

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 527
3106672

BETWEEN HARLEY RANGITAAWA-
KAUI
Applicant

AND UBP LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: Dave Cain, advocate for the applicant
Juanita Morgan, agent for the respondent

Investigation Meeting: 17 August 2021 in Hamilton

Submissions (and further information) received: At the investigation meeting and 24 August 2021 from the applicant
At the investigation meeting and 24 August 2021 from the respondent

Date of determination: 25 November 2021

DETERMINATION OF THE AUTHORITY

- A. UBP Limited unjustifiably caused disadvantage to Harley Rangitaawa-Kauī regarding his return to work following an accident.**
- B. Mr Rangitaawa-Kauī was unjustifiably dismissed by UBP Limited.**
- C. Within 21 days of the date of this determination UBP Limited will pay Mr Rangitaawa-Kauī the following remedies for his grievances:**

- (a) \$38,437.38 gross as lost wages; and
- (b) \$20,000 as compensation.

D. Costs are reserved and a timetable set.

Employment relationship problem

[1] Harley Rangitaawa-Kauai was a boner and trimmer at the Te Kuiti meat-processing plant operated by UBP Limited (UBP or the company). He had worked at the plant on and off for around 15 years. In March 2020 Mr Rangitaawa-Kauai's work finished.

[2] Mr Rangitaawa-Kauai claims that he was disadvantaged by events when he returned to work after a workplace injury and was unjustifiably dismissed. UBP disputes that.

[3] An investigation meeting was held in Hamilton on 17 August 2021. I heard evidence in person from Mr Rangitaawa-Kauai, along with UBP's Myron (Sonny) Rapana (night shift boning room supervisor) and Marion Nathan (night shift production co-ordinator). The parties later provided written submissions. Both submissions included some factual material which would have been better covered in witness evidence.

[4] This determination has not recorded all material received from the parties but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result, as permitted by s 174E of the Employment Relations Act 2000 (the Act).

Issues

[5] The issues for determination are:

- (a) whether Mr Rangitaawa-Kauai was disadvantaged by unjustified action of UBP when he returned to work after a workplace injury in March 2020;
- (b) whether he was unjustifiably dismissed; and
- (c) if a grievance is established, what remedies (if any) he should be awarded.

Background regarding Mr Rangitaawa-Kau

[6] Mr Rangitaawa-Kau describes a work accident in 2014 when he stabbed himself in the stomach and gastro-intestinal problems occurring since then. He discussed his difficulties with Mr Rapana a few times.

[7] At least in recent times Mr Rangitaawa-Kau worked night shifts.

[8] UBP has a collective employment agreement with the Te Kuiti Beef Workers Union. There is also another union with some members at the plant. Mr Rangitaawa-Kau was regarded as covered by the agreement although in March 2020 he was not a member of either union.

Warnings

[9] Mr Rangitaawa-Kau received a number of warnings over the last few years of his employment, focused around absences from the workplace and not meeting hygiene and sanitation standards (sometimes referred to as dirty gear). He believes that many of the warnings were unwarranted and that the company liked to move people through their first two warnings so it could then have them on a final warning and dismiss them if they did not need them. He did not formally challenge the warnings when they were given.

[10] Mr Rapana as supervisor was responsible for disciplinary actions and procedures with the workers he supervised. He used a similar process for each warning. He acknowledges that he did call Mr Rangitaawa-Kau into meetings saying he was going to give him a warning. The decision was thus predetermined although there appears to have usually been some opportunity for the employee to speak. There does not seem to have been any further investigation if, for example, the employee reported having phoned and left a message with head office about an absence. There was also no notice in advance of what the meeting was about or opportunity to bring a support person.

[11] The warnings are on a standard template with a few details written in by hand. The detail on some was modest. The warnings do not identify how long they remain in

place. Ms Nathan referred to the collective agreement specifying that warnings will be in place for a year.

[12] Although I could not establish that UBP routinely took people through to final warnings so it could dismiss them when it suited the company, there were unusual aspects to the company's practice to be seen in Mr Rangitaawa-Kauai's situation which seemed to reflect wider practice. On several occasions he was given final warnings but when another incident occurred within the year he would not be dismissed. Instead he would be given a renewed final warning. This did not reflect anything in the collective agreement. Mr Rangitaawa-Kauai was told that this meant the original final warning was scrapped and another one put in its place, seemingly with the one year starting again.

[13] Only the relatively lengthy period of one year seemed to be set for warnings to remain in place, regardless of the nature and seriousness of the breach involved.

[14] UBP's submissions cover the difficult labour situation it faces in Te Kuiti with shortages of skilled labour and the company reportedly applying a similar disciplinary approach to all employees.

[15] I briefly mention the issues covered by the warnings. Generally Mr Rangitaawa-Kauai did not accept that he had failed to notify UBP of absences, whether for sickness or other reasons. He had on occasions not attended with little advance notice due, for example, to a family crisis. The process for notifying absences does not appear ideal. Contact was to be made with the supervisor on his landline at home or work although understandably he was not always by his phone. Office staff did not like taking messages regarding worker absences (to be left in Mr Rapana's pigeon hole) as it was not their issue, with workers directed to phone their supervisor.

[16] Regarding the two warnings for dirty gear, Mr Rangitaawa-Kauai does accept that they were justified. After a long shift he did a couple of times put his gear away dirty in his locker. He did not have dirty gear on the production line as he understood that this was a health and safety issue.

The accident

[17] On 18 March 2020 Mr Rangitaawa-Kauai stabbed his left hand in a knuckle when his knife went through a hole in his chain links.

[18] Ms Nathan told Mr Rangitaawa-Kauai to head straight to the Te Kuiti Medical Centre, which he did. A nurse who bandaged his hand and told him to return the following day.

[19] The next morning Mr Rangitaawa-Kauai returned to the Centre. He was seen by a doctor who provided a medical certificate stipulating light and dry duties for one week, avoiding heavy physical work.

Return to work

[20] On 19 March 2020, Mr Rangitaawa-Kauai went into UBP. Mr Rapana was off work that day. Mr Rangitaawa-Kauai gave his medical certificate to Ms Nathan. She gave him dry duties in the laundry to perform all that day.

[21] On 20 March at the start of the shift Mr Rapana directed Mr Rangitaawa-Kauai to gear up and return to the boning floor. This was not to undertake full boning tasks but rather to separate and move pieces of meat on a conveyor belt.

[22] Mr Rapana described the work as light and only requiring the use of one hand, so the injured hand could be kept dry. Mr Rangitaawa-Kauai did not regard this as particularly light nor dry work, saying he still had to wear gloves and used both hands picking up larger cuts of meat.

[23] The two disagree on whether Mr Rangitaawa-Kauai actually undertook the work for a period or not. Mr Rangitaawa-Kauai says he did. Mr Rapana's view was that Mr Rangitaawa-Kauai had undertaken little or no work before complaining. For reasons set out below, I prefer Mr Rangitaawa-Kauai's evidence.

[24] Mr Rangitaawa-Kauai reports that after some time working his gloves made his hands hot and sweaty. This irritated his cut which got moist and itchy. Grabbing pieces of meat also caused irritation. Mr Rapana suggested he use a plastic sleeve on his arm instead of gloves but that did not assist.

[25] Mr Rangitaawa-Kauai approached Mr Rapana, telling him that the cut was becoming irritated, showing him a wet hand. Mr Rapana told the Authority that he suspected Mr Rangitaawa-Kauai had put his hand in the apron wash. Mr Rapana did not think he could prove his suspicion as he had not seen Mr Rangitaawa-Kauai wetting his

hand and the CCTV did not cover that area. He did not mention his suspicion to Mr Rangitaawa-Kauai at the time.

[26] Mr Rapana told Mr Rangitaawa-Kauai that he might as well go home if he was not going to do the job. Mr Rangitaawa-Kauai said he was supposed to be on dry duties and asked about other suitable duties. Mr Rapana replied that these were the only duties to do and if he could not do them, Mr Rangitaawa-Kauai would have to stay home without pay until he was able to return to the boning floor.

[27] The reason I prefer Mr Rangitaawa-Kauai's evidence relates to evidence regarding a meeting between himself, Ms Nathan and Mr Rapana shortly after Mr Rapana told him to go home. Both Mr Rapana and Ms Nathan's witness statements use the same language to strongly deny that any further meeting occurred that day, along with making their own individual comments. Both confirmed their witness statements at the start of Authority's meeting without change regarding this point, having heard Mr Rangitaawa-Kauai's evidence. However, later Ms Nathan accepted under questioning that Mr Rangitaawa-Kauai had come to see her about a disagreement he had had with Mr Rapana about light duties.

[28] At the Authority's meeting Mr Rapana indicated he was unaware of a further meeting and assumed Mr Rangitaawa-Kauai left the plant after their discussion near the boning room. I conclude that Mr Rapana was unable to recall the meeting and this has impacted on my assessment of his recall regarding earlier events that day.

[29] I return to events on 20 March 2020. After being told to go home, Mr Rangitaawa-Kauai asked Mr Rapana if he was allowed to speak to Ms Nathan. He hoped to explain to her that he was not supposed to be working on the boning floor until his knuckle healed and needed dry duties. Mr Rangitaawa-Kauai reports Mr Rapana telling him if he walked over the boot wash (to see Ms Nathan), he would be fired.

[30] Mr Rangitaawa-Kauai went to the office to speak to Ms Nathan. Moments later Mr Rapana arrived, loudly saying "don't fucking listen to him", more than once. Ms Nathan pulled both men into her office.

[31] Ms Nathan told Mr Rangitaawa-Kauai that he had to listen to his supervisor. Mr Rangitaawa-Kauai reminded her that his medical certificate required dry duties for a week and no heavy lifting. Mr Rapana said something like "If you aren't going to do your duties then fuck off".

[32] Mr Rapana left the office and Mr Rangitaawa-Kauai asked Ms Nathan if there were any other light duties or whether he had to leave the plant. She repeated that he should listen to his supervisor, go home and they would not pay him. Mr Rangitaawa-Kauai says he asked again about other light duties. Ms Nathan said no. She told the Authority that such duties were a supervisor's decision.

[33] All witnesses agreed that there were a variety of light and/or dry duties that employees undertook at times, such as helping in the kitchen or laundry, sweeping, masking mince and rubbish pick up in the car park.

Further contact about light duties

[34] On 23 March 2020 Mr Rangitaawa-Kauai called the day shift manager who usually organised light duties to ask if more light duties had become available. He also expressed his concerns about being on unpaid leave and Mr Rapana's threats of firing him.

[35] The day shift manager told Mr Rangitaawa-Kauai not to worry, that Mr Rapana was not going to fire him. He recommended giving Mr Rapana some time to calm down, recognising that Mr Rapana had issues going on at home. The manager asked Mr Rangitaawa-Kauai to see him once he was ready to return to work.

[36] Mr Rapana was asked whether he had phoned Mr Rangitaawa-Kauai about his absence on his next working day. He thought he might have but was not certain.

[37] The 23rd of March 2020 was the day that New Zealand's first Covid-19 lockdown was announced. The following day Mr Rangitaawa-Kauai texted the day shift manager to follow up but got no response.

Was Mr Rangitaawa-Kauai disadvantaged by an unjustified UBP action?

[38] Mr Rangitaawa-Kauai was entitled to seek other suitable dry duties when he found that the work was irritating his injury.

[39] There were usually other duties available but Mr Rapana refused to explore and offer such duties, seemingly on the basis that he did not accept that Mr Rangitaawa-Kauai's hand had become wet during his work on the belt. However, Mr Rapana's suspicion was not mentioned. Ms Nathan did not step in to arrange discussion about other light duties, relying on that being the supervisor's call.

[40] I find that UBP acted in an unjustified manner, disadvantaging Mr Rangitaawa-Kauī, by refusing to explore other light and dry duties and sending him home, indicating that he was not to be paid.

[41] There is some uncertainty regarding Mr Rangitaawa-Kauī's pay situation after he was sent home. Under usual circumstances his pay was quite variable. According to his bank records he did continue to be paid on a weekly basis with the final payment being on 1 April 2020. I would have considered an award of lost wages had one been claimed but it was not.

[42] There was relatively little evidence of effects on Mr Rangitaawa-Kauī specifically related to these events as distinct from his dismissal. I accept that being sent home understanding that there would be no pay can be stressful and unsettling. Any such effects will be considered as part of a global award below.

What happened at the 26 March meeting?

[43] On 26 March 2020 Mr Rangitaawa-Kauī went back to work, a day before his doctor's recommended return to work date, as his hand was healing well and he felt ready to return to his usual work. Mr Rangitaawa-Kauī returned to the boning floor to begin work when Mr Rapana came to tell him to go to see Ms Nathan. He asked what for but Mr Rapana just repeated to go and see her. As it turned out Ms Nathan was not particularly aware of what the meeting was to be about either. It was initiated by Mr Rapana.

[44] Unfortunately there are no notes from this meeting and there are significant differences in accounts.

[45] Early on Mr Rapana mentioned about Mr Rangitaawa-Kauī being able to have a support person present. It seems this was not initially pursued by Mr Rangitaawa-Kauī.

[46] Mr Rapana outlined Mr Rangitaawa-Kauī's warnings and attendance history, referring according to the latter's attendance as "shit". Mr Rangitaawa-Kauī was asked if he had anything to say. Mr Rangitaawa-Kauī felt pressured but recalls saying something.

[47] Mr Rapana recalled the dirty gear warnings being mentioned whereas Ms Nathan did not.

[48] What appears to have been Mr Rapana's concern at this time, in addition to his suspicion about the hand wetting, was Mr Rangitaawa-Kauai's unwillingness to do what he was told on 20 March. However, even on Mr Rapana's evidence there was no mention of failure to follow instructions by undertaking the meat separation work, nor his suspicion.

[49] Mr Rapana's version of events is that he said on the basis of the warnings history, Mr Rangitaawa-Kauai could "possibly be terminated". Ms Nathan also recalled the reference being to "possibly be terminated".

[50] Mr Rangitaawa-Kauai's version is that he was told that he was losing his job. He does not accept that he was told he could be terminated. He is confident Mr Rapana said that he terminated the position.

[51] All agree that Mr Rangitaawa-Kauai then asked to get a support person. His recollection is that when he asked, he was told (by Ms Nathan) that if he went, not to come back. That was denied by Ms Nathan. Mr Rapana and Ms Nathan understood that the meeting was to resume at some stage once a support person had been found. They did not have a strong view about whether that would be the same day or another day with no time being set. It was already late afternoon by this stage.

[52] On 27 March 2020 Mr Rangitaawa-Kauai texted Ms Nathan asking:

Are we able to postpone meeting till I can get a support person.

[53] This message does not fit comfortably with either party's version of events. According to the UBP witnesses the meeting was already postponed without another time or date set and Mr Rangitaawa-Kauai thought he had already been dismissed. He says he was trying to arrange another meeting to get his job back.

[54] Ms Nathan replied by text that he should contact his supervisor.

[55] Then Mr Rangitaawa-Kauai phoned Mr Rapana. Mr Rapana recalls being asked if Mr Rangitaawa-Kauai had time to get some advice from a lawyer. Mr Rapana agreed and said "just get back to me". Mr Rangitaawa-Kauai does not recall them actually talking.

[56] Mr Rangitaawa-Kauai communicated with Work and Income New Zealand. Later during 27 March he texted Ms Nathan again saying:

Hi Marion I'm pretty gutted that Sonny fired me yesterday because I've had too much time off over the last six months. I've called Wins and they need a letter from you saying I was let go yesterday, can you please get this to me by Monday. *[email address provided]*.

[57] Ms Nathan told the Authority that she found it strange to get that message as she did not think Mr Rangitaawa-Kauai had been dismissed. She did not follow up with Mr Rapana or speak to her boss Roger Stewart.

[58] Mr Rangitaawa-Kauai felt he had to chase UBP to get a termination letter. He rang the day manager who advised him to speak to Mr Stewart. He attempted to visit Mr Stewart at the plant but Mr Rapana saw him and told him to leave. Mr Rapana threatened to call the police. Mr Stewart came out and said he had to go, recommending he talked to a manager.

[59] Ms Nathan was under a considerable amount of pressure with the first lockdown and a lot of things coming at her all at once. She acknowledges that she did not read Mr Rangitaawa-Kauai's text message properly. She was focused on assisting Mr Rangitaawa-Kauai with WINZ.

[60] Sometime in about early April 2020 Ms Nathan provided a letter dated 27 March, without consulting others. The letter records:

This letter confirms our discussion we had on the 26.03.21 regarding your employment with UBP Ltd as being terminated as of the 27.03.20.

The reason for this decision was based on your attendance from September 2019 - March 2020.

This is unacceptable to the company resulting in your termination.

Was Mr Rangitaawa-Kauai dismissed?

[61] Mr Rapana does not believe that Mr Rangitaawa-Kauai was terminated at the 27 March meeting. Mr Rapana described Mr Rangitaawa-Kauai as then having "opted to be terminated" when he later asked for a dismissal letter. Ms Nathan did not believe Mr Rangitaawa-Kauai was dismissed on 27 March but did accept that he could have misunderstood what was being said to him.

[62] I accept that Mr Rangitaawa-Kauai genuinely thought he had been dismissed, even if that was a misunderstanding. He had been called into a meeting with no advance written or oral notice of either the meeting or what was to be discussed and thus felt under pressure.

[63] Given that from UBP's perspective there appeared from the 27 March 2020 text to be a misunderstanding, the company was obliged to correct it. Rather, in the pressure of the lockdown and thinking to assist Mr Rangitaawa-Kauai, it sent him a dismissal letter.

[64] Mr Rangitaawa-Kauai was dismissed by UBP.

Was the dismissal unjustified?

[65] Under s 103A of the Act the test is whether UBP acted as a fair and reasonable employer could have done in all the circumstances.

Reason for dismissal

[66] Dismissal letter gives the reason for dismissal as Mr Rangitaawa-Kauai's attendance from September 2019 to March 2020. Inconsistently, the statement in reply refers to previous breaches of the company hygiene and sanitation rules meaning that the company "could no longer take the risk in continuing his employment in this climate".

[67] Ms Nathan has no recollection of the dirty gear warnings being mentioned at the 26 March meeting. In addition there had been no recent incident of that nature. It is untenable for hygiene and sanitation rules to be relied on to justify the dismissal.

[68] Mr Rapanana's likely motivation for setting up the 26 March meeting was what he saw as a failure to follow instructions, namely undertaking the meat separation task as directed and his suspicion that Mr Rangitaawa-Kauai had deliberately wet his hand. However, these issues were not raised with Mr Rangitaawa-Kauai.

[69] On the basis of the evidence before me I cannot conclude that Mr Rangitaawa-Kauai deliberately jeopardised his completion of the light duties. He raised a concern about their suitability and attempted to discuss other possible duties.

[70] Turning to the absence issue, I cannot be satisfied that the absence warnings given to Mr Rangitaawa-Kauai were properly imposed. In addition having had a series of final warnings without dismissal, despite further incidents seemingly occurring within the period the previous warning was still live, meant dismissal was not envisaged.

[71] Significantly, there was no absence by Mr Rangitaawa-Kauai which would justify disciplinary action being taken regarding the March events. Even on Mr Rapana's evidence, he sent Mr Rangitaawa-Kauai away from the work place on 20 March. This is not an example of absenteeism but rather a direction from management to stay at home.

[72] There are no grounds on which a fair and reasonable employer could justify dismissal.

Process

[73] UBP failed to tell Mr Rangitaawa-Kauai in advance what the 26 March 2020 meeting was about. Mr Rapana accepted, under cross examination, that it was possible that that was unfair.

[74] Had Mr Rangitaawa-Kauai been a union member, Mr Rapana would have got him a union representative and there would thus have been advance notice of the meeting.

[75] As outlined above, it is not evident that the company put its real or motivating concerns to Mr Rangitaawa-Kauai, as it was obliged to do under s 103A(3)(b) of the Act.

[76] After the 26 March meeting Mr Rangitaawa-Kauai attempted to contact UBP by going to the plant. Both Mr Rapana and Mr Stewart sent him away. Covid-19 restrictions may have limited his entitlement to be there but the company should have contacted him in some other way to find out what his concern was. It failed to do so.

[77] UBP unjustifiably dismissed Mr Rangitaawa-Kauai on both a substantive and procedural basis.

Remedies

Lost wages

[78] Mr Rangitaawa-Kauai claims on-going lost wages as he does not have other paid work. His weekly UBP pay fluctuated. A monthly average of \$6,406.23 gross is sought.

[79] Mr Rangitaawa-Kauai has been out of work for an extended period. As will be seen below his dismissal had a serious effect on him and he was not in a fit state for some time to find other work. There was some evidence of later attempts to find work.

[80] This was also not an especially easy period to get a job. The lockdown continued into May 2020 and then there was a period of uncertainty regarding how the economy was going to be affected by the pandemic.

[81] Mr Rangitaawa-Kauai scanned for labouring and other jobs identified through Facebook and Trade Me jobs. Few responses were received to his applications. By August 2020 Mr Rangitaawa-Kauai was able to undertake a job search and sought a meeting with a recruiter. There were limited job prospects in the Te Kuiti area although he did start looking further afield.

[82] This is a situation where the discretion under s 128(3) of the Act should be exercised so as to award Mr Rangitaawa-Kauai more than the three months specified. Given UBP's practice of renewing final warnings means I cannot be satisfied that Mr Rangitaawa-Kauai was particularly likely to be dismissed had it not occurred in April 2020. I do note however his evidence that he decided sometime after dismissal that he did not want to continue working around knives and meat. This may have resulted in his resignation from UBP. It is also likely to have reduced his chances to find other work, as that was his main area of work experience.

[83] Considering these factors, a fair assessment for lost wages is an amount to cover the period from April to the end of September 2020, totalling \$38,437.38 gross. Contribution is discussed below.

[84] Submissions raised the prospect of deducting the benefit Mr Rangitaawa-Kauai received from WINZ however, the practice has been in employment cases not to make

deductions for that but rather to leave that as a matter to be resolved between the employee and WINZ.

Compensation

[85] Mr Rangitaawa-Kauai was shocked and devastated to be dismissed. He thought he had done what the day shift manager asked him to do which was to allow Mr Rapana some time to cool off. Mr Rangitaawa-Kauai thought he was a valued worker as he had received positive comments over the years from UBP. He enjoyed his job and felt that he was good at what he did. It was the job he had had for the substantial majority of his working life.

[86] Mr Rangitaawa-Kauai suffered sleepless nights for an extended period, lying awake stressed and worried about the future. He constantly felt nervous and tense like something bad was just around the corner. He had not previously been an anxious person.

[87] Mr Rangitaawa-Kauai's family grew very concerned about his mental state as he began feeling depressed. There were limited options for help whilst the country was in lockdown. Mr Rangitaawa-Kauai did phone the Healthline on occasions. In order to cope with all the negative emotions he was feeling, he turned to food and ended up gaining 60 pounds or so.

[88] Mr Rangitaawa-Kauai's confidence was knocked and as a result of what UBP did he lost trust in employers. He applied for jobs over Facebook but was not able to find anything.

[89] Finally Mr Rangitaawa-Kauai obtained a job interview but his son was born on 19 March 2021 and went into neo-natal intensive care. As a result Mr Rangitaawa-Kauai did not make the interview. The prospective employer told him that he could get in touch once his son was stronger.

[90] Mr Rangitaawa-Kauai found the stress of having a sick baby and losing his job put pressure on him and his relationship with his son's mother fell apart. She suffered from post-natal depression. He is hopeful that they will be able to reconcile.

[91] Mr Rangitaawa-Kauai took over primary care of his son. He lived off his savings for a few months and was then forced to take money out of his Kiwisaver fund due to

significant financial hardship. Once he had drained all his savings he went on the benefit. He describes himself as still being in a deep hole financially.

[92] Mr Rangitaawa-Kauai sought \$20,000 as compensation for humiliation, loss of dignity and injury to feelings. He was seriously impacted for an extended period by his dismissal and that is a fair amount, prior to consideration of contribution.

Contribution

[93] I now look at whether Mr Rangitaawa-Kauai's conduct can be said to have contributed to the situation giving rise to his dismissal.¹ To make a reduction in remedies conduct must be blameworthy and contributory.²

[94] Mr Rangitaawa-Kauai acted reasonably in raising his concerns about the meat separation work and seeking alternative light duties. He went home on instruction from Mr Rapanu and returned when he was able to undertake full duties. When he understood he was dismissed, having spoken to WINZ he asked for written confirmation of his termination. None of that conduct can be described as blameworthy.

[95] I have considered whether Mr Rangitaawa-Kauai's previous warnings can be regarded as providing a basis for a contribution deduction. As outlined above, there are serious difficulties with the warnings process and I cannot conclude that they provide a sound basis on which to find Mr Rangitaawa-Kauai's conduct to be blameworthy and contributory. No deduction is made.

Award

[96] UBP is to pay Mr Rangitaawa-Kauai the following amounts within 21 days of the date of this determination as remedies for his grievances:

- (a) \$38,437.38 gross as lost wages: and
- (b) \$20,000 for compensation for humiliation, loss of dignity and injury to feelings.

¹ The Act, s 124.

² *Xtreme Dining Ltd (trading as Think Steel) v Dewar* [2016] NZEmpC 136 at [175].

Costs

[97] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Mr Rangitaawa-Kauai shall have 21 days from the date of this determination in which to file and serve a memorandum on the matter. UBP shall have a further 14 days in which to file and serve a memorandum in reply. Submissions claiming costs must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[98] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors require an adjustment upwards or downwards. The notional daily tariff for a one day investigation meeting is \$4,500.

Nicola Craig

Member of the Employment Relations Authority