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Vakapuna v PPCS Ltd WA 154/07 (Wellington) [2007] NZERA 794 (21 November 2007)

Last Updated: 23 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

Determination Number: WA 154/07
File Number: 5091552

BETWEEN	VILIAMI VAKAPUNA Applicant
AND	PPCS LIMITED Respondent

Member of Authority: P R Stapp

Representatives: Sandra Moran and Anthea Hughes for Applicant

Tim Cleary for Respondent Investigation Meeting: 30 August 2007 at Wellington Submissions: 21, 28 September and 5 October 2007

Determination: 21 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Viliami Vakapuna (also known as Bill Vakapuna) was employed by PPCS Limited (PPCS or the Company) at its Shannon fellmongery. He was a spreader on the paint table processing sheep skins.

[2] Mr Vakapuna was employed at the plant in October 1987. He was a member of the New Zealand Meat Workers Union (the Union). The Company and the Union were parties to a collective employment agreement (the CEA). It was binding on Mr Vakapuna and the Company. The CEA contained the following terms:

29. **WARNINGS**

For offences outside those, which would result in summary dismissal, employees shall be subject to a warning procedure prior to being dismissed.

Warnings recognised as official shall be given in the presence of a plant official and the employee concerned, and the time, date, reason and nature of the warning recorded and signed by the Company representative and a copy given to the Union.

Warnings shall be issued in three stages and shall lapse after one year from the date of recording in the case of stage one and stage two warnings and after two years in the case of a stage three warning.

Stage 1: An official first written warning Stage 2: An official second written warning Stage 3: An official final written

warning

30. DISMISSALS

(a) *Prior to any employee being dismissed or suspended a Plant Official must be informed and must be present together with the employee concerned, if the dismissal or suspension is to be carried out. The time, date, and reason for the dismissal or suspension shall be recorded and signed by the Company representative and a copy given to the union.*

(b) *Notwithstanding sub-clause 29(a), where a instant dismissal is intended, and the union wishes to contest the dismissal, the employee concerned shall be stood down and paid at the rate of \$15.30 per hour. The period of payment shall be either to the end of the following day or until negotiations are concluded, whichever is the sooner.*

31. PERSONAL CONDUCT

(a)...*Examples of offences, which would normally warrant dismissal, include the following:-*

... (iii) *Hitting, fighting, offensive personal abuse and threatening or intimidating people are all examples of failure to control anger, are potentially dangerous and are unacceptable forms of behaviour in a decent workplace.*

[3] Mr Vakapuna says he was unjustifiably dismissed. A personal grievance was raised. He is seeking compensation and lost wages, plus reinstatement. The matter was not settled by mediation services provided by the Department of Labour.

Incident on 18 January 2007

[4] Mr Vakapuna was working the morning shift on 18 January 2007 as a spreader on the paint table. His hours were 4.00am until 2.00pm. Mr Buck Nikora the team captain was working outside, packing or grading and working on the forklift and salting sheepskins. Mr Willie Te Rangi the acting team captain was grading sheepskins and fleshing on a level above the floor where the pelts are spread on the tables and painted. Mr Vakapuna was the only spreader at the table when he decided to have a toilet break.

The toilet was a few minutes' walk away from the table that Mr Vakapuna was working at, near the smoko room and in the same building.

[5] The team captain would normally stand in for anyone needing to take a toilet break to cover the work. It is common ground that Mr Nikora and Mr Te Rangi were working elsewhere and 2 trimmers and 2 spreaders were absent.

[6] Mr Vakapuna says that since there were experienced people in the team laying the skins onto the table and flattening them he could go to the toilet without any impact on the work for a short time and made no arrangements to cover his absence.

[7] After Mr Vakapuna went to the toilet, Maurice Tribe, the product manager, noticed that the conveyer was working, but that there were no spreaders on the paint table. He considered the situation was serious because product would bunch up and result in a poor wool pull. He decided to hit the stop button on the conveyer and asked a nearby employee for the names of the employees who should have been on the table. He was told that the two missing men were Bill Vakapuna and Dion Hiranui. He also noticed that there were two other men missing off the trimming table.

[8] Mr Tribe located Dion Hiranui who was reading the paper at the "*portacom*". Mr Tribe says Mr Hiranui acknowledged he should have been spreading and he went back to work when he was told to. Mr Tribe says he then saw a Mr "BJ" Vinsen, a trimmer, in the smoko room, and asked him what he was doing. He says he told "BJ" that he was looking for Mr Vakapuna and the other trimmer. He required "BJ" to return to work. He then saw Tom Wiley, the other trimmer, walking through, and required him to return to work too. Mr Tribe says "BJ" and Mr Wiley headed back to the trimming table without making any trouble. Mr Tribe says that Mr Vakapuna was still not at the paint table when he looked again. He says that he then located Mr Buck Nikora at the tipper and asked him where Mr Vakapuna was, but Mr Nikora did not know.

[9] Mr Nikora says that Mr Tribe made some derogatory comments about Mr Vakapuna and referred to Mr Vakapuna as a "*bastard*", a "*useless bastard*" and a "*useless fucking bastard*". Mr Nikora also says that Mr Tribe

referred to Mr Vakapuna as a “*fucking useless bastard*” (para.21 Nikora). Mr Tribe denied making these and any other derogatory comments about Mr Vakapuna. It was alleged during the

Authority’s investigation that Mr Tribe also made a racist remark about Mr Vakapuna: Mr Tribe vehemently denied it.

[10] Mr Tribe also learned that Mr Te Rangi was the acting team captain that day. Mr Tribe located Mr Te Rangi in the pelt department grading salted skins. Mr Tribe says that Mr Te Rangi did not know where Mr Vakapuna was and so they both went down to the paint table.

[11] Mr Tribe says that as he approached the table, with Mr Te Rangi behind him, he saw Mr Vakapuna putting his gloves on and he called out to Mr Vakapuna and asked what he had been doing, but Mr Vakapuna did not hear him. He says he assumed that Mr Vakapuna did not want to hear him. It is common ground there was a lot of noise in that area including knives being banged, yelling, and the radio.

[12] Mr Vakapuna says that it was “BJ” who told him that Maurice Tribe was looking for him, and he quickly returned to the paint table. He says that as he was putting his gloves on someone tapped him on the shoulder from behind and Mr Tribe asked him where he had been. Mr Tribe denied touching Mr Vakapuna.

[13] The ensuing events involved a difference of opinion about whether or not Mr Vakapuna swore at Mr Tribe, whether or not Mr Tribe stood up close to Mr Vakapuna and who it was who got in the other’s face, whether or not Mr Tribe leaned towards Mr Vakapuna waving his notebook and pen poised ready to write down whatever Mr Vakapuna’s reply was, and finally whether or not Mr Tribe said to Mr Vakapuna that “*you’re gone. See me and Adrian at 8am in the office*”. During the altercation Mr Tribe says Mr Vakapuna’s reaction caused him to turn and gesture to Mr Te Rangi to come closer because he wanted a witness.

The Company’s Preliminary Investigation

[14] It is common ground that Mr Vakapuna left the table to go to the toilet. It is common ground there were no spreaders at the table at the time and 2 trimmers missing. Mr Te Rangi was not present in the department at the time. Maurice Tribe arrived and stopped the line, affecting the production. He then left to find out where the missing men were. The key players returned to the paint table. Mr Ricky Nikora, a feeder at the top of the paint table throwing skins onto the spreaders that day, says that he heard Mr Vakapuna saying “*you’re stupid*” to Mr Tribe. He says he heard nothing else. Mr Ricky Nikora confirmed it was noisy, with the radio going. He also

confirmed that Messrs Tribe and Vakapuna were face-to-face. He did not see Mr Te Rangi around. He says he did not hear what was being said. He says he never saw or heard Mr Vakapuna swearing or yelling or waving his arms around except that he heard Mr Vakapuna saying “*you’re stupid*” to Mr Tribe. He says if Mr Vakapuna was swearing and yelling and waving his arms around, he would have seen it.

[15] Mr Te Rangi told the Authority that he followed Mr Tribe back to the paint table and what he witnessed was as though Mr Vakapuna “*had the devil*” in him. He supported Mr Tribe who recorded in his complaint that Mr Vakapuna was going to *hit/clock him*. He added in his statement of evidence that there “*was hate in his face with spit coming out. His eyes were wild. I thought he was going to hit Maurice*”. During his evidence before the Authority Mr Tribe also referred to seeing spittle coming from Mr Vakapuna’s mouth.

[16] Mr Te Rangi and Mr Tribe left the area and went to the plant manager’s office. Mr Kealey, the plant manager initially carried out a preliminary investigation and obtained details from Mr Tribe and Mr Te Rangi, and Ricky Nikora, and the other trimmer, Jeremy Lyn.

The Company’s Investigation

[17] Following the preliminary investigation Mr Kealey decided to investigate the matter further. Indeed by then he had received a formal written complaint in a letter from Mr Tribe. In that complaint, Mr Tribe alleged that Mr Vakapuna told him to *fuck-off* at least three times when he asked Mr Vakapuna where he had been. He alleged that Mr Vakapuna then told him to *piss-off* at least five times and that Mr Vakapuna said he was stupid. He says that this was a second incident that involved Mr Vakapuna speaking to him in an abusive manner when he was carrying out his role as the production manager. Mr Tribe provided a full outline of the events as he recalled them

in his complaint (letter 18 January 2007).

[18] Mr Kealey kept notes of his interviews with Mr Te Rangi (19 January 2007) and Mr Tribe (18 and 19 January 2007), Ricky Nikora, Jeremy Lyn and Bill Vakapuna, and notes of subsequent meetings. The Union was also involved and Mr Les Hoffman, the shed president, conducted his own interviews with Ricky Nikora, Jeremy Lyn and Bill Vakapuna. He produced no notes or records of his own despite having the opportunity

to do so before the Authority's investigation meeting. He could not add any more information.

[19] On 21 January 2007, Mr Kealey met separately with Ricky Nikora, Jeremy Lyn and Maurice Tribe. He put to Mr Tribe that Mr Vakapuna had alleged he had made derogatory comments to Buck Nikora who says Mr Tribe referred to Mr Vakapuna as a "bastard and a useless bastard" and a "useless fucking bastard", touched Bill Vakapuna to get his attention, pulled out his notebook and said to Mr Vakapuna "You're gone...". Mr Tribe denied the allegations. Mr Kealey did not put Mr Tribe's reply back to Mr Vakapuna. He decided not to interview Buck Nikora. The purpose for this evidence being raised has been to support the claim that Mr Tribe was influenced by his attitude towards Mr Vakapuna and Mr Tribe's management style unnecessarily contributed to the situation that developed.

The Disciplinary Process and Decision

[20] On 25 January 2007, being satisfied that the incident did occur, that the code of conduct had been breached, that the breach was significant, that there was an impact on the complainant, and considering whether or not there was provocation and any other issues, Mr Kealey decided that there needed to be a disciplinary meeting on the course of action to be taken.

[21] On 25 January 2007 there was a disciplinary meeting. Present at that meeting were Messrs Vakapuna, Middlemass (Union official), Kealey and a note taker, and Hoffman, (the Union shed official).

[22] All the above matters were put before Mr Vakapuna and the Union officials. Mr Kealey stated that he had reached a conclusion. His conclusion was that the incident did occur, the code of conduct was breached, there had been an impact on Mr Tribe, that there was no clear evidence of any provocation by Mr Tribe and that he had considered all other issues. There was a request by Mr Vakapuna for Mr Kealey to interview Buck Nikora, particularly having regard to the remarks made allegedly by Maurice Tribe calling him a "useless bastard" and other derogatory terms. Mr Kealey did not consider that that would progress matters or would be relevant. He explained to the Union officials and Mr Vakapuna that Mr Vakapuna's conduct was significant and warranted dismissal.

[23] Upon providing this conclusion, Mr Kealey asked Mr Vakapuna for any other information and gave him an opportunity to get legal advice. Mr Middlemass responded and asked Mr Kealey "whether any dismissal was from now". Mr Kealey told him the dismissal from that day, ie 25 January 2007. Mr Middlemass gave notice that the Union would lodge a personal grievance. Mr Kealey explained to Mr Vakapuna what would happen with final pay details and superannuation scheme. Mr Vakapuna was paid to that date.

[24] On 25 January 2007 Mr Vakapuna was sent a letter by Mr Kealey that read as follows:

This letter is to confirm your dismissal following an investigation into a complaint made by Maurice Tribe, product manager at PPCS Shannon.

The complaint was that approx. 7.30am on 19th January 2007 you verbally abused Maurice when responding to a question of where you had been.

My investigation confirms that the manner in which you responded was unacceptable, it demonstrated a failure to control your anger and was delivered in a threatening and intimidating manner.

The Issues

This behaviour contravenes our code of conduct set out in s. 31(a) (iii) of the Shannon Collective Employment Agreement.

[25] A general issue is whether the dismissal was justified. I am required to assess what a fair and reasonable employer would have done (applying s.103A of the Act). The issues are:

- What consideration was taken into account by the employer in reaching its decision?
- How did the employer come to the decision to dismiss the applicant?
- Did the employer follow a fair process?

[26] If there is a personal grievance established, I will be required to assess what remedies should be made considering reinstatement is being sought. Section 124 of the Act requires any contribution to be assessed.

[27] Factual findings are required in regard to the reasons for the dismissal, the events on 18 January and contribution.

[28] The employer has provided information about Mr Vakapuna's employment background that it has put to the Authority as evidence of unsatisfactory conduct that should be taken into account for any consideration of reinstatement.

The Determination of the Matter

[29] Mr Tribe, Mr Vakapuna and the witnesses have provided me with different nuances on the events that occurred on 18 January. There are differences in their statements, but there is some common ground between the witnesses. The main differences were about the time Mr Te Rangi was present during the altercation, and what actually happened. Mr Kealey had to make a call on who was telling him the truth. Because of his decision I find he made that call in favour of Mr Tribe and Mr Te Rangi based on what they had to say.

[30] I am satisfied that there was an incident. It is more difficult to determine exactly what happened. This is because Mr Kealey did not take the actual step of making any actual findings, and the reasons for doing so, other than to believe Mr Tribe. Therefore what the employer relied upon at the time is Mr Tribe's version of events, I hold.

[31] Mr Kealey says Mr Tribe was more believable. Mr Kealey believed that Mr Vakapuna swore at Mr Tribe and that he told Mr Tribe "*to piss-off*" in a threatening manner and that Mr Tribe would not have said "*You're gone...*". He had the written complaint and Mr Te Rangi's version of the incident and explanation of Mr Vakapuna's demeanour. He had conducted interviews and drew his conclusions from all that information. He had in the back of his mind the previous incidents involving Mr Vakapuna. That was not put to Mr Vakapuna at the time to comment on.

[32] On the point that the comment was made that Mr Tribe allegedly said "*You're gone...*" no one else has come forward who say they heard that and in particular to corroborate Mr Vakapuna's claim that Mr Tribe actually said: "*You're gone. See me and Adrian at 8am in the office*". Mr Vakapuna said at least once "*piss-off*", according to Mr Te Rangi's and Lyn. At the time of Mr Kealey's investigation Mr Te Rangi's information was that Mr Vakapuna waved his arms in the air and pointed in Mr Tribe's face but no one else saw that.

[33] Mr Lyn provided a statement of evidence for the Authority's investigation but due to personal circumstances was not able to appear at the investigation meeting. A question has arisen about how much weight should be given to his statement. In his statement, he says he could hear Mr Vakapuna above the noise and he says he heard Mr Vakapuna say, just once, "*piss-off*" and "*stupid*". He does not indicate that he saw or heard anything else. He did not remember seeing Mr Te Rangi present.

[34] Mr Ricky Nikora at the time of Mr Kealey's investigation said that there was yelling, the word *stupid* were used. He says Mr Te Rangi was not present initially and Mr Tribe went to get him.

[35] I am satisfied that Mr Kealey would conclude from the information available at the time that there had been an incident that involved a reaction from Mr Vakapuna at least saying to Mr Tribe to "*piss-off*" and that he was "*stupid*". Mr Te Rangi was present for some of the time but Mr Vakapuna's witnesses have disputed how long he was there and where he was standing.

[36] Mr Kealey relied upon the collective employment agreement for serious misconduct involving offensive personal abuse and threatening or intimidating people and relied on finding that Mr Vakapuna failed to control his anger and that had an impact on Mr Tribe. He found there was no clear evidence of any provocation on Mr Tribe's part.

[37] Mr Te Rangi says that Mr Vakapuna "*had the devil*" in him. He supported Mr Tribe who recorded in his complaint that Mr Vakapuna was going to "*hit/clock him*" (complaint). He added in his statement of evidence that there "*was hate in his face with spit coming out. His eyes were wild. I thought he was going to hit Maurice*". Mr Te

Rangi's evidence before me was intense and he had a deeply held conviction about what had happened. Mr Te Rangi's evidence that was relied upon at the time was more or less consistent with that of Mr Tribe and Mr Tribe's notes and it was open to Mr Kealey to rely upon it. However Mr Kealey was not able to explain how he assessed the information from Messrs Ricky Nikora and Lynn who say they did not hear any swearing.

[38] Given that there was not enough information and too many loose ends and some of the information was not consistent from the witnesses a fair and reasonable employer would not have concluded there was serious misconduct. The allegation is a serious

allegation and therefore the level of proof has to be sufficient to support the allegation. The employer is not assisted when the workplace was noisy and Mr Ricky Nikora's evidence does raise some doubt about the events and when Mr Te Rangi arrived on the scene and how long he was there. Although a fair and reasonable employer would have found that Mr Vakapuna abused Mr Tribe, a fair and reasonable employer would not on the information available from all those involved have decided that there had been serious misconduct for threatening behaviour.

[39] The next consideration is that Mr Kealey did not interview Buck Nikora who says Mr Tribe allegedly made some derogatory comments about Mr Vakapuna being a "*bastard*", a "*useless bastard*" and a "*useless fucking bastard*". Buck Nikora also had other information that Mr Tribe had made other comments about Mr Vakapuna previously and what he thought of him in his employment.

[40] A fair and reasonable employer would have taken Buck Nikora's information into account. At the very least Mr Kealey should have interviewed him given he had knowledge of the existence of that information at the time in his notes. Mr Tribe's management style was a relevant factor raised by Mr Vakapuna and his representatives in Mr Vakapuna's defence in regard to any motive that Mr Tribe might have had about Mr Vakapuna, differences over management style and the allegation that Mr Vakapuna was being set up. That information would have been material for reaching a conclusion on whether or not Mr Tribe said to Mr Vakapuna "*You're gone. See me and Adrian at 8am in the office*" and whether or not Mr Tribe touched Mr Vakapuna on the shoulder. Mr Kealey's decision not to interview Buck Nikora would not have been a decision made by a fair and reasonable employer to ensure objectively and to ensure all relevant information was covered since Mr Vakapuna relied upon that information for mitigation.

[41] Finally Mr Kealey acknowledged that he had in the back of his mind earlier issues that did not reflect well on Mr Vakapuna and his conduct at work. He acknowledged he did not raise them at the time with Mr Vakapuna and his representatives. I conclude therefore he was not acting objectively and with an open mind because Mr Vakapuna had a clean slate at the time and no live warnings.

[42] I conclude that Mr Vakapuna has a personal grievance. He was unjustifiably dismissed.

[43] I now turn my mind to the very serious question of whether Mr Vakapuna deserves to be reinstated. Under s 124 of the Act I have to make an assessment on any blameworthy and contributory conduct. I have no hesitation to conclude that Mr Vakapuna was involved in an incident. In the first place he walked off the spreading table without arranging cover that a responsible employee would be expected to arrange. I am satisfied that he told Mr Tribe to "*piss-off*" and that Mr Tribe was "*stupid*". Messrs Te Rangi and Tribe say that Mr Vakapuna swore at Mr Tribe. Just because some witnesses say they did not hear any swearing does not mean it did not happen and has to be treated cautiously because of the noise during the incident at the time. Mr Te Rangi was consistent and his reliability was not shaken when questioned. However, he is one witness alongside others who say they did not hear any swearing and who question what Mr Te Rangi would have seen. There is also the unsettled matter of how many times Mr Vakapuna swore and the evidence is inconclusive on that.

[44] The truth of the matter lies somewhere between what the witnesses from both sides say happened, I hold. The witnesses supporting Mr Vakapuna raise some doubt about what could have happened given the noise, the radio and the feeling involved about the operation being shut down.

[45] It is more than likely that Mr Vakapuna did respond to Mr Tribe, at the very least verbally in Mr Tribe's face, because of his dislike of Mr Tribe over his management style and that he did say "*piss-off*" and "*stupid*". Whether or not he waved his arms in the air and pointed in Mr Tribe's face remains in contention for me to reach a firm conclusion because no one else but Mr Tribe and Mr Te Rangi say this happened. It is less clear what he actually did given the variances in the information from Messrs Tribe, Te Rangi and the workers interviewed. Mr Tribe says he felt threatened, but the evidence does not establish that he was actually threatened as opposed to being abused, I hold. Nevertheless Mr Vakapuna's verbal reaction by not answering properly a reasonable question is partly the cause of the situation and I hold that he has contributed to the situation giving rise to the personal

grievance in the way he reacted to Mr Tribe.

[46] It is also enough for me to accept the evidence of the past incidents that have been referred to and one of those that involved a settlement of differences that Mr Vakapuna was implicated in. However, I have given this very little weight considering

there has been a gap in the time between those matters and this one. Indeed Mr Hoffman who was apparently involved in one of the matters did not see it being relevant in the present matter and was not too concerned about Mr Vakapuna returning to work.

[47] I also heard evidence that Mr Kealey would consider seriously his own future to continue working at the plant if he had to put up with Mr Vakapuna returning to work. This is more serious than Mr Tribe saying the same thing because Mr Tribe had issues with Mr Vakapuna. Mr Kealey is the senior plant manager and I am confident has the skills to manage Mr Vakapuna and not allow Mr Vakapuna get to him personally.

[48] Mr Tribe felt threatened by Mr Vakapuna getting in his face. However Mr Tribe is a senior Company official who I found also contributed to the situation by his reaction. Although there is insufficient proof that he told Mr Vakapuna that he was “gone” or that he tapped Mr Vakapuna on the shoulder he was partially responsible for any aggravation by taking out his notebook and gesturing to Mr Te Rangi to come forward to be a witness and must have known those actions would have drawn a response from Mr Vakapuna. He did not have to do that in the middle of a major noisy incident where there was an unpopular stoppage. He had another option of containing himself from reacting immediately considering Mr Vakapuna was back at his work table, and to deal with it later. Mr Vakapuna needs to improve his behaviour too because he also reacted to Mr Tribe’s question about what he had been doing. Mr Tribe was entitled to ask him that. The question is will reinstatement be effective and will Mr Vakapuna be a harmonious worker? Clearly the employer does not think so. Mr Vakapuna was not convincingly remorseful and did not give me a great deal of confidence that he would have any better attitude towards Mr Tribe. He did not have much remorse probably because he denied the extent of his behaviour and claimed Mr Tribe was out to get him. Given that the behaviour involved abuse and that there was a question about what Mr Tribe allegedly said about Mr Vakapuna to Buck Nikora a fair and reasonable employer would have put Mr Vakapuna on a warning for misconduct. He should be given another chance given that reinstatement is the primary remedy. I am supported in this in so much as his team leader is Buck Nikora who has no issue with him. Mr Te Rangi occasionally acts in the team leader role where there might be a problem. Mr Te Rangi will not always have to deal with him. This does not make reinstatement impracticable.

[49] Significantly Mr Kealey is the manager and one removed from Mr Tribe unless he is acting in Mr Tribe’s place. Mr Kealey will not have to deal with Mr Vakapuna always. The passage of time and the impact on Mr Vakapuna of what has happened should put him on notice that he needs to manage himself much better. Mr Tribe was less categorical about whether or not he would leave if Mr Vakapuna was reinstated. I have decided to reinstate Mr Vakapuna.

[50] Taking this into account and balancing Mr Vakapuna’s blameworthy and contributory conduct for leaving his place of work without cover and being involved in an incident where Mr Tribe felt threatened by him, I assess that the following remedy will require a deduction of 40%. It might have been more but for the vagaries in the evidence available that does not help me to determine the full extent of the events that occurred on 18 January 2007 and if they involved Mr Vakapuna to any greater extent than determined here.

[51] Mr Vakapuna has lost wages as a result of his personal grievance since the dismissal and the investigation meeting. He was dismissed on 25 January 2007. The grievance was immediately raised and put in writing on 9 February 2007 by the Union. However it was not filed in the Authority until 26 June 2007 following unsuccessful mediation.

[52] Mr Vakapuna attempted to mitigate his loss and I accept that his age and stamina for suitable employment may be against him as he says. However, he did attempt to mitigate his loss but this was limited and he did not constructively seek further assistance to get work in the interim. He did not pursue an option to apply for interim reinstatement or deal with the grievance much more speedily in the Authority given the claim for reinstatement and any delays associated with mediation services. I restrict the period of any loss to three months under the Act. The amount is to be calculated by the Company and subject to agreement on the actual sum to be paid. I reserve the right for the parties to return to me for determination of any disagreement on the amount to be paid. This amount is to have a deduction of 40% for contribution and the income from any other sources in the three month period of the assessment of loss.

[53] Finally, I now turn to compensation. Mr Vakapuna has claimed \$5,000. He has given enough evidence of the impact of his dismissal on him in regard to the affects on his feelings and being humiliated amongst friends and family. I accept the dismissal

had some impact on his feelings that can be addressed by his reinstatement and some of his lost wages. It is not the money

that is important to Mr Vakapuna but his reinstatement. Therefore because his reaction involved abusing Mr Tribe and a fair and reasonable employer would have put him on a warning he should not be compensated.

Orders of the Authority

[54] PPCS Limited is ordered:

- (1) To reinstate Mr Vakapuna to his previous position or a position not less advantageous.
- (2) To pay Mr Vakapuna 3 months wages and deduct 40% for contribution and deduct any income from other sources in that period. Leave is granted to the parties to return to the Authority to determine a sum if agreement can not be reached.

[55] Costs are reserved.

P R Stapp

Member of the Employment Relations Authority

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