RDJ’s request and in preparing the email responses Mr F sent to him.

[41] Mr F said he did not know at the time what the reference to “a police investigation” was about but had included it at ZEL’s suggestion. At the Authority investigation meeting ZEL explained that this related to an assault complaint she made against RDJ in October 2020. She said the Police had told her in March 2021 that they were contacting RDJ about that complaint and she had told Mr F that the Police had contacted RDJ on 17 March.

[42] On 18 March Mr F and Ms G went to Ms E’s property to meet RDJ there and to collect his work phone and car. Mr F had rung ahead to arrange the collection. It was during working hours. Ms G went there with Mr F so she could drive back their work car while Mr F drove the car collected from RDJ back to the office.

[43] While at that address Ms G also served RDJ with trespass notices for the street address of ZEL's residence and SGF office and for another address where ZEL's sister lived. Both trespass notices were filled out in what RDJ recognised as ZEL's handwriting and signed by her.

[44] On 19 March RDJ sent Mr F a medical certificate stating he was unfit for work for 14 days, that is through the remainder of his notice period.

[45] RDJ did not get a response to his leave request until he emailed Mr F on 30 March to ask about his final pay. It was ZEL who responded to his query. By email the next day she wrote that his medical certificate had been received and approval granted for unpaid sick leave. She also stated that Mr F was no longer the general manager and she was "responsible for the full management" of SGF. However, as clarified in the Authority investigation meeting, Mr F had remained in the same position throughout. ZEL said she thought his position title had changed some time beforehand. Mr F's witness statement in this matter, lodged more than 18 months later, described his role as general manager. ZEL's description in her email on 31 March had, however, created the incorrect perception that Mr F had left the business or been demoted.

[46] By further email on 31 March RDJ asked if ZEL was refusing his application for domestic violence leave. She replied that his medical certificate had been accepted and, if he had any entitlement remaining, he would have been paid out sick leave. Mr F had told RDJ on 3 March that he had no sick leave left.

[47] ZEL's email concluded by stating that "multiple enquiries" had been made to Employment New Zealand and the matter was discussed with Police staff but RDJ's leave application "did not meet the criteria required under the Holidays Act 2003".

Failure to fairly consider leave application

[48] RDJ's submissions referred to provisions in the Act about short-term flexible work for people affected by family violence but the provisions relevant to RDJ's leave request in this case are found in the Holiday's Act 2003 (the HA). Although his request in 2021 had referred to domestic violence leave, the term used in the HA is family violence leave (FVL).

[49] At the time FVL was still a quite recent addition to the available statutory leave provisions. If granted it would have allowed RDJ up to 10 days' paid leave, that is enough to have covered the last two weeks of his notice period.

[50] An employer may require proof that an employee is a person affected by family violence.⁴

[51] The HA's definition of family violence is drawn from the Family Violence Act 2022:

9 Meaning of family violence

- (1) In this Act, family violence, in relation to a person, means violence inflicted—
 - (a) against that person; and
 - (b) by any other person with whom that person is, or has been, in a family relationship.
- (2) In this section, **violence** means all or any of the following:
 - (a) Physical abuse;
 - (b) Sexual abuse
 - (c) Psychological abuse
- (3) Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:
 - (a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person);
 - (b) it causes the person, or may cause the person, cumulative harm.

[52] The HA provides no guidance on a situation where an employer, or some other person in a position of management responsible for making decisions about FVL applications, is the alleged perpetrator of the violence. However the measure for assessing what any employer has done in considering an application for FVL is the standard set by s 103A of the Act for assessing all employers' actions. This asks whether what the employer did was what a fair and reasonable employer could have done in all the circumstances at the time?

[53] ZEL had her own equally strongly felt and expressed views that it was RDJ who was a perpetrator of family violence, not her. Her evidence included a letter from a Marlborough women's refuge setting out her description of threats, intimidation and

⁴ Holidays Act 2003, s 72G.

abuse she said she had experienced in her dealings with RDJ. From her point of view, it was him and not her who was a perpetrator of the types of abuse referred to in the statutory definition of family violence.

[54] ZEL said she had asked SGF's external human resources consultant for some advice about RDJ's FVL request but was told to consult an employment lawyer. She said that "sounded expensive" and felt she had done enough by calling the Employment New Zealand 0800 number. She also said she had "fully discussed" the decision with Mr F.

[55] However deeply ZEL considered her view of the situation was correct, this was not a circumstance where a reasonable employer acting fairly could have gone ahead and allowed her to make the decision. Even allowing for the small size of the business, the highly unusual situation in which an alleged perpetrator was in a position to make a decision on an FVL application clearly required some more detached or third-party consideration. It was a failure of fairness to RDJ as an employee of SGF for ZEL to have made and communicated the decision about his FVL request. He has a personal grievance for unjustified disadvantage on that account.

Unfairly served trespass notice

[56] RDJ was also unfairly treated by Ms G using the opportunity of a work-related visit to him to serve him with two trespass notices that clearly related to personal matters.

[57] For the purposes of this determination RDJ's view that the notices were unnecessary anyway was irrelevant. Even if, as ZEL argued, there were other valid reasons for serving such notices, it was not appropriate for Ms G to do so as part of a work-related activity. Doing so was a further instance of not observing appropriate boundaries between work and personal matters.

[58] Ms G was attending Ms E's house during working hours on a work-related matter to see RDJ in her capacity as an SGF employee. Ms G was, by this time, also ZEL's spouse and has served the notices at ZEL's request. However, as ZEL said in her own oral evidence, serving those notices at that time "had nothing to do with work". RDJ had a personal grievance for unjustified disadvantage on that account.

Remedies

[59] RDJ was entitled to an assessment of remedies for two aspects of his application. Firstly, he sought an order for payment of the two weeks FVL he had asked for in March 2021. Secondly, he sought an order for compensation of his grievances under s 123(1)(c)(i) of the Act.

Lost wages

[60] RDJ's claim for payment of the FVL required a counterfactual assessment of what a reasonable employer, considering the request fairly, could have concluded.

[61] Such an employer is entitled to request, as SGF did, proof that the applicant for FVL is a person affected by family violence. The statute does not establish what level of proof is required. Learned commentaries suggest it is set at a low bar.⁵ The analysis in those commentaries also note that Parliament rejected prescribing the range of acceptable documents that may be provided in support of a FVL request. Rather "any proof" that an employee was affected by family violence would be sufficient.

[62] If an employer, for example, had two employees from the same family who each sought FVL due to violence they said they had experienced from the other employee, the employer could not be expected to conduct an extensive inquiry into the respective merits of each one's claim about the other. Rather, a fair assessment could reasonably consider what the proof proffered by one employee showed about the basis of her or his own FVL application. The reality in such a scenario might possibly be that how each acted towards the other could amount to abuse of the type defined as family violence. Both might then qualify as someone meeting the statutory definition of being a person affected by family violence even if they had, on that description, also been a perpetrator of it from the point of view of the other person.

[63] In this case RDJ had provided some information about the event where Ms E was bitten, including the photo of her arm, and some text messages from ZEL. One text sent after the events of 4 November 2020 said: "Hope you die". Another, sent in February 2021, described RDJ as a "fuckin useless" father to their children.

⁵ John Hughes and others *Mazengarb's Employment Law* (online ed, LexisNexis) at [3272G.1] and *Employment Law* (online ed, Thompson Reuters) at [HA72G.01].

[64] His medical certificate said he was unfit for work but provided no diagnosis or wording that linked his ill health to any issue of family violence.

[65] There was also Mr F's view that the FVL request was a 'try on' because RDJ knew he had no sick leave entitlement left.

[66] Weighing that background as best as could be done on the available evidence, it was more likely than not that a reasonable employer, aware of the complex and volatile context, would have accepted that the threshold for the type of behaviour that is defined as family violence had been crossed in the interactions between RDJ and ZEL. On that basis RDJ was a person affected by family violence and a reasonable employer, acting fairly, would have granted the ten days leave requested.

[67] RDJ was entitled to an order for the payment of ten days leave. The amount due was not quantified in RDJ's application to the Authority, his evidence or closing submissions. Taking the annual salary and five-day week set in his employment agreement, RDJ's gross average daily pay was \$223.80 so ten days' paid leave amounted to \$2,230.80.⁶ This is the amount SGF must pay as lost wages to RDJ within 28 days of the date of this determination.

Compensation for humiliation, loss of dignity and injury to feelings

[68] The assessment of compensation is limited to the distress arising from RDJ's two established disadvantage grievances, regarding the failure to fairly assess his leave application and inappropriately serving him a trespass notice in a work context.

[69] It cannot compensate for hurt or anguish arising from the ongoing family matters which is outside the employment relationship.

[70] RDJ decided he could not bear to remain working in SGF's office for the last two weeks of his notice period, for which he would have been paid, and to seek FVL instead. This caused a short period of financial distress as he had arranged to return to the job he had done previously. While the delay and eventual refusal over his leave request was worrying, his upset mostly related to the family situation beyond the employment relationship. However he experienced the unfair treatment of his leave application and the arrangements to serve a trespass notice on him for personal purposes

⁶ \$58,000 divided by 52 weeks divided by five days is \$223.08 x 10 = \$2,230.80.

during a work-related meeting as an exercise of the control ZEL had through her role as managing director of SGF. The loss of dignity and injury to his feelings caused by those actions warranted an award of compensation of \$7,000 under s 123(1)(c)(i) of the Act. This is the amount SGF must pay as compensation within 28 days of the date of this determination.

No deduction for contribution

[71] When remedies are awarded the Authority is required under s 124 of the Act to consider whether any blameworthy conduct by a successful applicant contributed to the situation giving rise to the grievance and, if so, whether any remedy awarded should be reduced due to that conduct.

[72] While answering questions in the Authority investigation meeting RDJ accepted he had contributed to difficulties in his working life at SGF by not sticking to boundaries between work and personal matters. This concession would be of more importance if he had been successful in his claim of constructive dismissal. It is less so in relation to the two disadvantage grievances on which he has succeeded. He did not contribute to SGF's failure to fairly assess his leave application. He had provided what he considered was relevant information and offered to provide more to a suitable third party. Similarly, he did not contribute to SGF's unfair action in using a work-related meeting for another purpose by serving a trespass notice. On neither count was any reduction of the remedies awarded required.

Summary and orders

[73] RDG's employment with SGF did not end by constructive dismissal. He was unjustifiably disadvantaged by actions of SGF during his notice period. In settlement of his grievances for unjustified disadvantage, SGF must pay the following amounts to RDJ within 28 days of the date of this determination:

- (i) \$2,230.80 for wages lost during his notice period; and
- (ii) \$7,000 as compensation for humiliation, loss of dignity and injury to his feelings.

Costs

[74] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they cannot and an Authority determination of costs is needed,

RDJ should lodge a memorandum on costs by no later than 14 days after the date of this determination. SGF would then have 14 days to lodge a reply memorandum.

[75] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate of \$4,500 for the first day of the investigation meeting and \$3,500 for subsequent days unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁷

[76] Unless there are other factors to consider, such as prior settlement offers, and subject to any information provided and submissions made, the following initial assessment may assist the parties. For the investigation meeting taking one day, at the \$4,500 tariff, and five-sevenths of a second day, calculated on the \$3,500 tariff (being \$2,500), those costs would total \$7,000. Costs for determination of the preliminary issue, determined on the papers, were reserved.⁸ Those costs would likely be set at \$1,500, giving a total of \$8,500 for costs in this matter, plus reimbursement of the \$71.55 filing fee.

Robin Arthur
Member of the Employment Relations Authority

⁷ See www.era.govt.nz/determinations/awarding-costs-remedies.

⁸ *RDJ v SGF*, above n 1, at [32].