

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 674  
3030034

BETWEEN            JENNY CHRISTALL  
                                 Applicant

A N D                KLJ LIMITED  
                                 Respondent

Member of Authority:     Peter van Keulen

Representatives:         Robert Morgan, advocate for the Applicant  
                                 No appearance for the Respondent

Investigation Meeting:    8 October 2019

Submissions Received:    8 October 2019 from the Applicant

Date of Determination:    25 November 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Jenny Christall was employed by KLJ Limited from May 2013 until August 2017. Ms Christall worked as the night duty manager at KLJ's Quality Hotel in Blenheim.

[2]     Ms Christall has three complaints arising out of her employment. First, she says she was not paid at least the minimum applicable wage during the time that she worked as well as the applicable rate for public holidays that she worked. Second, she says she was not paid her accrued but untaken holiday pay on the termination of her employment and this includes her alternative days of holiday entitlement for public holidays worked. Third, Ms Christall says she was unjustifiably dismissed when KLJ disestablished her position and made her redundant.

[3] Ms Christall's complaints form the basis of her claim in the Authority, set out in her statement of problem.

[4] KLJ responded to Ms Christall's claims by lodging a statement in reply and an amended statement in reply, participating in a case management conference and then lodging a memorandum dated 19 September 2019, regarding the conduct of the claim in the Authority.

[5] KLJ's position, set out in its statement in reply, is:

- (a) KLJ signed an employment agreement with Ms Christall, which included a remuneration provision, and this covers Ms Christall's minimum wage claim.
- (b) KLJ has provided wage and time records and Ms Christall should particularise her claim for unpaid holiday pay based on these records.
- (c) Ms Christall's redundancy was genuine.

[6] KLJ's subsequent position set out in the memorandum it lodged, is:

- (a) Ms Christall had failed to properly quantify her claims and therefore KLJ could not properly respond, either by way of settling (if appropriate) or responding to the claim.
- (b) As a result, KLJ offered no evidence, but in doing so it did not admit Ms Christall's claim but rather it put Ms Christall to proof on liability and quantum.

[7] It was not entirely clear if this stated position meant KLJ was going to attend the investigation meeting. When counsel for KLJ was asked if KLJ intended to attend at the investigation meeting he replied advising that KLJ reserved its position on attendance.

[8] In the end, KLJ did not attend the investigation meeting. It is clear, that having participated fully in this matter up until it lodged its memorandum on 19 September 2019, KLJ was aware of the investigation meeting including the date, time and venue, which was set out in a notice of investigation meeting dated 23 July 2019. That notice of investigation meeting also recorded that if KLJ did not attend I may continue to investigate and issue a determination without hearing any evidence from KLJ. KLJ did not advise of any difficulties

that it might have with attending the investigation meeting and it did not advise the Authority of any issue with it attending the investigation meeting either on the day. So, I conclude that KLJ chose not to attend my investigation meeting.

[9] Given all of this, I believe it was appropriate to hold my investigation without KLJ. I therefore proceeded with the investigation meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

### **Minimum wage payment**

[10] The first part of Ms Christall's claim is that KLJ did not pay her at least the applicable minimum wage for all of the hours that she worked.

[11] KLJ employed Ms Christall as a night manager in a hotel it operated in Blenheim. Ms Christall was employed from May 2013 until 8 August 2017.

[12] As the night manager, Ms Christall was on duty every night from 8:00 pm until 6:30 am the following morning. Ms Christall also worked during the day on Sunday from 10:30 am until 8:00 pm.

[13] KLJ paid Ms Christall \$250.00 (gross) per week for the first ten weeks of her employment and then from the end of July 2013, this was increased to \$310.00 (gross). KLJ also provided Ms Christall with a room at the hotel and board, which included breakfast and dinner daily, provision of all linen and towels and payment of all utilities such as power.

[14] I note at this point that Ms Christall would also work occasional shifts in the restaurant at the hotel and KLJ paid her for this work in addition to her salary and board. Ms Christall accepts KLJ paid her appropriately for this additional work.

[15] It is against this employment scenario that I must establish if Ms Christall was paid correctly, in line with the Minimum Wage Act 1983 (the MW Act).

[16] Sections 6, 7 and 9 of the MW Act provide:

#### **6. Payment of minimum wages**

Notwithstanding anything to the contrary in any enactment, award, collective agreement, determination, or contract of service, but subject to sections 7 to 9, every worker who belongs to a class of workers in respect of whom a minimum rate of wages has been prescribed under this Act, shall be entitled to

receive from his employer payment for his work at not less than that minimum rate.

**7. Deductions for board or lodging or time lost**

(1) In any case where a worker is provided with board or lodging by his employer, the deduction in respect thereof by the employer shall not exceed such amount as will reduce the worker's wage calculated at the appropriate minimum rate by more than the cash value thereof as fixed by or under any Act, determination, or agreement relating to the worker's employment, or, if it is not so fixed, the deduction in respect thereof by the employer shall not exceed such amount as will reduce the worker's wages (as so calculated) by more than 15% for board or by more than 5% for lodging.

(2) ...

8. ...

**9. Workers to whom Act does not apply**

This Act shall not apply to—

(a) [Repealed]

(b) apprentices bound by an indenture of apprenticeship entered into under the [Maori Housing Amendment Act 1938](#), the [New Zealand Railways Corporation Act 1981](#), the Defence Act 1971, the Post Office Act 1959, or the State Services Act 1962, or under any other Act:

(c) [Repealed]

(d) inmates of any charitable institution (not being persons residing on the premises by reason only of their being employed therein) who, as such inmates, do any work in or in connection with the institution:

(e) employees to whom the [Home and Community Support \(Payment for Travel Between Clients\) Settlement Act 2016](#) applies, in respect of travel between clients (as defined in [section 4](#) of that Act) undertaken by those employees.

[17] There is no dispute that Ms Christall was covered by the MW Act whilst employed by KLJ as her work was not excluded by s 9. This means that Ms Christall should have been paid at least the applicable minimum wage rate for the hours she worked.

[18] In determining whether KLJ met its obligations to pay Ms Christall at least the applicable minimum wage for the hours she worked I need to establish:

(a) How many hours did Ms Christall work?

- (b) What should KLJ have paid Ms Christall, at the applicable minimum rate, for those hours?
- (c) What did KLJ pay Ms Christall for the hours worked?
- (d) Is there any shortfall between these two sums, as this will be money owed to Ms Christall?

[19] In working through this, there are two main issues for me to resolve. First, was Ms Christall working for all of the hours she was on duty and second, what value is placed on the room and board that formed part of the remuneration KLJ paid to Ms Christall, applying s 7 of the MW Act?

*How many hours did Ms Christall work?*

[20] As I have identified, the question here is, was Ms Christall working for all of the time when she was rostered on as the night duty manager.

[21] In *Idea Services Ltd v. Dickson*<sup>1</sup> the Court of Appeal discussed what constituted work for the purposes of the MW Act. It referred to the earlier decision of the Employment Court and approved the consideration of three factors being the constraints placed on the freedom of an employee, the nature and extent of responsibility and the benefit to the employer of having the employee in the role. The Court of Appeal said:

[7] In deciding whether sleepovers constitute work for the purposes of this section, the Employment Court found it helpful to consider three factors:

- (a) constraints placed on the freedom the employee would otherwise have to do as he or she pleases;
- (b) the nature and extent of responsibilities placed on the employee; and
- (c) the benefit to the employer of having the employee perform the role.

[8] The greater the degree or extent to which each factor applied (ie the greater the constraints, the greater the responsibilities, the greater the benefit to the employer): the more likely it was that the activity in question ought to be regarded as “work”. The Court said that the question has to be approach in an “intensely practical” way, adopting it was said by this Court in *NZ Fire Service Commission v. NZ Professional Fire Fighters Union*.

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<sup>1</sup> *Idea Services Ltd v. Dickson* [2011] NZCA 14

[9] ...

[10] We agree with the factors the Employment Court found helpful. We also agree with the Court's application of those factors to the facts as it found them.

[22] I will consider each of these factors in turn as they relate to Ms Christall.

*Constraints placed on the freedom of the employee*

[23] In considering the first of those factors, the Court in *Dickson* said that the greater the degree of constraint the more likely it would be that the period of it ought to be regarded as work.

[24] Ms Christall lived at the hotel, and was available to guests throughout her shift. Generally, from 8:00 pm she would undertake various duties such as laundry or assisting in the bar. Ms Christall would work on these tasks until around 11:00 pm, with this sometimes extending until 12:00 am if the bar was busy or there were other things to do for the next day. Between 11:00 pm/12:00 am and 6:30 am Ms Christall was able to sleep but had to respond to any calls, late arrivals or guest enquiries during this time. This meant that between 8:00 pm and 6:30 am Ms Christall had to be on site, had limited freedom in what she could do including that she could not consume alcohol and could not have friends around and she had to be ready to respond to any hotel requirements.

[25] As in *Dickson*, I am satisfied that the restrictions imposed on Ms Christall were significant and this weighs heavily in favour of the whole period she was on duty being work.

*Responsibility placed on employee*

[26] In *Dickson* the Court held that the greater and more extensive the responsibilities placed on the employee the more likely the period was work.

[27] Ms Christall's responsibilities were significant, particularly from 11:00 pm/12:00 am when she was the only hotel employee available for guests to contact. I am satisfied that the responsibility imposed on Ms Christall was significant and continuous and this weighs heavily in favour of the whole period she was on duty being work.

### *Benefit to employer*

[28] There was a clear benefit to KLJ in having Ms Christall working the shift she did, with the responsibilities she had. This meant the hotel was able to operate throughout the evening and early morning for guests, including providing late check in, providing food after the restaurant had closed, dealing with guest issues (such as lost keys and not being able to get into the hotel), dealing with early check outs and any enquiries guests might have through the night.

[29] This factor also indicates that Ms Christall was working throughout the night.

### *Conclusion*

[30] Applying the three factors from *Dickson* it is clear to me that Ms Christall was working all of the time she was on duty.

[31] My conclusion is supported by the Employment Court decision in *A Labour Inspector of the Ministry of Business Innovation and Employment v Smiths City Limited*<sup>2</sup>. I do not need to set out my analysis of that judgment but I will refer to one aspect that I found particularly instructive. The Employment Court, in summarising and stating the Court of Appeal's reasoning in *Dickson*, set out a summary of other cases, which the Court of Appeal referred to – these four cases are similar to Ms Christall's arrangements, so are worth repeating here. The Employment Court stated at [39]:

While recognising jurisdictional differences, the Court of Appeal acknowledged that the full Court's decision was consistent with overseas authorities illustrating what the concept of work entails in the minimum wage area. The Court of Appeal referred with approval to cases where:

- (a) the European Court of Justice held that doctors on call overnight were in working time;<sup>3</sup>
- (b) a doctor on call at a hospital who was permitted to sleep when not attending to patients was engaged in working time;<sup>4</sup>
- (c) operators of a telephone booking service performed at night were at work because they had to be available to deal with telephone calls even though, between calls, they could spend time reading or watching television;<sup>5</sup> and

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<sup>2</sup> *A Labour Inspector of the Ministry of Business Innovation and Employment v Smiths City Limited* [2018] NZEmpC 43.

<sup>3</sup> At [18]; citing *SIMAP v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* [2000] IRLR 845 (ECJ).

<sup>4</sup> At [19]; citing *Landeshauptstadt Kiel v Jaeger* [2003] 3 CMLR 16 (ECJ).

(d) a night watchman required to be on site all night, but permitted to rest or to sleep when not carrying out particular tasks, was working.<sup>6</sup>

*How much should KLJ have paid Ms Christall?*

[32] So, based on my conclusion that Ms Christall was working all of the time she was rostered on I calculate the total hours she worked per week as 79 – this is seven 10 hour shifts as the night duty manager and nine hours on a Sunday.

[33] I must now calculate how much KLJ should have paid Ms Christall for 79 hours of work per week based on the applicable minimum wage rate. I calculate this as follows:

*Table 1*

Period of employment	Applicable Minimum Wage Rate	Total wage payment per week (minimum wage rate x 79 hours work)
21/5/13 – 31/3/14	\$13.75	\$1,086.25
1/4/14 – 31/3/15	\$14.25	\$1,125.75
1/4/15 – 31/3/16	\$14.75	\$1,165.25
1/4/16 – 31/3/17	\$15.25	\$1,204.75
1/4/17 – 8/8/17	\$15.75	\$1,244.25

*How much did KLJ pay Ms Christall?*

[34] The next step is to calculate how much KLJ paid Ms Christall during her employment. For the first 10 weeks of employment KLJ paid Ms Christall \$250.00 (gross) per week and then increased that to \$310.00 (gross) per week for the remaining time she was employed.

[35] As outlined above, KLJ also provided Ms Christall with board (based on Ms Christall residing in a room at the hotel). The value attributed to this board was not clear.

[36] KLJ stated in its statement in reply that Ms Christall's employment agreement dealt with her remuneration and this covered the minimum wage issue. However, it did not specify in the statement in reply what the total remuneration was or even if a value for the board part of the remuneration had been agreed so that the total remuneration could be calculated.

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<sup>5</sup> At [21]; citing *British Nursing Association v Inland Revenue* [2002] EWCA Civ 494, [2002] IRLR 480.

<sup>6</sup> At [23]; *Scottbridge Construction Ltd v Wright* [2003] IRLR 21.

Further KLJ did not provide a copy of the employment agreement (either attached to the statement in reply or as evidence at the investigation meeting) nor did it provide any evidence at my investigation meeting as to the terms of the employment agreement.

[37] In contrast, Ms Christall said in her evidence that she never received an employment agreement and as a consequence she never signed an employment agreement. Ms Christall also said KLJ simply told her she would get a room and board as part of her remuneration but no value was ever placed on it.

[38] Based on the evidence I have I conclude that no value was agreed for the board component of Ms Christall’s remuneration. This means I can only attribute a value of 15% of Ms Christall’s weekly wages – applying s 7 of the MW Act.

[39] So, I calculate the payment made to Ms Christall, including board at a value of 15% of the weekly wage as follows:

*Table 2*

Period of employment	Wages paid by KLJ to Ms Christall	Value of board (15% of weekly payment as calculated in Table 1)	Total paid by KLJ to Ms Christall
21/5/13 – 22/7/13	\$250.00	\$162.94	\$412.94
3/7/13 - 31/3/14	\$310.00	\$162.94	\$472.94
1/4/14 – 31/3/15	\$310.00	\$168.79	\$478.79
1/4/15 – 31/3/16	\$310.00	\$174.78	\$484.78
1/4/16 – 31/3/17	\$310.00	\$180.64	\$490.64
1/4/17 – 8/8/17	\$310.00	\$186.64	\$496.64

*What shortfall, if any, is there?*

[40] I now calculate any shortfall by deducting the amount KLJ did pay to Ms Christall from the amount it should have paid. Any weekly shortfall is then totalled for the relevant period of employment and the overall total of these shortfalls is the total amount of wages owed to Ms Christall:

Table 3

Period of employment	Shortfall: minimum wage amount to be paid (Table 1) less the amount paid by KLJ (Table 2)	Number of weeks	Total amount of shortfall
21/5/13 – 22/7/13	\$1,086.25 - \$412.94 = \$673.31	10	\$6,733.10
3/7/13 - 31/3/14	\$1,086.25 - \$472.94 = \$613.31	35	\$21,465.85
1/4/14 – 31/3/15	\$1,125.75 - \$478.79 = \$646.96	52	\$33,641.92
1/4/15 – 31/3/16	\$1,165.25 - \$484.78 = \$680.47	52	\$35,384.44
1/4/16 – 31/3/17	\$1,204.75 - \$490.64 = \$714.11	52	\$37,133.72
1/4/17 – 8/8/17	\$1,244.25 - \$496.64 = \$747.61	19	\$14,204.59
		Total	\$148,563.62

[41] The total amount of wage arrears for payment at the applicable minimum wage that KLJ owes Ms Christall is \$148,563.62.

### **Holiday pay**

[42] Ms Christall says that during her employment she only took 13 days holiday. She says she also worked every public holiday and was not paid the correct pay for these days nor was she given an alternative days holiday for the public holidays she worked.

[43] I have reviewed Ms Christall's evidence and the wage records provided and calculate that she was entitled to the following at the end of her employment:

- (a) 67 days of accrued holiday - calculated on the basis of 80 days holiday for four complete periods of 12 months between 21 May 2013 and 20 May 2017 less 13 days holiday taken by Ms Christall<sup>7</sup>.
- (b) Holiday pay at the rate 8% of Ms Christall's earnings for the period 21 May 2017 until 8 August 2017<sup>8</sup>.
- (c) 45 alternative days holiday for all public holidays worked during Ms Christall's employment<sup>9</sup>.

<sup>7</sup> Sections 16 and 24 of the Holidays Act 2003.

<sup>8</sup> Section 25 of the Holidays Act 2003.

(d) Payment for the hours Ms Christall worked on public holidays at the rate of half of the applicable minimum wage<sup>10</sup>.

[44] Based on these entitlements I calculate the payments to be made to Ms Christall as follows:

(a) 67 days of holiday, paid at the rate of Ms Christall's ordinary weekly pay<sup>11</sup> at the end of her employment – this is \$1,244.25 (79 hours at \$15.75 per hour). The total payment is \$11,907.75.

(b) 8% of Ms Christall's earnings for the period 21 May 2017 until 8 August 2017, which is \$12,426.75<sup>12</sup>. The total payment is \$994.14.

(c) 45 alternative days of holiday, paid at the average daily pay<sup>13</sup> being \$173.69. The total payment is \$7,816.05.

(d) Half of the applicable minimum wage rate per hour work on a public holiday.

Period of employment	Applicable Minimum Wage Rate	Number of hours worked on public holidays in the period	Total amount owed – number of hours worked at half minimum wage rate
21/5/13 – 31/3/14	\$13.75	80	\$550.00
1/4/14 – 31/3/15	\$14.25	110	\$783.75
1/4/15 – 31/3/16	\$14.75	110	\$811.25
1/4/16 – 31/3/17	\$15.25	110	\$838.75
1/4/17 – 8/8/17	\$15.75	40	\$315.00

Total \$3,398.75

[45] KLJ has not paid Ms Christall any of the holiday pay amounts owing so the total payment due to Ms Christall is \$24,116.69.

<sup>9</sup> Section 56 of the Holidays Act 2003.

<sup>10</sup> Section 50 of the Holidays Act 2003

<sup>11</sup> Section 24 of the Holidays Act 2003.

<sup>12</sup> Calculated on the basis of 79 hours per week and a minimum wage rate of \$15.75 per hour.

<sup>13</sup> Section 60 of the Holidays Act 2003.

## **Unjustified dismissal**

[46] On 26 July 2017, without any prior indication or discussion, Ms Christall received a letter from KLJ. That letter stated:

As you will be aware on the 6<sup>th</sup> August we will be losing the contract for ANZ. Unfortunately this will have consequences for the hotel especially during the winter. To maintain a viable business it will be necessary for us to change rosters and work hours and maybe even shift staff to different departments, it is also very likely that there will be a couple of redundancies as we strive for the most efficient way to run the hotel. Although I hate the thought of making anyone redundant it is important that the hotel remains profitable so as to ensure the viability of the business.

[47] Then on 8 August 2017 Ms Christall was handed a second letter, which stated:

This is formal notice to you of your position here at [the hotel]. Several weeks ago I gave all staff at the hotel a letter stating that there will be some positions here that will be under review due to restructuring. Consequently we regret to inform you that your position here will be disestablished as of 8<sup>th</sup> August. As of this date you will not be required to work and we ask that you vacate your room in a timely manner.

[48] Between the two letters, KLJ did not discuss any possible restructure or redundancy with Ms Christall. Ms Christall did not receive any additional information about the possible restructure and redundancy and Ms Christall did not have an opportunity to comment on any proposal for restructuring and potential redundancy.

[49] Ms Christall says that based on these events she was unjustifiably dismissed by KLJ.

[50] The issues to be resolved in respect of the unjustified dismissal claim are:

(a) Was Ms Christall dismissed; and

(b) If so, was the dismissal justified, with the onus resting on KLJ to show its actions were justified in line with the test for justification and the duty of good faith set out in the Act?

[51] Clearly, Ms Christall was dismissed by KLJ. The second letter of 8 August 2017 sets that out and Ms Christall's employment ended on that day.

[52] So KLJ must establish that Ms Christall's dismissal was justified in line with s 103A of the Act. In *Grace Team Accounting v Brake*<sup>14</sup>, the Court of Appeal considered the justification requirements set out at s 103A of the Act as they relate to a redundancy situation and said at [85]:

If an employer can show the redundancy is genuine and that the notice and consultation requirements of s.4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s.103A test.

*Was the redundancy genuine?*

[53] So, first I must consider if the redundancy was genuine. That involves considering the underlying business reason for the dismissal. The issue is other than a reference, in the first letter, to KLJ losing the contract of a customer (ANZ) of its hotel there is no evidence to show the redundancy was genuine.

*Was the process of consultation a fair one?*

[54] In *Grace Team Accounting*, the Court of Appeal confirmed that the other aspect of the justification of a dismissal for redundancy is whether the process by which the consultation over the proposed redundancy occurred was a fair one. And, in this regard, the requirements of s 4 of the Act and s 103A of the Act are the starting point for that.

[55] In *Stormont v Peddle Thorp Aitken Limited*<sup>15</sup> Judge Inglis (as she was then) summarised the consultation requirements as follows:

[54] The key requirements in relation to consultation can be summarised as follows. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done. Consultation must be a reality, not a charade. Employees must know what is proposed before they can be expected to give their view on it. This requires the provision of sufficiently precise information, in a timely manner. The employer, while quite entitled to have a working plan already in mind, must have an open mind and be ready to change and even start anew.

[56] By simply providing Ms Christall with two letters and doing nothing else KLJ failed to provide Ms Christall with a proposal let alone provide sufficient information relevant to the proposal. KLJ then failed to listen to what Ms Christall had to say about the proposal as it

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<sup>14</sup> See *Grace Team Accounting Ltd v. Brake* [2014] NZCA 541

<sup>15</sup> *Stormont v Peddle Thorp Aitken Limited* [2017] NZEmpC 71

did not engage with her over the proposal. It follows that KLJ failed to consider Ms Christall's response as Ms Christall could not and did not provide one. And finally, KLJ made its decision without any regard to Ms Christall's views.

[57] In short, KLJ failed to consult at all over the proposed restructuring and possible redundancy – it simply gave notice that it was a possibility and then notice that it had decided to make Ms Christall redundant.

[58] It is clear that KLJ unjustifiably dismissed Ms Christall.

### **Remedies**

[59] As KLJ unjustifiably dismissed Ms Christall, I must consider what remedies she may be entitled to under s 123 of the Act; Ms Christall seeks compensation and reimbursement.

[60] I will not award Ms Christall any reimbursement as she chose not to look for new employment and is now retired. Ms Christall did not mitigate her loss and is not entitled to any reimbursement, as she did not lose any income because of her dismissal; rather the loss arises because she chose not to look for new employment.

[61] In terms of compensation pursuant to s 123(1)(c)(i) of the Act, I must consider the effects of Ms Christall's dismissal on her, which involves identifying the harm caused to her and the loss she suffered as a result. Then I must quantify that harm and loss by establishing where it sits on the spectrum of loss and harm seen in cases.<sup>16</sup>

[62] Ms Christall described the effects of the dismissal on her:

- (a) She was devastated by it and felt let down as she had given over four years of hard and loyal service to KLJ.
- (b) She became anxious, depressed and suffered from stress – she had to see her doctor about these effects on two occasions.
- (c) She suffered from loss of self-esteem, thinking the redundancy was personal.

[63] The advocate for Ms Christall sought \$18,000.00 for compensation. Given the evidence of harm and loss and considering where that sits on the spectrum of cases, I believe

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<sup>16</sup> *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

this is an accurate assessment. I award Ms Christall \$18,000.00 pursuant to s 123(1)(c)(i) of the Act.

[64] As I have awarded compensation to Ms Christall, I must consider whether she has contributed to the situation that gave rise to her grievance.<sup>17</sup>

[65] When assessing if Ms Christall's actions contributed to the situation that gave rise to her grievance I am looking for a causal link between any of her actions and the situation that gave rise to her dismissal. If I am satisfied that there is a link, then I must consider whether the behaviour was culpable or blameworthy, which would require a reduction in remedies.<sup>18</sup>

[66] Clearly, in this case, there is no contributory behaviour by Ms Christall. KLJ did not consult with Ms Christall about the proposed restructuring and any possible redundancy and therefore she took no actions that could have influenced or contributed to her subsequent dismissal for redundancy.

### **Outcome**

[67] KLJ failed to pay Ms Christall minimum wage for all of the hours she worked. KLJ must pay Ms Christall \$148,563.62 (gross) in wage arrears.

[68] KLJ did not pay Ms Christall her accrued but untaken holiday entitlements on the termination of her employment and it did not pay Ms Christall properly for public holidays that she worked. KLJ must pay Ms Christall \$24,116.69 (gross) for holiday pay and public holiday entitlements.

[69] KLJ unjustifiably dismissed Ms Christall. In satisfaction of this grievance KLJ must pay Ms Christall \$18,000.00, without any deductions, for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

### **Costs**

[70] As Ms Christall has been successful in her claim she is entitled to a contribution to her costs. I will award Ms Christall costs based on the daily tariff. My investigation meeting took one quarter of a day so Ms Christall is awarded \$1,125.00. Ms Christall is also entitled to the filing fee of \$71.56.

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<sup>17</sup> Section 124 of the Act.

<sup>18</sup> *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

[71] KJL must pay Ms Christall \$1,125.00 plus \$71.56 as a contribution to her costs.

Peter van Keulen  
Member of the Employment Relations Authority