

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 549
3345400

BETWEEN TOP ENERGY LIMITED
Applicant

AND PETER DELL
Respondent

3373344

BETWEEN PETER DELL
Applicant

AND TOP ENERGY LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Andrew Caisley, counsel for Top Energy Limited
Jo Baguley, counsel for Mr Dell

Investigation Meeting: 2 September 2025 in Kerikeri

Date of Determination: 4 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Top Energy Limited (TEL) is a community owned power company that carries on business as an electricity network provider and geothermal generator, supplying electricity to approximately 34,000 consumers in the Far North. TEL builds and maintains the electricity distribution network across Northland. It is one of the largest businesses in Northland, as it employs 180 staff.

[2] In September 2021, TEL offered Mr Peter Dell employment in Kerikeri as a newly created Senior Design Estimator. At that time Mr Dell was living in Rotorua with his family.

[3] Mr Dell accepted this offer of employment, and he commenced work for TEL on 1 November 2021. Mr Dell resigned on 9 May 2023 and his last day of work for TEL was 7 July 2023. Mr Dell had worked for just less than twenty months by the time his employment with TEL ended.

[4] Each party has made claims against the other. TEL sought to recover money that Mr Dell was required to repay it when his employment ended, which he has still not repaid. The Authority identified a slight discrepancy in the calculations used by TEL. It had claimed \$3,696.96 was owing, but the Authority calculated \$3,686.96 was owing.

[5] Mr Dell agreed he was contractually required to repay TEL, but said it was unfair for it to require him to pay this amount because it had failed to promote him and had not given him a salary increase in 2023.

[6] Mr Dell also claimed that TEL had unjustifiably disadvantaged him in his employment and had breached its duty of good faith to him. Mr Dell replied on these claims to explain why, two years after his employment with TEL had ended, he had still not repaid what he admitted he owed it.

[7] The Authority heard both proceedings together.

The employment agreement

[8] TEL and Mr Dell entered into an individual employment agreement that was signed by TEL on 21 September 2021 and by Mr Dell on 23 September 2021.

[9] Clause 18 of the employment agreement was an acknowledgement clause, in which Mr Dell acknowledged that he had been advised of his right to take advice on the terms of the proposed employment agreement, he had been provided with a reasonable opportunity to do so, and he had read and understood the terms of the employment agreement.

[10] Clause 2 in Schedule Two of the employment agreement provided that:

- (a) TEL would pay fifty percent of the costs of up to 3 units per year that Mr Dell was studying towards his Electrical Electronic Engineering degree, until he had completed it.
- (b) Mr Dell was required to reimburse TEL the portion of the unit costs it had paid if he did not pass or did not complete a unit.
- (c) Mr Dell was also required to repay TEL all of the costs it had paid towards his university fees if he left TEL's employment before he had completed two years' service after completing his degree.

[11] Clause 5 in Schedule Two of the employment agreement provided that:

- (a) TEL would pay up to \$5,000.00 towards relocation costs for Mr Dell and his family, to facilitate their relocation from Te Puke to the Bay of Islands for his job with TEL.
- (b) Mr Dell was required to repay TEL his relocation costs if he terminated his employment, before he had completed two years' service with TEL.

[12] As it turned out, Mr Dell presented TEL with an invoice for \$5,326.51 (GST inclusive) for his relocation costs, which TEL paid. TEL sought to recover this full amount when Mr Dell resigned before he had worked for it for two years.

[13] Shortly after starting work for TEL, Mr Dell presented it with an invoice for "semester 3, 2021 fees" of AUS \$3,529.00. TEL reimbursed Mr Dell NZD \$1,889.29 towards these study fees, which it sought to recover. When Mr Dell left TEL, he had not yet completed his degree so, the two-year period he had to work for TEL after obtaining his degree was still a long way from being completed.

[14] TEL attempted to obtain repayment from Mr Dell of the full amounts due under clauses 2 and 5 of his employment agreement before his last day of work, but that did not occur. Part payment occurred when (by agreement) TEL applied Mr Dell's final pay of \$3,528.84 to reduce the amount he owed it from \$7,215.80 to \$3,686.96.

TEL's claims

[15] TEL lodged a statement of problem on 10 December 2024, in which it sought to recover the unpaid balance of \$3,686.96 arising from the clauses 2 and 5 of his employment agreement, on the grounds that this repayment was a key term and condition of his employment.¹

[16] TEL did not accept Mr Dell's assertion that it would be unfair for it to recover the outstanding money he owed because it had failed to promote him internally and/or because he had not been given a pay rise in the 2023 annual salary review. TEL had previously used these types of repayment clauses in many of its employment agreements and intended to keep doing so, so it wanted to consistently apply the repayment provisions in its employment agreements.

[17] TEL explained to the Authority that its attempts to obtain repayment from Mr Dell of the money he owed it had wider significance to it. TEL often assisted new employees to relocate to the Bay of Islands and it often supported staff with higher education and training. TEL said it needed to know it could rely on its usual contractual terms that permitted it to recover these payments from employees whose length of service fell short of what was required, due to the employee's decision to leave.

[18] To justify this additional type of expenditure (in addition to salary and other benefits offered to all employees) TEL needed to ensure it obtained a proper return to the business. The return was that employees who obtained such benefits were required to commit to a minimum period of employment with TEL or to repay the investment TEL had made. TEL said it had never previously had a problem, as other employees who had received such benefits had either completed their qualifying period of service or had repaid the amount owing under the terms of their employment agreement.

[19] TEL said its standard qualifying period of service was two years, as that was the length of time it had determined was required to ensure TEL obtained a proper return on these financial investments, as TEL was mindful to ensure it acted prudently with shareholders' money. TEL was therefore not prepared to set a precedent whereby Mr Dell was not required to meet his contractual repayment obligations, when other employees were.

¹ This is matter AEA 3373344.

Mr Dell's counterclaim

[20] In response to TEL's attempt to recover the money he owed it, Mr Dell lodged a counterclaim on 22 April 2025, in which he claimed TEL had unjustifiably disadvantaged him and had breached its good faith obligations to him by:²

- (a) Not conducting an annual salary review for him in 2023.
- (b) Not giving him a salary increase in 2023, because he had resigned.
- (c) Not communicating with him about his 2023 salary review.
- (d) Communicating with him in "an unacceptable and unreasonable" manner after he had resigned.

[21] Mr Dell claimed remedies of:

- (a) \$20,000.00 distress compensation; and
- (b) \$2,178.00, being a salary increase of 7.2% to be applied to the 13 weeks he had worked for TEL from 1 April 2023 until his employment ended on 7 July 2023.

[22] No penalty claim was associated with the breach of good faith claim as it was not lodged within the 12 months' time limit required by s 135(5) of the Act. Instead, Mr Dell said TEL's breaches of good faith should be compensated as it they were unjustified disadvantage grievances.

[23] TEL said its budgeted pay increase for 2023 was five percent, so if Mr Dell had remained employed, he likely would have received a salary increase of that amount, not the 7.2 percent increase he had claimed. In 2022 Mr Dell had received a three percent salary increase.

[24] TEL disputed the Authority's jurisdiction to investigate Mr Dell's disadvantage grievances on the grounds they had not been raised within the 90-day time limit required by s 114(1) of the Employment Relations Act 2000 (the Act).

[25] This substantive determination has dealt with both proceedings.

² This is matter AEA 3345400.

The Authority's investigation

[26] The Authority held a one-day in-person investigation meeting in Kerikeri into both matters.

[27] The parties lodged witness statements and an agreed bundle of relevant documents prior to the investigation meeting.

[28] Mr Dell was his only witness. Mr Paul Dougherty - General Manager Finance and Ms Shirley Field – Human Resources Manager both gave evidence on TEL's behalf.

[29] TEL lodged written submissions in advance of the investigation meeting. Mr Dell provided the Authority with written submissions and a chronology at the investigation meeting. Both parties also presented oral submissions at the investigation meeting, at the conclusion of the evidence.

[30] The Authority provided a preliminary indication of the outcome of each of the parties' claims. The parties were also told the amounts that TEL would be awarded, in the hope that would assist the parties to resolve their issues before this substantive determination was issued. However, that did not occur.

The issues

[31] During the Authority's case management conference (CMC) held in May 2025, the parties agreed the following issues were to be determined for TEL's original claim and for Mr Dell's counterclaim:

- (a) Can TEL recover the outstanding relocation/education expenses of \$3,686.96 under clauses 2 and 5 of Schedule Two of Mr Dell's employment agreement?
- (b) Did Mr Dell raise disadvantage grievances with TEL within the 90-day time-limit required by s114(1) of the Act?
- (c) If so, did TEL unjustifiably disadvantage Mr Dell by:
 - (i) Failing to conduct a salary review for him in 2023?
 - (ii) Failing to increase his salary in 2023?
 - (iii) Failing to communicate with him about his 2023 salary review?

- (d) If so, what if any remedies should be awarded?
- (e) Did TEL breach its good faith obligations to Mr Dell by:
 - (i) The way it communicated with him after he had resigned?
 - (ii) Not communicating with him about his salary review in 2023?
- (f) What costs and disbursements should be awarded?

Material background

[32] Mr Dell accepted TEL's offer of employment with effect from 1 November 2021, after negotiating a \$2,500.00 increase to the originally offered salary. TEL also agreed to pay Mr Dell:

- (a) Accommodation costs for Mr Dell and his wife to visit the Bay of Islands before they moved there for his new job;
- (b) Temporary accommodation costs of \$2,682.00 to Mr Dell to assist him with obtaining accommodation after he had moved for his new job with TEL.

[33] These accommodation costs were simply paid by TEL, and it has not sought to recover this expenditure from Mr Dell, so these additional costs associated with employing him were not recorded in his employment agreement.

[34] During pre-employment negotiations, TEL offered to meet certain relocation costs and university fees for Mr Dell provided:

- (a) The relocation costs would be repayable in full if Mr Dell left the role within two years, i.e. before 1 November 2023; and
- (b) The university course fees would be repayable in full if Mr Dell left the role before completing two years' service, after he had completed his degree.

[35] Shortly after he had started work, Mr Dell had surgery and was away from work from 10 December 2021 to 10 January 2022. Mr Dell was off work again for at least two weeks in March/April 2022 for more surgery. During his two months' notice period, Mr Dell was again away from work from 6 to 26 June 2023, having his third surgery.

[36] In addition to having had time off work for three different surgeries, Mr Dell was also given time off work from 1 December 2022 to 10 January 2023 for an overseas trip. Therefore,

although Mr Dell had been employed for less than twenty months, he had actually worked for considerably less time than had been anticipated by TEL when he was first employed.

[37] Although Mr Dell stated in his resignation letter he had resigned because he had applied for three jobs internally, but had not been promoted, the facts established he had only applied for one job. Two of the three roles Mr Dell claimed he had applied for did not exist, were never advertised and TEL established that Mr Dell had not applied for them.

[38] The Planning Engineer role Mr Dell claimed he had applied for did not exist. There was no vacancy, as this role had been removed and replaced with two Graduate Engineer positions that paid less than half of Mr Dell's salary. Mr Dell did not apply for these graduate positions. The Asset Engineer role Mr Dell claimed to have applied for had never been created or approved by TEL, so could not have been, and was not, applied for by Mr Dell.

[39] The only role Mr Dell applied for while employed by TEL was the New Future Technology Engineer role, which required a degree in electrical engineering plus several years working in communications, engineering, or technology. Mr Dell had not completed his degree, and he did not have the required work experience. When Mr Dell applied for this role, TEL informed him that he could not be considered for this role because he did not meet the minimum qualifying criteria.

[40] Accordingly, Mr Dell's assertion that he should not have to repay the money he owed TEL under his employment agreement because it had failed to promote him had no factual basis, as there were no suitable roles he could have been promoted into.

[41] In about March 2023, Mr Dell applied for a new role with a higher remuneration package at Northpower. He was successful, and on 9 May 2023 he resigned from TEL to work for Northpower. He was required to give two months' notice, so his last day of employment by TEL was 7 July 2023.

[42] TEL informed Mr Dell during his notice period that, because he had not been employed for two years from 1 November 2021:

- (a) The relocation expenses became repayable; and
- (b) The university fees became repayable.

[43] Although TEL consistently sought repayment of the balance of these expenses, Mr Dell has not paid anything since his final pay was applied to partly pay the amount he had owed in July 2023.

Can TEL recover the outstanding relocation and/or education expenses of \$3,686.96 under clauses 2 and 5 of Schedule Two of Mr Dell's employment agreement?

[44] TEL's offer to assist Mr Dell with his relocation expenses was subject to its standard obligation to repay this expenditure if he left his employment, before he had completed two years' service. This requirement was recorded at Schedule Two, clause 5 of Mr Dell's employment agreement.

[45] This is essentially the same arrangement that applied to TEL's contribution towards half of Mr Dell's university fees. The arrangement the parties entered into regarding the payment and reimbursement of university fees was recorded in Schedule Two, clause 2 of Mr Dell's employment agreement.

[46] The same repayment obligation applied to TEL's agreement to fund half of Mr Dell's university fees, as had applied to his relocation costs. TEL had agreed to pay half of Mr Dell's anticipated university fees, provided he passed the courses he was studying, on the basis that he agreed to repay all of these fees if his employment ended before he had completed two years' service with TEL, after completing his degree.

[47] TEL is entitled to rely on the contractual terms the parties negotiated, agreed, and recorded as express terms and conditions in Mr Dell's employment agreement. Mr Dell did not raise any question or objection to the repayment clause at the time he accepted the offer of employment and entered into the employment agreement.

[48] The meaning, intent, and interpretation of the repayment clause was clear. The words used had their plain meaning, so are easily understood. Mr Dell accepted that he had a contractual obligation to repay TEL the outstanding relocation costs and university fees.

[49] Despite that acknowledgement, Mr Dell maintained to the Authority he should not have to repay TEL because it had failed to promote him, and he was not given a salary increase in 2023. Mr Dell therefore did not challenge the validity or enforceability of the repayment

clauses. Rather his position was that it was unfair of TEL to enforce it, not that the contractual repayment obligations were unenforceable.

[50] Mr Dell did leave his employment with TEL before completing two years of service. Mr Dell would have known that at the time he handed in his resignation. However, there was no attempt by Mr Dell to get TEL to waive its right to recover relocation costs and university fees from him before he resigned.

[51] Mr Dell's resignation on 9 May 2023 occurred because Northpower had made him an offer around March and was pressing him for a response.

[52] There was no dispute that, because Mr Dell had not worked for TEL for two years when his employment ended on 7 July 2023, the total sum repayable was \$7,215.80 This consisted of \$5,326.51 GST inclusive for his relocation fees plus \$1,889.29 for reimbursement of half of his university fees (this amount was in New Zealand dollars and GST inclusive), under clauses 2 and 5 of Schedule Two of Mr Dell's employment agreement.

[53] On 10 July 2023, TEL calculated Mr Dell's final pay as \$3,528.84, which was to have been paid to him on 11 July 2023. However, as previously agreed by the parties, and as per clause 19 of Mr Dell's employment agreement, his final pay was applied to partially repay what he owed TEL. That left the balance of \$3,686.96 owing for reimbursement of the relocation costs and university fees TEL had paid.

[54] Bonding arrangements have been enforced by the Authority on previous occasions. For example, in *Whangarei District Council v Jenkins* the Authority considered an employee whose relocation expenses were paid, subject to a two-year bonding period.³ Mr Jenkins left his employment prior to completing the required two years' service. The Authority held that the relevant clause was "clear and unequivocal" and required repayment to be made.

[55] Mr Jenkins' argument that the relocation expenses should be pro-rated for the period of service completed was unsuccessful, as the words in the applicable employment agreement were clear and unequivocal. That same reasoning applied to Mr Dell's situation.

³ *Whangarei District Council v Jenkins* [2010] ERA AA 370/10.

[56] Accordingly, as a matter of straightforward contractual interpretation, TEL is entitled to recover \$3,686.96 from Mr Dell, under Schedule Two clauses 2 and 5 of his employment agreement.

Should TEL be awarded interest?

[57] An award of interest is discretionary. Mr Dell has retained the use of money he should have repaid to TEL when his employment ended on 7 July 2023. It is therefore appropriate that he paid TEL interest on the \$3,686.96 he has retained for his own benefit.

[58] Accordingly, interest is to run from 7 July 2023 (being his last day of work) on the outstanding amount of \$3,686.96 until TEL has been paid the money plus interest it is owed.

[59] Interest is to be calculated using the Civil Debt Interest Calculator on the Ministry of Justice website. Mr Dell is therefore ordered to pay TEL interest of \$462.97 for the period 7 July 2023 to the date of this determination, plus accrued interest on any outstanding amount after that date until TEL has been fully paid the money Mr Dell owed it.

Did Mr Dell raise his disadvantage grievances within the 90-day time limit required by s 114(1) of the Act?

[60] Mr Dell's counsel wrote to TEL on 4 July 2023 claiming he had been unjustifiably disadvantaged, asking he not be required to repay the outstanding relocation costs and university fees, and seeking a backdated salary review.

[61] This letter was sufficient to have raised the following disadvantage grievances:

- (a) Failure to conduct Mr Dell's annual salary review in 2023;
- (b) Failure to increase Mr Dell's pay for the last 13 weeks he worked, because he had resigned;
- (c) Failure to communicate with Mr Dell about his salary review.

[62] The Authority had jurisdiction over these disadvantage grievances, which were all raised within the 90-day time-limit in s 114(1) of the Act.

[63] However, the Authority did not have jurisdiction over any new claims that Mr Dell made during the course of the Authority's investigation, as none of these were raised by him

as personal grievance claims within the required 90-day time-limit required by s 114(1) of the Act.

Did TEL unjustifiably disadvantage Mr Dell by failing to conduct a salary review for him in 2023?

[64] The evidence clearly established that TEL did undertake a review of Mr Dell's salary, along with all the other individual employment agreement salary reviews, in May 2023. As a result, Mr Dell did in fact receive the review he was contractually entitled to, even though his salary was not increased.

[65] TEL conducted the remuneration reviews for all employees who worked on individual employment agreements at a Remuneration Committee meeting held on 12 May 2023. Mr Dougherty attended this meeting, and he explained in detail the review process that had occurred.

[66] Although Mr Dell refused to accept that evidence, the Authority found Mr Dougherty to be a credible witness. Mr Dougherty's evidence also aligned with what had been communicated to Mr Dell about his salary review at the material time, and with relevant documentation.

[67] The recommendation made to the Remuneration Committee was that Mr Dell not be given a salary increase because he had already resigned. That advice was accepted, so Mr Dell was one of four employees who did not have their salary increased during the 2023 remuneration review. Two employees (one of whom was Mr Dell) had resigned and the other two employees were new. Mr Dell is the only person who has challenged TEL's failure to increase his salary.

Did TEL unjustifiably disadvantage Mr Dell because it failed to increase his salary in 2023?

Was Mr Dell entitled to a salary increase in 2023?

[68] Mr Dell's claim that he was entitled to be paid a 7.2% salary increase in April/May 2023 did not succeed. Mr Dell's claim that TEL's failure to pay him an extra \$2,178.00 (being a 7.2% increase to his salary for the 13 weeks before his employment ended) unjustifiably disadvantaged him also did not succeed.

[69] Mr Dell's employment agreement did not contain any entitlement to an annual CPI increase, or to any other guaranteed increase to his pay. Schedule Two, clause 1 of Mr Dell's employment agreement only stated that there would be an annual review of his remuneration. It did not provide him with a contractual entitlement to an annual salary increase, so any increase was at TEL's sole discretion.

Can the Authority increase Mr Dell's salary?

[70] Section 161(2)(b) of the Act expressly prohibited the Authority from setting or fixing terms and conditions of employment for parties. The Authority did not have jurisdiction to increase Mr Dell's salary.

Does a salary review require a salary increase?

[71] In *Sheath v Selwyn Foundation*, the Authority held that the employee had not been unjustifiably disadvantaged by her employer's failure to raise her salary as "*clause 6.3 of the employment agreement provides for a remuneration review only. It does not guarantee a salary increase...*".⁴ That is the same situation Mr Dell faced in this case.

[72] The right to an annual remuneration review did not also require Mr Dell's salary to be increased annually.

Was TEL's decision justified?

[73] TEL exercised its discretion to not increase Mr Dell's salary. As it had done previously in similar circumstances for other departing employees, TEL decided there was no particular need to, and no particular value to the business in, increasing Mr Dell's salary for the short period before his resignation took effect.

[74] That was a decision that was available to a fair and reasonable employer in all the circumstances. TEL's actions, and how it acted it, therefore met the requirements of the justification test in s 103A(2) of the Act.

[75] There was nothing unlawful in TEL exercising its discretion to apply the money it had budgeted for salary increases to those employees who would be continuing to work for it during the next 12 months. Mr Dougherty explained that the purpose of the annual salary review was

⁴ *Sheath v Selwyn Foundation* [2015] NZERA Auckland 134 at [54].

to ensure employees were remunerated fairly for the year ahead and to maximise employee retention. TEL was justified in holding that view.

Finding

[76] TEL understandably did not see a benefit to its business by increasing the remuneration of an employee who had already resigned, because it increased its costs for no return. That decision did not amount to a breach of good faith or to an unjustified disadvantage of Mr Dell. Accordingly, those claims did not succeed.

Did TEL unjustifiably disadvantage Mr Dell by failing to communicate with him about his 2032 salary review?

[77] Mr Dell's claim that TEL failed to communicate about the outcome of Mr Dell's 2023 salary review was contradicted by the evidence. Mr Dell's breach of good faith and unjustified disadvantage personal grievance claims alleging non-communication by TEL therefore did not succeed.

[78] The Authority was satisfied that, contrary to Mr Dell's evidence, TEL did communicate the outcome of its 2023 salary review to him. In particular:

- (a) Ms Field informed the Authority that Mr Dell's manager, Ian Robertson, spoke to Mr Dell to confirm that because of his resignation, his salary would not be increasing for his remaining time in the business.
- (b) On 28 June 2023 Ms Field emailed Mr Dell to confirm that, as his manager had previously advised him, his salary would not be increasing.
- (c) Mr Dell did not challenge that he had been told he would not be getting a salary increase when his counsel responded to TEL's email dated 4 July 2023, that stated he had been verbally advised that there would be no salary increase.
- (d) On 5 July 2023 TEL set out in a letter from its counsel a comprehensive explanation for its decision not to award Mr Dell a salary increase.
- (e) Ms Field told the Authority that she and Mr Robertson had met with Mr Dell in person to discuss the outcome of his 2023 salary review. They told Mr Dell his salary had not been increased because he had resigned, and TEL did not give pay rises to employees who had resigned. The date of this meeting was unclear,

but the parties agreed that it must have occurred over the period 25 May to 5 June 2023.

[79] Mr Dell's disadvantage grievance did not succeed, because the alleged failure to communicate was contradicted by the evidence. TEL's actions in verbally communicating the outcome of his annual salary review did not unjustifiably disadvantage Mr Dell.

[80] There was no contractual obligation on TEL to communicate, or communicate in writing, with Mr Dell about the outcome of its annual salary review process. As a result, any failure to do so (or to do so earlier than it did) cannot give rise to a disadvantage grievance claim since:

- (i) The action did not affect Mr Dell's employment (or 1 or more conditions of his employment); and/or
- (ii) The alleged 'failure to communicate' did not create any 'disadvantage' to Mr Dell.

[81] Mr Dell was therefore unable to establish the required elements of an unjustified disadvantage grievance claim, regarding TEL's alleged failure to communicate with him about his 2023 salary review.

[82] TEL's usual practice was to communicate verbally where there was no change to salary and communicate in writing where there was a change to salary. It was not a breach of good faith for TEL to do so. Verbal feedback that there would be no salary increase made sense, since in the former situation there was no change to terms and conditions, whereas in the second situation there was a change to terms and conditions, so it was appropriate for that to be recorded in writing.

[83] The first time Mr Dell raised a concern about not having received a letter confirming that his salary was not changing was on 27 June 2023. TEL promptly responded to him by email on 28 June 2023. TEL continued to communicate in an open and responsive way thereafter.

[84] TEL did not breach its good faith obligations to Mr Dell regarding its communications with him about his 2023 salary review.

Did TEL breach its good faith obligations to Mr Dell because of the way it communicated with him after he had resigned?

Mr Dell's claims

[85] Mr Dell claimed, via his counsel's letter of 4 July 2023, that TEL breached good faith by threatening "debt collection proceeding if he fails to repay the amount by 31 July 2023" and that the "tone and timing of these emails has caused anxiety and stress for Peter [Mr Dell] during his recovery from his hip operation".

[86] During the Authority's investigation meeting, Mr Dell identified three emails he said was evidence TEL had breached its good faith obligations, which had unjustifiably disadvantaged him:

- (a) Email dated 11 May 2023 from Ms Field to Mr Dell.
- (b) Email dated 6 June 2023 from Ms Field to Mr Dell.
- (c) Email dated 28 June 2023 from Ms Field to Mr Dell.

Email dated 11 May 2023

[87] TEL acknowledged Mr Dell's resignation of 9 May 2023 by email from Ms Field on 11 May 2023.

[88] Ms Field in her email asked what Mr Dell intended to do about his notice period, including whether it could be extended in light of the sick leave he was taking during the notice period for surgery or whether he could reschedule his surgery. TEL made that request in the hope that if Mr Dell had additional time at work during his notice period that would facilitate a smoother handover.

[89] Mr Dell accepted that he had declined TEL's request, and that TEL had accepted that. However, Mr Dell said the mere fact TEL had made this request breached good faith and disadvantaged him. Mr Dell was unable to explain how he had been disadvantaged. He rejected the request, so no changes had been made to his notice period, and he took time off for his surgery during the notice period. TEL had accepted Mr Dell's decision about those matters without complaint.

Email dated 6 June 2023

[90] Mr Dell tabled a repayment proposal in an email dated 25 May 2023. TEL responded on 6 June 2023, with an alternative proposal. Mr Dell initially claimed that Ms Field's request that he respond to her email by 8 June 2023 was a breach of good faith and had unjustifiably disadvantaged him because he was on sick leave, due to his third surgery at the time.

[91] When questioned about this during the investigation meeting, Mr Dell agreed that the email had not disadvantaged him and that this email did not mention debt collection proceedings. Mr Dell said he had not seen the 6 June 2023 email until after he had returned to work from sick leave on 26 June 2023. Mr Dell responded to Ms Field on 27 June 2023, after he had returned to work from his surgery related sick leave, and the date of 8 June 2023 was not enforced or referred to by TEL.

Email dated 28 June 2023

[92] On 28 June 2023, after Mr Dell had returned to work after his surgery and had emailed Ms Field about TEL's repayment request, Ms Field responded to Mr Dell's repayment proposal.

[93] Ms Field's email to Mr Dell dated 28 June 2023 recorded that TEL declined Mr Dell's payment proposal and asked him to repay the money he owed it by 31 July 2023. TEL's email then noted that if payment had not been made by 31 July 2023, then it may commence debt collection proceedings to recover the outstanding balance.

[94] Mr Dell claimed this reference to "debt collection proceedings" was a breach of good faith and had unjustifiably disadvantaged him in his employment.

[95] Mr Doherty explained to the Authority that it was common, normal, and appropriate for TEL to pursue repayment of debts through debt collectors. In advising Mr Dell of this fact, TEL was doing nothing more than referring to its usual debt recovery processes. It was not a breach of good faith for TEL to have advised Mr Dell of the likely consequences if he refused or failed to pay the contractual debt he still owed TEL.

[96] TEL's advice to Mr Dell about what would likely happen if his debt was not repaid did not disadvantage him in his employment. Mr Dell's employment continued as usual until it

ended on 7 July 2023. He did not repay the amount owed before he left his employment and more than two years later, he has still not repaid the balance of what he agreed he owed TEL.

Other communications

[97] During the investigation meeting, the Authority took Mr Dell to all of the communications he had with TEL, and he did not identify any other communications he alleged were “unacceptable and unreasonable”. His claims therefore relied solely on the three identified emails.

Finding

[98] TEL’s communications with Mr Dell after he gave it notice of his resignation were not “unacceptable” or “unreasonable”. None of the communications the Authority reviewed breached TEL’s statutory good faith obligations or had resulted in Mr Dell being disadvantaged in his employment.

[99] Accordingly, Mr Dell’s claims that TEL’s post resignation communications breached good faith and unjustifiably disadvantaged him did not succeed.

Did TEL breach its good faith obligations to Mr Dell by not communicating with him about his salary review in 2023?

[100] As the Authority has already determined, Mr Dell’s claim TEL had breached the good faith obligations it had to him by not communicating with him about his 2023 salary review did not succeed.

[101] The evidence established that after TEL had completed its 2023 remuneration review, it had multiple communications with Mr Dell about the fact his salary was not going to be increased. TEL was not required to communicate with Mr Dell about the remuneration review before it had occurred, because it had the exclusive discretion about how and when that process would occur.

What costs and disbursements should be awarded?

[102] TEL as the successful party is entitled to a contribution towards its actual legal costs. The parties agreed in their submissions that the successful party should be awarded costs of

\$4,500.00, which the Authority considered was appropriate. TEL is also entitled to be reimbursed \$71.55 for its filing fee.

[103] Accordingly, within 28 days of the date of this determination, Mr Dell is ordered to pay TEL \$4,571.55, consisting of \$4,500.00 as a contribution towards its actual legal costs plus \$71.55 to reimburse its filing fee.

Orders

[104] Within 28 days of the date of this determination, Mr Dell is ordered to pay TEL the sum of \$8,721.48, consisting of:

- (a) \$3,686.96, being the outstanding balance of relocation costs and university fees that are repayable pursuant to clauses 2 and 5 of Schedule Two of Mr Dell's employment agreement.
- (b) \$462.97 interest from 7 July 2023 (Mr Dell's last day of work for TEL) to 4 September 2025 (being the date of this determination);
- (c) \$4,500.00 contribution towards TEL's actual legal costs;
- (d) \$71.55 to reimburse its filing fee.

[105] Interest continues to accrue on any of the \$4,149.93 Mr Dell was ordered to pay TEL to reimburse his relocation costs and university fees (consisting of \$3,686.96 balance outstanding plus \$462.97 interest to date) that remains outstanding from the day after the date of this determination, until TEL has been paid in full.

[106] Accruing interest is to be calculated using the Civil Debt Interest Calculator on the Ministry of Justice website.

Rachel Larmer
Member of the Employment Relations Authority