IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

[2013] NZERA Wellington 116
5394709

	BETWEEN	NOEL BRIDGEMAN Applicant
	AND	PROGRAMMED MAINTENANCE SERVICES (NZ) LIMITED Respondent

Member of Authority:	P R Stapp
Representatives:	Applicant in person J D Turner, Counsel for the Respondent
Investigation Meeting:	16 July 2013 at New Plymouth
Submissions Received by:	16, 25 and 29 July 2013 and 5 August 2013
Determination:	26 September 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an employment relationship problem where the employer decided to follow a performance based evaluation on reducing two positions. It decided to reduce 2 positions from 7 painting positions in a short timeframe in June 2012. This was to enable consultation, discussion and opportunity for Mr Bridgeman to have input. The consultation commenced from 5 June 2012 until 21 June 2012. Mr Bridgeman's employment terminated with notice on 21 June and took effect on 26 June 2012.

[2] The employer's reason for terminating Mr Bridgeman's employment related to the unavailability of work and to make cost savings.

[3] Mr Bridgeman claims the redundancy was not genuine (that he was "targeted"). He is seeking lost wages, compensation for hurt and humiliation and the impact on his professional standing, and costs.

[4] Programmed Maintenance Services (NZ) Limited (Programmed) denies all the allegations and any remedies.

The facts

[5] Mr Bridgeman was employed by Programmed under an individual employment agreement between the parties dated 4 October 2010 (the agreement). His employment commenced on 6 October 2010 in the role of a painter under the terms of the agreement.

[6] Programmed is a sizable company (161 employees and branches throughout New Zealand and self-managed by local people and regional managers), but run out of Australia.

[7] The agreement allowed either party to bring the employment to an end by giving notice under clauses 28 and 31; and these clauses read as follows:

> *28.* ***Redundancy***
>
> *28.1 In this clause "redundancy" means a situation where the Employee's employment is liable to be terminated, wholly or mainly, owing to the fact that the Employee's position is, or will become, superfluous to the needs of the Employer.*
>
> *28.2 If the Employee's position is redundant there will be no redundancy payment made to the Employee.*
>
> *28.3 Where the Employer's organisation or company is in full or in part sold, leased or transferred the Employer will not pay redundancy compensation to the Employee.*
>
> *31.* ***Termination of employment***
>
> *31.1 Either party may terminate this agreement on not less than 1 week notice in writing to the other party.*
>
> *31.2 Where the Employee terminates this agreement under this clause, the Employer may pay wages/salary in lieu of the Employee having to work out the notice period.*

31.3 Should the Employee leave without the required notice period being given, the Employer may deduct pay for the period of notice not actually worked from the Employee's final pay (including holiday pay).

31.4 Where the Employer terminates the agreement under this clause, the Employer may elect to pay wages/ salary in lieu of the Employee having to work out the notice period.

[8] In addition, the parties' agreement made provision for:

*4. **Times and Hours of Work***

4.1 You are engaged in full-time capacity.

4.2 The Employee will comply with reasonable requests to provide information on time worked. Time sheets must be completed and authorised each Tuesday.

4.3 Programmed works a flexible day/week covering all seven days and hours between Wednesday and Tuesday each week. Usual hours of work are 40 hours a week between the hours of 6am and 6pm on weekdays. Overtime (at the rate specified in Schedule 2 of this Agreement) will be paid only when forty (40) hours have been physically worked. If any leave is taken (including public holidays) during the week, forty (40) hours must be physically worked before the overtime rate is paid. Note: travel time is not considered to be hours physically worked. Travel is therefore not to be counted when determining the number of hours worked the pay week, for the purposes of calculating the entitlement to overtime.

4.4 These hours are subject to the restrictions of weather and customer demand and may vary considerably from day to day or week to week. However, Programmed will endeavour to ensure that a minimum of 32 hours of work is offered per week subject to the employment position not becoming redundant.

*5. **Policy and Rules***

6.1 The Employee will be subject to and must observe and comply with all rules, policies and procedures in force from time to time as set out by the Company. The Employer is entitled from time to time to amend, cancel or introduce such rules, policies and procedures as it considers necessary. Any Employee who breaches any of the rules, policies or procedures of the Company will be subject to disciplinary action, which may result in the termination of the Employee's employment. In signing this employment agreement, the Employee agrees to take full responsibility to read and familiarise him/herself

> *with all company policies upon completion of employment.*

[9] Lastly there was a provision for performance reviews to be carried out. No such performance review was ever carried out for Mr Bridgeman in the time that he was at Programmed. Mr Bridgeman says when he inspected his personal file he found it empty.

[10] Mr Bridgeman's hourly rate of pay was $20 per hour. The record shows that his hours of work varied considerably whereby he occasionally worked a maximum of 40 hours. His hours of work varied because of the weather, the unavailability of work, the winter downturn of available work, accident compensation, sickness, and annual leave. It is common ground that Programmed undertook to provide at least 32 hours work per week, but if there was no work the painters would not be paid.

[11] Mr Bridgeman worked as a painter on projects secured by Programmed from time to time and his position included general painting duties, including yard work. In the autumn months of 2012, the availability of work was not enough to keep seven painters fully employed. Programmed's works projection for paint jobs showed a decreasing trend, with reductions predicted to occur in the months of June, July and August 2012. This was attributed to the fall off of work, lack of projections and was partly to do with the winter slowdown.

[12] In early 2012 Mr Bridgeman made a complaint regarding an alleged breach of "confidentiality" to Mr Kevin Cameron (Programmed's general manager of human resources operations located in Australia). Mr Bridgeman did not raise a personal grievance over this allegation and did not further pursue the inquiries that had been made in regard to the complaint.

[13] On or about 17 February 2012, Mr Shane Gray, the New Plymouth branch manager, prepared a "commercial itinerary" in regard to the paint contracts held by Programmed that indicated they were all either coming to an end, or were at their "wash service" cycle and that there was no, or very little, projected work for the months of June, July and August (Tab 13 Supplementary Bundle).

[14] Programmed relies on a number of general discussions held with painters at the branch about the shortage or low level of work coming up. These regular meetings are called "toolbox meetings". Mr Bridgeman disputes that any meaningful

consultation occurred in regard to these alleged discussions. Minutes produced by Programmed support that there were some difficulties raised in the toolbox meetings, but no planned arrangements relating to the impact on peoples' jobs. Mr Bridgeman is right I hold that nothing meaningful occurred at the toolbox meetings because the minutes are not remarkable as they do not convey any details and content of discussions, nor any proposals for consideration.

[15] At the start of May 2012, Programmed was still working to complete contracts as well as attempting to secure new work going forward, but the works projection against budget at that time showed that work for June, July and August was declining. Mr Gray and Mr Craig La Hood, the regional manager, started to plan for the possibility of reducing staff numbers and to lower its cost overheads in the event of no or insufficient work. In this process, Mr Gray came into possession of a matrix that contained a full range of criteria for scoring the affected employees for selection for any position that might have been at risk of potential redundancy.

[16] Mr Gray, and another manager (name withheld because he did not give evidence), commenced an evaluation of the affected employees using the matrix. The involvement of the other manager was to endeavour to avoid any bias, and was to inject independence into the evaluation. Programmed says that the other manager could not score Mr Bridgeman on every criterion so that manager's knowledge of Mr Bridgeman related only to "justification", which I presume meant over the scores. Mr Bridgeman complained that the other manager simply did not have the knowledge about him to make any meaningful evaluation. This complaint was never addressed properly at the time and went unchecked and without any further review process involved later. The manager did not give any evidence before the Authority. Despite Mr Bridgeman's objection the process went ahead, but he was later given the opportunity to respond once he received the scores and criteria.

[17] On 5 June 2012, Mr Gray advised Mr Bridgeman of the possible redundancy situation by writing to him in the following terms:

> *As a result of a downturn in current work and forward projections for future work looking even less hopeful it has become necessary for Programmed Property Services to restructure the Taranaki Branch. As a result of the need to restructure we would like to meet with you at the New Plymouth office on Wednesday 6th June, 8.30am as we are considering making your position redundant.*

> *The purpose of the meeting is to go over the situation in more detail and to get your feedback on what's being proposed as well as discuss alternatives to redundancy before any decision is made over your future.*
>
> *As this is a potential redundancy situation, you are of course entitled to bring with you a representative or a support person and we would encourage you to do so.*

[18] Upon receipt of the letter, Mr Bridgeman and Mr Gray agreed that the meeting would be held on 8 June 2012 instead. Mr Bridgeman had no knowledge that the scoring had been done. It had been planned for Mr La Hood to be present at the meeting on 6 June, but instead the Palmerston North branch manager attended the meeting held on 8 June 2012 because Mr La Hood was not available. Mr Bridgeman was represented with a support person (Mrs Beverley Raine) in attendance.

[19] Mr Gray claims that Mr Bridgeman's response was that he "would be taking legal action" when he was informed of what was happening, but Mr Bridgeman says that he indicated that he would be seeking legal "advice", and did so on 15 June from a lawyer. After twenty minutes in the meeting Mr Bridgeman was handed the matrix for review, and discussion on the scores followed. There was an attempt made during the meeting to get agreement on the scores. There was no agreement. Instead, Mr Bridgeman was advised that he could prepare his own evaluation under the matrix with scores and comments. He did so and gave it to Programmed.

[20] At a meeting on 11 June 2012, there was further discussion on the criteria and scoring in the matrix and it was agreed that the "skills" score would be raised from 2 to 3, the "knowledge/suitability to work on a client site" should be raised from 2 to 3, and the ability to "identify safety interventions" score raised from 2 to 3, but in all other areas the scores were not agreed. In effect, Mr Bridgeman's score remained one of the three lowest scores.

[21] On 15 June 2012, Mr Gray wrote again to Mr Bridgeman about the possible redundancy situation in which he said:

> *We refer to our previous discussions regarding the restructure of the Taranaki/New Plymouth branch.*
>
> *Programmed has now had an opportunity to consider the discussions and the issues raised by yourself and others as part of the restructure process. Unless there is new additional issues for consideration Programmed is now in a position to notify all concerned parties of the outcome of those considerations. As such, we request your*

> *attendance at a meeting at the Programmed offices 8am on Wednesday 27th June 2012.*
>
> *As throughout this process you are of course entitled to bring with you a representative or a support person and we would encourage you to do so.*

[22] The decision was brought forward to 21 June 2012 at Mr Bridgeman's request. A decision had been made regarding the redundancies and Programmed had decided that Mr Bridgeman's position of painter was no longer required. Mr Bridgeman did not wish to work out his notice period for redundancy.

[23] A letter dated 21 June 2012 was sent to Mr Bridgeman confirming his position was made redundant effective from that day and that under his employment agreement he would be paid one (1) week of notice in lieu of him having to work under the employment agreement.

[24] On 12 July 2012, Mr Bridgeman raised a personal grievance for unjustified dismissal by Programmed.

Issues

[25] The issue in the employment relationship problem is about whether Mr Bridgeman's dismissal on 21 June 2012 was justified for the reason of redundancy and that it was fair.

The law

[26] The question of whether a dismissal or an action was justifiable or not must be determined on an *objective basis* under s.103A of the Employment Relations Act 2000 (the Act). The test is of fairness and reasonableness. The test as set out in s.103A(2) of the Act is:

> *(2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[27] The Full Court in *Angus v. Ports of Auckland Ltd* [2011] NZEmpC 160 at para.[22] held that:

> *The change from "would" in former s103A to "could" in new s103A is not dramatic but … it is neither ineffectual nor even insignificant. The Authority and the Court must continue to make an assessment of*

> *the conduct of a fair and reasonable employer in the circumstances of the parties and judge the employer's response to the situation that gave rise to the grievance against that standard. What new s103A ("could") contemplates is that the Authority or the Court is no longer to determine justification (what the employer did and how the employer did it) by a single standard of what a notional fair and reasonable employer in the circumstances would have done.*

[28] The Court also held that:

> *[24] … The Authority and the Court will have to continue to assess, objectively and carefully, both the conduct of the employee and the employer, and then the employer's response to those conducts.*
>
> *[25] On a case by case basis, the Authority and the Court will need to assess objectivity whether what the employer did, and how the employer did it, were what a fair and reasonable employer in those circumstances could have done.*
>
> *[26] The legislation (in subss(3), (4) and (5)), although expressing this for the first time, continues the emphasis on substantial fairness and reasonableness as opposed to minute and pedantic scrutiny to identify any failing, however minor, and to determine that this will not be fatal to justification.*
>
> *[27] The new legislation has not affected longstanding considerations such as parity/disparity of treatment or other employees in similar circumstances, the need for employers to comply with relevant contractual provisions and with their own unilaterally determined codes of conduct, and the need to consider the employee's overall employment history. In appropriate cases, these (and others not mentioned) are still matters that will require consideration.*
>
> *…*
>
> *[35] Whereas, under former s103A, the Court and the Authority were required to determine a single outcome (what a fair and reasonable employer in all the circumstances would have done and how such an employer would have done it), the new test allows for more than one possible justifiable outcome and more than one possible justifiable methodology. That is not to say that there will always be more than one possible consequence justifying dismissal or making a dismissal unjustified.*

[29] The principle remains as a matter of law that whilst the Court or the Authority can inquire into the genuineness of the redundancy, the adequacy of the employer's commercial reasons is a matter for the employer's judgement. The Employment Court in *GN Hale & Sons Ltd v. Wellington Caretakers IUOW* [1991] 1 NZLR 151 (CA) held that:

> *Where a dismissal is based on redundancy, it is the good faith of that basis and the fairness of the procedure followed that may fall to be examined. … the Court cannot properly be concerned with an examination of the employer's account except so far as it bears on the true reason for dismissal.*

[30] In the Employment Court's recent decision in *Rixon-Thomas t/a Totara Hills Farm v. Davidson* [2013] NZEmpC 39 it was held that redundancy cannot be justified by the employer simply stating that redundancy was a genuine business decision. Section 103A requires the Authority to inquire into what a fair and reasonable employer could have done, and how it was done, however the Authority cannot substitute its own judgment for that of the employer. The employer must adduce evidence to prove the fairness/reasonableness of the decision in all of the circumstances. The Authority is required to determine what was done, how it was done, and to determine what a fair and reasonable employer could have done in all the circumstances at the time. Since *Rixon Thomas t/a Totaora Hills Farm* the Court has confirmed its approach as to the requirements on an employer: see *Gilbert v Transfield Services (NZ) Limited* [2013] NZEmplyC 71 and *Tan v Morningstar Institute of Education* [2013] NZEmplyC 82. The latter is particularly relevant as the facts applied after 1 April 2011 and the "could" test applied. The Court has changed nothing in its approach.

Determination

[31] Mr Bridgeman's termination of employment for redundancy related to there being no work available.

[32] However, there are circumstances that impact on the decision reached by Programmed. These circumstances are:

i. That Programmed has raised the matter of achieving cost savings as a contributory reason at the time during the Authority's investigation meeting for the first time.

ii. That Programmed did not engage Mr Bridgeman in any discussion on the method to be used to select the employees for the number of vacancies remaining.

iii. That Programmed did not performance review Mr Bridgeman during his time with it.

iv. That Programmed has blended the restructure with its regular "toolbox meetings" without fully disclosing the activity behind the scenes; for example using a matrix of criteria to score the employees for their performance on selecting employees.

v. That Programmed in deciding not to engage in discussion on the restructure has left an impression that it chose the poorest performers for performance reasons to terminate their employment.

vi. That Programmed did not adequately deal with Mr Bridgeman's complaint that the other manager engaged in the evaluation of him using the matrix criteria did not know enough about him to undertake the task.

vii. That Programmed did not allow any full discussion on all the options instead of redundancy; for example "no work no pay" under the terms of Mr Bridgeman's employment.

[33] The final decision was to reduce two positions (and not 3 as originally envisaged by Mr La Hood) because work was not available. The need to change the number was not entirely explained by Messrs Gray and La Hood. The decision seems to be one that had been made to make the poorest 2 performers redundant because:

(i) the method of selection was imposed and decided without consultation;

(ii) there had been no prior performance reviews of Mr Bridgeman's work;

(iii) a pro forma evaluation had been completed for Mr Bridgman under the criteria prior to him having any involvement;

(iv) Mr Bridgeman's complaint had not been properly dealt with in regard to the other manager scoring him;

(v) Mr Bridgeman's attendance at "toolbox meetings" held on site remains the subject of some dispute.

(vi) Mr Gray's decision not to include the 5 better performers in any further discussions and to solely deal with the 3 affected people who had the lowest scores.

[34] The critical point is that consultation to be done properly in a reasonable time has to be done in advance, but does not mean that the employer has to agree with any suggestions and/or options put forward. Programmed had from April 2012 to have a proper consultation and plan any timetable for restructuring. It did not do this adequately enough I hold.

[35] Another reason put forward by Programmed for the change was to save costs, but there was no analysis provided at the time of any details about the savings to be made at the time. In reality the core of the problem was an unavailability of adequate work based on the "commercial itinerary" and the manager's reports. There was some discussion at the Authority's meeting about costs savings achieved, but I hold, that discussion on cost savings never occurred at the time. Programmed has not established that this was a primary factor at the time, other than saving 2 painters' wages, but where it did not have to pay them if there was no work. Indeed it has only been at the Authority's investigation meeting and in Programmed's final submissions that savings in regard to Kiwi Saver, ACC and wages have been raised, and there have been no details provided of the amounts and extent of savings achieved by the reduction in numbers.

[36] I hold that the reason for the reduction in numbers had more to do with the unavailability of work and the performance of the affected employees than a full costs analysis to make savings. It seems to have been an intuitive reaction by Programmed to the information available at the time. As such Programmed could as a fair and reasonable employer have allowed full input from the employees on all of the options and a timetable for restructuring and as such Mr Cameron's advice for there to have been a full meeting of all employees should have taken place. Mr Gray's omission to do so disadvantaged Mr Bridgeman in the process and ultimately the selection, I hold.

[37] Mr Bridgeman was evaluated against the other employees and he had one of the lowest scores. Mr Bridgeman challenged the ability of the other manager involved to assess him, but he was denied any consultation about that because Programmed maintained its position on the use of the matrix and applied the criteria by continuing the process. Three points here are:

i. That it was not fair and reasonable to impose the selection method on Mr Bridgman without consultation particularly in the absence of any employment term in Mr Bridgeman's employment agreement and no policy and procedure

that he had been made aware of and where there had been no prior performance reviews carried out. There is no proper explanation of where the Matrix came from and how it was devised and Mr Bridgeman had no input.

ii. That it was not fair and reasonable to present Mr Bridgeman with the matrix results without any prior notice for him to properly prepare.

iii. That under s 103 A (3) (a) of the Act the Authority is required to consider the resources of the employer, which include that Programmed is an Australian company and that there are resources available notwithstanding the company structure and arrangements in New Zealand.

[38] It was open to Programmed as a fair and reasonable employer to allow Mr Bridgeman time to reply on the matrix, as it did and this is supported by the changes that were made to the scores in a subsequent meeting.

[39] Programmed knew from April 2012 that there was a prospect of a need for a reduction in the number of positions. So it did have time available to engage earlier and to engage more fully given its resources. I accept it tried to hold off on a decision for as long as possible. Because of the projections for unavailable work the decision was made to move quickly in June based on the "commercial itinerary" and monthly manager's reports. One day's notice to Mr Bridgeman to meet and no notice to Mr Bridgeman on the existence of the matrix and scoring were not fair and reasonable. I do not accept Programmed's explanation that the speed to get things done was to protect people from the stress of the situation in the restructuring and redundancy. There is a requirement to properly communicate and provide adequate time for a response. There was no planned timeline put in place for the restructuring other than to implement the decision quickly, once the decision became inevitable. In other words Programmed has not satisfied me that there was a need to act with such short notice in regard to the matrix and the method of selection when there was time to do it earlier. It is therefore entirely understandable that Mr Bridgeman has seen the situation as one of him being dismissed for poor performance, targeted and singled out. However, I hold that the decision falls short of him being targeted because the selection process involved all 7 painters and 2 redundancies. However, I hold that Mr Bridgeman was blind-sided with the details at the time.

[40] The employment agreement had no terms for selection to be followed. Programmed has no written policy and procedure for restructuring and redundancy. Thus, Mr Gray was following oral advice from Mr Cameron, manager HR, on what to do. It would not have been fatal that Mr Cameron's advice was not fully followed in regard to having a restructuring meeting with all painters, but for the matter being alluded to in general terms at toolbox meetings and the evaluations being carried out on all the painters prior to 5 June, and without Mr Bridgeman's knowledge.

[41] As there was no policy and procedure it was incumbent on a fair and reasonable employer to first consult on the method of selection, and then to consult on the criteria to apply in the matrix before making a decision, and then to involve the employee in the matrix discussions. Perhaps steps 1 and 2 could be done together. It would be too complex for a small employer to follow, but not for one the size of Programmed with its resources, I hold. Because of the way the restructure communication was imposed, meaningful consultation on the method of selection was denied to Mr Bridgeman, even if the outcome probably would not have been any different if another method had been used: for example "last on, first off"; because of Mr Bridgeman's length of service.

[42] Mr Bridgeman was not put on full and proper notice of any planned restructuring and/or change in the numbers required even although the indications are that Mr Bridgeman (i) knew that his position could be made redundant, (ii) that he alleges Mr Gray discussed his employment with two other people, and (iii) that Mr Gray had said that there was no or very little projected work.

[43] For completeness the complaint about (ii) above was not taken any further by Mr Bridgeman, and he did not raise a personal grievance about that at the time. Mr Bridgeman has not proved that Programmed deliberately predetermined an outcome, except that it had scored him on the criteria before he had any opportunity for input and Programmed may only be saved by the opportunities given to Mr Bridgeman later to respond and reply on the scoring, I hold. I am supported by the following:

i. That Mr Bridgeman did not call any independent witnesses.

ii. That Mr Gray did not give any credence to the claim that Mr Bridgeman had been singled out.

iii. That Programmed reduced two positions including making another person's position redundant out of seven positions.

[44] The next question is whether or not Programmed addressed the defects in the consultation by holding a discussion with Mr Bridgeman and giving him the opportunity to present his own matrix score before discussing it further. I hold that Programmed did engage Mr Bridgeman and afford him an opportunity for input on the matters relating to the criteria he had issues about. Mr Bridgeman requested that the decision to be brought forward (21 June), which Programmed agreed to. Unfortunately for Mr Bridgeman there was insufficient change in the scoring to affect the outcome. While Programmed's actions would seem to cover off consultation and an opportunity for Mr Bridgeman to have some input, the damage had already been done where it was unfair of Programmed not to have consulted him first on selection methods earlier, second not to consult on the criteria to apply and third to form a pro forma view of Mr Bridgeman, and that it had done this much earlier than June behind the scenes.

[45] I am satisfied that alternatives to reducing the positions were discussed because the evidence supports Mr Bridgeman raising the issues later. The options involved the contracting arrangements, work in Christchurch and the existing work in the branch and the availability of other work in the yard. There was no agreement reached on alternatives, however.

[46] I accept that the employment agreement provides for the employer to use its best endeavours to try and provide work for at least 32 hours per week. However, the agreement does provide for employment on the basis of not paying when there is no work. However, this was not discussed as an alternative if no work was available and how it would best deal with it with the entire staff. This was never contemplated as an option and only came to the fore during the Authority's investigation. Indeed Mr Bridgeman had previously not been paid when weather prevented work from taking place and/or he was taking leave. As no work no pay was a term of the employment arrangement a fair and reasonable employer could be expected to consider it, especially as only two employees were ultimately affected, but did not have to agree I hold. The advantage of meeting all the employees would have been to address this. Programmed's decision to blend what was happening into the "toolbox" meetings has not assisted, I hold. I hold that this may not have been a long term fix, but could have

been discussed for the short term and who knows what the rest of the work force might have agreed to if Mr Cameron's suggestion for Mr Gray to meet all the painters had been done. Also, at some point the employer would have been entitled to call halt and the circumstances arise where it would have been better for the affected employees who did not have any work to go rather than being strung alone.

[47] Because of Programmed's omissions I hold that Mr Bridgeman has a personal grievance.

[48] I hold that the reason for the reduction in numbers had more to do with the unavailability of work and the performance of the affected employees than a full costs analysis to make savings because the number of positions affected to be made redundant has not been explained.

Conclusion

[49] Mr Bridgeman has a personal grievance and as such is entitled to remedies.

[50] I am not satisfied that he has established his lost wages because he went on unpaid stress leave and was not available for work until August. I am satisfied that Programmed has shown that there was no work and that a job advertisement put on the intranet in early July was unforeseen and did not involve any replacement being made. It is probable therefore that at least for the three months following the dismissal Mr Bridgeman would not have had any paid work based on the unavailability of work at Programmed.

[51] To his credit Mr Bridgeman retrieved all his pay slips for proof of his earnings and hours of work. This is more than Programmed did to provide a proper wage time and holiday record as required under the Employment Relations Act and Holidays Act for me to assess in regard to the claims for lost wages because of the issues around the hours. Timesheets are not proper wage records. Furthermore, a document included in the bundle of documents for the Authority purporting to be a wage record falls short of meeting the proper requirements. There was no name on it. There were no full wage details and no calculations of holiday pay and entitlements.

[52] Mr Bridgeman was clearly suffering stress that he acknowledged was partly attributable to other influences in his life at the time, but I am satisfied he was further affected by how Programmed managed its restructuring and the redundancy. He

described his feelings and reaction, but without sufficient independent support. I award Mr Bridgeman $5,000 compensation for hurt and humiliation under s 123 (1) (c) (i) of the Act.

Costs

[53] Mr Bridgeman has been successful with his claim. His costs submitted related to attempts to settle and mediation, which as a matter of public policy the parties must incur. It is not clear what his legal costs otherwise were for and some of the costs have been subject to dispute. He has tried to save costs by undertaking the investigation meeting on his own, but has used lawyers to raise his personal grievance and rely on their advice for the information needed in the Authority's investigation and the claims and the submissions. His total sum of costs has been challenged based on the costs not having anything to do with the Authority's investigation. Indeed the information conveys that the costs related to matters in raising the personal grievance and getting advice before the filing of the application in the Authority. The first invoice is for 15 June 2012 to 11 July 2012. The second invoice dated 26 November 2012 related to pre-Authority matters and mediation that are not recoverable. These are costs that do not relate to the Authority's investigation.

[54] There is nothing exceptional and or significant for me to depart from the daily tariff approach. I hold that Mr Bridgeman's costs are not recoverable, and since he did not have any representation at the Authority's meeting and did much of the work himself, there is nothing for me to award costs for. I make no award for costs, but Mr Bridgeman is entitled to the $71.56 filing fee as claimed.

Summary of Authority's orders

[55] Programmed Maintenance Services Limited is to pay Noel Bridgeman:

i. $5,000 compensation for hurt and humiliation.

ii. $71.56 filing fee.

P R Stapp
Member of the Employment Relations Authority