

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 168  
3159542

BETWEEN	BAKER TIMBER SUPPLIES LIMITED Applicant
AND	VALERIE BAKER Respondent

Member of Authority:	Sarah Blick
Representatives:	Jeremy Sparrow, counsel for the applicant Mark Beech, counsel for the respondent
Investigation Meeting:	2 November 2022
Submissions received:	At the investigation meeting
Determination:	6 April 2023

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**DETERMINATION OF THE AUTHORITY**

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**What is the employment relationship problem?**

[1] The applicant Baker Timber Supplies Limited (BTS) was first incorporated in 1972 and was involved in wholesale and retail timber processing and treatment. The respondent Valerie Baker (Ms Baker) worked in her parents' businesses for approximately 45 years. Her brothers have also worked in the business over the years. Ms Baker officially became BTS's general manager in 2006 after the passing of her father Douglas Baker. Upon her father's passing, Ms Baker's mother Florence Baker was left as the sole director of BTS. Ms Baker says due to her age Florence wanted the support of her children, and Ms Baker and her brother Lloyd Baker became additional directors.

[2] In 2020 BTS appointed an insolvency specialist Thomas Rodewald as the sole independent director, who in 2021 arranged the sale of BTS' business. Ms Baker was employed by BTS until her employment ended by redundancy upon the sale. BTS paid Ms Baker the equivalent of one years' salary in redundancy compensation and was given four weeks' written notice of termination. However, Ms Baker says she was entitled to receive the equivalent of two years' salary in redundancy compensation and to be given three months' notice (or three months' salary in lieu of notice). The problem is no signed employment agreement can be located - only a draft agreement exists, along with a signed variation.

[3] Ms Baker is a shareholder of BTS. Other shareholders, including another brother as a majority shareholder, dispute that any further payment to Ms Baker is due and payable. Mr Rodewald says he has taken a neutral position on Ms Baker's entitlements but is concerned that she is paid correctly given the level of potential liability for BTS.

[4] Mr Rodewald accordingly seeks a determination confirming whether BTS has any obligation to pay Ms Baker further redundancy compensation and/or notice payment. Once its affairs are finalised BTS intends to enter voluntary liquidation.

#### **What was the Authority's process?**

[5] Witness statements were filed for Mr Rodewald and Ms Baker. They answered questions under affirmation from the Authority and representatives at the investigation meeting. The parties declined to make substantive closing submissions when given the opportunity to do so.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination does not record all the evidence and submissions I received and considered during my investigation, but it states findings of fact and law and expresses conclusions on issues necessary to dispose of the matter.

[7] As permitted by s 174C(4) of the Act, the Chief of the Authority has decided that exceptional circumstances exist to allow this written determination to be issued outside the three month timeframe required by s 174C(3) of the Act.

## **What are the issues?**

- [8] The following are the issues for investigation and determination:
- a. Was Ms Baker entitled to payment of redundancy compensation on termination of her employment and if so, what was her entitlement?
  - b. Were there notice payment requirements and if so, what were they?
  - c. Is either party entitled to an award of costs?

## **What is the background?**

### *The family companies*

[9] Ms Baker's late parents were directors of BTS, but also of other companies including Glenville Properties (Katikati) Limited ("GPK") and Fraser St Firewood Limited ("FSF").<sup>1</sup>

[10] Ms Baker says after her father's passing in June 2006, Florence Baker provided oversight and was involved in BTS's governance, while Ms Baker managed BTS's day-to-day operations.

[11] GPK is now in liquidation. Ms Baker has sought leave in the High Court to review GPK's liquidators' decision to reject some of her claims, which included a claim for redundancy pay and payment in lieu of notice.<sup>2</sup> While leave was granted, the Authority is not aware of the application for review having been determined.

### *Ms Baker's employment agreement with BTS, GPK and FSF*

[12] Ms Baker says following advice from the companies' then employment lawyer (the lawyer) in late 2005 it was decided the three companies would be identified as the employers in a single written employment agreement. Ms Baker says the lawyer circulated a draft employment agreement between BTS, GPK, FSF and Ms Baker, which she signed (IEA 1). IEA 1 holds signatures appearing to be those of Ms Baker's parents, signing as directors of the companies. Although undated, the agreement appears to have been signed prior to June 2006 at which point Mr Baker passed away.

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<sup>1</sup> Fraser St Firewood Limited was removed from the Companies Register in October 2015.

<sup>2</sup> *Baker v Baker* [2022] NZHC 1253.

[13] IEA 1 says ordinary hours of work each week would generally be between 8am and 4.30pm, with overtime being payable when hours worked exceeded 50 hours. It provided for an annual salary of \$48,172, and in the event of redundancy four weeks' notice or four weeks' pay in lieu of notice would be given. It says no redundancy compensation would be payable. BTS has not questioned the validity of this agreement.

*Ms Baker's employment agreement with GPK from October 2006*

[14] Ms Baker says as her father's affairs were being finalised, in 2006 her mother instructed the lawyer to draft new employment agreements separating her employment between BTS and GPK.

[15] Ms Baker signed an employment agreement identifying only GPK as her employer, dated 11 October 2006 (IEA 2). There is a message "Error! Bookmark not defined" in the table of contents in respect of a non-solicitation and non-competition clause heading. There is no correlating clause in the body of IEA 2.

[16] IEA 2 is signed by Florence Baker as GPK's director. It does not record Ms Baker's hours of work but says her normal hours would take into account her "full time employment elsewhere" and work for GPK would be worked outside Monday to Friday 8am to 4.30pm. It provided for an annual salary of \$25,220. In the event of redundancy four weeks' notice or four weeks' pay in lieu of notice would be given. IEA 2 says no redundancy compensation would be payable. BTS has not questioned the validity of this agreement.

*New employment agreements sought*

[17] Ms Baker says in 2008 Florence Baker instructed the lawyer to prepare new employment agreements with BTS and GPK. Ms Baker says her work for FSF was subsumed within her other work and no further employment agreement or remuneration was provided for FSF.

*BTS directors' resolutions on redundancy for Ms Baker*

[18] Ms Baker says in 2008 Florence Baker was considering inserting redundancy clauses into the employment agreement of another long-serving employee (SB). Ms Baker says this prompted Florence Baker to consider redundancy clauses in Ms Baker and Lloyd Baker's employment agreements.

[19] A written resolution records that at a directors' meeting on 24 November 2008, BTS' then directors Florence Baker, Lloyd Baker and Ms Baker resolved that "a redundancy clause is inserted into the employment contract of Valerie Baker General Manager of the above-named company, details to be arranged with the company employment lawyer." Ms Baker says the rationale for including compensation was because the companies were asset rich but cash poor, so BTS was unable to pay her a fair wage for her work.

[20] Another written resolution records that at a directors' meeting on 25 November 2008, the directors of BTS further resolved that:

1. The employment agreement for the Company General Manager, Valerie Baker, updated and amended to include a redundancy compensation provision;
2. The employment agreement for [SB], be updated and amended to include a redundancy compensation provision;
3. The Company employment lawyer be instructed to provide draft updated agreement(s) in accordance with 1, above along with recommendations and information on suitable redundancy compensation provisions for consideration by the Directors;
4. Owing to a conflict of interest, Valerie Baker, as a Director, absent herself from further discussion concerning this resolution.

[21] The resolution holds signatures for Florence, Lloyd and Ms Baker as directors. Ms Baker says the decision-making on redundancy compensation was driven by her mother, and that she did indeed absent herself from further discussion concerning this resolution.

*BTS sought legal advice on redundancy provisions*

[22] After the 25 November 2008 directors' meeting, BTS sought legal advice on redundancy compensation provisions for both Ms Baker and SB. BTS has shared its lawyer's advice dated 11 December 2008, addressed to the directors of BTS and "associated companies". It was "attentioned" to Florence and Lloyd Baker (not Ms Baker). The advice records the lawyer was asked to review the applicable employment agreements for the three companies. The lawyer's advice included the following:

6. You have resolved to ensure that both the present General Manager and [SB] have appropriate redundancy provisions in their employment agreements. This is to recognize the long, faithful and loyal service of these employees.
7. The starting point concerning such a contractual position is that the respective parties can agree on whatever they deem appropriate to include in the employment

agreement. As directors, your respective responsibilities to act in the best interests of each of the companies will apply to limit how generous the redundancy provisions may be.

8. ...In our experience, redundancy agreements for General Managers displaying long service and loyalty are frequently very generous. More so than provisions for lower ranking employees  
...
14. On a simple arithmetical calculation for the General Manager's length of service using the type of formulae above, you can see that a redundancy compensation payment based on between one to two years salary would, (for Baker Timber Supplies Limited for instance), amount to a gross payment of between \$30,000 and \$60,000 on termination for redundancy. Given the relatively low rate of remuneration during employment, and the considerable length of service, we would think that the directors would have little difficulty in justifying a payment within that range. Even using the modest and common formula referred to above without any cap and without taking into account any other benefits, a payment of 64 weeks salary would be justifiable. A higher payment, such as two years salary, would be justifiable on the more generous formula, especially when taking into account what we consider to be probably a below market salary rate for the General Manager role at Baker Timber Supplies Limited  
...
16. We consider that it would be appropriate for the directors to consider whether they wish to have a formula based redundancy clause; a salary equivalent for a specified period of service; or a simple fixed sum for redundancy compensation. Once that decision has been made then we can readily draft suitable clauses.

[23] The legal advice references Ms Baker's length of service as approximately 32 years and SB's service a total of 21 years (excluding a 5 year break in SB's service). The advice says it encloses "three new draft employment agreements for the General Manager".

[24] Ms Baker says she was usually the contact person for the companies' lawyers. Ms Baker says the lawyer drafted her employment agreements under instruction from either her mother or father, and after her father passed away, he took instructions from her mother. Ms Baker was clear that in matters involving her employment, the lawyer would not deal with her directly due to his concerns around conflicts of interest. Ms Baker says she recognised and respected the lawyer's position.

[25] Ms Baker says Lloyd Baker and SB were offered and agreed to receive the equivalent of one years' salary as redundancy compensation. Ms Baker, by comparison, says she agreed to receive the equivalent of two years' salary taking into account her management responsibilities for BTS and GPK and her much longer and unbroken period of service. Ms Baker says she worked extremely long hours to keep the companies operating - much longer than the capped 40-hour week she was paid for.

*Draft BTS employment agreement*

[26] BTS has provided an unsigned draft employment agreement between Ms Baker and BTS, supplied by the lawyer who does not hold a final or signed version of the document (IEA 3). IEA 3 also contains questions marks where employment commencement dates would otherwise have been inserted and an “Error? Bookmark not defined” message in the table of contents in respect of a probationary period heading. For obvious reasons, there is no correlating probationary period clause in the body of the agreement.

[27] IEA 3 says Ms Baker’s hours of work would generally be between 8am to 4.30pm Monday to Friday and records her annual salary as \$30,732. A general termination clause, clause 15.1, states IEA 3 may be terminated by giving not less than three months’ written notice of termination, and says the employer may at its discretion give three months’ pay in lieu of notice, and such notice “shall be in addition to any compensation payable in the event of redundancy”.

[28] Clause 1.4 of Schedule E of IEA 3 states in a redundancy situation, Ms Baker would receive three months’ written notice, or at the employer’s discretion, three months’ pay in lieu of notice. Clause 1.5 then states:

In the event that the Employee’s position becomes redundant **for any reason** the Employee shall be entitled to compensation for the fact of redundancy. [**Compensation shall be paid as follows...New clause**] (no emphasis added).

[29] Clause 2.2 of Schedule E, addressing a consultation process at clause 2.3, holds a message “Error! Reference source not found”. IEA 3 otherwise contains all required provisions required of an individual employment agreement.<sup>3</sup>

[30] I find IEA 3 is likely one of the draft agreement agreements enclosed by the lawyer with his 11 December 2008 advice. Ms Baker says she and Florence signed a final version of IEA 3, but Ms Baker was unable to locate it in the place BTS normally kept employment agreements. Mr Rodewald has also been unable to locate a signed version of IEA 3 despite his firm’s inquiries, including with the lawyer who reported he does not hold one.

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<sup>3</sup> Employment Relations Act, sections 65(2) and (3).

*Variation to employment agreement to include redundancy compensation*

[31] Two different documents titled “Variation to Employment Agreement” with the date of 6 May 2009 have been provided to the Authority. Ms Baker says the lawyer drafted the variations. Both variation documents refer to an employment agreement between Ms Baker and BTS with an unspecified date of “December 2008”. The two variations are the same document but BTS says they contain some differences; Ms Baker’s signatures appear different across both documents; the signatures for BTS also appear to have slight differences; one of the variations is dated 11 May 2009 in the employee signature box (Variation 1); one includes the wording “Val to insert from signed agreement” and “Error! References source not found”.

[32] Any discernible difference between signatures in the variations appear minor and cause no concern to the Authority. Ms Baker gave evidence that she and/or her mother identified text that needed to be removed after signing, and so the variation was amended, printed out and signed again, and dated 11 May 2009 (resulting in Variation 1). I accept that explanation as likely given the differences between the variations. I find Variation 1 was more likely than not signed by Ms Baker and Florence on or about 11 May 2009.

[33] Variation 1 states:

Schedule E of the abovementioned agreement shall be varied as follows:

- a. Clause 4.4 shall be amended by adding the following sentence
  - i. “Payment for notice shall be in addition to compensation for the fact of redundancy”.
- b. Clause 1.5 shall be replaced with the following:
  - i. “In the event that the Employee’s position becomes redundant **for any reason** the employee shall be entitled to compensation for the fact of redundancy. Having regard to the Employee’s dedicated and lengthy service, she shall be paid compensation equivalent to two times her annual gross salary at the time of termination at the time of termination by reason of redundancy less any PAYE or other statutory deductions.”
- c. Clause 2.2 shall be replaced with the following clause:
  - i. “In the event of Restructuring, if the Employee is an “affected employee” under Part 6A, the Employer will follow the process set out in clauses 2.3 to 2.4 as well as any other legislative requirements. The Employee has a right to refuse any employment offer with a New Employer and such refusal shall not affect her right to notice or compensation as set out above”

[34] The amendments to the clause references in Variation 1 do not correlate with clauses in IEA 1 between Ms Baker, BTS, GPK, and FSF. The amendments are entirely consistent, however, with relevant clauses in IEA 3 between Ms Baker and BTS in relation to notice and redundancy compensation.

[35] For completeness, the Authority has also been provided with a signed variation of employment agreement between GPK and Ms Baker, which is ostensibly the same as the BTS variation document. This document purports to insert the same redundancy and notice clauses into its agreement with Ms Baker.

*Change of BTS directors*

[36] In April 2014 Lloyd Baker ceased to be a director, and in August 2014 Florence Baker passed away. Ms Baker remained a director, and in April 2015 her daughter Florence Valerie Baker joined her as the only two remaining directors.

*Further variation following legislative amendments*

[37] BTS has provided a document titled “Variation to Employment Agreement” dated 8 May 2018 and signed by Ms Baker’s daughter (Variation 2). It also holds Ms Baker’s signature. Variation 2 says it replaces several clauses of Ms Baker’s “current employment agreement which remains in force”. The new clauses relate to employment and health and safety legislative changes. Notably, the amendments to the clauses correlate with clauses in IEA 3 in terms of where they are inserted.

*Mr Rodewald appointed and Ms Baker’s role made redundant*

[38] On 25 May 2020 Mr Rodewald was appointed as sole director, who later arranged the sale of BTS’s business.

[39] On 17 September 2021 Mr Rodewald wrote a letter to Ms Baker giving four weeks’ notice of termination of employment on redundancy grounds. A Schedule attached to the letter calculated payment for notice would be paid in the sum of \$14,560.00 (equivalent to three months’ salary) and redundancy compensation in the sum of \$116,480.00 (equivalent to two years’ salary).

[40] On or around 30 September 2021 the BTS business was sold and settlement was completed on 12 October 2021. Ms Baker's last day of employment was 20 October 2021. Her employment did not transfer to the purchaser.

[41] On 1 October 2021, at Ms Baker's suggestion Mr Rodewald contacted the lawyer asking if he held a copy of an employment agreement with BTS after 2006. On 6 October 2021 the lawyer emailed IEA 3 as an attachment, saying it was "an incomplete draft of a December 2008 agreement" for Ms Baker, and his firm had exhausted its search for the agreement.

[42] On 19 October 2021, Mr Rodewald wrote to Ms Baker advising the 17 September 2021 letter may have been incorrect with respect to payments that may or may not have been owing to her. The letter advised BTS intended to seek the assistance of the Authority and ask for a determination on whether Ms Baker was entitled to payment for two years' redundancy compensation and/or three months' notice. The letter advised, in the meantime, BTS intended to pay Ms Baker one years' salary in redundancy compensation subject to any future determination from the Authority. It also advised no further notice payment would be provided given the 17 September 2021 letter had provided Ms Baker with four weeks' notice of the termination of her employment, which she had worked out.

[43] On 20 October 2021, Ms Baker was paid one years' salary as redundancy compensation (approximately \$58,240 gross). BTS says it made the decision to pay Ms Baker one years' salary in redundancy compensation pending a determination of the Authority as to its liability. BTS acknowledges it may have introduced a provision for one years' redundancy compensation for Ms Baker to bring her entitlement in line with Lloyd Baker and SB.

**Was Ms Baker entitled to a payment of redundancy compensation on termination of her employment and if so, what was her entitlement?**

[44] For the avoidance of doubt, while some of GPK's employment documentation has been provided and been informative to the Authority, Ms Baker's redundancy or notice entitlements (if any) with GPK are not before the Authority for investigation and determination.

*IEA 3 applied to Ms Baker's employment*

[45] Ms Baker's evidence was that the family businesses were not run in a particularly commercially sophisticated manner - they were run by the family and for the family. BTS' record-keeping appears to have been lacking, for which Ms Baker appears to hold some responsibility as General Manager. While no original signed employment agreement being available is unhelpful, that has not prevented the Authority from determining what terms and conditions applied to Ms Baker's employment with BTS.

[46] I find it unlikely that the signed employment agreement between BTS, GPK, FSF and Ms Baker (IEA 1) remained the relevant agreement applying to Ms Baker's work at the time her employment ended. In making this finding, I observe there are two signed variations between Ms Baker and BTS, and the clause references within the variations do not correlate with IEA 1.

[47] Having heard Ms Baker's evidence and had the opportunity to question her about the documents and circumstances of IEA 3, I find it more likely than not Ms Baker and BTS agreed on the terms outlined in it around December 2008. The limited typographical oversights in IEA 3 (not uncommon in the companies' documentation) do not detract from its otherwise clear terms. I find the terms and conditions in IEA 3 continued to apply to Ms Baker's employment with BTS at the time her employment ended. This finding is supported by the fact Variations 1 and 2 correlate with clauses in IEA 3.

[48] IEA 3 did not identify what compensation would be paid. This is likely to have been an oversight which was rectified a few months later by Variation 1, entered into on or about 11 May 2009. The decision to include a generous redundancy compensation provision of two years' salary is consistent with BTS' lawyer's legal advice that the directors would have little difficulty justifying a payment the equivalent of between one to two years' salary to Ms Baker. This was expressed as taking into account her responsibilities as General Manager (as opposed to lower ranking employees) and her long and loyal service. The advice references Ms Baker's relatively low salary at the time, being \$30,732, as part of his justification assessment. That salary amount also equates to the lawyer's assessment that a fixed sum payment would result in a redundancy payment of \$30,000 for one year or \$60,000 for two years. The lawyer

suggested BTS directors should consider whether they wished to have a formula-based redundancy clause, a salary equivalent for a specified period of service, or a simply fixed sum for redundancy compensation. I am satisfied BTS, through Florence Baker as a director, chose the latter option as evidenced in Variation 1. That Ms Baker's salary increased over the years, ultimately increasing BTS' liability, does not undermine that finding.

[49] While perhaps there should have been further resolutions agreeing to adopt this level of redundancy compensation, this does not appear to have occurred. Not only is this the case in respect of Ms Baker, but also in respect of Lloyd Baker and SB. There is no suggestion from BTS that their redundancy entitlements have been questioned because there is no resolution relating to them.

[50] BTS suggests Ms Baker's claims to redundancy compensation and notice would arguably only crystallise on the termination of her employment on the grounds of redundancy on 20 October 2021. It says the 19 October 2021 letter from BTS advised the 17 September 2021 letter may have been incorrect with respect to any payments that may have been owing to Ms Baker. To the contrary, in its 17 September 2021 letter BTS accepted Ms Baker was entitled to two years' salary in redundancy compensation and three months' notice upon termination. Although the Authority's finding does not turn on it, Ms Baker should have been entitled to rely on that representation.

[51] By paying Ms Baker one years' salary as redundancy compensation, BTS acknowledged Ms Baker was entitled to be paid at least some amount in redundancy compensation under an employment agreement. It took into account the circumstances, including available documentation such as IEA 3 and Variation 1. It cannot now renege on its acknowledgement there is an entitlement.

### *Finding*

[52] The Authority is satisfied, notwithstanding that a signed version of IEA 3 is not now available or was not signed, that IEA 3 together with Variation 1 and Variation 2 constituted the terms and conditions of Ms Baker's employment at the time her employment was terminated.

**Were there notice payment requirements and if so, what were they?**

[53] Clause 1.4 of Schedule E of IEA 3 states in a redundancy situation, Ms Baker would receive three months' written notice, or at the employer's discretion, three months' pay in lieu of notice. This period aligns with clause 15.1 of IEA 3, a general termination clause also requiring the giving of three months on termination. For this reason and the reasons stated above, I find Ms Baker was entitled to receive three months' notice of termination under the terms and conditions of her employment.

*Compliance with constitution and Companies Act 1993*

[54] BTS points out that its constitution stated a person will be disqualified from holding the office of director if they are aged over 70. On 24 October 2006 BTS' shareholders voted on the removal of this age restriction at a shareholders' meeting. Pursuant to s 32 of the Companies Act 1993 ("the CA 1993") and BTS' constitution, any alteration of the constitution must be by way of special resolution of the shareholders. BTS says it is not clear from the record of directors' resolutions that the resolution removing the age restriction was passed as a special resolution, meaning Florence may not have been entitled to sign the variation to the employment agreement as a director.

[55] BTS further says it may be that Ms Baker (as a director) would not have been acting in the best interests of BTS in agreeing to adopt a two year period of redundancy compensation for herself, contrary to s 131 of the CA 1993. BTS considers a two year period could be well beyond what could be considered reasonable. BTS suggests there was unequal treatment between employees as to their redundancy entitlements which could suggest Ms Baker was not acting in the best interests of the company.

[56] Section 161(1) of the CA 1993 states the board of a company may authorise the entering into of the provision of benefits by a company to a director (for services as a director or in any other capacity), if the Board is satisfied that to do so is fair to the company. Section 161(2) says any provision of any benefit must then be entered in an interests register. Section 161(4) further requires directors who have authorised provisions of a benefit to a director to sign a certificate saying that in their opinion the provision of the benefit is fair to the company and the grounds for that opinion. BTS does not have any documentation to suggest BTS directors complied with ss 161(1), (2) and (4).

[57] Section 161(5) states where the provisions of ss 161(1) or (4) have not been complied with (including where a certificate under 161(4) has not been signed), the director (or former director) to whom the benefit is provided becomes personally liable to the company for the monetary value of the benefit, except if they can prove that the benefit was fair to the company at the time it was provided. BTS says this could suggest the obligation is on Ms Baker to establish the provision of two years' redundancy compensation was fair to BTS and if she cannot s161(5) CA 1993 may see Ms Baker needing to repay this sum.

[58] The Authority does not consider these CA 1993 provisions prevent it from making and stating relevant findings of fact in relation to the parties' employment relationship. As this matter involves Ms Baker holding dual capacities as an employee and director at the time the relevant terms and conditions were agreed, the raising and resolution of issues regarding compliance with the CA 1993 provisions in this instance may lie in statutory processes under the CA 1993 and/or in another jurisdiction.<sup>4</sup> There is also provision within BTS' constitution to assist with the resolution of disputes between shareholders which the parties may still be able to utilise.<sup>5</sup>

### **Outcome**

[59] The Authority finds the terms and conditions outlined in IEA 3 between BTS and Ms Baker were agreed between the parties, and they applied to Ms Baker's employment from December 2008 onwards. Variation 1 and Variation 2 were also agreed on or about 11 May 2009 and 8 May 2018. Together these documents constituted the terms and conditions of Ms Baker's employment at the time her employment was terminated.

[60] For relevant purposes here, the Authority finds Ms Baker was entitled upon redundancy to:

- a. Compensation for the fact of redundancy, being compensation equivalent to two times her annual gross salary at the time of termination by reason of redundancy less any PAYE or other statutory deductions; and

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<sup>4</sup> *FMV v TZB* [2021] NZSC 102, at [102] and [105].

<sup>5</sup> Document "R", Common Bundle of Documents.

- b. Three months' written notice of redundancy, in addition to compensation for the fact of redundancy.

### **Costs**

[61] Costs are reserved.<sup>6</sup> A party may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum the other party would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

Sarah Blick  
Member of the Employment Relations Authority

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<sup>6</sup> For further information about the factors considered in assessing costs, see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).