

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 363
5621574

BETWEEN RICHARD MARK ASHCROFT
 Applicant

A N D REDZONE ROBOTICS NEW
 ZEALAND LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: John Ropati, Counsel for Applicant
 Michael Quigg, Counsel for Respondent

Investigation Meeting: 25 August 2016 at Auckland

Submissions Received: 8 September 2016, from the Applicant
 15 September 2016, from the Respondent

Date of Determination: 7 November 2016

DETERMINATION OF THE AUTHORITY

- A Richard Mark Ashcroft was unjustifiably dismissed from his employment with RedZone Robotics New Zealand Limited.**
- B RedZone Robotics New Zealand Limited is ordered to pay to Richard Mark Ashcroft the following:**
- (a) The sum of \$20,407.80 gross being reimbursement of lost wages under s 123 (1)(b) of the Employment Relations Act 2000.**
- (b) The sum of \$18,000 without deduction being compensation under s 123 (1)(c)(i) of the Employment Relations Act 2000.**

C Costs are reserved and failing agreement a timetable has been set for an exchange of submissions.

Employment relationship problem

[1] Mr Richard Ashcroft commenced employment as a design engineer in New Zealand with Clean Flow Systems Limited (Clean Flow) in November 2007. In August 2011, Clean Flow was purchased by RedZone Robotics New Zealand Limited (RedZone NZ or the Company) and Mr Ashcroft accepted employment with the Company on 22 August 2011 as an engineer.

[2] RedZone NZ is a duly incorporated company having its registered office at Auckland and carrying on business in robotic sewerage system operations. The sole shareholder of RedZone NZ robotics is an American company, RedZone Robotics, Inc. which has its registered office in Pittsburgh.

[3] There is a written individual employment agreement (the employment agreement) between Mr Ashcroft and RedZone NZ. Mr Ashcroft's key duties and responsibilities are set out in schedule A to his employment agreement as engineering design, project management, product development, staff management and other duties and tasks as may be required by the Company from time to time.

[4] Mr Ashcroft was promoted several times with RedZone NZ with corresponding salary increases and potential bonus entitlements. In early 2012 he was appointed Chief Technical Officer with three staff members reporting to him. His new job description was to lead all product development and software development in RedZone NZ, project management and staff management. On 1 January 2013 his salary increased to \$100,000 with a 10% bonus if the company met its financial targets.

[5] In January 2014 Mr Ashcroft assumed an additional responsibility of leading manufacture at RedZone NZ and had between six to eight staff reporting to him. His salary was increased in February 2014 to \$108,000 and his bonus to 15% with the full bonus paid out for 2013.

[6] In or about July 2014, Mr Ashcroft was appointed Director of Engineering with engineering staff reporting to him directly from both the Auckland and Pittsburgh office. His number of direct reports grew to between eleven and thirteen and he was responsible for engineering across the global company. His salary increased to \$120,000 per annum and his bonus to 25%.

[7] In January 2015, Mr Ashcroft was appointed to the position of New Zealand Director of RedZone NZ and his salary was increased in April 2015 to \$160,596 per annum effective from 1 January 2015 and his bonus to 25%. He received a full bonus for 2014.

[8] Mr Ashcroft was required to travel for work primarily to the Head Office in Pittsburgh and he would travel between 2- 4 times per year.

[9] On 16 March 2016 Mr Ashcroft was advised that the compensation committee had completed its review of RedZone NZ performance for 2015 and he received a full bonus of \$40,149 for the year ending 2015. He was advised that the potential bonus for 2016 would be 25% dependent on the performance of the whole company.

[10] On 24 March 2016 Mr Ashcroft was advised by RedZone NZ that his employment was terminated on 24 March 2016 for reasons expressed in a letter of the same date which had been signed before the meeting of *a reduction in force* and *redundancy*. He says that his dismissal was unjustified. Mr Ashcroft seeks reimbursement of lost earnings from 24 March 2016 with interest on that sum, \$25,000 compensation and reimbursement of legal costs.

[11] RedZone NZ does not accept that Mr Ashcroft was unjustifiably dismissed and says that his position was genuinely redundant.

The issues

[12] The Authority is required to determine the following issues in this matter:

- (a) Applying the test of justification in s103A of the Employment Relations Act 2000 (the Act), whether what was done by the employer and how it was done was what a fair and reasonable employer could have done in all the circumstances at the time. As this matter concerns

a decision to dismiss for redundancy, the Authority will need to consider:

- (i) Whether the decision to dismiss was for genuine redundancy reasons; and
 - (ii) Whether the dismissal was procedurally fair. This will include an assessment of the process adopted by RedZone NZ including consultation, the conclusion that there were no suitable alternative roles, compliance with the statutory obligations of good faith and notice requirements.
- (b) If the dismissal was unjustified, the Authority will then need to consider remedies including whether lost wages should be awarded and whether there are issues of mitigation.

Was the decision to dismiss for genuine redundancy reasons?

[13] The importance of the Authority considering and determining the genuineness of a redundancy was confirmed by the Court of Appeal in *Grace Team Accounting Limited v Brake*.¹ The Court of Appeal in *Grace* agreed with and upheld the decision of the Employment Court that employers must show a decision to make an employee redundant is genuine and based on business requirements. It was confirmed in *Grace* that the Court is entitled to enquire into the merits of the redundancy business decision to assess whether what was done by the employer, and how it was done, were what a fair and reasonable employer would [could, from 1 April 2011] have done in all the circumstances at the time.²

[14] The Authority heard evidence from the decision makers about the reasons for the decision to make Mr Ashcroft's position redundant. Dr Justin Starr, Vice President of Technology for RedZone Robotics, Inc. is based in Pittsburgh and attended the Authority investigation meeting in person. Mr Daniel Yingst, Executive Vice President and Chief Operating Officer attended by telephone. Both Dr Starr and Mr Yingst said that the decision to make Mr Ashcroft's position redundant was to improve the efficiency of the company and remove a bottleneck in New Zealand.

¹ [2014] NZCA 541

² Ibid at [84]

[15] Dr Starr was promoted to the position of Vice President of Technology based in Pittsburgh on 8 October 2015 and from that time Mr Ashcroft reported to him directly. Before that date Mr Ashcroft had reported to Mr Yingst.

[16] The evidence for the Company was that channelling operations via New Zealand caused a bottleneck because of the distance, time zones and other considerations. Dr Starr in his evidence said that he communicated this to Mr Ashcroft from October 2015 following his promotion. The decision to make Mr Ashcroft's position redundant was made on 7 March 2016. Dr Starr says that Mr Ashcroft's position has not been replaced and that he is carrying out Mr Ashcroft's duties and responsibilities in Pittsburgh.

[17] Dr Starr said that there were discussions with Mr Ashcroft from in or about October 2015 about moving him into a different role on the same terms and conditions where he could act as a liaison between Pittsburgh and Auckland sharing information but that Mr Ashcroft's willingness to undertake this role "*ebbed and flowed*." Dr Starr referred to this role as a technical liaison role and his recollection when he gave his evidence was that Mr Ashcroft had "*morphed*" or evolved into this role before his redundancy although he could not be absolutely clear when this change had occurred.

[18] Mr Ashcroft in his evidence says that before 24 March 2016 and advice that his employment was terminated there had been no discussion regarding about a possible restructure, redeployment, redundancy or possible redundancy. The first time he said that he heard about a technical liaison position was when Mr Quigg responded to a letter from Mr Ropati dated 4 April 2016 which raised his personal grievance.

[19] There is no documentation relating to the making of the business decision on 7 March 2016 to make Mr Ashcroft's position redundant. Documentation can be important in persuading the Authority as to the genuineness of the decision including the commercial reasons for the redundancy.³ The letter of termination is not particularly informative and it makes no mention of the technical liaison role. The Authority has been provided with some emails before the decision was made. Dr Starr also relies on what was said during telephone discussions with Mr Ashcroft but

³ *Rolls v Wellington Gas Co* [1998] 3ERNZ 116 at 123

Mr Ashcroft's recollection of what was said did not accord in many respects with Dr Starr's evidence. I have placed less weight on the evidence about what was discussed during telephone calls and more weight on any documentary evidence.

[20] There is reference in emails sent from Dr Starr to Mr Ashcroft in October 2015 about the possibility of change and that the current situation may evolve. In the days following Dr Starr's promotion an email was sent to Mr Ashcroft dated 16 October 2015 which provided there is a lot that needs to be addressed in engineering/software and the current status quo will likely evolve and change in the weeks/months ahead.

[21] In a different email from Dr Starr to Mr Ashcroft sent on 16 October 2015 he writes amongst other matters that running everything through New Zealand had become a bottleneck and Mr Ashcroft did not have to be "*plugged into*" every little process from 8000 miles away. Dr Starr expressed his view that some aspects of engineering may be "*better suited by smaller functional teams not all of which would be led by you*" and, that there may need to be some changes to how things are currently set up in order to make the best use of the resources and Mr Ashcroft's role may continue to evolve. Some tasks were transferred from New Zealand to Pittsburgh on a trial basis.

[22] Following the emails in October 2015, not all of which I have referred to, between Dr Starr and Mr Ashcroft the next email provided to the Authority is dated 20 January 2016. In between some holiday leave was taken by Dr Starr and Mr Ashcroft. Dr Starr said there were usually weekly telephone calls although some were cancelled due to unforeseen circumstances. In his written evidence Dr Starr stated that in response to Mr Ashcroft's frustration about his availability he added him to the engineering email list at RedZone Robotics, Inc. so he could be better informed about Dr Starr's whereabouts and those of the Pittsburgh team out of office time.

[23] From February to March 2016 the emails the Authority was provided with which were sent to or from Mr Ashcroft concern in the main to day to day matters. I have placed some weight on the contents of these in assessing the genuineness of the redundancy decision because it is close in time to when the decision was made.

[24] Mr Yingst in an email dated 18 February 2016 to Mr Ashcroft, Mr Charles Pulaski, Director of Maintenance and Dr Starr expressed some frustration about the

delay in the delivery of components of laser wands from New Zealand to Pittsburgh for assembly onsite. Mr Ashcroft had earlier said in an email that some design changes were necessary and could delay delivery as they would need to be tested in New Zealand.

[25] Mr Yingst was not happy with this delay and in his email referred to the company not being able to afford to slow down because “*we can only do things in one place, or only have one person capable of doing it*”. He referred to the need for a cross functional team and an expectation that they act accordingly. Mr Yingst expressed his view in the email that it would sound ridiculous if he had to tell the board that something could not be accomplished because there was only one place to do it and only one person that knew how. He wrote that he would be lucky to have a job the next day and “*Get it done! I don’t want any more excuses from anyone and there will be no delays in anything.*”

[26] Mr Ashcroft responded by email that he understood and would get it done but he wanted it done right the first time. The decision to make Mr Ashcroft’s position redundant was made shortly after this time.

[27] I accept RedZone NZ wanted to operate in a more effective way with sharing of technical knowledge between Auckland and Pittsburgh and addressing what was seen as a bottleneck in New Zealand. It was proposed that Mr Ashcroft not be involved in every engineering decision, some work was transferred to Pittsburgh on a trial basis and Mr Ashcroft was asked to undertake work on compiling a central repository to share engineering drawings between Auckland and Pittsburgh.

[28] The work Mr Ashcroft performed in all likelihood changed or evolved between October and March 2016. Dr Starr said that by mid-November 2015 he had picked up some of Mr Ashcroft’s duties although Mr Ashcroft thought this was to address a situation where he had too much work.

[29] Mr Ashcroft in his communications to the date he was advised of the redundancy decision still referred to himself as Director of Engineering. He was at that stage undertaking duties of what could be said to be a liaison type: loading files to the central repository and making sure there were technical drawings and build of materials for all the assets. Even though there was some changes in his duties I could not be satisfied that Mr Ashcroft was aware this impacted on his position or that he

was transitioning or evolving into another role and his success in doing so would determine his future employment with RedZone NZ. Mr Ashcroft's key duties and responsibilities in his employment agreement included to undertake any other duties and tasks as may be required by the Company from time to time.

[30] The evidence supports in or about mid-February 2016 a level of frustration on the part of Mr Yingst. Dr Starr said that on 7 March 2016 he met with Mr Yingst and told him that Mr Ashcroft's role was still causing a bottleneck. He felt that although Mr Ashcroft had a chance to do so he would not evolve his position into a technical liaison one. Dr Starr advised Mr Yingst that he was going to disestablish Mr Ashcroft's role and Mr Yingst approved that action.

[31] RedZone NZ does not accept that Mr Ashcroft was dismissed for ulterior motives or reasons. I find however when I consider and weigh the evidence there were mixed motives in making Mr Ashcroft's position redundant.

[32] The predominant motive I find was a view or perception that Mr Ashcroft was not seen to be performing adequately in liaison of a technical nature between the Auckland and Pittsburgh offices rather than a decision for commercial reasons. In particular at the time the decision was made it is likely the failure to promptly deliver to Pittsburgh the laser wand components brought matters to a head. In his oral evidence Dr Starr said amongst other matters when asked about making the decision to dismiss that Mr Ashcroft had not sent components and the deadline was not addressed. Dr Starr said that he thought he had done everything that he could to transition Mr Ashcroft into the liaison role before that date to prevent the redundancy. Although the evidence from Mr Yingst was that if Mr Ashcroft had willingly adapted to the liaison role he would still be employed, any issues about his acceptance, performance or otherwise in the role were not brought to Mr Ashcroft's attention in the proper way.

[33] I prefer Mr Ashcroft's evidence that he had never heard of the technical liaison role until Mr Quigg referred to it after his termination. There is no evidence about the duties such a role would entail and the degree of overlap if any between those and the Director of Engineering duties. It is more likely than not that any knowledge on the part of Mr Ashcroft was limited to a requirement to undertake some liaison type tasks or duties so the technical knowledge could be shared between Pittsburgh and Auckland rather than any impact on his current position and employment with

RedZone NZ. If the technical liaison role was a redeployment option rather than simply a change to existing duties without breaking the continuity of employment it was simply discounted as an option before termination. Mr Ashcroft was not I find aware that his continued future with RedZone NZ depended on his performance.

[34] In conclusion RedZone NZ has not satisfied me that the redundancy was genuine. The decision therefore to dismiss Mr Ashcroft for reason of redundancy was unjustified.

Procedural fairness

Consultation and good faith

[35] There is reference in the employment agreement to restructuring in clause 6 but that is limited to a situation where the Company proposes to sell or otherwise restructure its business so that the business or part of it is undertaken by another party. The other provision which is relevant is in clause 5 (a) and provides that either party may terminate on thirty days' notice. Clause 5(b) provides amongst other matters that the Company may in its sole discretion pay the employee in lieu of working out the notice period.

[36] Mr Quigg submits, whilst noting Dr Starr appreciated he could have documented the consultation process in a more formal manner, it was nevertheless carried out in a procedurally fair manner as circumstances of long distance communication would allow. He submits that five months was spent trying to retain and keep Mr Ashcroft.

[37] Mr Ropati submits there was no process whatsoever before the meeting on 24 March 2016 when Mr Ashcroft was advised his employment was terminated for reason for redundancy. He says there were no formal meetings, discussion and no opportunity to consider any proposal and provide feedback.

[38] Dr Starr described the usual process in Pittsburgh for redundancy as one with no warning to the employee about the redundancy decision in part because of a risk the employee may behave in a negative way to the interests of the company.

[39] In New Zealand an employer must comply with the duties of good faith contained in s 4 of the Act. The duty of good faith applies to making employees

redundant and it also requires that an employer who is going to make a decision which will have an adverse effect on the continuation of employment of an employee, provides access to information relevant to continuation of that employment about the decision and gives an employee an opportunity to comment on that information.

[40] The Authority has been provided with some emails including one from Mr Ashcroft to Mr Yingst, not responded to in October 2015 that refers to a fear his position will become redundant. The emails do not satisfy the statutory requirements of consultation or good faith. It is not enough as Dr Starr said in his evidence that he thought Mr Ashcroft “*would have known it was coming*”. Mr Ashcroft needed to be told what was proposed and be given sufficient and precise information to which he could properly respond. That included information about technical liaison duties or a role. I do not find that he was provided with that information.

[41] There was no information provided to Mr Ashcroft before the decision to disestablish his role was made on 7 March 2016. Dr Starr in his written evidence stated about that matter that Mr Ashcroft was not working in moving to become a technical adviser and had thwarted efforts to retain his employment. I have already addressed that when considering the genuineness of the redundancy decision which overlaps in this matter with procedural fairness. I am not satisfied that Mr Ashcroft was aware that he was being assessed on the basis of evolving into a new role or that his employment was in jeopardy because of his performance. An email from Dr Starr dated 18 February 2016 to Mr Ashcroft notes amongst other matters about some of these liaison type duties appear to be largely in place and the technical drawings have been “*coming into gradcad nicely*”.

[42] The first Mr Ashcroft knew of the decision was on 24 March 2016. He arrived at work and his email was disabled. Dr Starr was in the office and he was asked to a meeting with him. He did not know the purpose of the meeting and there was no advice to bring a support person. He given the letter dated 24 March 2016. It had been signed by Dr Starr and Mr Yingst on 21 March 2016. Mr Ashcroft was advised in the letter that his employment was terminated effective 24 March 2016. Notice was paid in lieu.

[43] Mr Yingst said that he stressed to Dr Starr when it was decided to move ahead with the proposed redundancy that Mr Ashcroft should get his full bonus although Mr Ropati submits that that decision was made by the compensation committee. I accept

that nothing in the email to Mr Ashcroft about the bonus payment would suggest a correlation between it and the impact of any redundancy.

[44] There was no prior notice of the meeting on 24 March 2016 or its purpose and no opportunity for a support person. The decision was simply advised and Mr Ashcroft was asked to leave immediately with notice paid in lieu. Mr Quigg submitted that an enhancement of the process would not have made a significant difference to the outcome. With respect I do not agree. The process was not what a fair and reasonable employer could have done. It was unfair and not in a minor or technical way. A fair process could have resulted in a different outcome.

Determination

[45] I find that Mr Ashcroft's dismissal by reason of redundancy was unjustified substantively and procedurally and was not what a fair and reasonable employer could have done in all the circumstances at the time of dismissal.

[46] Mr Ashcroft has made out his personal grievance that he was unjustifiably dismissed and he is entitled to consideration of remedies.

Remedies

Lost Wages

[47] Mr Ashcroft seeks reimbursement of lost wages less earnings received. He received payment in lieu of notice for six weeks from 24 March to 9 May 2016 from RedZone NZ. He was able to obtain employment at an engineering company from 11 April 2016 but at a rate of \$30 per hour and between that date and the date he resigned from that role on 16 June 2016 he received \$11,761.20 gross working an average of 38 hours per week. Mr Ashcroft then commenced work as a consultant on a contractor basis and the Authority heard evidence that he undertook work for about 16 hours per week for the same company he had previously worked for as an employee. Between the date he started working as a consultant on a contracting basis and the date of the investigation meeting he received a profit before tax of \$7002.03.

[48] Medical certificates were provided dated 16 June 2016 and 22 August 2016. The first certificate confirmed Mr Ashcroft was suffering from stress and anxiety as a result of his redundancy which was without warning or consultation and the second

that Mr Ashcroft had to stop working in the role he had obtained after his redundancy because of the ongoing compensation matter and has since taken up a self-employed role to better manage his health and well-being.

[49] Mr Quigg submits that Mr Ashcroft has failed to mitigate his loss because he has only contacted two recruitment agencies on 29 April 2016 and there is no evidence of the provision of a job application or curriculum vitae having been presented. Further that he left a permanent role for a consultant role. A copy was provided after the investigation meeting.

[50] I accept Mr Quigg's submission that there is a duty on an employee whose employment is terminated to take steps to mitigate their loss. There are a number of Employment Court judgments that confirm the onus is on the dismissed employee to mitigate their losses and establish this in evidence – *Allen v Transpacific Industries Group Limited (Trading as Medismart Limited)*.⁴

[51] I find that given the unexpected redundancy and the stress Mr Ashcroft adequately mitigated his loss at least up to June 2016. He then resigned from his employment and became a consultant reducing his hours of work from about 38 per week to about 16 hours per week with a charge out rate as a consultant of \$60 per hour. It is likely from the documents at [20] in the bundle that the fact there were not many jobs available at the level Mr Ashcroft was seeking employment was another reason he made a change to become a consultant.

[52] Mr Ashcroft wanted to spend more time with his family to improve his well-being and his wife had had their first child in July 2015. He agreed when asked by Mr Quigg that he was not on medication and his doctor had not suggested the change to him and/or a reduction in hours. I cannot be satisfied that the sole reason for the change when assessed against the evidence is medical in nature. I weigh that Mr Ashcroft had managed to work for about two months before the decision to work as a contractor was made and that the hours in that role were not dissimilar to those he worked at RedZone NZ.

[53] I accept that Mr Ashcroft was very shocked and surprised by the unexpected termination of his employment and that did impact on his ability to at least within the short term find comparable work and make long term decisions. I find that he took

⁴ [2009] 6 NZELR 530 (EmpC) at [78]

appropriate steps to minimise this stress by raising a grievance very quickly after 24 March. When he received the explanations for his dismissal I accept these in all likelihood increased his distress and anxiety because he felt they were fabricated and that there was no merit or substance in them. Mr Ashcroft also obtained alternative work quickly.

[54] I have considered whether the employment relationship with RedZone NZ was likely to last. The evidence from RedZone NZ was that Mr Ashcroft could have continued to work in the technical liaison role if he had willingly accepted the role on his same terms and conditions. I have not been satisfied that he knew of this role and therefore I conclude with a fair process he could have retained employment. I have not found the redundancy was genuine. The evidence supported Mr Ashcroft was viewed as a good performing employee. The bonus payments support that. He also had knowledge of the Clean Flow systems and manufacture/production.

[55] I find that Mr Ashcroft lost income as a result of his dismissal on 24 March 2016 and that he initially made adequate attempts to mitigate that loss. The decision to become a consultant would have been advantageous long term but there was a decrease short term in income received. Notice was paid in lieu for the period to 9 May 2016 so loss ran from that date.

[56] I find that any issues as to mitigation after 16 June 2016 can be dealt with by limiting recovery to a period of three months lost wages from 9 May 2016 with any loss after the date of resignation continuing to be assessed on the basis of the amount Mr Ashcroft would have received after 16 June 2016 if he had not resigned. The evidence was that he worked an average of 38 hours per week at \$30 per hour. In order to properly reflect that there were earnings received for a period that Mr Ashcroft was also paid notice the earnings for the four week period between 11 April and 9 May 2016 have been taken into account.

[57] Mr Ashcroft whilst employed at RedZone NZ was on a salary of \$160,596 which is a weekly amount of \$3088.38 gross. For loss assessed over a three month or thirteen week period he would have but for his termination received the sum of \$40,149. Mr Ashcroft did earn from 11 April to 16 June the sum of \$11,761.20 gross. After that date to 8 August which is a period of 7 weeks I have assessed loss less earnings of \$7980 gross calculated at 38 hours at \$30 per hour each week. Although Mr Quigg suggested in his submissions there may have been other income received

over this period there was nothing in front of me to support that for that seven week period Mr Ashcroft received money from other sources.

[58] Subject to any issues of contribution Mr Ashcroft is entitled to reimbursement of lost wages calculated on the basis of \$40,149 less earnings of \$19,741.20, assessed as above, in the \$20,407.80 gross.

Interest

[59] I am not minded to exercise my discretion and award interest on the lost wages.

Compensation

[60] There is a claim for \$25,000 under this head.

[61] Mr Ashcroft gave evidence about the impact of the dismissal on him and I heard from his wife Abbie Ashcroft. The evidence supported that the dismissal coming as it did without warning was devastating for Mr Ashcroft and that he struggled with the stress and anxiety of having an uncertain future. Mr Ashcroft was at that time the sole earner for his family and enjoyed his job at RedZone NZ and felt that with the payment of a full bonus shortly before his dismissal his future was secure.

[62] He said that he could not understand why he had been dismissed and the matters put forward subsequently to justify his dismissal were untruthful and that increased his stress and he has not been able to sleep well or eat well since his dismissal. He obtained some assistance from his doctor.

[63] Mrs Ashcroft confirmed in her oral evidence that Mr Ashcroft had not discussed with her any concern he had about his future with RedZone NZ before she recalled he was shocked and angry on 24 March 2016. After that date she said that he became withdrawn from her, their child and friends.

[64] I find that the effect on Mr Ashcroft of his dismissal was significant. It was completely unexpected. His email was disabled the morning he was advised of his dismissal and he was expected to leave the premises that day after handing back his personal belongings and equipment. I agree with Mr Ropati's submission that he was not given the sort of farewell that may have been expected to be given to a person

who was in a senior position and had been with RedZone NZ since 2011 and before that with Clean Flow. The procedural unfairness I find caused considerable distress. I have taken into account the payment of a bonus would have alleviated some immediate financial distress. There was an offer of \$1500.00 on 7 June 2016 towards some outplacement services although that was considerably after the event.

[65] I find that an appropriate award for compensation subject to any issue of contribution in all the circumstances is the sum of \$18,000.

Contribution

[66] The Authority must under s 124 of the Act where it determines that an employee has a personal grievance in deciding the nature and extent of the remedies consider the extent to which the action of the employee contributed towards the situation that gave rise to the personal grievance and if the actions so required reduce the remedies that would otherwise be awarded.

[67] I am not satisfied that Mr Ashcroft contributed towards the situation that gave rise to the personal grievance. If there were issues with his performance then I do not find these were raised with him so that he understood his continued employment may be at risk.

Orders

[68] I order RedZone Robotics New Zealand Limited to pay to Richard Mark Ashcroft the following sums:

- (a) The sum of \$20,407.80 gross being reimbursement of lost wages under s 123(1)(b) of the Employment Relations Act 2000.
- (b) The sum of \$18,000 without deduction being the payment of compensation for humiliation, loss of dignity and injury to feelings under s 123 (1)(c)(i) of the Employment Relations Act 2000.

Costs

[69] I reserve the issue of costs. If agreement cannot be reached then Mr Ropati has until 22 November 2016 to lodge and serve submission as to costs and Mr Quigg has until 6 December 2016 to lodge and serve submissions in reply.

Helen Doyle
Member of the Employment Relations Authority