

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 665  
3337080

	BETWEEN	JOHN BUTLER Applicant
	AND	ECOPOD CONCEPTS LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Natalie Tabb, counsel for the Applicant Garry Pollak, counsel for the Respondent	
Investigation Meeting:	9 and 10 September 2025 in Auckland	
Submissions and/or further evidence	23 September 2025 from the Applicant 17 September and 15 October 2025 from the Respondent	
Determination:	21 October 2025	

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Mr John Butler, claims that he was unjustifiably dismissed by the Respondent, Ecopod Concepts Limited (Ecopod).

[2] Mr Butler further claims that he was unjustifiably disadvantaged by Ecopod underpaying his wages and unilaterally reducing his hours.

[3] Ecopod denies that it unjustifiably dismissed Mr Butler, or that it unjustifiably disadvantaged him.

**The Authority's investigation**

[4] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, John Butler.

[5] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Oliver Mason, Operations Manager, and Rick Boven, Managing Director.

[6] By agreement, three of the Applicant witnesses who had provided written witness statements, were not called to provide evidence at the Investigation Meeting.

[7] Mr Paul Dyson was a director and shareholder of Ecopod during the time when Mr Butler was employed but was deceased at the date of the investigation meeting.

[8] Oral and written submissions were received from Ms Tabb for the Applicant and from Mr Pollak for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Issues**

[10] The issues requiring investigation are whether or not Mr Butler was:

- Unjustifiably dismissed by Ecopod
- Unjustifiably disadvantaged by Ecopod underpaying him
- Unjustifiably disadvantaged by Ecopod unilaterally reducing his hours

### **Background**

[11] Ecopod builds pre-fabricated homes, “tiny homes”. In November 2020 Ecopod leased a site at Greenhithe, Auckland, (the Site) which included two very large sheds and a slipway which had been used by the boat builder which had previously leased the Site. Members of the public had also been permitted to use the slipway.

[12] Ecopod had two directors, Mr Paul Dyson (deceased) and Rick Boven. Mr Boven said Mr Dyson was the CEO of Ecopod. His own role was to advise and make joint decisions about Ecopod with Mr Dyson, especially the big issues such as sourcing work, managing finances and the organisation.

#### *Employment of Mr Butler*

[13] Mr Butler was a tradesman boatbuilder who had worked for the previous boat builder tenants of the Site between 2009 and the end of 2019 when the boat builder tenants closed its boat building operations.

[14] During 2011 Mr Butler had moved into a cottage situated on the Site (the Cottage) where he lived with his wife and daughter.

[15] After the boat builders ceased its operation at the end of 2011, Mr Butler remained living at the Cottage under an arrangement reached with the landlord of the Site. In accordance with that arrangement, he maintained the property, undertook repairs and provided security on the Site.

[16] Mr Butler met the then Operations Manager of Ecopod in or about August 2020 and was asked if he would consider working for Ecopod. He had agreed to do so.

[17] Mr Butler said the terms of his agreement with Ecopod were negotiated and agreed with the Operations Manager and Mr Dyson. An individual employment agreement was provided which was signed by Mr Dyson on 28 July 2021 (the Employment Agreement) which contained the following terms:

Position: General Hand and caretaker

Date of commencement: 16 November 2020

Hours of work: at least 20 per week

[18] Schedule A of the Employment Agreement entitled 'Special remuneration considerations' set out the agreed hourly rate payable to Mr Dyson as \$30.00 per hour. It set out the basis for the rate as being reached after consideration of the benefits provided to Mr Butler by Ecopod and the value Mr Butler provided to Ecopod.

[19] Mr Butler said he had wanted to work 20 hours a week due to health issues, and he had been happy with the terms set out in Schedule A at that time.

[20] Mr Mason commenced as Operations Manager on or about July 2021. He said his role involved working closely with Mr Dyson. They discussed issues about Ecopod's operation and Mr Dyson signed off on the business decisions they reached.

[21] Mr Mason said he discussed on an almost daily basis the tasks allocated to Mr Butler. These included moving materials, assisting with inventory, operating the forklift and gantry, running errands for materials, making minor repairs and cleaning and tidying the premises. Mr Butler also provided security for the Site.

[22] Mr Mason said after he commenced employment at Ecopod he learnt that Ecopod's lease included a slipway which he described as being more comprehensive than a boat ramp and generally available for public use. He said a significant part of Mr Butler's duties had been in relation to the slipway.

[23] Mr Butler said the slipway work involved approximately two hours work to pull a boat out of the water, and approximately one hour to lower it back in after the maintenance work had been carried out.

[24] By July 2021 Mr Butler's hours had started to increase from 20 per week. He said that when Ecopod had a number of pods being built at the same time, this involved more time to move and manage the materials required. The additional hours were paid.

[25] In late 2022 Mr Butler said he asked for a pay increase. There was a meeting held between him, Mr Dyson and Mr Mason in early 2023. Mr Butler said that at a follow-up meeting Mr Dyson told him he could have a pay increase if he took on more responsibility as a team leader or in a building project leader role. However as the new role would result in him needing to work longer hours and take on additional responsibility, he did not agree to the change.

[26] In early 2023 Mr Mason implemented Total Preventative Maintenance (TPM) which was part of the Kaizen quality management system Mr Dyson was implementing Mr Butler said TPM put more structure and scheduling around the maintenance work he had already been doing.

[27] Mr Mason said TPM assisted him and Mr Dyson to monitor the business costs and to manage more efficiently. He did not believe that TPM added significantly to the duties performed by the employees, including those performed by Mr Butler.

[28] Mr Butler said that on or about late May 2023 cleaning the toilets appeared as a task for him on the TPM list. It had not been on the TPM list before then, and he did not consider it to be a maintenance task. He raised it as an issue with Mr Mason because he did not think it was appropriate that he was cleaning toilets, although he said he would do so as part of a roster.

[29] Mr Mason said that having a commercial cleaner to clean the toilets was an overhead cost that Ecopod, which was experiencing financial constraints by 2023, could no longer afford. This had been explained to Mr Butler.

#### *Meeting 19 July 2023*

[30] On 19 July 2023 Mr Dyson and Mr Mason met with Mr Butler to discuss his concern about his duties as defined in the TPM. Mr Butler said that during the meeting his role, a Caretaker, had been emphasised and he disagreed that his role was to be sole toilet cleaner, whereupon Mr Mason said they would have to get someone else to do it which he understood to mean another employee who would replace him.

[31] Following the meeting Mr Dyson emailed Mr Butler. In the email dated 19 July 2023. Mr Dyson noted that Ecopod had been going through a slow period, but that he was optimistic that demand on Ecopod's product and services would increase substantially in the following months.

[32] Mr Dyson also stated that a task list had been created for the newly designated role of Facilities Manager since it had been noted that Mr Butler was uncomfortable with the title of Caretaker. The tasks were listed in the email.

[33] Mr Butler said he had been worried that he might lose his job as a result of refusing to clean the toilets so he instructed Ms Tabb to act for him. Ms Tabb wrote to Ecopod on 24 July 2023. The letter from Ms Tabb stated:

I have been instructed to act for John Butler. I am concerned to hear from John that you called a meeting with John on 19 July 2023 at 12 midday at which you requested John clean toilets and inferred that if he did not agree to clean toilets he could lose his job.

I have seen your follow up email on 19 July at 4.00 pm. which, I am pleased to see, does not include any threat that John will lose his job if he does not agree to clean toilets or agree to the new list of "Facilities Manager Duties" attached to your email.

[34] Mr Dyson responded at length to Ms Tabb on 26 July 2023 in order to explain the situation and what had been discussed with Mr Butler. He stated that Ecopod had implemented the Kaizen system with the aim of making Ecopod processes "Easier, Better, Faster, Cheaper". He explained that as part of that system Mr Butler, in his role as caretaker/general hand, had been asked to take special care of tidying, cleaning and maintenance as these areas appeared to need more focus. This had been the purpose of the meeting with Mr Butler on 19 July 2023.

[35] Mr Dyson explained in the letter to Ms Tabb that Mr Butler's aversion to cleaning the toilets had been discussed, and he had been asked if he was happy to clean the sheds and the yard, to which his response had been that he would have to think about it. Mr Dyson stated:

We explained that if he didn't want to clean and tidy as part of his role, we would look to engage someone to do that – not meaning to imply at all that it would be a replacement but rather an addition. ...

We reminded him during the meeting that the role he accepted was "Caretaker and General Hand" ...

However, we could see that John was no longer comfortable with the title of caretaker and we concluded the meeting ...

...Oliver and I then spent time redefining the duties and even to come up with a new title that we thought he would be more comfortable with

[36] Mr Dyson ended the letter by inviting Ms Tabb to meet and "work together towards a mutually agreeable outcome".

*Meeting 2 August 2023*

[37] There was a meeting held on 2 August 2023 between Mr Dyson, Mr Mason, and Mr Butler accompanied by Ms Tabb.

[38] Mr Mason said that it was stated by Mr Dyson during the meeting that no one was being dismissed.

[39] During the meeting he said that Ms Tabb raised the subject of the slipway and suggested that the general use by the public of the slipway without any significant supervision could be a health and safety legal risk.

[40] Mr Butler said that after the meeting the issues of his cleaning the toilets and the new job description were never raised by Ecopod again. He considered however that Mr Dyson and Mr Mason's attitude towards him changed and they became less friendly toward him.

[41] Mr Mason denied there had been any change in attitude towards Mr Butler. He said he allocated his work to Mr Butler and was never anything other than professional and friendly to him. He also said he never saw any change in Mr Dyson's attitude to Mr Butler.

[42] In early October 2023 Ecopod employed an apprentice. Part of his role was tidying and cleaning the sheds and the yard, including cleaning the toilets. Mr Mason said the apprentice had just left school, had no skills or experience and after a short period with Ecopod left to join another employer.

[43] By late 2023 Mr Mason said that Ecopod was in dire financial circumstances. This was a fact known to all the employees and sub-contractors because the work in progress was openly displayed on a board. He, Mr Dyson and Mr Boven were all worried about the future of Ecopod: it was a building business without any future orders.

[44] Mr Mason said by October 2023 he and Mr Dyson had frequently discussed cost cutting, overheads, the lack of work and how change could be effected. He said, and Mr Boven confirmed, that Mr Dyson's personal financial contributions were helping Ecopod to survive.

[45] Mr Boven confirmed that Ecopod's financial situation had been precarious and that it lost a significant amount of money in the three months to 30 November 2023, in the following four months, it lost an even greater amount. The losses continued in the succeeding three months. Combined with the Ecopod's disappearing pipeline of work and the building industry downturn, he said he and Mr Dyson were greatly concerned.

[46] Mr Boven said it was Mr Dyson's personal financial input into Ecopod that assisted Ecopod to remain trading solvently.

[47] Following the meeting on 2 August 2023 Mr Mason said Mr Dyson sought advice and they formed the view that Ecopod could not continue with the slipway because the cost of bringing it to a minimum liability activity was prohibitive.

[48] Mr Boven said that he was particularly conscious of health and safety issues. The slipway had been an historic slipway for residents for their launches and yachts, and Mr Dyson had elected to keep it open as a service for the community.

[49] He and Mr Dyson had discussed the slipway and were of the view that it was an unacceptable risk for them personally, and for Ecopod, to maintain it. Whilst Ecopod derived a very limited revenue from the slipway and mooring, it was not part of its core building business.

[50] During October 2023 a Worksafe Inspector visited the Ecopod site. Mr Butler said Mr Dyson informed him of the visit and told him he was concerned about the slipway and Ecopod's potential liability as the leasee of the site should an accident occur.

[51] Mr Boven said he was involved in the decision about the need to restructure and reduce overheads as a result of the financial situation confronting Ecopod, including the discussions about Mr Butler's position.

[52] Mr Butler said that in late 2023 Mr Mason told him that Mr Dyson was inviting him to a meeting. As he had recently raised the issue of a pay increase again, he anticipated that would be the subject of the meeting.

#### *Meeting 5 December 2023*

[53] Mr Mason said that the purpose of the meeting was to discuss about the concerns he and Mr Dyson had about Ecopod and the potential implications for Mr Butler's role.

[54] Mr Butler said during the meeting Mr Dyson told him that Ecopod was not making any money and that there were "no orders at all". Mr Dyson showed him a computer screen which confirmed what he was saying. Mr Butler said he could not see the screen clearly. During the meeting he was given a two page document which he could retain and study. It was headed 'Confidential – do not copy' and entitled 'Summary & Outlook of the business – November 2023'.

[55] Set out in the document were sections detailing the Sales Leads and Sales confirmed; Institutional Sales; Production Summary; Financial Performance and Status. Also included was a section on anecdotal feedback from the market.

[56] Mr Butler said he was told by Mr Dyson that he was sorry and whilst there was no hurry to move out of the Cottage, he should try to do so in four weeks. He said Mr Dyson also said that he had asked the landlord if there was employment for him. He was invited to comment on the position and told there would be a further meeting in a few days.

[57] Mr Mason said that Mr Dyson had explained clearly in the meeting that Ecopod had no orders or foreseeable work for the next year and was therefore considering redundancies, including the possibility of Mr Butler's role no longer being required. He said Mr Dyson had said it was proposal, not a decision.

[58] He said that Mr Dyson said he was sorry, and there would be no pressure on Mr Butler and his family to vacate the Cottage quickly. During the Auckland flooding in January 2023 the buildings used by Ecopod had been damaged and had to move to another shed on the Site. The consequence of a Geo Tech report prepared as a result of the flooding at the Site was that Mr Butler and his family would have to vacate the Cottage, which sat behind a cliff that was eroding. The move could take place during the summer months when a landslide was less likely.

[59] Mr Mason said Mr Butler had been aware of the Geo Tech report prior to the meeting held on 5 December 2023.

[60] Following the meeting Mr Dyson sent a letter via email to Mr Butler dated 5 December 2023 summarising what had been discussed during the meeting. In the letter Mr Dyson summarised Ecopod's financial position with supporting details. He also stated that Ecopod had received a signed contract for two office buildings at MOTAT, but that these would be built on site at MOTAT, not at the Ecopod site at Greenhithe. The letter concluded:

As I explained, at this stage, we are only proposing to disestablish your role, in order to give you the opportunity to reflect on the news, perhaps seek third-party advice, and to come back to us in a few days with any comment, feedback or counter suggestions.

We left you with a copy of the document I prepared a couple of weeks ago, "Summary & outlook of the business – November 2023" so that you can review in your own time and give feedback and comment on the situation. **Please do not distribute this company confidential information to anyone else.**

[61] Mr Butler said he spoke to Ms Tabb who offered to attend the next meeting with him. He provided her with a copy of Mr Dyson's letter and the confidential document 'Summary & Outlook of the business – November 2023'.

[62] Mr Butler said that on 6 December 2023 Mr Mason told him that he would only be required to work 20 hours per week, but no reason was provided to him for the decision.

[63] Mr Mason confirmed that was correct. There were no builders on the Ecopod Site at Greenhithe because they were working at the MOTAT site, and there was little work for Mr Butler. However the contractual 20 hours minimum was guaranteed and would be paid.

*Meeting 13 December 2023*

[64] The meeting with Mr Dyson and Mr Mason was attended by Mr Butler accompanied by Ms Tabb. During the meeting Mr Butler said an organisation chart was provided. It was discussed that two other Ecopod builders had been made redundant and that the role Mr Butler was performing was no longer necessary as the Ecopod site, with very little work being undertaken on site, did not require a permanent caretaker.

[65] Mr Butler said Mr Dyson made it clear that the decision to make his role redundant had already been made. Mr Mason disagreed and said that the decision to make Mr Butler's role redundant, whilst seeming inevitable, had not been made. He said that Mr Dyson had said that a possibility would be to engage Mr Butler as a casual employee if work became available.

[66] Mr Mason said that Ms Tabb had asked at the conclusion of the meeting if feedback could be provided. This was agreed and a date for a further meeting to be held on 22 December 2023 was proposed.

*Meeting 22 December 2023*

[67] Following the meeting on 13 December 2025 Mr Butler assisted by Ms Tabb prepared a feedback document which was presented during the meeting on 22 December 2023.

[68] Three proposals were made as an alternative to redundancy, the first that Mr Butler would work reduced hours for three months until there was more work; the second that he would take a three month "furlough", and/or as the third option, he could operate the slipway independently of Ecopod. Mr Butler also offered as part of the proposals to work offsite at MOTAT and undertake more building work.

[69] Mr Butler also expressed his concern at having to vacate the Cottage.

[70] Mr Mason said the proposals made by Mr Butler were considered by him and Mr Dyson. He noted that in late 2023 they had proposed to Mr Butler that if he was willing, Ecopod would provide for training so he could become trained as a registered builder; however Mr Butler had declined that option.

[71] The options that Mr Butler work reduced hours or not perform work for three months were considered but not accepted because it was anticipated that there would be no work for

Ecopod in three months' time, Mr Mason observed that half of that period was holidays and there were no orders.

[72] In regard to the slipway proposal, Mr Dyson offered to speak to the Site landlord, and Mr Mason said he did do so subsequently, but the suggestion that Mr Butler operated the slipway was not accepted.

[73] In relation to Mr Butler's concern at having to leave the Cottage, Mr Mason said Mr Butler was aware of the Geo Tech report which stated that the Cottage did not meet the new regulations for a rental and was uninhabitable. Therefore, irrespective of his employment status, Mr Butler and his family would have had to leave the Cottage.

[74] Mr Mason said that by the time of the 22 December 2023 meeting Ecopod had, as a result of redundancies and self-employed contractors leaving, less than 10 employees and no work. It was decided to maintain a basic workforce for the New Year.

[75] He said that in the financial situation it was facing Ecopod needed to maintain a core skilled workforce that could work efficiently and expeditiously. Mr Boven said that the MOTAT work required specialist builders and while Mr Butler had some joinery and building skills, they were not a good fit for the MOTAT site.

#### *Decision Letter*

[76] Following the Christmas/New Year holiday period Mr Butler re-commenced working on 15 January 2024. On 19 January 2024 he returned to the Cottage and opened a letter which had been hand delivered. The letter dated 18 January 2024 responded to the feedback proposals and confirmed the termination of his employment at Ecopod. It stated:

We have considered your proposals, and also explored other options. However, unfortunately, we have come to the same conclusion. Namely, with still no orders for pods to build in our factory and just one contract to build on site at MOTAT, we are having to urgently change the way Ecopod operates. As part of this consideration, the role you perform is no longer required.

When we do receive further orders for off-site manufactured jobs to be build in our facility, we will operate differently – specifically without a dedicated caretaker to our small facility and, instead, divide those responsibilities among our team.

In response to your specific Proposals –

...

#### Conclusion

Regrettably, the company has come to the conclusion that the role you have been undertaking has become redundant. In accordance with the terms of your contract, your final day of work will be 16<sup>th</sup> February 2024.

[77] Mr Butler worked his four week contractual notice period, his last day of employment was 16 February 2024.

[78] On 28 March 2024 Ms Tabb wrote to Ecopod raising a personal grievance for unjustifiable dismissal.

### **Was Mr Butler unjustifiably dismissed by Ecopod?**

[79] Mr Butler was dismissed from his employment with Ecopod by reason of redundancy. Justification for dismissal is stated in the Employment Relations Act 2000 (the Act), which at s 103A sets out the Test of Justification as being:

#### **S103A Test of Justification**

- (1) For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).
- (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.

[80] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. An employer must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[81] Looking firstly at substantive justification, an employer is entitled to make its business more efficient and an employee does not have the right to continued employment if the business can be run more efficiently without the employee, provided that the procedural requirements are met<sup>1</sup>.

[82] This proposition was commented upon in *Michael Ritson-Thomas T/A Totara Hills Farm v Hamish Davidson (Ritson)*, in which Chief Judge Colgan considered that the Court cannot impose or substitute its business judgment for that of the employer taken at the time.<sup>2</sup>

[83] Ecopod has provided evidence that its financial position prior to and at the time Mr Butler's employment was terminated by reason of redundancy was precarious.

[84] Mr Boven's evidence was that at the time of Mr Butler's dismissal there were no orders for paying customers at the Greenhithe site. The MOTAT contract which was signed

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<sup>1</sup> *GN Hale & Son Ltd v Wellington and Caretakers etc IUW*[1991] 1 NZLR 151 at 155.

<sup>2</sup> *Michael Ritson-Thomas t/a Totara Hills Farm v Hamish Davidson* [2013] NZEmpC 39 20 March 2013 at [54].

in early December 2023 involved building on the MOTAT site rather than at Greenhithe. The work required specialist builders who could work skilfully and quickly.

[85] The work that was being carried out at the Greenhithe Site was on the stock pods which were funded by Mr Dyson who had decided to have them built as a means of maintaining a core building team who could work on them on the occasional day when work at the MOTAT site was not possible.

[86] I therefore examine whether or not the decision to dismiss Mr Butler by reason of redundancy was one a fair and reasonable employer could have made. In a redundancy situation a fair and reasonable employer must, if challenged, be able to establish that he or she has complied with the statutory obligations of good faith dealing pursuant to s.4 of the Act.

[87] Mr Boven confirmed with financial detail that in the three month period to 30 November 2023 Ecopod has lost a significant amount of money and in the four month period to the end of March 2024 it lost an even larger amount of money. By the end of 2023 Ecopod was technically insolvent but was able to continue trading due to Mr Dyson having injected his personal funds into the business and the Directors providing a 'Letter of Comfort' to the lender, that is the bank.

[88] The evidence provided was that Ecopod needed to sell at least three to five pods per month to reach a break even position, but it did not have any work by the end of 2023 apart from the two pods being built at MOTAT. The two stock pods had not been sold and there was no pipeline of future orders.

[89] I find there was substantive justification based on the compelling financial information and the operating situation of Ecopod at the end of 2023 for the redundancy decision impacting on Mr Butler's position.

[90] Turning to procedural fairness and whether or not the decision to dismiss Mr Butler by reason of redundancy was one a fair and reasonable employer could have made in all the circumstances at the relevant time, I observe that in a redundancy situation a fair and reasonable employer must, if challenged, be able to establish that he or she has complied with the statutory obligations of good faith dealing pursuant to s.4 of the Act.<sup>3</sup>

[91] The duty of good faith required Ecopod to consult meaningfully with Mr Butler.

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<sup>3</sup> *Simpsons Farms Limited v Aberhart* [2006] ERNZ 825 at [65].

[92] The first meeting held with Mr Butler on 5 December 2023 was with the purpose of discussing concerns, Ecopod's operating position and his role.

[93] During the meeting Mr Butler was given information on the financial position of Ecopod. Information was presented on a computer screen. I accept Mr Butler's evidence that he could not fully see what was on the screen, and appreciate that perhaps due to shock he may not have understood the full import of what was being discussed with him during the meeting; however he was given the two page document to take away and peruse.

[94] That document, entitled "Summary & Outlook of the business – November 2023", provided a significant amount of information about Ecopod's financial position at that time, under headings related to sales, production and financial performance and outlook.

[95] Mr Butler had been informed that Ecopod was needing to consider redundancies, and that his role could be impacted.

[96] Mr Butler was not required to comment on the proposal but invited to make a comment at a further meeting to be held. This was confirmed in the emailed letter from Mr Dyson sent following the meeting.

[97] At the second meeting held on 13 December 2023 which Mr Butler attended with Ms Tabb there was further discussion about the situation and Mr Butler's request to provide feedback was agreed.

[98] Mr Butler's feedback was presented at the third meeting held on 22 December 2023. It contained three proposals for averting the redundancy of his position. I find that Ecopod considered the three proposals.

[99] I have considered whether or not, as claimed by Mr Butler, the fact that he declined to clean the toilets was the reason for his redundancy. I do not find that the evidence supports that proposition: after the meeting on 2 August 2023 the toilet cleaning issue was not raised again, and by the time of the first meeting in December 2023 almost four months later, I find the financial position experienced by Ecopod was the driving consideration for the redundancy proposal.

#### *Redeployment*

[100] It was submitted on behalf of Mr Butler that Ecopod did not consider redeployment, and that there was work he could have carried out at either the Greenhithe Site or at the MOTAT site.

[101] The work at the Greenhithe Site consisted of work on the stock pods which were purely to provide occasional work for the specialised builders, whether employees or contractors, who worked at the MOTAT site. The evidence was that this work was ‘rainy day’ work and not regular.

[102] Work at the MOTAT site had been ongoing at the time Mr Butler was made redundant. Ecopod had considered Mr Butler working there when it was presented as a proposal as part of Mr Butler’s feedback. However it decided against that as a redeployment option because the work required specialised builders, particularly contractors.

[103] I note that Mr Butler had been provided with an opportunity to train as a registered builder some time earlier, but had chosen not to accept that opportunity. Had he done so, it might have presented as a viable option for him.

[104] I find that Ecopod acted towards Mr Butler with procedural fairness and in good faith.

[105] I determine that Mr Butler was not unjustifiably dismissed by Ecopod.

### **Was Mr Butler unjustifiably disadvantaged by Ecopod underpaying him?**

[106] Section 103 (1)(b) of the Act is applicable to disadvantage grievances and states:

That the employee’s employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee’s disadvantage by some unjustifiable action by the employer;

[107] The elements of s103 (1) (b) are twofold:

- a. An unjustifiable action by the employer, which
- b. Affected the employee’s terms and conditions of employment, and this was to the employee’s disadvantage.

[108] The Employment Agreement stated at clause 3.1.1. that Mr Butler would be paid \$30 (gross) per hour. It further stated: “Refer to Schedule A for details”.

[109] In Schedule A of the Employment Agreement there was an analysis of the value of benefits provided to Mr Butler resulting from his occupancy of the Cottage. This was stated as being \$1,320. There was stated a value to Ecopod of Mr Butler providing on-site security. This was estimated as \$1,000. It stated that there was difference of \$320 per month.

[110] Schedule A stated: “In view of this, the agree hourly rate for Employee is \$30.00.”

[111] Ms Gurden, Operations Support Manager at Ecopod and responsible for the payroll administration, said that Mr Butler provided a time sheet outlining the hours he had worked in the period and she paid him at a rate of \$30 gross for each hour worked. Mr Butler confirmed that he had been paid for all hours worked.

[112] Ms Gurden confirmed when questioned that she had not deducted any monies from Mr Butler.

[113] It is clear that Mr Butler believed a wage increase was merited. He approached Ecopod in late 2022 to request an increase and there was a meeting in early 2023 to discuss it. As a result of that meeting Mr Dyson had told him that he could have a pay increase if he accepted more responsibility as a team leader or building project team leader, however Mr Butler declined that offer.

[114] Mr Butler raised the pay issue again in late 2023, however by that stage Ecopod were in financial difficulties and the pay increase was not addressed, as Mr Butler had anticipated it would be, in the meeting held on 5 December 2023.

[115] The parties had agreed to the hourly rate of \$30 per hour at the outset of the employment relationship. Mr Butler agreed he had been paid for all the hours he worked.

[116] Mr Butler may subsequently have become dissatisfied with the agreement as set out in Schedule A of the Employment Agreement, however there was no evidence that it had been renegotiated or changed. Ecopod had not breached it and there was no unjustifiable action by Ecopod causing Mr Butler's terms of employment to be disadvantageously affected..

[117] I determine that Mr Butler was not unjustifiably disadvantaged by Ecopod underpaying him.

**Was Mr Butler unjustifiably disadvantaged by Ecopod unilaterally reducing his hours?**

[118] It states in clause 2.1.1. of the Employment Agreement: "The employee will work for at least 20 hours each week on Monday to Friday ..."

[119] Mr Butler's hours of work started to increase from July 2021. During 2023 his weekly hours varied from 22.50 in the week of 19 March 2023 to some weeks when he worked in excess of 40 hours per week.. It is submitted for Mr Butler that he worked an average of 37.5 hours per week for at least the 12 months prior to 5 December 2023. There is no dispute that he was paid for the additional hours worked.

[120] The day following the meeting held on 5 December 2023 Mr Mason informed Mr Butler that he would only be required to work 20 hours per week.

[121] During the meeting held on 5 December 2023 it was explained to Mr Butler that Ecopod had "no orders at all". In those circumstances he may have anticipated that there would be no requirement for him to continue to work hours in excess of those contractually guaranteed.

[122] Notwithstanding, I accept Mr Butler's evidence that the notification by Mr Mason that he would not be required to work hours in excess of 20 per week came as something of a shock to him. I consider that a less abrupt notification may have been considerate, however Mr Butler's terms of employment were not disadvantageously affected. There was no breach by Ecopod of the requirement to pay Mr Butler "at least 20 hours per week". I therefore find that there was no unjustifiable action.

[123] I determine that Mr Butler was not unjustifiably disadvantaged by Ecopod unilaterally reducing his hours.

### **Costs**

[124] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[125] If they are not able to do so and an Authority determination on costs is needed Ecopod may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Butler 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.

[126] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[127] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>4</sup>

Eleanor Robinson  
Member of the Employment Relations Authority

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<sup>4</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].