

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 270
3287779

BETWEEN SUJATHA UDUMULLAGA
Applicant

AND HOPKINS JOINERY
LIMITED
Respondent

Member of Authority: Claire English

Representatives: Adrian Plunket, counsel for the Applicant
Charles Woods, advocate for the Respondent

Investigation Meeting: 15 October and 29 November 2024 in Rotorua and by
AVL

Submissions received: Up to 12 May 2025 from Applicant
Up to 7 February 2025 from Respondent

Determination: 15 May 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Sujatha Udumullaga, owned and ran a joinery company in Sri Lanka before coming to New Zealand. She started work at Hopkins Joinery Limited (Hopkins) in 2014 and worked there until she was dismissed in November 2023. She says she was unjustifiably dismissed.

[2] Hopkins disputes this. It says that Ms Udumullaga was injured and on long term leave. It states that Ms Udumullaga's absence adversely affected Hopkins, and as a result, it had to reduce the work it took on and make changes to its operations including

using more pre-cut materials, and that ultimately this lead to the disestablishment of her position.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Ms Udumullaga, and from Ms Kim White, a social worker. At the investigation meeting, Mr Ron Hopkins, Director, and Ms Sarah Martin, Office Manager attended on behalf of Hopkins together with their representative. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

[4] 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.

The issues

[5] The issues requiring investigation and determination were:

- (a) Was Ms Udumullaga unjustifiably dismissed, or in the alternative, subject to unjustified disadvantage relating to the way in which her employment ended?
- (b) Did breaches of good faith occur in relation to the ending of her employment?
- (c) If Hopkins' actions were not justified (in respect of disadvantage and/or dismissal), what remedies should be awarded, considering:
 - Unpaid wages from 16 November 2023 when Ms Udumullaga says she was ready and willing to work to dismissal as of 28 November 2023;
 - Unpaid holiday pay and Kiwisaver entitlements;
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct that contributed to the situation giving rise to the grievance/s?

- (e) Should penalties be awarded for penalties for alleged breaches of the Wages Protection Act 1983, breaches of good faith obligations, and failures to provide wage and time records?
- (f) Interest, reimbursement of the filing fee; and costs.

Background

[6] Ms Udumullaga had worked for Hopkins for some eight years as a fabricator and machine operator, before she injured her back in late December 2022. The injury was not work-related.

[7] Ms Udumullaga first went to a chiropractor. This chiropractor was recommended by Mr Hopkins, and I understand Mr Hopkins also paid for some of the appointments. Ms Sarah Martin, office manager, assisted Ms Udumullaga to get to the chiropractor, and supported her on some occasions. The chiropractor assisted Ms Udumullaga in making an ACC application in January 2023. When her symptoms did not improve, she went to her GP who referred her to a specialist. She began receiving weekly compensation from ACC. Ms Udumullaga did not see the chiropractor after March 2023.

[8] Ms Udumullaga kept Hopkins up to date, as she would visit the office regularly every 2 to 4 weeks to provide copies of her ACC records and doctor's certificates and to receive help scanning and uploading the same from Ms Martin.

[9] On around 30 August 2023, Ms Udumullaga's ACC compensation came to an end. She then sought assistance from MSD, as she was still on unpaid leave. Although Ms Martin expressed some concerns about this to Ms Udumullaga, there is no indication this was improper. Ms Udumullaga wanted to return to work, and mentioned this to Hopkins.

[10] On 31 October 2023, Hopkins wrote to Ms Udumullaga inviting her to a meeting on 9 November 2023. The letter was brief, and set out three bullet points "to discuss" as follows:

- Your recovery / return to work / other
- Managing client work commitments while our workers are on Acc.
- How this is impacting on Hopkins Joinery.

[11] Ms Udumullaga then met with Mr Hopkins and Ms Martin, Ms Udumullaga expected that this meeting would be to discuss her return to work. However, she was presented with an unsigned letter of resignation which had been prepared by Hopkins and dated 8 November 2023. It stated in its entirety:

I Sujatha Udu Mullage, wish to inform Hopkins Joinery Ltd that I am unable to return to work due to ongoing health issues, after being off work on ACC for spinal injury since Jan 2023.

[12] Ms Udumullaga was shocked and refused to sign the letter. She asked Mr Hopkins directly what she needed to do to come back to work. He asked for clearance from her doctor that she could go back to work.

[13] Ms Udumullaga then went to see her doctor. She was able to get an appointment on 15 November 2023, and received a medical certificate stating that she had been seen and examined, was “well and able to start back at work on 16/11/23”.

[14] Ms Udumullaga immediately took this certificate to Hopkins. She handed it to Mr Hopkins, who told her that it was insufficient, and that he required more detail. In the statement in reply, and his in-person evidence, Mr Hopkins said that this was because he felt that the doctor could not give Ms Udumullaga clearance to work without seeing her, even though it is stated in the medical certificate that the doctor had “seen and examined” Ms Udumullaga.

[15] Despite this, Ms Udumullaga promptly did as she was requested, and sought a second medical certificate from her doctor, on 17 November 2023. This certificate records that Ms Udumullaga was seen and examined on that date. It records that she had suffered an injury to her neck and lower back, however, in the doctor’s opinion was “fully fit to return to her usual role in aluminium joinery”.

[16] She brought this second certificate to Mr Hopkins. He did not agree that she could return to work and suggested that she needed clearance from ACC. He sent Ms Udumullaga away again. On 21 November 2023, Ms Udumullaga was told to expect a contact from Hopkins’ health and safety person, Mr Charles Woods. Ms Udumullaga was then asked to contact Mr Woods, which she did on 22 November 2023. He arranged to meet with her the following day, on 23 November 2023.

[17] Ms Udumullaga met with Mr Woods on 23 November 2023. She was not given any indication of what to discuss or possible outcomes of the meeting, but she was expecting to discuss her medical certificates and her return to work.

[18] Mr Hopkins also attended the meeting with Mr Woods. He presented Ms Udumullaga with a letter from the chiropractor. The letter was dated 21 November 2023 and stated:

I have been asked to give an opinion as to the viability of Sujgtha Kumari Udumullaga returning to employment at Hopkins Joinery...it is my opinion that there is a strong likelihood that further injuries will occur.

[19] Ms Udumullaga was very surprised to receive this letter, as she had not seen the chiropractor since March, and had not known that Mr Hopkins had sought his advice. Mr Hopkins said that he received Ms Udumullaga's verbal consent to seek the advice of the chiropractor on whether she was fit to return to work, although he could not say for sure when this had occurred, and had no record of this. Ms Udumullaga says that she did not consent to this, and it was never even discussed. She has raised a complaint with the Privacy Commissioner about this matter, although at the time of writing this determination, this process had not yet been completed.

[20] At this meeting, Ms Udumullaga says she was told for the first time that there was no role for her at Hopkins. She also recalls being told she was a health and safety risk because of her injury. She says she told Mr Hopkins and Mr Woods that she wanted to return to work and that her doctor had said she was fit to return. Mr Woods then told her she had no job anymore.

[21] Mr Woods took notes on his device, and asked Ms Udumullaga to sign. She was unsure why, and refused to do so. The meeting ended with Ms Udumullaga expecting to receive a further letter from Hopkins.

[22] On 24 November, Ms Udumullaga sent a text to Mr Hopkins saying "I don't understand why you won't let me go back to work".

[23] On 27 November 2024, Ms Udumullaga received a letter from Hopkins headed "De-establishment of Position". It stated:

As discussed, we have had to make changes during your absence for our business to maintain the production continuity.

This has resulted in less fabrication work and the reliance of pre-cut materials, which has led to a more reliable production.

Unfortunately, this means we have made the decision to De-establish your position within the manufacturing side of our work. Again, this was discussed, understood, and accepted by you at the meeting.

I appreciate you feel capable of returning to work, but as explained during the meeting, there is no position for you to return to with your particular skill set....

We absolutely appreciate the value you have brought to the job, and I am sure this has been a two-way relationship to that end.

[24] Although this letter did not refer to termination of Ms Udumullaga's employment, the ending of employment, the last day of work, a notice period, or final pay, it was effectively a termination letter, and both Hopkins and Ms Udumullaga understood it as such.

[25] Ms Udumullaga described feeling angry and betrayed by her termination. She said it was particularly hard being fired so close to Christmas. She said she had to walk everywhere because she had no money for petrol, and had to rely on foodbanks. Nevertheless, she worked with a work broker to find work and provided evidence of this. She found cleaning work for 11 hours per week on 1 April 2024, and a second job as a carer for 13 hours per week from 1 May 2024.

[26] Mr Hopkins and Ms Martin gave evidence on behalf of Hopkins. Mr Hopkins explained that, following Ms Udumullaga going on long-term sick leave, changes were made to the business to ensure it could continue to meet customer demand. In particular, this included shifting to the use of more pre-cut products, effectively permanently reducing the need for labour.

[27] Mr Hopkins explained that not only was there limited to no work for Ms Udumullaga to perform as a result of this change, he also took the view that she was not in fact fit to return to work and that her medical certificates from her doctor were unreliable. He believed that the chiropractor's medical certificate which he had requested directly was a better reflection of her state of health.

[28] Mr Hopkins said that Ms Udumullaga must or should have known about the changes to the business and the potential for redundancy as a result of the restructuring that had occurred during her absence, because her former brother-in-law also worked

at Hopkins and I should assume he mentioned these changes to her, and because of the first letter to Ms Udumullaga dated 9 November. Hopkins takes the position that Ms Udumullaga was made redundant and her dismissal was justifiable.

[29] The notes from the meeting of 23 November 2023 were also in evidence, although I note that Ms Udumullaga never signed them and explained to me that they contained certain inaccuracies. These notes relevantly stated:

- a. Under the heading “Expect to Achieve from his meeting”, “explain to Sujatha why the job position she had has been de-established”.
- b. That she was “still unfit to fully resume her previous job/role at Hopkins Joinery”;
- c. “Unfortunately, your job role has been de-established which means we have no work for you to return to”;
- d. “Do you understand that your job position is gone and Hopkins Joinery now have material delivered pre made”.
- e. “You will receive a termination of employment letter. You will get two weeks notice with wages and any holiday monies owing to you”.

[30] Hopkins’ position overall remains as set out in its statement of reply, that Ms Udumullaga’s injury “prevented [her] from returning to work...[and] ultimately this had lead [sic] to the de-establishment of Ms Udumullaga’s position/role”.

Analysis

[31] I must now consider if Ms Udumullaga was unjustifiably dismissed, or if the ending of her employment was substantively and procedurally justified. In doing so, I must apply the test of justification set out in s 103A of the Act, including considering whether:

- a. Hopkins sufficiently investigated the circumstances before taking action to dismiss Ms Udumullaga;
- b. Hopkins raised the concerns that they had with Ms Udumullaga before dismissing her;

- c. Hopkins gave Ms Udumullaga a reasonable opportunity to respond to those concerns before dismissing her;
- d. Hopkins genuinely considered Ms Udumullaga's explanation/s before dismissing her.

[32] I may also take into account any other factors that I think appropriate.

Was Ms Udumullaga's position de-established in a fair way?

[33] In considering Hopkins' assertion that Ms Udumullaga was made redundant, I do not accept that this is an accurate reflection of what actually occurred, and nor do I accept that the redundancy process followed, such as it was, met the test of justification set out in the Act.

[34] It was clear from the in-person evidence of Mr Hopkins, Ms Martin, and the contemporaneous documents such as the notes of the meeting on 22 November 2023, that the decision to restructure the way Hopkins sourced and made its products (eg by changing to the use of pre-cut materials) which resulted in Hopkins saying that Ms Udumullaga's role had been "de-established" had happened some months prior to the meeting on November 2023. The change was well-established by November 2023. Ms Udumullaga had not been consulted on this at the time in any way. Despite Ms Udumullaga visiting Hopkins every couple of weeks during this time, she had been led to believe that there was still a job for her to come back to if only she was able to get well enough to perform it.

[35] It was only when she attempted to return to work that Hopkins told her that this was not the case.

[36] The evidence establishes that Ms Udumullaga was not told that her job had already been "de-established" until it was raised in the meeting of 22 November 2023. I note that none of the documents produced by Hopkins used the word "redundancy". Instead, beginning in the meeting notes of 22 November, it began to use the phrase "de-establish" her position/job/role. Ms Udumullaga says that it was only at this meeting that she was told her position had been "de-established". Hopkins says that she was verbally told prior to the meeting that this was what the meeting would be about. It cannot point to any correspondence establishing this.

[37] In contrast, Ms Udumullaga's in-person evidence was that she was expecting to discuss her second medical certificate, which she had obtained at Mr Hopkins' request, and to his specifications. I find that this is more likely in all the circumstances.

[38] Even if I accept that Ms Udumullaga's position had been disestablished at a prior point in time such that there was, as of 22 November 2023, no position for her to return to, this does not assist Hopkins. It merely demonstrates that Hopkins had made a significant decision affecting Ms Udumullaga's employment without discussing it with her at all, and therefore without meeting any of the tests set out in s 103A of the Act which required it to investigate, raise concerns with Ms Udumullaga, give her a reasonable opportunity to respond, and genuinely consider what she had to say, prior to reaching the final decision to "de-establish" her position. By failing to consult with her at all, this decision fails to meet the test of justification required by the Act and is unjustified.

[39] The meeting of 22 November 2023 does not remedy these defects. Ms Udumullaga was not given any advance notice of what the meeting was to be about, was not given the opportunity for a support person, and the meeting notes show that the meeting ended with Ms Udumullaga being told her job was at an end and that all that was left to do was for her to wait to receive a termination letter. Again, this falls far short of the obligations in s 103A, to consult, provide a reasonable opportunity for her to respond, and to genuinely consider her explanations. There is no evidence that any of this occurred. Rather, the meeting notes demonstrate that in response to Ms Udumullaga's comments, Hopkins kept repeating its position that "your job position is gone".

[40] I note that the meeting notes demonstrate that after telling Ms Udumullaga that her "job role has been de-established which means we have no work for you to return to" Ms Udumullaga raises that she had a medical certificate supporting her absence. At this point, Mr Woods stated "would you like to re-schedule this meeting so you can bring a support person", to which Ms Udumullaga responded "no".

[41] The offer of a support person in the middle of a meeting occurring after Ms Udumullaga had been told her job no longer existed and after she had offered some verbal resistance to accepting Hopkins' narrative at face value is potentially self-

servicing, and is simply insufficient to meet Hopkins obligations to consult fairly. It was too little, too late.

Was Ms Udumullaga fit to return to work?

[42] I now turn to the other matter raised by Hopkins alongside its contention that Ms Udumullaga's role had been disestablished at some point during her authorised absence. This was that in any case, Ms Udumullaga was unfit to perform her role. The initial letter of 31 October refers to "your recovery" as the first bullet point. Mr Hopkins and Ms Martin's in-person evidence was that they believed that Ms Udumullaga was not fit to work, and that they were surprised that she was asking to return to work. They state that the first meeting on 9 November 2023, Ms Udumullaga said she could not do the role and asked for lighter duties (which Ms Udumullaga denies). Ms Udumullaga was then asked to sign a resignation letter drafted by Ms Martin, and the meeting ended with Mr Hopkins asking her to provide a medical certificate.

[43] When Ms Udumullaga promptly provided a medical certificate from the doctor who had been overseeing her care stating that she was fit to work, Mr Hopkins immediately told Ms Udumullaga that he would not accept it and that he wanted her to get another certificate with more detail. He stated this was because the first certificate was provided by a doctor who had not seen Ms Udumullaga. This statement cannot stand in the face of the medical certificate itself which states that Ms Udumullaga "was seen and examined by me". It suggests that Mr Hopkins' request for a second medical certificate was for some other reason.

[44] Ms Udumullaga promptly provided a second medical certificate that met this request including describing her injury and her work, which her doctor said she was fit to perform. Again, the certificate confirmed the doctor had seen and examined Ms Udumullaga.

[45] Instead of accepting this, Mr Hopkins then asked Ms Udumullaga to remain away from work and wait to be contacted. Mr Hopkins then sought a third medical opinion from a chiropractor who had not been involved with the treatment of Ms Udumullaga's injury and had not seen her for some nine months. It is agreed that the chiropractor did not see or examine Ms Udumullaga, despite Mr Hopkins requiring this of Ms Udumullaga's medical advice.

[46] I note that the certificate itself does not provide an assessment of Ms Udumullaga's fitness to work. It states: "I have been asked to give an opinion on the viability of [Ms] Udumullaga returning to employment....it is my opinion that there is a strong likelihood that further injuries will occur."

[47] Mr Hopkins relies on this certificate to support his contention that Ms Udumullaga was unfit to work. This is despite the fact that the certificate does not state this, and that it did not meet the more stringent requirements that Mr Hopkins imposed upon Ms Udumullaga's medical certificates. In addition, this advice was only obtained after Ms Udumullaga had provided Mr Hopkins with two positive medical certificates. Finally, Ms Udumullaga's evidence is that this advice was provided by the chiropractor without her knowledge and consent. Mr Hopkins said he had Ms Udumullaga's verbal consent to seek the advice, but has no record of this and cannot recall when or how this occurred.

[48] Immediately following, there is the first documentary reference to Ms Udumullaga's job having been "de-established", in the meeting notes of 22 November 2023, which is when Ms Udumullaga herself says this topic was first raised.

[49] Taking all this into account, I have no hesitation in concluding that genuine concern over Ms Udumullaga's fitness to return to work was not the real reason her employment came to an end. I prefer Hopkins' own contemporaneous records, being the meeting notes of 22 November 2023, and the termination letter of 27 November 2023, which record that her job had previously been disestablished, such that there was effectively no position for her to return to. Hopkins had simply not expected Ms Udumullaga to return. Its search for adverse medical information suggests instead that the decision had already been made and was not going to be unmade. It was looking for a way to justify what had already occurred.

[50] As this decision was unjustifiable for the reasons already set out, Ms Udumullaga has a personal grievance of unjustifiable dismissal. She is entitled to remedies accordingly.

Remedies

[51] Ms Udumullaga seeks an award of compensation for hurt, humiliation, and injury to feelings, of \$35,000 in accordance with s 123(1)(c)(i) of the Act. Ms

Udumullaga's evidence was that she was shocked and felt betrayed at how her employment came to an end, and she struggled to understand why it had ended when she had provided all the supporting medical advice which Mr Hopkins required of her. She remained distressed and upset by it. Ms Udumullaga's own evidence was supported by the evidence of Ms White, who knew Ms Udumullaga well and had supported her through her injury and both before and after her dismissal. I accept Ms Udumullaga's evidence of the impact on her.

[52] Taking Ms Udumullaga's evidence into account, as well as the disingenuous way that Hopkins changed its tack from focusing on Ms Udumullaga's fitness to work once it received positive medical certificates, to then focus on the "de-establishment" of her position which it had never before raised with her, I find that it is appropriate to award Ms Udumullaga compensation in the sum of \$25,000. Orders are made accordingly.

[53] Ms Udumullaga seeks reimbursement of unpaid wages from 16 November 2023 when Ms Udumullaga says she was ready and willing to work as supported by her medical certificates, but was told by Hopkins not to attend work, through to the date she received the dismissal letter on 28 November 2023. She has calculated this as being 9 working days, with pay of 8 hours per day at the hourly rate of \$23.30/hour. This is a total of \$1,677.60 gross. There is no dispute that Ms Udumullaga remained an employee of Hopkins until her dismissal. Therefore, it remains responsible for her wages for the period of time it instructed her to remain at home. Orders are made accordingly.

[54] Ms Udumullaga has requested compensation for three months lost wages, at the rate of \$23.30 per hour for 40 hours per week, amounting to \$12,116.00. This is in accordance with s 128 of the Act which provides that where an employee has lost remuneration as a result of a personal grievance, the Authority must order the employer to pay to the employee a sum equivalent to the employee's actual loss or three month's ordinary time remuneration. I accept that Ms Udumullaga lost wages as a result of her unjustified dismissal, and I award her three month's lost remuneration accordingly.

[55] Ms Udumullaga has requested that the Authority exercise its discretion to award lost remuneration for a longer period than this (some 35 weeks), on the basis that her new employment is paid at a lesser rate. I have considered this and I decline to do so.

The awards I have already made cover the period of time up to when she began new employment in April 2024. In my view, no further reimbursement is properly required after this date.

[56] Ms Udumullaga has requested that holiday pay and Kiwisaver contributions be payable on any awards of lost remuneration, pursuant to s 123(1)(b) of the Act which provides for the award of wages “or other money lost”. As Ms Udumullaga would have received holiday pay calculated at the rate of 8% of gross wages on these sums but for her unjustified dismissal, it is proper that I award this. Orders are made accordingly. I decline to award an additional sum in respect of Kiwisaver contributions, as Ms Udumullaga’s employment agreement states that “the Employee’s Kiwisaver contributions will be deducted from the Employee’s pay”, therefore this would appear to be a duplication of claims. In all the circumstances, I decline to exercise my discretion to award interest on the small amount of outstanding wages awarded. Orders are made accordingly.

[57] I have considered if any reduction to the remedies awarded ought properly to be made on the grounds that some blameworthy action by Ms Udumullaga contributed to her dismissal. Ms Udumullaga’s injury and resulting absence from work were not blameworthy, and neither was her attempt to return to work with clearance from her doctor. Throughout the process, Ms Udumullaga actively followed the instructions of her employer to remain at home, attend meetings, and provide multiple medical certificates. There is nothing in her conduct that suggest any reduction for contribution need be made.

[58] For completion, both parties mentioned a small loan, however, there is no evidence this was a disputed matter, and neither party has asked me to make a determination in respect of this, so I do not do so.

Penalties

[59] Ms Udumullaga seeks penalties be awarded against Hopkins as follows:

- a. A penalty of \$6,000 in relation to breaches of good faith;
- b. A penalty of \$3,000 in relation to a breach of s 130 of the Act (failure to provide wage and time records);

- c. A penalty of \$3,000 being a failure to pay wages when due for the period 16 November to her dismissal on 28 November 2023.

[60] She seeks that 75% of any penalties awarded are remitted to her, with the remaining 25% going to the Crown.

[61] I will first consider the claim that Hopkins breached its obligations to act towards Ms Udumullaga in accordance with its good faith obligations. It is submitted that this occurred due to “a clear lack of meaningful consultation, open communication, or provision of relevant information”, and that these factors indicate a predetermined approach to dismissal. Reference is also made to the sourcing of the letter from the chiropractor by Mr Hopkins without Ms Udumullaga’s knowledge or consent, on the grounds that Mr Hopkins’ statements that he had obtained her unrecorded verbal consent at some time and place he could not recall were simply not credible, and overall amounted to conduct that was misleading and deceptive or tending to mislead and deceive. Reference is further made to the attempt to get Ms Udumullaga to sign a pre-written letter of resignation at the meeting on 9 May, which is said to be inconsistent with employer obligations to act in a way that tends to maintain the employment relationship.

[62] My view is that breaches of the employer obligations to act in good faith did occur, particularly in relation to the obtaining of the chiropractor’s letter following on from Ms Udumullaga’s own provision of multiple positive medical certificates and urging Ms Udumullaga to sign a pre-written letter of resignation before she had even been told Hopkins considered her employment at risk for any reason. These actions were not aimed at establishing or maintaining a productive employment relationship, but were attempts to bring the employment to an end in circumstances where Hopkins had no lawful ability to do so.

[63] I have considered whether those actions meet the high threshold for the award of a penalty under s 4A of the Act, being either “deliberate, serious, and sustained” or intended to “undermine an employment relationship”. I have concluded that this threshold is met. A penalty is warranted.

[64] When considering the request for a penalty of \$6,000, I consider that Hopkins’ actions were intentional and served to undermine one of the objects of the Act. I have also taken into account Ms Udumullaga’s vulnerability as a second language speaker,

and as a person attempting to return to work after long absence due to injury, and her consistent actions during her absence to maintain an open and transparent contact with her employer by providing updates about her health. In considering the sum of \$6,000 appropriate, I note that Hopkins is a small employer, but is successfully trading and has provided no indication that it would be unable to meet such a sum.

[65] Orders for the payment of a penalty of \$6,000 are made accordingly, with half to be paid to Ms Udumullaga and half to be paid to the Crown.

[66] I have also considered the application for a penalty for a failure to provide wage and time records, and failure to pay Ms Udumullaga for the final 9 days of her employment. I decline to make penalty awards in relation to these concerns. They were not the proximate cause of her grievance and to the extent that Ms Udumullaga has suffered loss, this loss has now been satisfied by awards of lost wages in her favour.

[67] Ms Udumullaga has also sought the reimbursement of her filing fee of \$71.55. As she has been successful in her claim, she is entitled to have this returned to her and orders are made accordingly.

Orders

[68] Ms Sujatha Udumullaga has a personal grievance in that she was unjustifiably dismissed.

[69] Hopkins Joinery Limited is ordered to pay to Sujatha Udumullaga within 28 days of the date of this determination :

- a. The sum of \$1,677.60 gross, being wages for the nine days when Hopkins instructed Ms Udumullaga to stay at home;
- b. The sum of \$12,116.00 gross, being three month's lost remuneration;
- c. The sum of \$1,103.48 gross, being holiday pay calculated at the rate of 8% on these sums;
- d. The sum of \$25,000 without deduction as compensation for hurt and humiliation;
- e. The sum of \$71.55 being the reimbursement of the filing fee.

[70] Hopkins Joinery is ordered to pay a penalty of \$6,000 without deduction within 28 days of this determination. Half of this sum, or \$3,000 is to be paid to Ms Udumullaga. The other half, or \$3,000 is to be paid to the Crown Account.

Costs

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

[72] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Udumullaga may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Hopkins will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[73] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹

Claire English
Member of the Employment Relations Authority

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