

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Auckland 129  
5142820

BETWEEN	PAUL TAYLOR Applicant
AND	MACMAHON CONTRACTORS (NZ) LIMITED Respondent

Member of Authority:	R A Monaghan
Representatives:	P Taylor in person P Roberts, advocate for respondent
Investigation Meeting:	13 December 2011
Determination:	16 April 2012

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] Paul Taylor says his former employer MacMahon Contractors (NZ) Limited (MCNZ) dismissed him unjustifiably following a disciplinary warning and further concerns about the performance of his duties.

[2] MCNZ says the dismissal was justified.

**Background**

[3] MCNZ employed Mr Taylor as a maintenance planner at its Waihi mining operation, commencing in January 2007. Mr Taylor's responsibilities included the: planning and scheduling of maintenance of the company's equipment; maintenance of workshop and equipment records; ordering of replacement parts; planning and scheduling of inspections and servicing of plant and equipment; maximising of

equipment availability and reliability; maintenance of stocks of fuel and spares; reducing of the costs of maintenance operations to the lowest practical sustainable level; and provision of an activity plan for all major repairs. He was also to report regularly to the project manager and area maintenance manager.

[4] Mr Taylor said that, when his employment commenced, MCNZ had just moved to a computer-based planning package known as Mainpac. In practice a large part of his time was spent loading onto the Mainpac database details of the machinery on-site. These details included the status of every component in every piece of equipment, including details of the component's life cycle, servicing cycle and safety checks. Mr Taylor liaised directly with MacMahon's offices in Perth regarding the operation of Mainpac rather than with his immediate superior Bruce Preddy, the project manager.

[5] As well as saying the Mainpac system took up most of his time, Mr Taylor indicated in evidence that he was having difficulty with it, and complained that he received only limited training in its use. A performance review Mr Preddy conducted on 20 December 2007 included a comment on the need for Mr Taylor to provide more planning assistance for workshop supervisors as well as more up to date information on parts and labour requirements for planned work. The review also recorded Mr Taylor's wish for more training in Mainpac, and Mr Taylor's concern that it was difficult to concentrate on Mainpac issues when there were constant interruptions from fitters, contractors and service agents.

### **The disciplinary warning**

#### 1. The D10

[6] In November 2007 a D10 bulldozer used on the Waihi site was shipped to Stevenson's Engineering Limited (SE) in Auckland for an overhaul. The D10 was returned to the site before Christmas, and was put to use on 4 January 2008 after the end of the Christmas shutdown.

[7] On 4 January 2008 Mr Preddy received from Mr Taylor a purchase requisition form in the sum of \$85,000 for the 'end of life overhaul' work done on the D10,

which he authorised. Then on 30 January 2008 he received a second purchase requisition form in the sum of \$50,000 for 'job completion' on the D10. This was a significant cost overrun of which Mr Preddy had no prior warning, and the details of which were not recorded.

[8] Mr Preddy telephoned SE about the matter on 31 January, and was told that Mr Taylor was the person to whom job requirements were communicated.

## 2. Absence of planning documents and failure to close off jobs

[9] Also in January 2008 Mr Preddy became concerned about the absence of a weekly forecast when Mr Taylor was about to take a period of leave, and the absence of a weekly maintenance plan.

[10] Again in the same month Mr Preddy obtained and forwarded to Mr Taylor two reports listing respectively repair jobs showing on the Mainpac system as open and requiring completion, and mechanical defects which were to be closed out if associated work had been completed.

[11] The list of outstanding jobs comprised an excel spreadsheet identifying the equipment or component in question and the task to be carried out in respect of it, accompanied by one of 3 three main job classifications – planned, forecast or issued. As the life cycle of a piece of equipment or component progressed, planned and forecast jobs would become issued jobs when it was time for the relevant work to be done. Issued jobs were issued in the form of a work order specifying the work to be completed, together with a check sheet. On completion of the job the fitter and supervisor would sign off the work order, and refer the documentation to Mr Taylor to close off the job in Mainpac. The list of outstanding jobs also identified the dates on which a particular job was reported or planned, scheduled, issued, commenced and completed.

[12] The list of defects identified the equipment or component in question as well as the defect, together with the date the defect was reported and a priority rating.

## 3. The 4 February meeting

[13] These matters led Mr Preddy to write to Mr Taylor on 1 February 2008 citing serious concerns about Mr Taylor's performance. The concerns identified were the failure to advise of the \$50,000 overrun on the D10 at the time the extra work was carried out, and the concerns about Mr Taylor's recording practices. The letter sought a meeting, and advised that, in the absence of a satisfactory explanation disciplinary action such as a warning or dismissal may result.

[14] A meeting went ahead on 4 February 2008. Mr Preddy told Mr Taylor he was concerned about Mr Taylor's level of monitoring and controlling of the D10 job, and the failure to keep him informed.

[15] At the time Mr Taylor explained that he had not been in charge of the D10 job rather Vince Paynter, a supervisor, was responsible. Mr Preddy did not accept the explanation.

[16] The account Mr Taylor gave at the investigation meeting was that, although he was not responsible for overseeing the D10 overhaul and had limited information about it, a person he knew at SE would contact him from time to time with queries or requests. Some time in or about December 2007 SE contacted him seeking a requisition to cover the cost of labour. SE was not able to quantify the likely cost, so Mr Taylor consulted with a colleague and identified the figure of \$85,000 which was contained in the 4 January requisition. In or about mid-January 2008 Mr Taylor was shown an invoice for labour costs in a much higher sum. He did not dispute the amount charged, and completed the second requisition of \$50,000 to cover the balance.

[17] At the time Mr Preddy addressed the matter of the requisition by instructing that, if the cost of a job was going to exceed the value of a requisition authorised by Mr Preddy, another requisition was to be obtained and authorised by Mr Preddy to cover the extra costs.

[18] In addition Mr Taylor undertook to address the defect list by 5 February and the list of outstanding jobs by 9 February.

#### 4. The warning

[19] There was no immediate follow up to the 4 February meeting. Instead, on separate occasions later in February and early in March Mr Preddy raised with Mr Taylor various additional concerns about aspects of his work. These concerns led Mr Preddy to approach Mr Taylor on 7 March and hand him a letter of the same date.

[20] The letter included a written warning for failing to obtain the proper authorisation for the cost overrun on the D10. The terms of the warning did not address anything arising out of the monitoring and controlling of the D10 job. Nor did it address the list of outstanding jobs or the list of defects, although those matters remained outstanding.

#### **Further disciplinary action in March**

##### 1. Additional concerns

[21] The additional concerns were also set out in the 7 March letter, and explanations were sought. The concerns were:

- (i) despite the instruction issued on 4 February no fresh requisition had been sought for a cost overrun in respect of work on an oil pump and a head gasket, and invoiced on 28 February 2008;
- (ii) Mr Taylor authorised a subcontractor (SE) to repair a wheel end before raising a requisition or getting proper authorisation;
- (iii) the mechanical defect list which Mr Taylor said on 4 February he would address was not addressed;
- (iv) the list of outstanding jobs discussed on 4 February was not closed off, and more jobs had been added; and
- (v) further to a discussion on 6 March, monthly coolant checks had been closed out on Mainpac and hard copies of documents destroyed as the jobs had not been completed, but Mr Preddy was not informed that the jobs were not completed.

[22] The letter sought a meeting. It also advised that in the absence of satisfactory explanations of the above matters disciplinary action up to and including dismissal may result.

## 2. The 10 March meeting and the response to the concerns

[23] Mr Taylor provided explanations at a meeting with Mr Preddy on 10 March. The explanations were set out in a written record of the meeting, which was provided to Mr Taylor together with an invitation to review the record and make any adjustments if his responses were not recorded correctly. Mr Taylor signed the record without seeking any changes.

[24] In response to a general invitation to provide comments on MCNZ's concerns, Mr Taylor said the supervisor had been absent for the last 3 weeks. He had also been running the workshop and had not been able to keep up with planning requirements. His explanations of the concerns raised with him were as follows.

### (i) the requisition procedure

[25] Regarding the wheel end, Mr Taylor had forgotten about the instruction, while more generally a new requisition would be raised only if the purchasing officer notified Mr Taylor of a cost overrun. Mr Taylor would not monitor invoices himself.

[26] Mr Preddy was not satisfied with the explanations because the response regarding the wheel end demonstrated a failure to follow instructions, and it was unacceptable for Mr Taylor to rely on the purchasing officer as he described, because it was his job as maintenance planner to maintain control of projects and notify of any changes in a timely manner.

### (ii) the mechanical defect list

[27] Mr Taylor said he had not had time to address this.

[28] Mr Preddy's view of the explanation was that, since Mr Taylor had given the date by which the defect list would be addressed, a more concerted effort to attend to the matter was expected.

(iii) the list of outstanding jobs

[29] Mr Taylor explained that: the outstanding jobs prior to January were all planned jobs which were yet to be addressed; outstanding jobs for January had not been signed off by the supervisor; and Mr Taylor had not had time to address others.

[30] Mr Preddy did not accept the explanation because, of the jobs listed as planned and outstanding, 8 had been actioned but not closed out, and there were 13 further issued jobs also completed but not closed.

(iv) the coolant checks

[31] According to Mr Taylor, blank check sheets had been returned after the job was issued, and as there was no sense in filing blank paper the job was closed and the paperwork was thrown away.

[32] Mr Preddy also found this unacceptable because, although it was not Mr Taylor's job to ensure the checks were actually carried out, he was responsible for monitoring this and communicating any issues arising. Even if the paperwork was blank, it should be filed as evidence of whether the maintenance supervisor had signed confirming completion of a job or not.

### 3. The attempt to convene a further meeting

[33] Mr Preddy responded to Mr Taylor's explanations in a letter dated 14 March. The responses amounted to his findings in respect of the concerns he had raised.

[34] After setting out those findings the letter went on to say the company had: '*serious concerns about these deficiencies in your performance*' and a meeting was sought on 18 March to '*discuss this situation.*' Mr Taylor was further advised that the issues were considered so serious that the future of his employment was at risk. The

letter then said: *'you will be given the opportunity at this meeting to provide any mitigating circumstance[s] for you[r] performance before a final decision is made regarding your employment.'* In the context of the exchanges preceding it, I read the letter as offering Mr Taylor an opportunity to comment or make representations on what, if any, disciplinary action should be taken.

[35] The letter ended by advising Mr Taylor to bring a representative or support person to the meeting.

[36] Mr Taylor consulted a lawyer. On 17 March the lawyer responded to MCNZ by noting that the allegations were denied, and saying that despite signing the record of the 10 March meeting Mr Taylor now did not consider it an accurate reflection of the position. The lawyer also advised that an advocate named John Peebles would be acting as Mr Taylor's representative, but that Mr Peebles was likely to need a week's notice of the meeting. MCNZ should contact Mr Peebles to arrange the meeting.

[37] By letter dated 19 March MCNZ's representative advised that a delay of a week was unacceptable, and offered to meet on 20 March. Alternatively Mr Taylor could provide comments in writing by the close of business on 20 March.

[38] Mr Taylor's lawyer replied on 20 March saying Mr Taylor was unwell and would not be attending a meeting. Neither party was able to contact Mr Peebles, but by letter also dated 20 March MCNZ's representative suggested a further meeting on 26 March. If Mr Peebles was unavailable, a written submission could be made before MCNZ made a decision.

#### 4. Mr Taylor's written response

[39] No contact was made with or by Mr Peebles, but Mr Taylor provided a written account which was forwarded as an attachment to an email message on 25 March. In the covering message Mr Taylor said he would be visiting his doctor on 28 March and, once he had received medical advice, would be able to schedule a disciplinary meeting. He ended by saying:

*In the interim attached are my explanations for you to investigate where necessary*

[40] The attached account revisited the D10 issue in some detail. It sought to reargue the merits of the matter but did not raise a personal grievance and in particular did not challenge the justification for the disciplinary warning which had resulted.

[41] The account also commented on some of the other incidents which had been discussed informally with Mr Taylor but not raised as concerns in the disciplinary process. As they had not been raised as concerns in that process MCNZ could not rely on them, and it was not necessary to comment on them.

[42] A third feature of the account was that it also set out the explanations Mr Taylor now wished to proffer in respect of the concerns that had been put to him on 10 March. Mr Taylor's lawyer had already indicated that Mr Taylor wished to do so, and given a reason, so in that respect Mr Taylor was acting in accordance with his lawyer's indication.

[43] The following was Mr Taylor's account of the matters raised as concerns in the disciplinary process.

(i) requisition and cost estimating procedure

[44] Mr Taylor was following a procedure under which cost estimates were placed on requisition forms and sent to Mr Preddy for approval. If the subsequent invoice differed from the requisition, the invoice would be sent to Mr Taylor and the supervisor for checking. If the invoice was satisfactory, a new requisition would be sent to Mr Preddy to cover any shortfall.

[45] Despite that system working well, in Mr Taylor's view Mr Preddy had put it to him that there was a new system which involved contacting the supplier prior to the arrival of an invoice to obtain a final cost estimate. Mr Taylor asserted that Mr Preddy had unfairly highlighted his failure to do so as a serious performance issue.

[46] The assertion referred to the first set of comments in Mr Preddy's letter of 14 March, but Mr Taylor was reading the relevant paragraph too narrowly. Mr Preddy's

concern was with the lack of monitoring and failure to follow up illustrated by the incidents under discussion.

(ii) the mechanical defect list

[47] The defect list was said to be largely irrelevant as a record of the history of the defects in particular machines because defects are removed from the list when they are added to an existing job or converted to a job of their own. Some defects are not included in the list at all, because they are incorporated more directly into issued work orders.

[48] Mr Taylor added in evidence that he tried to manage the defects on a daily basis, and convert defects to an issued job immediately. The true record of a machine's defect history took the form of closed work orders signed off at the completion of a job. Further, when Mr Preddy later expressed to MacMahons in Australia a concern about the recording of defects, the regional manager advised that Mr Taylor's approach was satisfactory.

(iii) list of outstanding jobs

[49] Mr Taylor said in his 25 March explanation that all issued jobs were closed off.

[50] In evidence he said he had approached MacMahons in Australia because a procedure not available to him was required to close forecast and planned jobs. They did not complete that action in the timeframe discussed in February. He accepted that, if he explained that at the time, he probably did not do so well.

[51] He said further in evidence that some jobs were double ups which he was unable to close out. Double ups could occur when a planned job was completed as part of another issued job. He did not recall whether he explained that at the time. Mr Preddy said in evidence that, if true, the explanation would have weight.

(iv) coolant checks

[52] The explanation Mr Taylor gave on 25 March was that the Mainpac system was issuing forecast and issued jobs on a monthly basis, and he was preparing work orders and closing off jobs as the work was being completed and signed off. The check sheet and work order was being returned without being signed off and otherwise incomplete. Mr Taylor would close the job off and dispose of the blank check sheet. He conceded this was foolish, but said it was the supervisor's responsibility to ensure the checks were completed and, if not, to report to Mr Preddy.

[53] Mr Taylor said in evidence that he entered forecast coolant-checking jobs on a monthly basis. In hindsight this was a mistake and - since again he could not close forecast jobs - he approached MacMahons in Australia to have the jobs taken off the system. Meanwhile he and the supervisor agreed to ignore the check sheets because regular service checks including coolant testing were being carried out on the machines in any event, and the new coolant being used was marketed as not requiring regular checks at all.

### **The decision to dismiss**

[54] There was no further attempt to meet. Instead the decision to dismiss was conveyed in a letter originally dated 14 March 2008, with a handwritten amendment showing the date as 31 March. The amendment was not adequately explained, but this determination does not turn on the point.

#### 1. MCNZ's findings on Mr Taylor's written account

[55] The 14 March letter responded to the comments about the D10, and otherwise set out MCNZ's findings on Mr Taylor's written account as follows.

##### (i) requisition procedure

[56] There was no new system in place and Mr Taylor's account was unacceptable.

##### (ii) mechanical defect list

[57] The view that the list was irrelevant was a concern as it was important to have a tracking system to show identified issues were addressed in a timely manner. Otherwise the issue Mr Preddy had wanted Mr Taylor to address was the large number of defects still on the list either by removing them if work was completed or by allocating them to a job, but this was not done.

[58] Mr Taylor said in evidence that the comment about the list being irrelevant was taken out of context, and he was simply attempting to explain the procedure he followed. He accepted that some defects were turned into jobs, and he did not take them off the list when asked.

(iii) list of outstanding jobs

[59] As was explained to Mr Taylor in the 14 March letter, not all issued jobs were closed off. Further, a number of planned jobs had been completed but were not converted to issued jobs or otherwise completed.

(iv) coolant checks

[60] There was no mention in the letter of the coolant checks.

## 2. MCNZ's conclusion

[61] The letter went on to advise that, as the explanations offered were unacceptable for the above reasons, Mr Taylor was dismissed with 4 weeks' payment in lieu of notice. There was no reference in the letter to whether the behaviour was considered serious misconduct or poor performance, although the letter and the preceding correspondence were headed: *Serious concerns over work performance*.

[62] A personal grievance was raised in a letter dated 16 May 2008. The flavour of the letter was that the dismissal was understood to be a dismissal for serious misconduct. In reliance on *BP Oil Ltd v NDU*<sup>1</sup> the letter said the dismissal was not justified in that the conduct in question did not amount to conduct which deeply impaired or destroyed the relationship of trust and confidence between the parties.

---

<sup>1</sup> [1992] 3 ERNZ 483 (CA)

[63] MCNZ replied in a letter dated 13 August 2008. That letter summarised the history of the problem, attached a number of documents in support, and finished by saying:

*The attached record of correspondence in our view demonstrates that Paul was given a reasonable opportunity to explain deficiencies in his performance. When he was unable to do so, his employment was terminated on 4 weeks notice and he was not required to work out his notice.*

### **Was the dismissal justified?**

[64] The test of the justification for the dismissal is the test applying under s 103A of the Employment Relations Act 2000 prior to 1 April 2011, namely:

*... whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal ... occurred*

[65] MCNZ said in submissions that the dismissal was justified on the ground of serious misconduct, and that the following actions amounted to serious misconduct: the lack of a revised requisition for the overrun on the dump truck; the lack of a requisition for the wheel end repair; the failure to address the defects list; the failure to close out completed jobs by 9 February 2008; and the destruction of the coolant check records. I approach the issues with the dump truck and the wheel end repair as examples of Mr Taylor's breaches of the requisition procedure and address them in that context.

[66] As indicated above the submissions addressed the dismissal as one for serious misconduct, but that was not the tenor of the correspondence prepared by MCNZ at the time. Although the letter raising Mr Taylor's personal grievance referred to serious misconduct the terminology in the rest of the correspondence, as well as the terminology Mr Preddy used in evidence when describing his problems with Mr Taylor and his management of them, was more indicative of an attempt at performance management than of an attempt to address misconduct. In other words, the true nature of the problem was one of allegedly poor performance rather than of serious misconduct. For that reason I approach the dismissal as a dismissal for poor performance rather than a dismissal for serious misconduct.

[67] A commonly-applied approach to the justification for a dismissal on the ground of poor performance is embodied in a series of questions which the Employment Court has posed in deciding whether a dismissal for unsatisfactory work performance is fair. The questions are:

- Did the employer become dissatisfied with the employee's performance
- If so, did the employer inform the employee of that dissatisfaction and require the employee to achieve a higher standard of performance
- Was the information given to the employee an objective criticism of the work so far and an objective statement of the standards to be met
- Was a reasonable time allowed for the attainment of those standards
- Did the employer turn its mind fairly to whether the employee had achieved what was expected including,
  - (a) using an objective assessment of measurable targets,
  - (b) fairly putting tentative conclusions to the employee for explanation or an opportunity to refute,
  - (c) listening to the explanation with an open mind,
  - (d) considering the explanation and all favourable aspects of the employee's service record, together with any responsibility it had for the situation that developed,
  - (e) exhausting all possible remedial steps.<sup>2</sup>

[68] Three grounds for Mr Taylor's dismissal remain if the D10 issue is excluded because it had already been dealt with in the warning, and the matter of the coolant check is not taken into account as it was not expressly relied on in the letter of dismissal. They are: the failure to follow the required procedure in respect of requisitions; the failure to address the defect list; and the failure to address the list of outstanding jobs.

[69] Mr Taylor alleged that the catalyst for the difficulties was the D10 issue and that subsequently Mr Preddy was out to discredit him. I do not accept that Mr Preddy was so motivated.

---

<sup>2</sup> *Trotter v Telecom Corporation of NZ* [1993] 2 ERNZ 659, 681

[70] With reference to the steps in *Trotter* all three of the grounds I have identified were identified to Mr Taylor as areas of dissatisfaction, as was the matter of the coolant check if its omission as a ground for the dismissal was inadvertent. However none of them was put to him in the context of requiring a specified standard to be achieved in respect of those or similar actions, no timeframe was given in which to demonstrate an improvement, and there was no assessment at the end of the timeframe of whether the required standard had been met.

[71] The requisition procedure should have been addressed through a more timely warning following the D10 incident - which was expressed at the time as being concerned with the failure to follow procedure in respect of the second requisition - together with a statement indicating for example that any further failure to follow the procedure could lead to further disciplinary action. Instead, by the time the warning was issued some of the further failures relied on had already occurred so it was not possible to rely on the warning in respect of those failures.

[72] From time to time during the parties' exchanges over the requisition procedure Mr Preddy expressed concern that Mr Taylor was failing to follow instructions, and Mr Taylor's failures to comply with the requisition procedure was an example of this. However the failure to follow instructions was not given as a ground for the dismissal. There was no suggestion that it is subsumed in the broader ground of serious misconduct.

[73] The failures to address the outstanding job list and the defect list were similarly not made the subject of any instruction by Mr Preddy that particular action be completed by a specified time, or dismissal could result. Instead Mr Preddy became concerned because Mr Taylor had not completed the tasks within the relatively short timeframe he had set himself. A debate about why ensued, when Mr Preddy should have responded by specifying the tasks to be completed, the date of completion, and of the possibility of dismissal if the tasks were not completed.

[74] The adequacy of Mr Taylor's level of monitoring and supervision of work, and of his reporting to Mr Preddy, was also a theme of the concerns as was highlighted with the D10 issue. Despite this, that matter too was not given as a ground for

dismissal and there was no suggestion it was subsumed in the broader ground of serious misconduct.

[75] Finally if any of these matters are to be seen as serious misconduct in their own right then I am not satisfied that they meet the test of serious misconduct.

[76] Accordingly my view of the employment relationship problem overall is that there was an underlying difficulty not directly addressed because of the high degree of focus on individual symptoms of the difficulty. From Mr Preddy's point of view in addition to Mr Taylor's failures to follow instructions or to do as he said he would, there were failures to carry out some of his duties - in particular monitoring and reporting - adequately or at all. From Mr Taylor's point of view he was spending all his time on Mainpac, with which he was having difficulty and in which he was inadequately supported. During the investigation meeting he made a very belated allegation that Mr Paynter was also seeking to undermine him, on which I make no finding.

[77] Finally, Mr Taylor had asked on 25 March that a disciplinary meeting be scheduled and had made it clear that his attached account was intended to be an interim account. He was entitled to an opportunity at least to address MCNZ on an appropriate disciplinary outcome. The opportunity was not taken the written account because a meeting had been sought, and was expected. The inability to contact his nominated representative was not his fault. MCNZ should not have moved immediately to dismiss him.

[78] For these reasons I find that MCNZ's action in dismissing Mr Taylor was not the action a fair and reasonable employer would have taken. The dismissal was therefore unjustified.

## **Remedies**

### 1. Reimbursement of remuneration lost as a result of the personal grievance

[79] Mr Taylor sought the reimbursement of remuneration lost as a result of his personal grievance.

[80] He received payment in lieu of notice, and obtained alternative employment commencing on 4 June 2008 for which he was paid at a rate of \$18/hour. The equivalent notional hourly rate he received at MCNZ was \$43.27. In October 2009 he obtained another position paid for at an hourly rate, and from June 2010 has been employed in salaried positions on comparable or greater salaries than he received at MCNZ.

[81] His loss is \$8,653.85 in respect of the period between the date of termination of employment and the date of commencement of alternative employment, less the payment in lieu of notice. There is a further loss arising from the difference between his salary at MCNZ and the rate paid by the first of his new employers, in that the new rate of pay was less than half of his previous salary. The total actual loss suffered is more than three months' lost remuneration, but I find no reason to exercise discretion under s 128(3) of the Employment Relations Act 2000 to consider awarding the larger amount.

[82] Three months' lost remuneration calculated at Mr Taylor's former salary of \$90,000 pa is \$22,500.

[83] I turn next to whether this amount should be reduced under s 124 of the Act to take account of contributory conduct on Mr Taylor's part. I find there was such conduct in the form of Mr Taylor's attitude to Mr Preddy's attempts to address the employer's concerns, which was influenced by his view that Mr Preddy was trying to discredit or get rid of him, as well as the unsatisfactory nature of his explanations he gave at the time.

[84] For these reasons I impose a reduction of 50%. MCNZ is ordered to reimburse Mr Taylor in the sum of \$11,250 for the remuneration lost as a result of his personal grievance.

## 2. Compensation for injury to feelings

[85] Mr Taylor seeks compensation for the injury to feelings caused by his personal grievance. He expressed resentment and anger about the way he was treated, in

particular because of his belief that Mr Preddy was out to get him, but otherwise there was little evidence of injury to his feelings.

[86] I would have awarded \$7,500 as compensation for the injury to his feelings. That amount is reduced by 50% and MCNZ is ordered to pay Mr Taylor \$3,750.

### **Summary of orders**

[87] MCNZ is ordered to pay Mr Taylor:

- (a) \$11,250 as reimbursement of remuneration lost as a result of his unjustified dismissal; and
- (b) \$3,750 as compensation for injury to feelings caused by the personal grievance.

### **Costs**

[88] Costs are reserved.

[89] The parties are invited to agree on the matter. If they are unable to do so, any party seeking an order for costs shall have 28 days from the date of this determination in which to file in the Authority and copy to the other party a written statement of what is sought and why. The other party shall have 14 days from the date of receipt of that document in which to file in the Authority and copy to the first party a written response.

R A Monaghan

Member of the Employment Relations Authority