

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 139
5371752
5385261

BETWEEN GRANT BOSHER
Applicant (file 5371752)
Respondent (file 5385261)

AND WELLINGTON COMBINED
TAXIS LIMITED
Respondent (file 5371752)
Applicant (file 5385261)

Member of Authority: Michele Ryan

Representatives: Charles McGuinness, Counsel for the Applicant
Susan-Jane Davies, Counsel for the Respondent

Investigation Meeting: 3-4 October 2012 and 9 April 2013

Submissions received From the applicant on 23 April & 6 June 2013
From the respondent on 16 May 2013

Determination: 6 November 2013

DETERMINATION OF THE AUTHORITY

Prohibition on publication

[1] The evidence in this investigation meeting included a document titled 'Chairman's Report 2012' and was drafted in confidence for shareholders of Wellington Combined Taxis only. I am satisfied that it is appropriate in the circumstances of this matter to exercise the power in clause 10(1) of Schedule 2 to the Employment Relations Act 2000 and prohibit publication of that report.

Employment relationship problem

[2] On 24 May 2012 Mr Grant Boshier lodged a statement of problem with the Employment Relations Authority alleging he had been unjustifiably disadvantaged by his employer, Wellington Combined Taxis Limited (WCT); that WCT had breached obligations of good faith; and that on 7 February 2012 he had been unjustifiably dismissed. Claims that WCT breached the Wages Protection Act 1983 and for orders for general damages and reinstatement were later withdrawn.

[3] WCT denies that it unjustifiably disadvantaged or unjustifiably dismissed Mr Boshier. In a statement of problem WCT made counterclaims (file number 5385261) citing Mr Boshier and TeWhata Ruru Transport Limited (TWRT) as first and second respondents respectively. TWRT is a registered limited liability company in which Mr Boshier owns 50% shareholding and is the sole director. WCT requested the Authority find Mr Boshier had breached a number express and implied terms contained in his employment agreement, in particular that he had not acted in WCT's best interests and had breached his obligation to avoid conflicts of interest. During the Authority's investigation all claims against TWRT were withdrawn as were claims against Mr Boshier for special and/or exemplary damages.

Issues

[4] The Authority is required to determine

- whether Mr Boshier was justifiably dismissed and in particular whether WCT had substantive grounds to dismiss Mr Boshier?
- whether Mr Boshier breached terms and conditions of his employment agreement?
- was Mr Boshier unjustifiably disadvantaged?
- did either party breach its obligation to act in of good faith?
- what, if any, remedies should be awarded?

[5] The Authority was provided with a considerable amount of evidence. As permitted by s.174 of the Act, this determination has not referred to all the information obtained during its investigation but has stated the Authority's findings of facts and law and expressed conclusions on matters requiring determination. The Authority's findings are made on the civil standard of the balance of probabilities, assessing the evidence to determine what is more likely than not to have happened.

Background information

2007 – 2010

[6] In late 2007 WCT bought 'Co-Op Shuttles' from Lyall Holdings Limited, (LHL). 'Co-Op Shuttles' provides light transport services to the public in the greater Wellington region.

[7] Following WCT's purchase a number of LHL's employees transferred to WCT's 'Shuttles Division' including the applicant, Mr Boshier, Mr Paul Johansson and Ms Gloria Roche.

[8] Mr Boshier's individual employment agreement records he was appointed into the role of 'Shuttle Manager'. Throughout his employment he reported to Operations Manager, Mr Johansson. Ms Roche became Financial Administrator – Shuttles.

[9] Prior to employment with WCT and until 2010 Mr Boshier personally owned a shuttle van and provided services to Co-Op Shuttles as a franchisee/independent contractor. When he transferred to WCT Mr Boshier declared his separate business interests.

[10] TWRT was incorporated on 24 February 2010. No signed agreement between WCT and TWRT was produced. The Authority was however furnished with an Independent Contractors' agreement used by WCT to engage shuttle operators. The parties accept that document appropriately reflects the terms that govern the relationship between WCT and TWRT.

Co-Op Shuttle debt

[11] The purchase of Co-Op Shuttles resulted in financial challenges for WCT. From 2008 onwards Co-Op Shuttles had difficulties attracting sufficient shuttle operators to sustain a financially viable service.

[12] Mr Johansson deposed that to address pressures with maintaining a shuttle fleet business practices developed within Co-Op Shuttles whereby WCT leveraged franchisee and independent contractors into the shuttle service; financed the purchase of diesel fuel and allowed shuttle operators to pay weekly levies in arrears.

TWRT debt

[13] TWRT also had financial problems. Mr Boshier says there were obstacles in recruiting and maintaining suitable drivers for TWRT and the shuttle van was frequently off the road and not generating income. By May 2010 TWRT owed \$15,237.96 (comprised largely of ongoing and unpaid weekly levies and diesel costs) to WCT.

[14] To address the debt on behalf of TWRT Mr Boshier agreed with Mr Johansson to make additional instalment payments above weekly levy payments and to make a lump sum payment of \$5,000 following the sale of an old van.

[15] Mr Boshier accepts that the payments under the arrangement were variable and the lump sum payment did not materialise.

[16] Mr Johansson and Mr Boshier revisited the issue of TWRT's debt in November 2010 which by this time had increased to \$21,892.77. In a document dated 5 November 2010 Mr Johansson advised Mr Boshier that the debt owed by TWRT was unacceptable and formal arrangements were made to allow WCT to deduct \$100 per week from TWRT's 'Pay In Office'.¹

2011

[17] In early 2011 WCT underwent significant changes including moving to a corporate management structure. Changes to the Board were made and recruitment for an independent director and a professional manager was undertaken. Between

¹ Pay in office are receipts from customers that are invoiced by WCT on behalf of shuttle operators.

March and September 2011 Mr Dave Clyma undertook the role of Managing Director pursuant to a 6 month fixed term contract.

[18] In or around May 2011 Mr Clyma became aware that TWRT's debt had amounted to \$22,182.89. He approached Mr Johansson who advised that he was aware of TWRT's debt.

[19] Between June and August 2011 Mr Clyma sought confirmation from Mr Boshier as to how the debt would be repaid. No formal arrangements were entered into but Mr Boshier undertook to increase weekly payments to \$301.00 above levies due² and proposed that the debt could be also be addressed by use of a tax refund and by obtaining a loan on behalf of TWRT.

[20] By early August 2011 it was apparent that Mr Boshier was not able to obtain a loan and the anticipated tax refund had not eventuated.

[21] Ms Lynne Hayman, commenced as WCT's new General Manager/Chief Executive on 1 August 2011. Relatively soon after her appointment Mr Clyma informed her that a debt in excess of \$160,000 was owed by shuttle operators to WCT and that \$22,182.89³ of that sum was held by TWRT. Ms Hayman says she was appalled by the lack of financial controls within the shuttle division and shocked that a third tier manager within WCT had accrued such an extensive debt with no apparent plan for repayment.

September 2011

[22] On 6 September 2011, Ms Hayman presented a memorandum paper to the Board of WCT. The paper included a comprehensive list of shuttle operator debtors and revealed that 33 (out of a total of 35) shuttle operators owed on average a debt in excess of \$11,000. Of particular concern to Ms Hayman and the Board was the debt owed by TWRT to WCT. Amongst other thing the memorandum recorded that:

...the Board make a recommendation to the General Manager on how she should handle the seriousness of the Shuttles Manager incurring debt for his own franchise in excess of \$22,000 seemingly without formal agreement having been made with previous management.

² In total \$600 per week

³ This amount comprised unpaid weekly levies and diesel costs for the company's van.

[23] The Board Minutes also stated:

Discussions took place about the lack of performance by the Shuttle Manager for not keeping his debt in the Shuttle department under control.

[24] Chairman of the Board, Mr Warren Quirke, advised the Authority that prior to 6 September 2010 the Board had been under the impression that Co-Op Shuttles debt was customer related as opposed to debt accrued by shuttle operators, although he acknowledges he had become of the true nature of the situation when he was advised by Mr Clyma in July 2011.

[25] A week after the board meeting Ms Hayman met with Mr Boshier and Mr Johansson and advised that all financial aspects of Co-Op Shuttles would be undertaken by another manager.

September 2011 disciplinary meetings

[26] Ms Hayman met with Mr Boshier on 15 and 30 September 2011. Ms Hayman says the purpose of the meetings was to address Mr Boshier's "*serious misuse of his position to amass the debt and to establish his intended plans to pay the debt off*".

[27] A file note dated 15 September 2011 records that Ms Hayman informed Mr Boshier that she considered his actions constituted theft as a servant and that but for the failure of senior management to act sooner on the information Mr Boshier would have been instantly dismissed. Ms Hayman informed Mr Boshier that a final written warning would be issued, a debt repayment plan would be instituted and all outstanding debt must be repaid.

[28] Towards the end of the meeting Mr Boshier's advocate noted that it was Mr Boshier's company that owed the debt and not Mr Boshier's personally. The parties agreed to discuss repayment arrangements in the near future.

[29] The parties met again on 30 September 2011. On a without prejudice basis (which has since been waived by the parties) TWRT provided a written proposal plan as follows:

- *TWRT had renegotiated repayments with Toyota Finance which allowed for an increase in the weekly repayments to WCT by a further \$200;*
- *\$100 each week from [TWRT's] "Pay in office" was currently being credited to the debt;*

- *a further \$100 from the sale of a van was also being paid, and*
- *it was anticipated that an additional \$250 per week would be available resulting from a driver who would be commencing work for TWRT in 2-4 weeks*

[30] TWRT expected that \$650.00 would be paid each week to service the debt. The letter further advised that money from an anticipated backdating to Mr Boshers' salary could go towards paying the debt and that his Mr Boshers' wife had agreed to loan money to TWRT pending disbursement of a family trust dividend due for finalisation in mid-November that year. The offer concluded by stating it was TWRT's "*intention that the debt owed to Wellington Combined Taxis would be paid in full prior to 31 December 2011*".

Final written warning

[31] On 5 October 2011 Mr Boshers received a final written warning from WCT. The letter stated that the debt incurred by Mr Boshers in his capacity as owner of TWRT was regarded as serious misconduct and constituted aspects of theft as a servant, was a serious conflict of interest and an abuse of power in his employment position. Mr Boshers was told that he had contravened his employment agreement and was informed that further serious misconduct may result in termination from his employment.

[32] The letter noted that WCT accepted the proposed repayment plan with the following conditions:

- *Any failure to repay the \$400/\$650 weekly repayments will be immediately brought to my attention by yourself.*
- *That the Trust dividend will be received and paid to the debt by 10 December 2011 at latest. If for any reason these moneys are not available by this date you have confirmed that we may cash up two weeks annual leave moneys accrued to you.*
- *That you will maintain the weekly lease payments up-to-date at all times now and in the future.*
- *That all outstanding debts will be paid in full prior to 31 December 2011. If any events transpire which make this unachievable you are to immediately contact me so that we may discuss and confirm new arrangements.*

...

[33] Ms Hayman says she received no response to the letter of 5 October 2011 and assumed the repayment terms as set out in their correspondence reflected an agreed arrangement between the parties.

[34] By 22 December 2011 TWRT's weekly instalments had not been increased nor had Mr Boshers trust dividend been received. Ms Hayman approached Mr Boshers who advised that he would follow up with lawyers managing the trust in Taupo during the Christmas break.

2012

[35] Mr Boshers met with Ms Hayman on work-related matters on 9 January 2012. The discussion turned to progress made in respect to repayment of the company debt and Ms Hayman's concerns that the repayment schedule had not been adhered to.

[36] The following day, Ms Hayman sent Mr Boshers a letter and stated, inter alia:

I feel it is prudent to summarise the key points of our chat yesterday regarding the unpaid debt to [WCT] in your capacity of Shuttle owner of [TWRT].

[37] Mr Boshers was asked to "*comprehend the seriousness of not delivering on the repayment plan*" agreed in October and advised that continued contravention of his employment agreement may result in termination of his employment. He was instructed to provide by 20 January 2012 written confirmation from a lawyer as to the existence and timeliness of the trust monies.

[38] On 20 January 2012, Mr Boshers informed Ms Hayman of his mounting debt and dire financial circumstances. He told her that that was unable to contact lawyers involved with the trust dividend as these monies belonged to his wife's family.

[39] Ms Hayman's evidence is that the discussion of 20 January 2013 was a breaking point for her and she considered Mr Boshers was lying to her as to his intention to honour the payment plan. She wrote to Mr Boshers and requested he attend a disciplinary meeting. The letter reiterated the view that Mr Boshers had abused his employment position so as allow TWRT to obtain a financial advantage and further advised that the agreed repayment plan had not been delivered. Mr Boshers was told that those failures were regarded as potentially serious misconduct.

[40] Mr Boshier was represented by a solicitor at the meeting of 30 January 2012. During that meeting WCT withdrew the allegations set out in the letter of 20 January 2013 and reformulated its concerns. In essence Mr Boshier was asked to explain how WCT could continue to have trust and confidence in him to perform his role properly when he was aware that the debt accrued was regarded as serious misconduct and where he had not adhered to the agreed repayment plan outlined in the letter of 5 October 2012.

[41] Mr Boshier provided his response to Ms Hayman in a meeting on 7 February 2012 and advised of the difficulties that he had repaying the debt and his ongoing commitment to ensure the debt is paid. Ms Hayman responded saying that she no longer had trust and confidence in him to perform his role as a manager and he was dismissed.

[42] By the final day of the Authority's investigation meeting I understand TWRT had repaid all outstanding debt owed to WCT and those parties remain in a commercial relationship.

Was Mr Boshier's dismissal justified?

[43] The justification for Mr Boshier's dismissal must be determined according to the statutory test in s.103A of the Employment Relations Act 2000 (the Act). The Act requires the Authority to consider whether WCT's actions leading to Mr Boshier's dismissal and its decision to dismiss were what a fair and reasonable employer could have done in the circumstances at the time.

[44] The test requires two considerations, first, what the employer did (the substantive dismissal and the grounds for it) and, second, how the employer acted (the process leading to those outcomes)⁴. Section 103(A)(3) sets out minimum standards of procedural fairness that the Authority is required to consider in its assessment of the employers actions.

What were the substantive grounds for Mr Boshier's dismissal?

[45] WCT provided a number of grounds as cause for Mr Boshier's dismissal.

Allegations of breach to terms of employment agreement

⁴ *X v Auckland District Health Board* [2007] ERNZ 66

[46] WCT claims Mr Boshier breached express and implied terms of employment including breaches of fidelity and trust. It says Mr Boshier did not act in good faith and failed to avoid a conflict of interest. These matters were further expanded in WCT's counterclaim and it further variously alleged that Mr Boshier breached contractual obligations to:

Carry out his duties well, faithfully...and to use best endeavours to promote, develop and extend WCT's business interest and reputation,

Not to do anything to WCT's detriment,

To work in the best interests of WCT;

To protect WCT's commercial interest and not engage in other business activities without WCT's prior written consent.

[47] WCT's Chairman, Mr Quirke stated in evidence that when he became aware of the debt owed by TWRT in July 2010 he had "*a gut feeling that Mr Boshier may have taken advantage of his friendship with Mr Johansson and Ms Roche*" and that those friendships had allowed TWRT's interests to be placed ahead of those of WCT.

[48] It is clear from the memorandum papers and minutes of the Board meeting on 6 September 2011 that the Boards' agreement to have Ms Hayman take action with Mr Boshier was premised on an assumption that Mr Boshier had misused his position to gain a financial advantage for TWRT.

[49] It is further apparent that those views persisted throughout the disciplinary meetings in September 2011 (which resulted in a final written warning) and formed part of the allegations against Mr Boshier going into the disciplinary meeting of 30 January 2013.

[50] Much of the evidence before the Authority in support of WCT's view that Mr Boshier misused his position to gain financial advantage for TWRT relies on the presumption that Mr Boshier's employment position was intrinsically involved with the financial management of Co-Op Shuttles.

[51] I find WCT's perception that Mr Boshier exercised financial control in the performance of his position was mistaken. There was little or no evidence of Mr Boshier's involvement in the financial management of Co-Op Shuttles nor did Mr Boshier's job description require financial responsibility.

[52] Mr Johansson's evidence confirmed that Mr Boshier's role had no financial oversight and during cross-examination he advised that if Mr Boshier had "*misused his position*" as alleged then he [Mr Johansson] had allowed it. I accept his evidence.

[53] During the Authority's investigation Mr Johansson acknowledged that financial management of Co-op Shuttles had been his responsibility from its inception at WCT until 13 September 2011 when this aspect of his role was removed. He says he had no involvement with the Board's decision to make inquiry about the appearance of a conflict of interest by Mr Boshier's activities nor was he asked to provide any information about how shuttle operators amassed debt. He says TWRT received no greater advantage than any other shuttle operators. Ms Hayman conceded that although she had made some inquiries as to the financial operation of the shuttle division prior to the September Board meeting she had not approached Mr Johansson or Mr Boshier about her concerns as regards financial management of Co-Op Shuttles or TWRT's debt.

[54] Evidence emerged during the investigation meeting that exposed an anomaly in the way Co-Op Shuttles financial statements were provided to the Board prior to April 2011. It was apparent that no one individual had been tasked with the responsibility to ensure full information was provided. I note also that Mr Quirke conceded in evidence that prior to Ms Hayman's appointment there had been "*weak controls and leadership which the company has to wear*" in some areas of WCT.

[55] I accept that there were weaknesses in Co-op Shuttles' financial management and reporting. Had WCT undertaken a more fulsome inquiry it may have become evident that the concerns surrounding the operational management of Co-Op Shuttles were a consequence of systemic failings as opposed to a deliberate plan on the part of its management and in particular Mr Boshier.

[56] It follows that any purported breach by Mr Boshier as regards his obligations under his employment agreement with respect to Co-Op Shuttles allowing TWRT's debt to accrue had been condoned and accepted by Mr Johansson and by extension WCT. I do not accept that Mr Boshier breached terms and conditions of his employment in the way it has been alleged by WCT and I dismiss these claims.

[57] For the sake of completeness I do not accept that the rationale set out in WCT's statement of problem as regards claims of breach of the employment

agreement and subsequent submissions that Mr Boshers conduct outside the work environment were cause for Mr Boshers dismissal. None of these allegations were put to Mr Boshers for his response prior to his dismissal.

Trust and confidence

[58] Ms Haymans evidence is that Mr Boshers was dismissed because WCT considered it could no longer have trust and confidence in him to perform his role when he was aware that the debt accrued was regarded as serious misconduct and where he had not adhered to the agreed repayment plan outlined in the letter of 5 October 2012.

[59] WCT further submits that *“Mr Boshers was not dismissed for his companys debt per se”*. I find on balance that the evidence does not support this proposition.

[60] Ms Hayman provided cogent evidence as to her endeavours to have Mr Boshers agree to a repayment schedule for TWRTs debt. She was equally candid about her increasing frustration with Mr Boshers apparent failure to abide by the repayment plan commitments he had previously made.

[61] I consider the context in which the repayment schedule was agreed is at the heart of the matter. With the exception of the meeting of 30 September 2013 and later when Mr Boshers was legally represented, it is apparent that the parties did not discuss the context in which discussions about repayment of TWRT were being held and in particular whether the repayment schedule was agreed as parties to a commercial arrangement between WCT and TWRT or within the confines of the employment relationship between WCT and Mr Boshers. I do not accept evidence on behalf of WCT that Mr Boshers *“blurred the lines”* between the two distinctly different relationships, but I accept the submission that the evidence is littered with both parties intermingling references to TWRTs debt as Mr Boshers debt whenever the issue was discussed.

[62] TWRT is an incorporated and registered limited liability company pursuant to the Companies Act 1993. Section 15 of that Act provides *“A company is a legal entity in its own right separate from its shareholders and continues in existence until it is removed from the New Zealand register”* There is no dispute the TWRTs debt was incurred under the commercial arrangement between TWRT and WCT.

[63] I have insufficient evidence to reasonably conclude that Mr Boshier formally assumed liability for TWRT's debt or that WCT and Mr Boshier agreed that repayment of TWRT's debt was a term of his employment of which a breach could reasonably give grounds for dismissal. In this respect I find Ms Hayman's referral to TWRT's debt during discussions and correspondence with Mr Boshier as serious misconduct⁵, and as conduct which placed his continued employment at risk was misconstrued.

[64] Both Mr Quirke and Ms Hayman sought to explain why WCT did not pursue TWRT's debt under the commercial agreement between them. Mr Quirke advised that initiated debt recovery action against Mr Boshier's company would not have reflected well on WCT within the industry. Ms Hayman stated that such action would have undermined Mr Boshier's position as Shuttles Manager amongst shuttle operators.

[65] I am unable to regard either explanation as acceptable and I find WCT's approach to deal with TWRT's debt was inherently flawed from the start.

[66] The appropriate platform for WCT to deal with TWRT's debt should have been through the mechanisms contained in their commercial agreement. That agreement allows for the parties to attend arbitration where a dispute arises and it is open for WCT to terminate TWRT's services for breach of its obligations as regards payment of weekly levies. WCT was further entitled to recovery action against TWRT including through the courts of ordinary jurisdiction to retrieve any losses. It was not available for WCT to undertake disciplinary action against Mr Boshier pursuant to an employment agreement to address difficulties within its commercial relationship with TWRT.

[67] I have no doubt that WCT's Board and Ms Hayman had genuine and serious concerns about TWRT's debt in circumstances where the director of TWRT held an employment position of management within WCT's business structure, or that Ms Hayman became increasingly frustrated by Mr Boshier's failure to ensure TWRT comply with the repayment plan. However no evidence was provided which linked TWRT's failure to repay its debt with Mr Boshier's obligations and duties as a WCT employee. In this respect WCT has been unable to persuade me that WCT was able to

⁵ Final Written Warning, 5 October 2011; letter of 10 January 2012; letter of 20 January 2012

reasonably conclude that it could no longer have trust and confidence in him as an employee. It remains unclear what aspect of Mr Boshers' employment it was that WCT could no longer have trust and confidence in him.

[68] WCT has not been able to satisfy me that its decision to terminate Mr Boshers' employment was the action of a fair and reasonable employer in the circumstances at the time. I find Mr Boshers' dismissal was unjustified.

Was Mr Boshers unjustifiably disadvantaged?

[69] Mr Boshers claims WCT unjustifiably disadvantaged him the following ways. Firstly he says that the memorandum presented to the Board and minute notes taken during that meeting were not provided to him despite information requests. He further claims that Ms Hayman did not advise him of her conclusions in respect to his performance before going to the Board, nor did she consult with him before unilaterally altering his reporting line. I consider these aspects of Mr Boshers' claims intrinsically form part of the factual matrix which led to his dismissal. I decline to determine and order remedies associated with these claims separate to my finding that he was unjustifiably dismissed.

Did either party breach its obligation to act in good faith and should penalties be awarded?

[70] WCT alleges Mr Boshers failed to be active and communicative. Ms Hayman testified that she constantly needed to chase Mr Boshers up on the issues contained in the repayment plan despite written agreement that he would contact her if the repayment plan was impeded for any reason. There is also an inference contained in the evidence that Mr Boshers deliberately misled Ms Hayman as regards TWRT's ability to repay the debt. I have already concluded that the repayment plan was agreed within the realms of the commercial agreement between TWRT and WCT of which good faith is not a term of that agreement.

[71] Mr Boshers' claims as regards WCT's omission to act in good faith relate to its failure to provide relevant information following the September Board meeting. It is not disputed that WCT did not provide the documentation however I accept Ms Hayman's explanation that as a new Chief Executive she genuinely perceived the information as confidential to the Board and that WCT was not obliged to provide the

material. In these circumstances I do not regard the breach was wilful and/or flagrant and decline to award a penalty in this regard.

Remedies

[72] Mr Boshier seeks reimbursement of \$22,844.60 as remuneration lost between the time of his dismissal and the first day of the Authority's investigation. He further seeks \$25,000 as compensation. These claims are dealt with according to s.128 and s.123 of the Act which provide for remedies where the Authority has determined, as I have in this case, that Mr Boshier was unjustifiably dismissed and has a personal grievance.

Lost wages

[73] Section 123(1)(b) provides that an employee dismissed unjustifiably may be reimbursed a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance. That section is qualified by s.128(2) which, subject to any reduction that the Authority may make under s.124 for contributory behaviour, provides that the Authority must order the employer to pay to the employee the lesser of a sum equal to that lost remuneration, or 3 months' ordinary time remuneration.

[74] There was considerable debate between the parties as to whether Mr Boshier sufficiently attempted to sufficiently mitigate his losses. WCT criticizes Mr Boshier's efforts to find work. There is an inference that he did not take reasonable steps to find alternative work and/or that he unreasonably delayed preparations to obtain the necessary Passenger Service Licence ("P licence") required to provide transport services to the public.

[75] It was apparent that Mr Boshier did not look for work with an external employer. His evidence is that his P licence had expired during his employment with WCT. Following his dismissal he applied for a renewal of his P licence but receipt of the licence was delayed due to an error in his provision of information. I accept his evidence that he immediately commenced working for TWRT when he received the P licence and I am satisfied Mr Boshier took steps to mitigate his losses.

[76] WCT challenged Mr Boshers calculations as regards income following his dismissal and it emerged that his documentation in this respect was incomplete and at times incorrect.

[77] At the time of his dismissal Mr Boshers was paid an annual salary of \$50,000. I find Mr Boshers is entitled to reimbursement of 3 months' wages minus the modest income derived from his employment between 4-6 May 2012. I calculate this sum to be \$12,065 (gross)⁶ and order WCT to pay this sum to Mr Boshers as reimbursement of lost wages pursuant to s.128(2).

[78] It is clear Mr Boshers resumed work from 4 May 2012 although he submits his income was lower than what he would have received with WCT. It appears his income and/or drawings from TWRT were largely required to service TWRT's remaining debt. I find Mr Boshers' calculations as to earnings after 7 May 2012 were unreliable. I decline to exercise my discretion to award reimbursement of lost remuneration pursuant to s.128(3).

Compensation

[79] Mr Boshers gave modest evidence as to the effect his dismissal had on him. He says he felt humiliated particularly in circumstances where he had extensive personal and professional ties with many people within a relatively close knit industry. I accept the evidence of Mr Boshers that he was distressed and humiliated by his dismissal. I consider an award of \$6,000 pursuant to s 123(1)(c)(i) as compensation is appropriate in the circumstances.

Contribution

[80] In an assessment of the nature and extent of remedies to be provided in respect of Mr Boshers' unjustified dismissal the Authority is required to consider whether his actions contributed towards the situation which gave rise to his personal grievance.

[81] I have found that the genesis of the breakdown in the relationship between WCT and Mr Boshers was TWTR's failure to adhere to the repayment plan. I accept submissions on his behalf that TWRT's actions cannot be legitimately assessed as giving cause for a finding of contribution to Mr Boshers' personal grievance. I decline to order a reduction of remedies in these circumstances.

⁶ Three months salary = \$12,500 minus earnings of \$435.00

Costs

[82] Costs are reserved.

Summary of orders

[83] **Wellington Combined Taxi's Limited is ordered to pay Mr Boshier:**

- i. \$12,065 (gross) as reimbursement for lost wages pursuant to s.128(2); and**
- ii. \$6,000 as compensation pursuant to s.123(1)(c)(i).**

Michele Ryan
Member of the Employment Relations Authority