

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 225
3133155

BETWEEN

BRADLEY STEENHART
Applicant

AND

SOUNDS SHIPWRIGHT
SERVICES LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Kevin McLaughlan, advocate for the Applicant
Michael Hardy-Jones and Sean Thompson, counsel for the Respondent

Investigation Meeting: 6 April 2022 at Blenheim

Submissions Received: 12 April 2022 from the Applicant
6 and 28 April 2022 from the Respondent

Date of Determination: 31 May 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Bradley Steenhart was employed by Sounds Shipwright Services Limited (Sounds Shipwright) from 28 September 2020 until 11 December 2020 as a Boat Yard General Hand.

[2] Sounds Shipwright is a duly incorporated company having its registered office at Nelson and carrying on the business of provision of shipping services. The sole director of Sounds Shipwright is Lloyd Price.

[3] Mr Steenhart comes to the Authority to resolve employment relationship problems that he says arose both during his employment and when the employment ended.

[4] He says that during his employment there was a failure by Sounds Shipwright to provide him with a safe work environment including from unwanted behaviour of a sexual nature. Further that he was asked to leave the worksite on 11 December 2020 and did not return to work after that date. Mr Steenhart maintains that he was a permanent employee although his employment agreement referred to him as a casual employee and that what occurred on 11 December 2020 was a change to his terms and conditions of employment. He says that he was dismissed either actually or constructively and that such dismissal was unjustified.

[5] Sounds Shipwright does not accept that it failed to provide Mr Steenhart with a safe working environment. It does not accept that Mr Steenhart was dismissed. It says that he was a casual employee who rejected an offer of work and made a statement that could be one of resignation. It does not accept that there was a change to Mr Steenhart's terms and conditions.

[6] Mr Steenhart seeks compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) for hurt and humiliation in relation to the unjustified disadvantage in the sum of \$10,000 and \$20,000 for the unjustified dismissal together with reimbursement of lost wages from the date of his dismissal on 11 December 2020 until he commenced his new employment on 6 January 2021. He also seeks payment of holiday pay together with costs.

The Investigation

[7] The Authority heard evidence from Mr Steenhart by Zoom. Mr Price and an employee who undertakes administration for Sounds Shipwright, Fiona Stonehouse appeared in person to give evidence. The Authority heard from Roger who is another employee of Sounds Shipwright by telephone as he was unable to attend in person or participate by Zoom.

The Issues

[8] The Authority needs to determine the following issues in this matter:

- (a) What is the legal framework for assessing whether a relationship is one of casual employment or not?
- (b) What were the material provisions of the employment agreement?
- (c) Was the way the relationship operated in practice consistent with the employment agreement?
- (d) Was Mr Steenhart a casual employee?

- (e) Was there a failure to provide a safe working environment?
- (f) How did the relationship end?
- (g) If the relationship did not end by way of actual dismissal or abandonment, then what were the reasons for Mr Steenhart ending the relationship?
- (h) Was his resignation caused by breaches of duty?
- (i) If there were breaches then were they of sufficient seriousness to make it foreseeable that Mr Steenhart would not be prepared to continue to work under the prevailing circumstances?
- (j) Is Mr Steenhart owed holiday pay?
- (k) If the personal grievances are made out then what remedies should be awarded and are there issues of contribution?

What is the legal framework for assessing whether a relationship is one of casual employment or not?

[9] *Jinkinson v Oceana Gold (NZ) Limited* is a leading Employment Court judgment about casual employment.¹ In assessing whether a relationship is one of casual employment or not Judge Couch in *Jinkinson* considered what was meant by the terms “casual”, “ongoing” or “permanent”. He stated that whatever the nature of the relationship the parties will have mutual obligations during periods of actual work or engagement. The distinction between casual employment and ongoing employment is in the extent to which there are mutual employment related obligations between periods of work. If the obligations only exist during periods of work or engagement, then employment will be regarded as casual but mutual obligations which continue between periods of work mean there will be an ongoing employment relationship.²

[10] Determining the nature of the relationship is important in this matter for resolving the employment relationship problem about how the relationship ended. If it is a casual employment relationship, then there is no continuing obligation on Sounds Shipwright to offer further work or for Mr Steenhart to accept any further work offered. That is because the obligations in the employment relationship only exist during periods of work or engagement to work. In between times the parties have no obligations to each other. Whilst a casual employee

¹ *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225.

² Above n 1.

could bring a personal grievance claim for dismissal that is limited to a situation where the employee was terminated during an engagement or period of work.

Material provisions of the employment agreement

[11] Mr Steenhart was offered employment by letter dated 27 August 2020. The letter offering him employment attached an employment agreement setting out proposed terms and conditions. Mr Steenhart was advised that he could seek advice about the employment agreement or contact Mr Price directly.

[12] The employment agreement was signed on 28 September 2020. It has headings for different clauses, but the clauses are not numbered.

[13] A clause headed “type of employment agreement” provides as follows:

The employee will work on a **casual “as required” basis** with no expectation of ongoing employment. The employer will give reasonable notice when asking the employee to work, and the employee may choose whether to accept or decline the work. If the offer of work is accepted, the employee must complete it – unless either the employer or the employee ends this agreement.

Each time the employee accepts an offer of work it is considered a new period of employment. The terms of this agreement will apply to each new period of employment unless the employer and employee agree to any changes.

[14] There is a clause headed “hours of work”. It emphasises the employment is casual and when required and there is no obligation on the employer to offer or the employee to accept work offered. It set out for hours of work that the employer may offer work during its usual hours of business Monday to Friday, between the core hours of 8am and 5pm.

[15] Holiday pay is recorded in the employment agreement to be paid with the regular pay.

[16] There are some clauses that are less usual with a casual employment relationship such as the restraint of trade provision and a clause about abandonment of employment. The employment agreement provides that the employee may end the employment relationship by resigning or because of serious misconduct.

[17] Mr Steenhart was paid \$30 per hour.

[18] I do not consider that the employment agreement supports to the required extent that the parties had mutual employment related obligations between engagements for employment.

The employment agreement provided there was no obligation on Sounds Shipwright to offer work, no expectation of ongoing employment and no minimum number of hours offered for each work session. Mr Steenhart could choose to accept work or not.

[19] It is necessary to consider how the relationship operated in practice.

Relationship in practice

Hours of work

[20] The Authority was provided with the wage and time records for the period that Mr Steenhart worked at Sounds Shipwright from 28 September 2020 to 11 December 2020. That was a period of about 11 weeks. The first and last weeks were not full weeks for the weekly pay cycle that ran from Thursday to Wednesday. Mr Steenhart was paid each week.

[21] For the first three days of his employment in September 2020 Mr Steenhart worked 8 hours a day. For the four weeks in October 2020, he worked between 37.5 and 41 hours a week. For the four weeks in November, he worked between 36 and 40 hours each week. There were some issues with timesheets in December for the final two weeks of work. These were explained by Ms Stonehouse. The hours/days worked for those weeks will be explored in the analysis of the events leading to the ending of the relationship. There were no such issues for the first week of December during which week Mr Steenhart worked for 40 hours.

[22] As Mr Hardy-Jones and Mr Thompson submit there were mainly 8-hour days worked by Mr Steenhart but there was a handful of day where the hours were less than 8 hours. One of these was when Mr Steenhart worked on a Saturday. The evidence was not such to enable me to draw conclusions whether these reduced hours reflected the casual nature of employment or were Mr Steenhart asking to leave early which is not necessarily indicative of casual employment.

Pattern of work

[23] During the period for which hours of work each week have been set above, Mr Steenhart worked Monday to Friday. He also worked one weekend during his period of employment.

Offering of work

[24] Mr Steenhart said that his workdays were Monday to Friday and he turned up without being contacted each day. He started work at 8am and usually another employee Roger would open the site. He finished at or about 5pm. Mr Steenhart recalled Mr Price arriving between 8.30 – 9.00am.

[25] Mr Price said that if there was work then Mr Steenhart would work Monday to Friday. He stated that the work was seasonal and the business was busiest in the summer and reduced in autumn and winter.

[26] In final submissions Mr Hardy-Jones and Mr Thompson submit that the mutual obligations only arose when a job had been accepted and not between jobs.

[27] There wasn't clear evidence that the way work was given or allocated to Mr Steenhart aligned with the employment agreement. The employment agreement required Sounds Shipwright to give Mr Steenhart reasonable notice and the ability to accept or decline work. The Authority was provided with a timesheet for the last week that Mr Steenhart undertook work. It reflected jobs on different boats and areas and that the nature of the work once on site was variable. That was not inconsistent with the evidence that he would start with the job he did not finish the day before or be directed as to what work to undertake by Mr Price on any day.

Conclusion about nature of the relationship

[28] Although the period of the relationship between Mr Steenhart and Sounds Shipwright was not extensive the hours and pattern of days worked by Mr Steenhart were overall consistent and predictable and essentially constituted full time work. I accept that it was the busy period and that it was likely work would have reduced over the autumn and winter months. That of itself does not support a relationship of a casual nature at the time the Authority has been required to assess. The pattern and hours of work could be indicative of seasonal/ fixed term employment that may have ended and been replaced with a casual employment relationship when work decreased. Mr Steenhart said that he did not take leave as such or sick days over the period he was employed so no guidance is available about how those matters would be dealt with.

[29] There were some aspects towards the end of the employment that Mr Hardy-Jones and Mr Thompson have relied on to support the relationship was casual in nature. They occurred at a time the relationship had begun to deteriorate, and I've placed less weight on what happened over that time accordingly.

[30] Objectively assessed the regular and consistent hours and pattern of work support a mutual expectation of continuity of employment and mutual obligations between periods of work.

[31] I do not find that the employment relationship was casual in nature.

Was Mr Steenhart provided with a safe workplace

[32] Three matters were raised by Mr Steenhart in his claim that he was not provided with a safe workplace.

The sabre saw incident

[33] Mr Steenhart said that he was working on a boat in the workshop when Mr Price placed a reciprocating sabre saw without the blade attached onto his buttock area and turned it on saying "you would like that wouldn't you." He said that he took offence at and felt humiliated by this behaviour which he said was observed by a customer and an employee. He did not accept that he laughed about the incident.

[34] Mr Price said that the incident with the tool was a moment of "friendly banter." He said that he was putting the saw back into the tool rack and Mr Steenhart was there pulling out the boat prop shaft. He went "pff pff" with the saw trigger and placed it back on the rack. He recalled Mr Steenhart "smirked", and they had a "laugh." He denied putting the tool on Mr Steenhart's person. He did not recall anyone else being around at the time. He said that whilst Mr Steenhart has stated that the incident was observed and had been asked before the Authority investigation meeting to say who by it was not until the Authority investigation meeting that he confirmed who was present at the incident.

[35] Mr Steenhart named for the first time at the Authority investigation meeting the customer he said was present at the time and the name of another employee V. This information had been requested at an earlier stage on behalf of Sounds Shipwright but not provided.

[36] Mr Steenhart provided a telephone recording of a conversation he had with an ex-employee of Sounds Shipwright as part of the information provided to the Authority. I shall refer to that ex-employee as V. It is clear from the recording that V did not want to participate in the Authority investigation meeting. He referred to signing some paperwork that he had not seen sexual harassment and that he “basically made me and Roger do all that” or he would not have a job and that he was against it. I have taken the reference to “he” to be Mr Price.

[37] Mr Price accepted that he did call a staff meeting in or about March 2021 during which he expressed concerns about the allegations made and the financial claims involved. The Authority heard from an employee Roger who was affirmed and gave evidence by telephone. Roger provided a written statement that what Mr Price explained at the staff meeting was that the allegations by Mr Steenhart meant “we could all be out of a job because of the amount involved.” He wrote that he took this to mean that the company could not sustain that loss and it was not directed at any one person.

[38] Mr Hardy-Jones and Mr Thompson submit there should be caution with the recording of V. They submit that the recording is only part of a larger conversation and as a result the Authority does not know the questions put to V by Mr Steenhart and the way they were put. They submit that it is therefore out of context. Further that V does not say what he signed was not true.

[39] I accept caution is required with the recording. On the recording the only voice audible is that of V. Introductory remarks and questions to put his statements into context are not available to the Authority.

[40] The Authority needs to be satisfied on the balance of probabilities about what occurred with the sabre saw. Mr Hardy-Jones and Mr Thompson submit that the evidential burden that is required to be met by Mr Steenhart has not been. The timing of the event was put by Mr Steenhart as three or four weeks before his employment ended.

[41] There is no dispute that the sabre saw was turned on by Mr Price whilst Mr Steenhart was bent over pulling out a prop shaft from a boat. Mr Steenhart said that Mr Price pushed the locking attachment into him past the stopper and it contacted with his buttocks. Mr Price denies that there was any contact with Mr Steenhart’s person.

[42] The Authority needs to consider whether there is reliable evidence against which the evidence can be tested about that matter. Grievances were raised in a letter dated 15 January 2021 from an employment advocate Ms Lisa Read on behalf of Mr Steenhart. Ms Read refers to the saw incident and states that the sabre saw was placed “directly behind Mr Steenhart’s buttocks.” This is also the action referred to in the first statement of problem. The amended statement of problem lodged in June 2021 refers to the placement of the saw “on his buttocks.” There is a distinction between the words “behind” and “on”. Usually, a statement made closer to the time of the actual event is more likely to be reliable and less likely to be impacted by memory fading or reconstruction. I cannot be satisfied to the degree required that the saw contacted with Mr Steenhart’s person.

[43] I do conclude it more likely than not that the saw was positioned behind Mr Steenhart’s buttocks as he was bending over. Mr Price in his statement says that the incident with the tool was one of “friendly banter” and Mr Steenhart laughed. Given the positioning of the saw I conclude it more likely that Mr Price made some comment along the lines that Mr Steenhart would “like that”.

[44] Mr Price likely did not intend his actions and statement to cause offence because he saw it as a joke. What is relevant having found that there was language and behaviour of a sexual nature is not what Mr Price intended but the impact of the conduct on Mr Steenhart. Mr Steenhart said in evidence that he didn’t find it funny and felt disgusted. He said that he did not know what to do and carried on but did not laugh.

[45] I conclude that there was conduct and words of a sexual nature with the sabre saw and that Mr Steenhart found the behaviour unwelcome and offensive and although not repeated it had a detrimental impact on his job satisfaction at that time. Engaging in such behaviour that amounts to sexual harassment is not consistent with the provision and maintenance of a safe workplace which is a duty of Sounds Shipwright in the employment agreement. It was an action that was unjustified and caused disadvantage to Mr Steenhart in his employment.

Pornography

[46] Mr Steenhart said that on occasion Mr Price showed pornography in the smoko room on his phone and he felt sick about it. He described one such clip in some detail. Mr Price denied that he had shown pornography. He said that at smoko time Mr Steenhart and V would be on their phone and Roger would be reading. He said that he would sit at the other end of

the table and was a “pretty private” person. Roger did not recall seeing a video clip that Mr Steenhart had given evidence about. He said that Mr Price showed some clips of boats and cars but he could not recall porn being shown.

[47] I cannot be satisfied to the degree required that Mr Price showed pornography to his staff including Mr Steenhart.

A punch on the arm

[48] Mr Steenhart said that he tried to intervene to stop Mr Price bullying another employee V who was standing behind a boat. He said that Mr Price punched him on the arm and said, “I’ll show you what a bully is boy.” Mr Price denied that ever happened. He said that he had had some major surgery at that time on his throat and was still in recovery and would not have risked a possible injury at that time.

[49] I could not be satisfied from the evidence to the required standard that this incident took place.

How did the relationship end?

Work on the boat CC

[50] Mr Steenhart undertook some work on a boat I shall call CC in December 2020. A grumbling noise had been detected by the owners who asked that it be attended to as part of an annual service. After the stern leg was removed, repaired by Mr Steenhart and put back a test run revealed there was an oil leak in the heat exchanger and the thread was damaged. Mr Steenhart worked over Saturday and Sunday on 5 and 6 December 2020 to attend to this leak. He also worked on Monday 7 December 2020. He did not appear to have worked on Tuesday 8 December.

[51] Mr Price said that he did not know that Mr Steenhart had used epoxy putty to fix the thread. He said that Mr Steenhart should have come to him to ask what was required because a permanent welded fix was what was required and the heat exchanger would need to be removed again to enable this to occur.

[52] The evidence supports a telephone call between Mr Price and Mr Steenhart to advise that the heat exchanger would need to come out again on Wednesday 9 December.

Mr Steenhart said that Mr Price blamed him for the leak. He came into work briefly on 9 December but then returned home about 9am because he was angry about what Mr Price had said to him.

[53] There are a series of text messages sent on 9 December 2020.

[54] At 8.12am Mr Steenhart sent a text to Mr Price:

Ring me when your not going to be such an asshole. An the fucking leek is fixed too ring me later if I still have a job if you want me there.

[55] Mr Price responded to Mr Lloyd:

Have you cleaned the fluid from the bilge and run the engine to temperature to test for oil cooler leaks?

[56] Mr Steenhart responds, "No iv gone home."

[57] Mr Price sends another text to Mr Steenhart:

"Well how can the job be signed off then?"

[58] Mr Steenhart sends Mr Price a text message asking Mr Price to ring him later when they have both calmed down.

[59] Mr Steenhart posted on the Rai Valley Facebook noticeboard on 9 December 2020 that he was looking for full time employment.

10 December 2020

[60] Mr Steenhart gave evidence that he was rung in the afternoon of 10 December and asked to come into work on 11 December. The timesheets however record that he was in fact at work on 10 December for eight hours. During that day the timesheets show he carried out two hours work on CC removing the heat exchanger.

[61] Ms Stonehouse produced two timesheets for the last period that Mr Steenhart worked. In her evidence she highlighted some entries on the first timesheet because that sheet had been written on incorrectly by Mr Steenhart. He had not put anything on the first timesheet for the Tuesday and Wednesday 8 and 9 December 2020 but had put hours and work undertaken for

Thursday 10 and Friday 11 December 2020. Mr Steenhart should have completed a new timesheet for the next pay week commencing on Thursday December 2020.

[62] Ms Stonehouse transferred the details of the work undertaken by Mr Steenhart on Thursday 10 and Friday 11 December 2020 to a second new timesheet. There must have been some communication between Mr Steenhart and Ms Stonehouse about his hours of work because 2.25 hours for work Mr Steenhart undertook on 9 December 2020 is added to the second timesheet when it is absent from the first. Ms Stonehouse said that she would also have had to clarify with Mr Steenhart what work he had undertaken on 11 December because on the first time sheet he has put CC twice but there is no description against the second entry of CC or the work he undertook or the time he took. On the second timesheet there is an hour for “cleaning the oil cooler ready for weld” recorded against CC. The finish time for 11 December is also recorded on the second timesheet as 1.00pm.

11 December 2020

[63] Mr Steenhart says that this was the date on which his employment was terminated.

[64] Mr Steenhart said in his oral evidence that he went to work on 11 December 2020 at the normal time and Mr Price talked to him about jobs to do and told him that he was hopeful that the special welding rod from Nelson required for the repairs to the heat exchanger would arrive with the courier by lunch time. He said that after he did the other jobs Mr Price told him that there would be no more work after the CC job, that he was not insured, and Mr Steenhart was not fitting in. Mr Steenhart said that he was told to go home. Mr Steenhart said that he responded and said that he was “not going to finish the job” and Mr Price told him to get “the fuck out of my workshop and don’t come back.”

[65] Mr Price said that the courier arrived at 12.30pm and on Friday when there was no welding rod he told Mr Steenhart that there was no work for him to do and that he would give him a call when the welding rod came in. He did not accept that he told Mr Steenhart to “fuck off.” He said that he wanted the work on the boat to be completed and did not want a confrontation.

[66] As Mr Hardy-Jones and Mr Thompson submit the employment relationship problem as presented in both the original and amended statements of problem made no mention of a

sending away of the nature Mr Steenhart gave oral evidence about. In the original statement of problem at paragraph 2(d) dated 17 March 2021 it stated about that date:

On 11 December 2020 Mr Price advised Mr Steenhart there was no longer any work for him, and he was required to leave immediately.

[67] The amended statement of problem lodged on 17 June 2021 stated in 1 (g) that:

On the 11 December 2020 Mr Price sought to alter the terms & conditions of Mr Steenhart's employment by stating there was no further work for him that day and that he should leave the workplace until Mr Price required his services again.

[68] What happened after 11 December is more consistent with Mr Price's evidence than Mr Steenhart's. On Monday 14 December 2020 at 11.09am Mr Price sent Mr Steenhart a text message that provided as follows:

You might as well come in tomorrow, I have the rod but I cant get onto it first thing as I need to get the big trailer ready.

[69] I do not conclude that Mr Steenhart was dismissed on 11 December 2020.

What happened after 11 December 2020

[70] The evidence supports that there was a telephone call from Mr Price to Mr Steenhart after his 14 December text to see if Mr Steenhart was returning to work. Mr Price said in his evidence that Mr Steenhart said when asked if he was coming to work "I don't have to do any fucken thing for you Lloyd."

[71] Mr Steenhart recalled that his response was "I don't owe you anything."

[72] From what was said at that time it was clear that Mr Steenhart did not intend to return to work.

[73] On 16 December Mr Steenhart sent a text message asking if he would be paid for the time he had worked. After that date no further work was offered.

[74] On 21 December Mr Steenhart sent a text message that stated he had been fired.

Conclusion about the ending of the relationship

[75] I do not find that Mr Steenhart was dismissed on 11 December 2020. Mr Hardy-Jones and Mr Thompson submit that in the alternative he resigned or abandoned his employment. I do not consider that what occurred fits within the abandonment clause in the employment agreement. Mr Price did contact Mr Steenhart and it would have been clear that he did not intend to return to work. Mr Price was also required by the employment agreement to tell Mr Steenhart that he was deemed to have ended his employment which he did not do.

[76] I conclude that Mr Steenhart resigned from his employment.

What were the reasons for the resignation?

[77] Mr Steenhart became unhappy following work on the CC vessel. He was unhappy on 9 December 2020 following a telephone call with Mr Price about his work on CC. Consistent with that he advertised that he was looking for other employment that day. I find that the reasons for the resignation was because of interactions about the work performed on CC and what followed. I am not satisfied that there was a causal link between the three incidences that Mr Steenhart says made the workplace unsafe and the resignation.

Was the resignation caused by breaches of duty to Mr Steenhart?

[78] Mr Price likely spoke to Mr Steenhart that he was dissatisfied about his work on the CC on 9 December 2020. His text messages later that morning reflect that he was calm and had moved to focus on a solution to the problem with CC rather than how it had arisen. He did not question Mr Steenhart about his leaving early on 9 December 2020 or about the tone of some of his text messages. Mr Steenhart returned to work the next day as usual.

[79] The written employment agreement between the parties was casual with no minimum number of hours for each work session. I have found that the relationship in practice was not casual. What occurred on 11 December 2020 when Mr Steenhart was asked to go home until the welding rod had arrived did not reflect the usual way work had been provided and undertaken. It was a unilateral variation of the employment agreement.

Were the breaches of a serious nature that it was reasonably foreseeable that Mr Steenhart would not be prepared to continue to work?

[80] Looking at the matter in the round I do not consider that Mr Steenhart being told to go home on 11 December 2020 to wait for the welding rod was a breach of a serious nature. Mr Steenhart had also ended his day early on 9 December 2020 without consequence and employment law endeavours to be even handed. Further work was offered.

[81] Matters had however reached a point where there needed to be some further communication. Both parties were unhappy with aspects of the relationship. A resignation and a claim of constructive dismissal before then was premature.

[82] I am not satisfied that the resignation was foreseeable. Mr Price contacted Mr Steenhart to see if he was returning to work when he did not receive a response to his text message on 14 December and Mr Steenhart did not turn up to work. It was clear only then that he did not intend to return to work.

[83] I do not find that there was a breach or breaches of duty by Sounds Shipwright that amounted to dismissive and repudiatory conduct so that it would be foreseeable that Mr Steenhart would not want to continue to work.

[84] I do not find that Mr Steenhart has established that his resignation was a dismissal.

Holiday Pay

[85] Mr Steenhart was paid 8 percent holiday pay with his pay each week. I do not find he is required to be paid again as he worked for less than 12 months.³

Remedies

[86] I have found one unjustified disadvantage action made out for which compensation is the appropriate remedy. In resolving the employment relationship problem, I have also found a unilateral variation of the employment agreement for half a day on 11 December and a whole day on 14 December. I intend to treat that not as a personal grievance but as a recovery of wages.

³ Section 28(4) of the Holidays Act 2003.

Compensation

[87] Mr Steenhart said that he felt humiliated with the sabre saw incident and did not know what to do. I conclude it more likely that the incident was observed by at least one other person. There was no evidence that the conduct was repeated. An appropriate award is the sum of \$3000 without deduction under s 123(1)(c)(i) of the Act.

Recovery of wages

[88] Mr Steenhart usually worked an eight-hour day at \$30 per hour. He was sent home early on 11 December and was not provided with work on 14 December 2020. It was only after that date that it was clear to Sounds Shipwright he was not intending to return. On that basis I have calculated that Mr Steenhart is owed 12 hours for a day and a half he did not work at \$30 per hour which is \$360 gross. I consider it appropriate to award that sum.

Orders made

[89] Sounds Shipwright Services Limited is ordered to pay to Bradley Steenhart the sum of \$3000 compensation under s 123(1)(c)(i).

[90] Bradley Steenhart is entitled to reimbursement of lost wages for the unilateral variation of his employment agreement in the sum of \$360 gross.

Costs

[91] I reserve the issue of costs.

[92] If costs cannot be resolved, then Mr McLaughlan may lodge and serve a costs submission within 14 days from the date of this determination. Mr Hardy-Jones and Mr Thompson then have a further 14 days from receipt of the submission to lodge and serve a reply submission as to costs.

[93] Costs will not be considered outside of that period unless prior leave to do so is sought and granted.

[94] The Authority usually determines costs on its national daily rate unless circumstances require an upward or downward adjustment of the tariff.⁴

Helen Doyle
Member of the Employment Relations Authority

⁴ Please note the Authority has issued an updated Practice Note on costs, effective from 2 May, available at <https://www.era.govt.nz/assets/Uploads/practice-note-2.pdf>