

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 90
3153722

BETWEEN	JESSE STEFFERT Applicant
AND	PARKERS BEVERAGE COMPANY LIMITED Respondent

Member of Authority:	Rowan Anderson
Representatives:	Ruth Pettengell, advocate for the Applicant Doug Speedy for the Respondent
Investigation Meeting:	28 September 2022 at Napier
Submissions received:	3 October 2022 and 19 October 2022 from Applicant 17 October 2022 from Respondent
Determination:	27 February 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jesse Steffert was employed by Parkers Beverage Company Limited (PBCL) commencing on 24 June 2019, and most recently was working as a Warehouse and Production Supervisor. PBCL's Managing Director, Doug Speedy, oversaw PBCL's operations and the day-to-day business.

[2] On 6 September 2021 Mr Steffert and Mr Speedy had an exchange in PBCL's warehouse which was followed by a meeting immediately afterwards in Mr Speedy's office at the same premises. PBCL suspended Mr Steffert, and ultimately dismissed Mr Steffert from his employment based on an allegation of threatening conduct during the meeting in Mr Speedy's office.

[3] Mr Steffert claims that he was unjustifiably dismissed from his employment, and that he was unjustifiably disadvantaged in his employment. Mr Steffert claims lost wages and compensation for humiliation, loss of dignity and injury to feelings.

[4] There is no dispute that Mr Steffert was dismissed from his employment. In order to determine the relevant issues, I must determine whether Mr Steffert's employment, or 1 or more conditions of his employment, were affected to his disadvantage. I must also then determine whether PBCL's actions, as to the dismissal and any disadvantage, were justifiable.

[5] If I find that Mr Steffert was unjustifiably dismissed or disadvantaged in his employment then remedies would need to be considered, including whether he should be compensated for lost wages and humiliation, loss of dignity, and injury to his feelings.

[6] Written witness statements were lodged from Mr Steffert, Mr Steffert's daughter Kayla Steffert, former PBCL employee Bruce Walker, Mr Speedy, and PBCL Operations Manager Sharlene Antonio. All witnesses attended the investigation meeting and answered questions under oath or affirmation.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[8] As permitted by s174C(4) of the Act, the Chief of the Authority has decided that exceptional circumstances exist such as to allow this determination to be issued outside of the three month timeframe required by s 174C(3) of the Act.

What caused the employment relationship problem?

[9] Mr Steffert says that, on the morning of 6 September 2021, Mr Speedy approached him in the workplace and set out to antagonise him. He says that Mr Speedy raised an issue with him as to a missing white board, which he explained another employee had taken home. Mr Steffert's evidence is that Mr Speedy was not satisfied with his response, Mr Speedy got "wound up", and that he then told him to meet him in his office.

[10] When he went to Mr Speedy's office, effectively immediately following the initial exchange, Mr Steffert says that Mr Speedy raised a number of issues with him, including a concern he had relating to Mr Steffert letting staff leave early the previous Friday and the absence of the white board. Mr Speedy then yelled at him, he seemed to be hysterical, and swore a few times. He says that Mr Speedy accused him of 'thinking he was the boss' and said words to the effect of "well you're not the fucking supervisor anymore". Mr Steffert said his recollection was that he had said to Mr Speedy "you're just a fucking idiot".

[11] Mr Steffert says that during the exchange in the office he had asked Mr Speedy to stop yelling and swearing, he said that Mr Speedy stood up and swore at him, and that he then stood and did the same. When asked at the investigation meeting, Mr Steffert recounted the end of the meeting as Mr Speedy saying "I think you should go home", with his response being "I think I should too". Mr Steffert then left the workplace.

[12] Mr Steffert denies threatening Mr Speedy. His evidence was that he later apologised by text message, a short time after having left the workplace, and that the apology was because he had sworn at Mr Speedy and not because of any alleged threat. Mr Steffert acknowledges that he swore at Mr Speedy, but he maintains he did not threaten him.

[13] Mr Speedy says that he asked Mr Steffert to attend his office, that Mr Steffert became aggressive, used abusive language, and then threatened him with violence. Mr Speedy maintains that he did not escalate the situation and was not the aggressor.

[14] Notes made by Mr Speedy following the meeting on 6 September 2021 record that he asked another employee why the white board was not in place and was told Mr Steffert didn't want it there. The notes also record that he approached Mr Steffert to ask about the white board and that he received 'an aggressive retort'. Mr Speedy says that he tried to diffuse the situation by asking Mr Steffert to his office in order to talk privately with him. He says that Mr Steffert started yelling and became aggressive, and then threatened to 'bash' him.

[15] None of the other witnesses were present in Mr Speedy's office during the exchange. Mr Walker's evidence was that he was in another office and could hear an

argument between Mr Speedy and Mr Steffert. He says that he heard Mr Speedy raise his voice first, and that Mr Steffert yelled back. He said that both Mr Steffert and Mr Speedy swore during the exchange.

[16] At the investigation meeting, Mr Walker said that he heard “f Bombs” but couldn’t make out what words were being used, and he couldn’t say who swore first. He says that he was in his office but went downstairs after about 15 seconds and that he could still hear the exchange from there. In questioning, he said that he didn’t hear Mr Steffert make any threat but that he wouldn’t have been able to hear it if he had.

[17] Ms Antonio says that she was in the adjacent office, together with another employee, and that at approximately 10.20am on 6 September 2021 she heard loud yelling and swearing from Mr Speedy’s office. She observed Mr Steffert exiting Mr Speedy’s office in a rush following the exchange. She then went to Mr Speedy’s office to see what had happened, describing Mr Speedy as being calm and in control at that time. Ms Antonio says that Mr Walker had not been in the upstairs office at the relevant time and that there was nowhere else upstairs that he could have been.

[18] On that same day, 6 September 2021, there was an exchange between Mr Steffert and Mr Speedy by text message, the content of which is recorded below:

Mr Steffert	[10.59am] I’m sorry I was inappropriate
Mr Speedy	Hi Jesse, I have passed the matter over to Grow HR
Mr Speedy	They advised we dont communicate
Mr Speedy	[12.57pm] Hello Jesse, You will appreciate the reasons for sending you home. I will forward you an invitation to a discipline investigation meeting for an allegation of serious misconduct for a meeting on Wed. I intend to suspend you on pay until this meeting. Do you have any reason why I should not suspend you?
Mr Steffert	OK I’ll seek legal advice then

[19] Mr Steffert confirmed that he received a letter that same day confirming the suspension and inviting him to a disciplinary investigation meeting. That letter contained the following:

The allegations are that you:

1. On Monday 6 September 2021, became aggressive, used abusive language and threaten (sic) me with violence.

[20] The words said to have been used in making the alleged threat were first put to Mr Steffert at a meeting on 8 September 2021. That came in the form of a question when Mr Lance Peterson, from an external human resources advisor Grow HR, said “so did you say you were going to bash him?”. Mr Steffert denied doing so.

[21] Later in that same meeting, seemingly after Mr Peterson had asked all of the questions he considered relevant to the investigation, Mr Steffert was asked if he had any other questions. Mr Steffert, in response to that, said that he didn’t believe that he had threatened Mr Steffert. Mr Speedy then interrupted saying “What you said was, “I just want to bash you right now””. Mr Steffert denied that, albeit after initially responding “did I?”.

[22] The meeting was adjourned for a period a short time later for approximately 15 minutes. When the meeting reconvened, Mr Steffert was advised that the allegations had been substantiated, he had committed serious misconduct, and that a preliminary decision had been made that it would be appropriate that he be dismissed. Mr Paterson concluded that the text message offering an apology sent by Mr Steffert was a factor in reaching the decision that the allegation was substantiated.

[23] There was a brief discussion at this point involving Mr Steffert being asked for his views as to alternatives to his dismissal. Mr Steffert was given until 3.00pm that day to come back to PBCL with any other response and the meeting was suspended. Mr Steffert then contacted his daughter, Ms Kayla Steffert, who then engaged further with PBCL, via Mr Peterson, on his behalf. The period of time in which Mr Steffert was given to respond was then extended until 10.00am 9 September 2021.

[24] Ms Steffert communicated with Mr Peterson by email on the morning and early afternoon of 8 September 2021. She, on behalf of Mr Steffert, sought to dissuade PBCL from dismissing Mr Steffert and proposed a warning be issued instead. Mr Steffert also emailed Mr Peterson later that day again denying that he had used the words alleged by Mr Speedy and apologising for swearing.

[25] Mr Steffert was dismissed from his employment on 9 September 2021. Mr Speedy authored a letter to Mr Steffert confirming the dismissal with immediate effect for serious misconduct.

[26] A personal grievance was notified on 20 September 2021.

Was Mr Steffert unjustifiably disadvantaged in his employment?

[27] Section 103A of the Act sets out the test for justification. I must consider, on an objective basis, whether PBCL's actions, and how PBCL acted, were what a fair and reasonable employer could have done in all of the circumstances at the time the action occurred.¹

[28] Justification requires the consideration of both substantive and procedural fairness. The onus is on PBCL to justify its actions. Section 103A of the Act requires me to consider the factors set out at s 103A(3) and I must also consider the requirements of good faith set out at s 4(1A) of the Act.

[29] Mr Steffert says that he was unjustifiably disadvantaged in his employment having regard to PBCL's decision to suspend him from his employment and the procedure it used in reaching that decision. PBCL deny that Mr Steffert was unjustifiably disadvantaged and submits both that any suspension was appropriate having regard to the circumstances, and that it otherwise followed an appropriate process including by seeking feedback from Mr Steffert.

[30] I accept that the suspension, albeit on pay, amounted to a disadvantage. As such, the onus is on PBCL to justify its actions.

[31] In the absence of an express contractual ability to suspend, suspension will only be justifiable in limited circumstances and will only be so if a fair process has been followed.² Where an employment agreement specifically deals with suspension, any such provision must be followed.³ Mr Steffert's employment was subject to an individual employment agreement (IEA) containing an explicit provision dealing with suspension. Clause 21 of the IEA provides as follows:

¹ Employment Relations Act 2000, s 103A.

² *Singh v Sherildee Holdings Ltd* EmpC AC53/05, 26 October 2005.

³ *Kumar v Icehouse (New Zealand) Ltd* (2006) 1 ERNZ 381 (EmpC) at [38].

21. Suspension:

After discussion with you, the Company may suspend you from duties, on pay, when investigating allegations of serious misconduct. While on suspension you are to remain available for meetings or duties. During any such period of suspension:

- The Company will be under no obligation to provide you with any work
- You may be required to stay away from the Company's premises and to have no contact with any of the Company's employees, officers, clients agents or suppliers
- You will continue to be bound by all of your obligations under this agreement insofar as they are compatible with you being suspended.

[32] Clause 21 of the IEA provided an express ability to suspend Mr Steffert from his employment, on pay, subject to two conditions. Firstly, clause 21 requires that such suspension be in circumstances where PBCL were investigating allegations of serious misconduct. Secondly, the ability to suspend Mr Steffert was conditional upon discussion occurring prior to any decision. The second of those conditions, I find, must be read as there having been a discussion as the proposed suspension. Additionally, I find that good faith required PBCL to provide relevant information to Mr Steffert and an opportunity to respond prior to any decision being made.⁴

[33] Mr Steffert was initially asked to leave the workplace by Mr Speedy. Mr Steffert, in his own evidence at the investigation meeting, said that he agreed that he should do so, and that he subsequently left. On Mr Speedy's evidence, the request that Mr Steffert leave the workplace was made immediately following a threat of physical violence.

[34] I find that it was open to PCBL to exclude Mr Steffert from the workplace in the immediate aftermath of the meeting in Mr Speedy's office. I find that Mr Steffert's leaving the workplace immediately following the incident was a matter of agreement and was otherwise urgently necessary having regard to health and safety. He was asked to leave, and he agreed that he should. In any event, I find that in the circumstances, any exclusion of Mr Steffert from the workplace, at least for a period until a formal decision could be reached as to any suspension, would have been justifiable.

⁴ *Sefo v Sealord Shellfish Ltd* (2008) NZELR 407 (EmpC), at [37].

[35] The letter of 6 September 2021 referenced the earlier text message invitation to provide feedback as to the proposed suspension and noted that there had been no feedback from Mr Steffert. I accept that the time between the request for feedback and the communication of the decision to proceed with the suspension was relatively limited.

[36] The text message seeking feedback asserted that Mr Steffert would understand the reasons for which he was sent home. It referenced alleged serious misconduct, aggressive behaviour, abusive language, and threatened violence. There was enough information in my view, having regard to the circumstances including the admitted conduct and agreement to leave the workplace, such that Mr Steffert could have responded. In that context, I find that Mr Steffert was put in a position such that he could have provided a response constituting a 'discussion'. However, Mr Steffert did not respond.

[37] No feedback was provided by Mr Steffert prior to PBCL issuing the letter of 6 September 2021 which also confirmed the suspension, nor in the days that followed. I consider that having regard to the circumstances, including the need for urgency, health and safety considerations, and the text message exchange, that PBCL's actions were justifiable. Whilst arguably more could have been done, I find that the attempt to obtain feedback by text message, in these very particular circumstances, was a course open to PBCL.

[38] I do not accept, as submitted on behalf of Mr Steffert, that the preceding communications in the text message exchange had the effect of preventing Mr Steffert from providing feedback. Given he responded to Mr Speedy's last text message advising he was to seek legal advice, he could have provided any feedback directly, or otherwise enquired as to who to send any feedback to.

[39] Whilst yet to be established, PBCL actions were predicated on a report of threatened violence in the workplace. I consider there was a substantive justification for the suspension. Whilst finally balanced, I find that the actions of PBCL from a procedural perspective were consistent with what a fair and reasonable employer could have done in the circumstances.

[40] I consider that any other issues raised on behalf of Mr Steffert as to alleged unjustified disadvantage are matters that are properly considered in the context of the procedural considerations relevant to the dismissal and they are addressed below.

[41] Mr Steffert claim of unjustified disadvantage is dismissed.

Mr Steffert was dismissed from his employment

[42] There is no dispute as to the fact of dismissal and as such the onus turns to PBCL to show that the dismissal was justifiable.

Was Mr Steffert unjustifiably dismissed?

[43] As noted above in relation to Mr Steffert's claim of unjustified disadvantage, s 103A of the Act sets out the test for justification. I must consider, on an objective basis, whether PBCL's actions, and how PBCL acted, were what a fair and reasonable employer could have done in all of the circumstances at the time the action occurred.⁵

[44] The onus is on PBCL to justify its actions and justification requires the consideration of both substantive and procedural fairness.

Did PBCL follow a fair process?

[45] Mr Steffert submitted that the dismissal was procedurally unjustified, including because Mr Speedy remained involved in the investigation and decision-making despite being directly involved in the events of 6 September 2021. Mr Steffert submitted that Mr Speedy was not impartial, that an impartial investigator and decision maker should have been appointed, and that PBCL was adequately resourced such as to ensure that that occurred for the purposes of s 103A(3)(a) of the Act.

[46] PBCL engaged Grow HR, an external human resources advisory service to assist with its investigation and disciplinary process. Mr Speedy remained the decision maker. Mr Speedy was also involved in the investigation and attended the meetings that formed part of the investigatory and disciplinary processes.

[47] On one view at least, it would have been wholly artificial for Mr Speedy to exclude himself from the investigatory and disciplinary processes given he was to be the decision maker. On another view, given Mr Steffert was directly involved in the

⁵ Employment Relations Act 2000, s 103A.

primary incident, an arguably better approach would have been for him to delegate any involvement and decision making to someone else.

[48] In submissions, PBCL referred to the decision of the Employment Court in *Bhikoo v Stephen Marr Design Network Ltd* as supporting the proposition that PBCL were entitled to have Mr Speedy act as the decision maker.⁶

[49] PBCL is a relatively small operation. Mr Speedy submitted that there was no one else who appropriately could have acted as the decision maker, including on the basis that he had sole day to day managerial responsibilities as the general manager and the other directors were overseas. Whilst PBCL were able to engage external assistance to assist Mr Speedy, I do not consider that supports a finding that it was able to, and should have, outsourced the entire responsibility for the investigation and decision making to Grow HR.

[50] It would be preferable that someone else be the decision maker. However, I find the PBCL were entitled to have Mr Speedy perform that role and that course was open to PBCL as what a fair and reasonable employer could have done in the circumstances. However, such an approach still required that PBCL's actions were otherwise justified, including in relation to other procedural considerations.

[51] In investigating the allegations, PBCL did not interview or take statements from other employees in the workplace. Primarily, appeared to be because the incident on 6 September 2023, and in particular the alleged threatening behaviour, took place when only Mr Speedy and Mr Steffert were in the room. However, I find that the investigation was deficient in that no other employees were interviewed. Additionally, whilst there was an interview of sorts with Mr Steffert, neither Mr Steffert or Mr Speedy provided a full account of what happened in the course of the investigation.

[52] Mr Speedy provided the Authority with notes he made, by way of emailing himself, following the incident on 6 September 2021. He emailed those notes to himself at 11.19am that same day. In summary, the notes are not particularly detailed but provide a brief contemporaneous account of the Mr Speedy's recollection of the events and recorded that "...It got to the point that JS was threatening to 'bash' DS...".

⁶ [2016] ERNZ 295.

[53] The letter of 6 September 2021 confirmed the suspension and required Mr Steffert to attend a disciplinary meeting. The letter put Mr Steffert on notice that the allegations were serious and that they may have resulted in Mr Steffert's employment being terminated and that if he required any information prior to the meeting then he could ask for that. However, the letter did not specifically state the words said to have been used by Mr Steffert, nor was he provided a copy of the emailed notes that Mr Speedy made.

[54] The letter did make clear that the allegations were serious. The allegations as contained in the letter did not merely involve swearing, but the letter explicitly referred to a threat of violence and the possibility that Mr Steffert's employment could be terminated for serious misconduct. Mr Steffert was on notice that the matter was a serious one, not just from the letter, but also given the content of the text message sent to him by Mr Speedy at 12.57pm on 6 September 2021 which referred to alleged serious misconduct. In that context, I do not accept Mr Steffert's assertion that he thought the proposed meeting was simply about swearing.

[55] Whilst the dismissal letter of 9 September 2021 states that Mr Speedy "...listened carefully to [Mr Steffert's] explanations and [Mr Steffert's] recollection of events". I find that that was not the case. The investigation meeting on 8 September 2021 proceeded in the absence of Mr Steffert having been provided with full and fair notice of the allegations to be made against him. Details were, or at least should, have been available and provided to Mr Steffert, including what Mr Speedy was alleging Mr Steffert had actually said and what was said to amount to the threat of violence.

[56] In circumstances where it is alleged that an employee was acting aggressively and threatened violence, I consider a fair and reasonable employer necessarily would have ensured that any such allegations were supported by sufficient detail, including a description of what was actually said to have happened. That should have included information as to the words said to have been used and the actions alleged.

[57] At the investigation meeting, in questioning, Mr Speedy described further observations which I find would have been relevant in any fairly conducted investigation. This included descriptions of Mr Steffert standing in the office during the conversation and having clenched fists. Those descriptions, which go towards whether Mr Steffert was aggressive and threatened Mr Speedy, were not put to him.

Additionally, whilst there was an apparent finding as to the words alleged to have been said constituting the alleged threat, and such as there may have been any, the factual findings relating to the full incident including the alleged abusive language and aggression were deficient.

[58] Mr Speedy, especially given he decided to maintain involvement in the process, should have ensured there was a full recorded account of his version of events that could be used in assessing the allegations and in seeking Mr Steffert's responses. That would have occurred in any appropriately conducted investigation had Mr Speedy not been the decision maker and should have occurred in this case. Indeed, given Mr Speedy's direct involvement it was even more important that that occur.

[59] In the meeting of 8 September 2021, Mr Steffert was asked a number of questions. On many occasions his responses exhibited a failure to remember as opposed to outright denial. However, this was clouded by what I consider a failure to squarely put the allegations to him in order to get a genuine response. Instead, I find that the meeting proceeded in a manner that involved Mr Speedy simply maintaining his version of events without any regard to what Mr Steffert had to say. This is exemplified in the following excerpt of a transcript provided of the meeting:

Lance Peterson	Okay, any other questions?
Jesse Steffert	I don't believe I threatened him. I know I put in my notice for your attitude towards me, but that's about it.
Doug Speedy	What you said was, "I just want to bash you right now."
Jesse Steffert	Did I?
Doug Speedy	Yes. That is why we are here.
Jesse Steffert	I don't believe I said that.
Lance Peterson	Do you want to take a couple of minutes to think about it?
Jesse Steffert	I don't believe I said that. I've been...I've felt a couple of time... The last couple of days have been shit. I haven't slept, I've been stressing out. I've been going through things in my head. But that never came up. Otherwise I would have apologised for that when I texted you. I apologized (sic) for being inappropriate.

[60] What Mr Speedy alleges that Mr Steffert actually said was only disclosed in full at the end of the meeting, effectively in passing. Additionally, I consider it clear that Mr Speedy, as hard as he may have tried, did not approach the matter with an open mind. The findings made by Mr Speedy were confirmed quickly and there was no apparent assessment resolving any factual differences as to the events. Additionally, I consider the reliance on Mr Steffert's text message apology to be indicative of predetermination and such a finding was not reasonably available having regard to Mr Steffert's clear statements in the meeting of 8 September 2021.

[61] In conclusion, I find that the allegations were not sufficiently investigated in terms of s 103A(3)(a). I also find that PBCL concerns were not clearly put to Mr Steffert and that he was not afforded a reasonable opportunity to respond to them before the dismissal. Further, I find that PBCL did not genuinely consider Mr Steffert's explanations (such as he was in a position to provide them) prior to making the decision to dismiss.

[62] I find that the dismissal was not procedurally justified.

Was PBCL's decision substantively justified?

[63] Mr Steffert's IEA does not define serious misconduct, although 'House Rules' attached to the IEA provide a non-exhaustive list of conduct said to amount to serious misconduct, including "Violence against another person or threatening behaviour toward another person on our premises...". Whilst serious misconduct cannot be conclusively defined, what is required is that the conduct deeply impairs or is destructive of the confidence or trust essential to an employment relationship.⁷

[64] I consider Mr Steffert's conduct on 6 September 2021 was inappropriate. He admitted as much. The conduct alleged was capable of amounting to serious misconduct. However, given the procedural defects the dismissal was not warranted in all of the circumstances and find that the dismissal was substantively unjustified in that there was no proper basis on which the allegations were made out as at the time the dismissal occurred.⁸

[65] Mr Steffert was unjustifiably dismissed from his employment.

Is Mr Steffert entitled to remedies?

Is Mr Steffert entitled to compensation for lost wages?

[66] Mr Steffert has established a personal grievance and I accept that he lost wages as a result. Mr Steffert found alternative employment following the dismissal, commencing on 18 October 2021. Mr Steffert submits that he lost \$4,992.00 in lost

⁷ *Chief Executive of the Department of Inland Revenue v Buchanan* [2005] ERNZ 797 (CA), at [36]; *Virginia Henry v South Waikato Achievement Trust* [2023] NZEmpC 20, at [60].

⁸ *Auckland Provincial District Local Authorities Officers IUOW v Northland Area Health Board* (1991) 2 ERNZ 215 (EmpC).

wages, with an additional \$400.84 in bonus payments that would otherwise have been made, as a result of the personal grievance.

[67] I accept the sums provided by Mr Steffert and would order PBCL to pay Mr Steffert the sum of \$5,392.84.

Is Mr Steffert entitled to compensation for humiliation, loss of dignity and injury to feelings?

[68] Mr Steffert submits that an award of \$20,000 should be made in terms of compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act.

[69] Mr Steffert provided evidence as to the impact of the dismissal. He said that he felt confused by the dismissal as Mr Speedy had attacked him, rather than it being the other way around. He also gave evidence that he was scared about being able to pay his bills, had an overwhelming depressive reaction and withdrew inside himself. Mr Steffert said that, for a period, he was not able to go out in public such was his sense of shame and that he would only go grocery shopping at night. He also said the dismissal had such an impact on him that he had to pull out of coaching kids softball.

[70] Ms Steffert's evidence was that Mr Steffert was "a mess" after the dismissal, that he slipped into depression, and that she had never seen him so down on himself. Ms Steffert, at the investigation meeting, noted that Mr Steffert got better over time, and that he had been sick but that he hadn't sought help.

[71] Whilst I don't doubt that the impact had a dismissal on Mr Steffert, he was to find alternative employment at least relatively soon after being dismissed. No medical evidence supporting the more extreme impacts claimed by Mr Steffert were provided, nor were any detailed observations from those close to Mr Steffert (with the exception of Ms Steffert's limited evidence).

[72] I find that Mr Steffert did suffer humiliation, loss of dignity and injury to feelings. Having considered the impact that the dismissal and actions of PBCL had on Mr Steffert, and having regard to generally comparable cases, I consider that an appropriate award of compensation is \$12,500.

Contribution

[73] Section 124 of the Act requires that I consider the extent to which Mr Steffert's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, that I reduce the remedies that would otherwise have been awarded accordingly.⁹

[74] I consider there was a clear casual link between Mr Steffert's actions and the situation that gave rise to his dismissal. Mr Steffert's actions contributed significantly to the situation that gave rise to the personal grievance. In making this finding, I have considered Mr Steffert's conduct as admitted by him. He acknowledged at an early stage that his conduct at the meeting on 6 September 2021 was improper, and he also apologised for that.

[75] I do not accept that Mr Speedy's actions were such that he provoked Mr Steffert. I instead find that Mr Steffert's behaviour, which I find included swearing and aggressive behaviour, I find that Mr Steffert's behaviour was both culpable and blameworthy. But for his actions, the personal grievance would not have arisen.

[76] I consider 45% an appropriate reduction to be made on account of Mr Steffert's blameworthy conduct.

Orders

[77] Parkers Beverage Company Limited is ordered, within 28 days of the date of this determination, to make payment to Mr Jesse Steffert of:

- (a) \$6,875 as compensation for hurt and humiliation under s 123(1)(c)(i) of the Act;
- (b) \$2,966.05 as compensation for lost wages under s 123(1)(b) of the Act;

Costs

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

[79] If they are not able to do so and an Authority determination on costs is needed Mr Steffert may lodge, and then should serve, a memorandum on costs within 14 days

⁹ Employment Relations Act 2000, s 124.

of the date of issue of the written determination in this matter. From the date of service of that memorandum PBCL would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[80] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.¹⁰

Rowan Anderson
Member of the Employment Relations Authority

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