IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2012] NZERA Auckland 341
5361322

	BETWEEN	ROSS WILLIAM WATSON Applicant
	A N D	UGL (NZ) LIMITED Respondent

Member of Authority:	K J Anderson
Representatives:	Ross Watson (Applicant) in person Charlotte Parkhill, Counsel for Respondent
Investigation meeting:	29 and 30 March 2012 at Hamilton
Submissions Received	30 March 2012 and 20 April 2012 from Applicant 5 April 2012 from Respondent
Date of Determination:	1 October 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Mr Ross Watson, brings two personal grievances to the Authority for determination. First, Mr Watson claims that his employment was disadvantaged by an unjustified action by his employer, in that the notification of the disestablishment of his position, and the time allowed for feedback, was unreasonable; as was the process adopted by his employer in regard to matters associated with the selection of Mr Watson's position to be disestablished. Mr Watson alleges that the manner in which UGL (NZ) Limited conducted the process associated with the disestablishment of his position, affected him to a degree that he should be awarded the sum of $15,000 for hurt, humiliation and loss of dignity.

[2] The second claim presented by Mr Watson is that he was unjustifiably constructively dismissed; effective from the date of his resignation on or about

15 March 2011. Mr Watson obtained employment almost immediately but there is a negative difference of $30,000 per annum between what he was earning at UGL, compared with the new role; hence Mr Watson claims six months' wages being the sum of $15,000. He also claims the sum of $15,000 compensation for hurt, humiliation and loss of dignity to remedy this alleged grievance.

[3] The respondent, UGL (NZ) Limited (UGL), denies the claims of Mr Watson and says that the disestablishment of the position held by him, and the associated redundancy process, was fair and reasonable and in accordance with the company's obligations under the employment agreement and the Employment Relations Act 2000. UGL says that the resignation of Mr Watson cannot reasonably be found to be an unjustified constructive dismissal.

[4] Mr Watson gave evidence to the Authority. For UGL, there is evidence from Ms Kelly Graham, Human Resources Adviser, Mr Martin Reid, General Manager – Legal and Commercial, and Mr James Thompson, Technician Supervisor. The parties have provided numerous documents and their respective closing submissions. All of the available material and evidence has been closely considered, albeit it may not be specifically referred to in this determination.

Background

[5] From April 2005[1] to March 2011, Mr Watson was employed as a technician working with high voltage equipment.

[6] The evidence of Mr Reid, the General Manager – Legal and Commercial for UGL, is that some time in November 2010, in conjunction with UGL Australia, a review of the level of the overheads in New Zealand took place. Mr Reid says that while UGL (NZ) was still profitable, it was agreed that the company's overheads were "disproportionately high" and there was a need to increase profitability in regard to the operations of UGL (NZ). Mr Reid attests that he was part of a management team that discussed cost reduction options, including staffing levels. An outcome was that a general directive was issued and managers were required to review staffing levels and advise of any "feasible" reduction in positions; taking into account the need to retain appropriate numbers of employees to complete the anticipated workload.

[1] Mr Watson says 2003, but the employment agreement produced states 1 April 2005

[7] In regard to the Hamilton operations of UGL, the evidence of Mr Reid is that by mid-January 2011, a number of areas were identified as being "potentially overstaffed" and/or surplus to the requirements of the company.

[8] The evidence of Mr Thompson, Technician Supervisor, is that as a result of being informed of the UGL requirement for managers to look critically at their teams, to see where numbers could be reduced, he accepted that he could reduce the number of protection technicians by one. Mr Thompson was subsequently provided with some scoring criteria to use for scoring each of the members of the protection technician team.

[9] The further evidence of Mr Thompson is that, in conjunction with three other managers, it was decided that the scoring exercise for Waikato employees would involve each employee being scored by their direct manager. After this, the managers met as a group to "debate" the scores to ensure consistency across the teams and reach agreement on the scores that had been given.

[10] Mr Thompson says that the outcome of the scoring exercise was that Mr Watson scored the lowest of the protection technicians "by a significant margin" and hence he was selected as a person whose position could be disestablished following appropriate consultation. Mr Thompson attests that it was expected that the scores and the associated comments contained in the review, would be discussed with affected employees with a view to reaching agreement "where possible." Perhaps Mr Thompson genuinely thought this could happen, but it appears to me that in the case of Mr Watson, the reality is that "the die was cast" with little chance of any tangible change.

[11] The Authority understands that the review/scoring process was conducted in regard to all employees involved with the UGL Waikato operation, but completely unknown to the employees. It is also the understanding of the Authority that the outcome of the review process was that it was then proposed that seven positions would be disestablished; one being that held by Mr Watson.

Notice of the proposal to disestablish positions

[12] On Friday, 28 January 2011, there was a meeting of the UGL Waikato employees for the purpose of informing of potential staffing reductions. After this meeting, Mr Watson (and the other employees whom had been selected for probable

redundancy) was required to stay behind and meet with Ms Graham, the UGL Human Resources Adviser. Upon meeting with Ms Graham, Mr Watson was given a letter dated 27 January 2011. Attached to the letter was the selection criteria score sheet for him. The evidence of Ms Graham is that upon receiving the material from her, Mr Watson became "very angry" about the letter, swore at her and "stormed out of the room". Mr Watson denies this but it is clear that he was (understandably) upset about the suddenness of what had occurred.

[13] The letter given to Mr Watson informed him that it was proposed that seven positions in the Waikato region would be disestablished, including one protection technician. Mr Watson was invited to provide any feedback that he wished to make by Tuesday, 1 February 2011. The letter also informed of a proposed timetable. Consultation with "directly impacted team members" would be on Friday, 29 January 2011. But of course, this date is incorrect as Mr Watson received his letter at the meeting with Ms Graham on 28 January 2011. Mr Watson then had until Tuesday, 1 February 2011 to provide any feedback; to which UGL would respond on Thursday, 3 February 2011. Finally, subject to the proposal going ahead as stated, formal notice of redundancy would also be notified on Thursday, 3 February 2011.

[14] The letter also referred Mr Watson to an internet site in order to explore redeployment opportunities within the company. The evidence of Mr Watson is that upon visiting the site, he was "astonished" to find that a position identical to his was being advertised. Mr Watson says that viewing this position on the internet site left him in a "very uncomfortable and disillusioned" state. UGL subsequently explained that the advertisement for a protection technician should not have been on the website and it was removed when UGL became aware of it. Ms Graham told the Authority that it was a "breakdown in communication" which led to the advertisement for the protection technician remaining on the website. Ms Graham explained that the advertisement was a "standing vacancy" on the UGL website, as protection technicians are highly trained people and relatively scarce in the market. The explanation by UGL appears to be credible, but in the circumstances, it is fully understandable that Mr Watson was disturbed to see the company advertising for technicians, when his position was under threat.

[15] One can further understand Mr Watson when he says that he was feeling "very uncomfortable" about his situation given the process that was adopted by UGL in

regard to selecting the employees that the company proposed to make redundant. Effectively, Mr Watson was presented with a fait accompli in regard to him being selected for redundancy. Mr Watson was completely unaware that he was being assessed; nor did he have any knowledge of the criteria that was adopted by UGL, until he received the relevant material on 28 January 2011. I will return to this matter in due course.

[16] Despite his concerns, Mr Watson promptly prepared a comprehensive response. He disagreed with how he had been assessed in regard to the criteria that had been applied pertaining to selecting him to be made redundant. It was the view of Mr Watson that in most of the areas related to his assessment, he should have been assigned the maximum score, rather than the low to medium score that had been given in the UGL assessment. Mr Watson also referred to areas in regard to the assessment of his disciplinary record being incorrect. The performance evaluations for 2007 and 2008[2] were also provided by Mr Watson whereby his scoring of the various measures used were on a par with or close to, that of his managers; with the outcomes showing that across the board, he had been rated as having "Good Performance" to "Superior Performance".

The challenge to the process

[17] While it is somewhat unclear when Mr Watson presented his response to the UGL proposal to make his employment redundant, given that he prepared it over the weekend of 29 and 30 January, with 31 January 2011 being a public holiday (Auckland Anniversary Day), the earliest that it could have been presented was most probably Tuesday, 1 February 2011. Mr Watson says he couriered the response to the Auckland office of UGL where Ms Graham is based. Mr Watson consulted a lawyer who in turn wrote on his behalf to UGL on 3 February 2011; the day that it was proposed that a decision on Mr Watson's employment was to be made.

[18] It seems that consistent with the timetable set out in the letter dated 27 January 2011, a meeting was to take place with Mr Watson and UGL. However, as a result of the letter from Mr Watson's lawyer, this was postponed. The letter informed UGL that:

[2] More recent performance reviews have not been produced by UGL.

(a) The company had not followed a fair and proper process in respect of the disestablishment of Mr Watson's role. In particular, the consultation process was "manifestly inadequate";

(b) The information provided by UGL was inadequate with a lack of detail as to the financial review carried out in late 2010;

(c) Mr Watson had provided a "rushed submission" in regard to the selection criteria used, rather than the actual proposal to make his position redundant;

(d) Mr Watson wished to provide a further submission in respect of the redundancy proposal.

[19] A request was made for UGL to provide a copy of the financial review conducted by UGL in 2010, and a business case to support the disestablishment of Mr Watson's position. Other information relevant to Mr Watson's situation was also sought.

[20] There is an issue relating to whether or not Mr Watson was expected to be at work following UGL the receipt of the letter from Mr Watson's lawyer. It seems that some employees who had been selected for redundancy elected (by agreement with UGL) to remain at home during the purported consultation process. Mr Watson says that he was instructed by his manager to remain off work on full pay but this is disputed by UGL. This matter was raised via a letter to UGL dated 10 February 2011 from Mr Watson's lawyer; and responded to by UGL on 11 February 2011, along with a response to the matters raised in the earlier letter from Mr Watson dated 3 February 2011.

[21] In its letter of 11 February 2011, UGL disagreed that the consultation period was inadequate but informed that if Mr Watson required additional time to submit a full submission, the consultation period was extended to 15 February 2011. In regard to the financial information requested by Mr Watson, UGL informed that it was under "no strict obligation" to provide these details. UGL gave a somewhat cursory explanation of why a decision had been made to reduce staff numbers. It was proposed that a meeting should be held on 18 February 2011, to receive Mr Watson's formal feedback on the redundancy proposal.

[22] Via a letter dated 14 February 2011, from Mr Watson, UGL was informed of various concerns about the proposed restructure. In particular:

(a) That UGL appeared to be focussing on the person, not the position; given that the selection criteria was indicative of Mr Watson being selected based on his work performance rather than a genuine redundancy existing;

(b) It was suggested that a fair and reasonable employer would have consulted with all of the protection technicians affected by the proposal. An inquiry was made in regard to whether the other protection technicians had been advised or consulted about the proposal and how it might affect them;

(c) Attention was drawn to s.4(1A) of the Employment Relations Act 2000 and the requirement to provide information and to be "active and constructive in establishing and maintaining a productive employment relationship".

[23] In its written response dated 16 February 2011, to the matters raised by Mr Watson, in addition to presenting a contrary view, UGL extended the time for Mr Watson to make further submissions about the company's proposal until 24 February 2011.

[24] Via a letter dated 21 February 2011, Mr Watson presented nine further submissions for the consideration of UGL. In particular, Mr Watson informed that two people had been employed as protection technicians "in the last two – three months" and were not trained (as he is) as a communication technician also; and he could cover for leave and sickness for both roles. Mr Watson also submitted that the two new employees mentioned had not been employed long enough to have their "credentials and abilities" assessed in comparison with him. The submissions of Mr Watson were attached to a letter from his lawyer (also dated 21 February 2011) raising a personal grievance.

[25] Via a letter dated 14 March 2011, UGL responded to Mr Watson. In regard to his request for further information, UGL referred Mr Watson to the content of the letter of 27 January 2011 and informed that:

As you are aware, in the fourth quarter of 2010, our client reviewed its business to look at achieving cost savings by addressing inefficiencies. This is due to the fact that the New Zealand company's profits had decreased in the year 2010-2011 and there has been substantial pressure from our client's head office in Australia to reduce costs in order to ensure higher profitability going forward. The company is therefore currently undertaking a nationwide cost saving exercise. Part of this exercise involves a review of the business to determine where head count can be reduced. While there has been some natural attrition with staff members resigning and not being replaced, UGL was also aware that some of the positions in the company remained overstaffed. This resulted in a number of the employees not working at capacity. A number of branches are also being impacted by the cost savings, including the Nelson office which has been completely shut down.

In relation to the Waikato branch, the following areas were identified as possibly being overstaffed and/or surplus to requirements:

a Maintaining/fitting
b Distribution supervisor
c Operations
d Protection technicians
e Administration.

Your client was provided a letter dated 27 January 2011 which explained the proposed cost reduction. The letter also emphasised that the restructuring was very much at the proposal stage and that your client's feedback would be sought before any final decision would be made.

As you can see from the above, this is a cost saving exercise rather than a situation where the company is carrying out a redistribution of roles or adopting an entirely new structure. However, in light of Mr Watson's concerns in relation to the provision of information, we have asked our client to prepare some data and have enclosed with this letter a document setting out the aim of the cost reduction in New Zealand. You will of course understand that the data which led to this analysis is confidential and will not be disclosed to your client, nor will the disclosure of that data assist your client with preparing his feedback.

Following the review, our client identified one of the protection technician positions as potentially being redundant. This was due to the fact that the protection technicians were not working to their full capacity and there was therefore a diminished need for this position at UGL. Our client has also received feedback from the other protection technicians that there is currently insufficient work to keep all four of them busy at UGL. In such circumstances, our client decided to downsize the team and the technician who is made redundant will not be replaced.

It is clear that the restructuring is not a sham. In fact, it is a response to very difficult financial circumstances created by the recession which has substantially affected the New Zealand operation of UGL. We also note that, despite the assertions contained in your letter, Mr Watson appears to accept that the restructuring of the team is

> genuine. In particular, we understand that he has been contacting another protection technician and placing pressure on him to move back to Australia in order to reduce the number of technicians in the team. This would suggest that he is aware that the team is overstaffed.

[26] Mr Watson was provided with the scoring results for the other protection technicians, with their names redacted. Finally, Mr Watson was invited to attend a meeting to discuss his feedback on the redundancy proposal and the associated scoring for him, as compared with the other protection technicians.

[27] Unfortunately, this meeting did not eventuate as, via a letter dated 15 March 2011, from Mr Watson's lawyer to UGL, Mr Watson resigned. His attached letter informed:

> I wish to tender my resignation effective immediately.
>
> Unfortunately I feel UGL have failed to provide a working environment where I can fulfil my duties without having a profound and negative effect on my health and wellbeing.
>
> I have incurred considerable and unnecessary legal costs to bring to UGL's attention that the original Redundancy Proposal (as presented to me) was neither legal nor ethically acceptable. In particular, the Proposal was targeted at me personally.
>
> I have enjoyed my technical challenges while working for UGL. However, I have always shown a resistive stance when asked to do something that I believe is morally wrong even verging on being fraudulent. Until now, I have always managed to rise above these conflicts, but I now feel I have been targeted for redundancy for my firm belief in doing right over wrong. I have, and will continue to be loyal to my employer, but I will never compromise my personal integrity. For this reason I have no option but to regrettably submit this Letter of Resignation.

Analysis and conclusions

[28] Mr Watson pursues two personal grievances. Firstly, that he was disadvantaged in his employment by an unjustified action or actions of his employer; and, that he was constructively dismissed.

Was Mr Watson disadvantaged in his employment by an unjustifiable action or actions by his employer?

[29] As I understand it, Mr Watson's grievance largely relates to the manner in which he was selected to be made redundant and the associated alleged failure to provide him with sufficient relevant information to consider, before giving

meaningful feedback to the UGL proposal, as communicated to him by the letter dated 27 January 2011.

[30] Mr Watson argues that the proposed redundancy was "a sham" and that he was singled out to be made redundant. Mr Watson argues that the process adopted to select him was effectively predetermined to make him, as an individual, redundant; rather than the position of a protection technician per se.

[31] The test for whether an action of an employer is justifiable in relation to a claim of unjustifiable disadvantage is the same as for a dismissal. It is whether the employer's actions and how the employer acted were what a fair and reasonable employer would have done at the time the action occurred[3].

[32] I conclude that in the circumstances applying to Mr Watson, there were several actions by his employer that cannot be considered to be what a fair and reasonable employer would have done.

[33] Firstly, the manner in which Mr Watson was informed of the proposal that his position was to be disestablished is appalling. A meeting was held with the Waikato staff on 28 January 2011, at which they were informed that some redundancies were being proposed. Then at the conclusion of the meeting, Mr Watson along with six other employees, were effectively drafted out and required to attend a meeting with Ms Graham. Mr Watson was informed that UGL proposed that his position would be redundant and he was told that selection criteria had been applied to him; without his knowledge or participation.

[34] It is difficult to imagine a more humiliating process given that there appears to have been no previous indication that a cutback in employee numbers was being contemplated by UGL.

[35] Another action that was unreasonable was the timeframe in which Mr Watson was required to make a response to the proposal. Mr Watson was given the proposal to remove his position on Friday, 28 January 2011. There was a "Proposed Timetable". Mr Watson was required to provide feedback to the proposal by Tuesday, 1 February 2011. Given that Monday, 31 January 2011 was a public holiday, the reality was that Mr Watson was expected to prepare a response when most people

[3] Employment Relations Act 2000, section 103A as it was then; being before 1 April 2011

would be enjoying the long weekend break. While it is accepted that UGL subsequently extended the timeframe for Mr Watson's feedback (after he obtained legal assistance), he took the timetable literally and obviously put some time and effort into his response. All while under the understandable impression that this was required and that a decision about his employment would be made on 3 February 2011. Not to mention that he had been critically assessed as to his suitability to do his job, without any input from him.

[36] This leads to the question of whether the consultation process exercised by UGL was what a fair and reasonable employer would have done. I find that it was not. This is because, I conclude, the purported consultation was not a genuine effort to accommodate the views of Mr Watson. Rather, he was effectively presented with a fait accompli because he had already been assessed as to suitability to retain his position. The assessment took place without his knowledge or input and the result was such that realistically, there was never going to be any meaningful opportunity for him to persuade his employer that the assessment was faulty or unfair.

[37] The legal principles pertaining to consultation are well established by legal precedent from the Court of Appeal[4] and the Employment Court[5]. In the *Telecom* case, Chief Judge Goddard referred to the *Wellington International Airport* judgment and set out a number of propositions which can now be taken as approved by the Court of Appeal. Particularly relevant to the circumstances of Mr Watson are:

> The requirement for consultation is never to be treated as perfunctorily or as a mere formality. The person or body to be consulted must be given a reasonably ample and sufficient opportunity to express views or point to problems or difficulties: "they must be free to say what they think".

[38] And, *"consultation must be allowed sufficient time."* While UGL subsequently extended the time frame for Mr Watson to respond to the "proposal" the reality is that the purported consultation was never going to be meaningful.

[39] Further:

> Genuine effort must be made to accommodate the views of those being consulted; consultation is to be a reality, not a charade.

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[4] *Wellington International Airport Ltd v. Air New Zealand Ltd* [1993] 1 NZLR 671
[5] *Communication & Energy Workers' Union Inc v. Telecom New Zealand Ltd* [1993] 2 ERNZ 429

[40] It is difficult to accept that the consultation with Mr Watson was anything other than a charade. This is particularly so given the unreasonably short time that he was initially allowed for him to provide feedback and the fact that he had been selected as the protection technician to be made redundant, without any input into that selection process; or indeed, having any knowledge of the criteria that had been applied, until after the fact.

[41] And:

> Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses, and then deciding what will be done.

[42] It appears that UGL had already decided what was going to happen to Mr Watson. As he has submitted, it was impossible for him to improve the scores that had been allocated to him as compared with the other technicians. And of course, it was only after challenging the process, via legal representation, that Mr Watson became aware of the futility of engaging further in the consultation process.

[43] While Mr Watson pursues a grievance on the basis that his employment was disadvantaged by an unjustifiable action by his employer, it seems to me that the issues he has raised about the process adopted by UGL, including the selection criteria, are really matters that, in a redundancy setting, would normally go to whether the dismissal was justifiable, that is, if Mr Watson had not resigned and had subsequently been dismissed on the ground of redundancy.

[44] But of course, Mr Watson did resign and he now claims that his resignation was, in reality, a constructive dismissal. That raises further questions:

Was the resignation of Mr Watson, in reality, a constructive dismissal and if so, was the dismissal unjustifiable?

[45] As was stated by the Court of Appeal in *Auckland Electric Power Board v. Auckland Local Authorities IUOW* [6]:

> In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered

[6] [1994] 1ERNZ 169

> in the affirmative, the next question is whether a breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

[46] Applying the above dicta of the Court of Appeal to the circumstances of Mr Watson, the first question is:

Was the resignation caused by a breach of duty on the part of UGL?

[47] I find that the resignation of Mr Watson was caused by a breach of duty on the part of UGL. This is because the process adopted to select Mr Watson to lose his employment was unfair and unreasonable for the reasons set out above.

[48] The next question that requires determination is:

Whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing?

[49] It seems to me that because Mr Watson had been singled out as an individual to be made redundant, rather than the position of protection technician;[7] and given that he had been plainly informed that he was not suitable to be retained in his position, it was entirely foreseeable that Mr Watson would choose to resign. The only other option that was left open to him was to engage in what was effectively a sham consultation process whereby he was being invited to convince UGL that the criteria that had been used to select him for redundancy was flawed, or at least, unfair, in regard to the manner in which it was applied to him.

[50] It would have been a different matter if there had been a competitive process used whereby the selection criteria was made known to all of the technicians and then, at least, Mr Watson would have had the opportunity to promote himself as a person to be retained, following a fair and transparent process, whereby all of the technicians were required to apply for their positions. Taking the overall actions of UGL into account, I am left to conclude that Mr Watson is most probably correct when he says that he was singled out as an individual who was going to be made redundant. Therefore, it is not surprising that Mr Watson felt that due to the failure of his

[7] See *NZ Fasteners Stainless Ltd v Thwaites* [2000] 1 ERNZ 739 at para [22].

employer to acknowledge that he was worthy of participating in a transparent and fair selection process, he chose to resign, rather than be exposed to further indignity.

[51] It follows that I find that the resignation of Mr Watson was in fact a constructive dismissal brought about by a breach of duty on the part of UGL. The breach of duty was of sufficient seriousness to make it reasonably foreseeable that Mr Watson would not be prepared to work under the conditions prevailing. The actions of UGL were not what a fair and reasonable employer would have done in the circumstances and I find that the constructive dismissal of Mr Watson was unjustifiable.

Remedies

[52] Having found that the dismissal of Mr Watson was unjustifiable and hence he has a personal grievance, pursuant to s.123(1) of the Employment Relations Act 2000 (the Act):

> Where the Authority or the Court determines that an employee has a personal grievance, it may, in settling the grievance, provide for one or more of the following remedies …

[53] Included in the remedies available is reimbursement of wages and compensation for humiliation, loss of dignity and injury to feelings. Then at s.128(2) of the Act, if the Authority determines that an employee has a personal grievance and there has been lost remuneration because of the grievance, the Authority:

> … must, whether or not it provides for any of the other remedies provided in s.123 order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to three months ordinary time remuneration.

Reimbursement of lost wages

[54] Mr Watson has some skills and experience that are in demand in the industry and he was able to obtain new employment immediately. However, the position that he obtained has a salary that pays $30,000 less per annum than what he was earning with UGL. Mr Watson claims reimbursement of wages in the sum of $15,000; being the difference in the two salaries for a period of six months.

[55] I have found that Mr Watson was singled out as the incumbent in his position, rather than the position itself being made redundant, but that does not detract from the

fact that, whether a position is truly redundant, is a matter of business judgment for the employer. UGL determined that the business could be run with one less protection technician, a decision that it was entitled to make in the circumstances. And while I have found that Mr Watson was unfairly treated, it strikes me that even if a fair process had been adopted, given the evidence of Mr Watson's history of some difficulty in his relationships with other employees, coupled with some attitudinal issues, it is possible that Mr Watson would still have been selected as a person to have been made redundant based on the scoring criteria used. While that remains somewhat inconclusive, I do reach the conclusion that it is not appropriate to exercise the discretion available under s.128(3) of the Act, to award more than three months loss of income; being the gross sum of $7,500.

Compensation

[56] Mr Watson claims compensation for hurt, humiliation and injury to feelings under s.123(1)(c)(i) of the Act. His evidence is that he was affected by the actions of UGL to a degree that it affected his health requiring him to take sick leave prior to resigning. I also accept that the manner in which he was singled out to be made redundant was humiliating along with effectively being informed that without his knowledge or input, or a competitive process being applied, his employer had already determined his selection for redundancy. Given these circumstances, I conclude that an award of $12,000 is appropriate.

Determination

[57] For the reasons set out above, I find that the resignation of Mr Watson was in reality an unjustifiable constructive dismissal. UGL (NZ) Limited is ordered to pay to Mr Watson the following:

(a) Pursuant to s.123(1)(b) and 128(2) of the Act, reimbursement of lost remuneration of the gross sum of $7,500.00;

(b) Pursuant to s.123(1)(c)(i) of the Act, the sum of $12,000.00

Costs

[58] Costs are reserved. The parties are invited to resolve that matter if they can, taking into account the outcome and the fact that Mr Watson represented himself,

albeit he incurred some expenses beforehand by engaging legal assistance. In the event a resolution cannot be reached, Mr Watson has 28 days from the date of this determination to file and serve submissions in the Authority. The respondent has a further 14 days to file and serve submissions.

K J Anderson
Member of the Employment Relations Authority