

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 394  
3137481

BETWEEN ALISON DANKS  
Applicant  
AND PAK HOLDINGS LIMITED  
Respondent

Member of Authority: Sarah Kennedy  
Representatives: Michael Fennessy, counsel for the Applicant  
Jenny Murphy, advocate for the Respondent  
Investigation Meeting: 3 May 2022 at Palmerston North  
Submissions [and further information] Received: 10 May 2022, and 15 August 2022 from the Applicant  
5 May 2022 from the Respondent  
Date of Determination: 16 August 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Alison Danks alleges that the decision to disestablish her position of Office Manager was an unjustified dismissal. Ms Danks was employed by PAK Holdings Limited, trading as Humphries Construction, (PAK), from 3 July 2018 until her employment was terminated by way of redundancy on 22 November 2019. She seeks lost wages and compensation.

[2] Ms Danks also claims she suffered an unjustified disadvantage by the actions of PAK during the redundancy process because it failed to offer redeployment or engage constructively with Ms Danks.

[3] PAK says that its actions were justified in that it went through a genuine restructure process and Ms Danks was given opportunities to consult and provide information and dismissal came at the end of that consultation period.

### **The Authority's Investigation**

[4] For the Authority's investigation written witness statements were lodged from Alison Danks, Loren Edwards, Ms Danks' counsel at the time of the redundancy, and Paul Humphries, company director. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The parties' representatives also gave oral closing and written submissions.

[5] 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 the evidence and submissions received.

### **The Issues**

[6] The issues requiring investigation and determination were:

- (a) Was the decision to disestablish the Office Manager position held by Ms Danks and how that decision was reached, made for genuine business reasons, without ulterior motive and following a fair process?
- (b) If not, was the termination of Ms Danks' employment on the ground of redundancy, an unjustified dismissal?
- (c) If not an unjustified dismissal, was Ms Danks nevertheless unjustifiably disadvantaged by what PAK did and how it carried out its redundancy process and decisions?
- (d) If PAK did act unjustifiably, what remedies should be awarded?
- (e) Did PAK breach its good faith duties in how it carried out its redundancy process and, if so, should a penalty be imposed?
- (f) Should either party contribute to the costs of representation of the other party?

## Background

[7] Ms Danks started work with PAK as an Office Administrator on 3 July 2018. On 11 September 2018, her role changed by agreement to Office Manager, when the previous office manager, Jenny Murphy was appointed to the Business Manager role.

[8] On 10 October 2019, Ms Danks received a letter advising of the proposed restructure as follows:

The Directors met recently to consider the future of PCM and PAK Holdings. It is anticipated that, due to planned projects, that PAK Holdings will continue to maintain its position in the market over the next 12 months, however, the outlook for PCM is not so good and this may have an impact on PAK Holdings. It is expected that there will be more compliance costs and with other contractors tendering for projects, margins will remain tight over the next 12 months. It is anticipated that the workload for Quantity Surveyors and Project Management will increase, with less requirements for general administration, due to electronic processes.

With the Quantity Surveyor role being temporarily vacant ... the property management of FMG House ending sooner than expected and a settling in process for the electronic processes introduced in 2018, it was timely to consider the current overheads and efficiency of the current office structure. There is also a concern that in some areas, such as the payroll requirements being completed inhouse, that unplanned absences could pose a risk to this important function being completed securely and ensuring privacy.

Attached is a proposal that we are considering and which affects the Office manager role. We are providing you with the proposal to seek your input as part of a consultation process. You will note that it is proposed that the Office Manager role be disestablished, the payroll outsourced to an external provider, the QS roles will increase to 3 roles in 12 months' time and there is an anticipated need for a Project Management Cadet (intern). The Accounts Administrator role would have new tasks that fit more appropriately with accounts and remove some double handling. There is also a need for more digital marketing/file management. It is proposed that a new position is created for and Administrator/receptionist (30 hours per week) to undertake these increased functions.

[9] The letter sought feedback and included a description of the proposed new role of administrator/receptionist. Under the heading "Roles Affected" it stated that due to the change of tasks and outsourcing of the payroll, the Office Manager role would become superfluous. Ms Danks was the only person made redundant at the end of the process.

[10] Ms Danks' employment agreement with PAK included a redundancy clause. That clause provided that where the employment of an employee is liable to be terminated by the employer in circumstances attributable, wholly or mainly, to the fact that the position filled by the employee is, or will be, superfluous to the needs of the employer. Two weeks' written notice was required, and no compensation was payable to the employee in the event of redundancy.

[11] Ms Danks says she was already doing most of the tasks that the 10 October letter indicated would be assigned to the new role, other than social media/marketing and she considered that with some training she would be a good candidate for the role as a whole. Ms Danks says it was not clear that the role was considered to be predominantly a social media role until she asked to be considered for it. At that point she was asked to provide her qualifications making her suited to that role and to state what training she would need. Ms Danks never provided that information.

[12] The parties entered into discussions. Ms Murphy, representing PAK, submitted that as there was no dispute between the parties at that stage, there could not be any negotiations and the requests for information and to negotiate were an attempt to delay the company restructure.

[13] On 22 October, Ms Danks' lawyers wrote to PAK requesting further information about what "margins will remain tight" and "PCM is not good" meant particularly taking into account the fact that PCM had purchased an expensive item the previous year. Ms Danks noted the new position was not entirely new because she already carried out nine of the ten tasks listed in the new role. Ms Danks provided some feedback about outsourcing payroll sought clarification about the data supporting the proposal to increase the work load for Quantity Surveyors and Project Management and the need to create a Project Manager Cadet role.

[14] At the investigation meeting Mr Humphries explained the relationship between Precast Concrete Manawatu (PCM). PCM is an associated company with the same directors as PAK. PCM provides a critical supply of precast concrete panels for commercial projects for PAK and other clients. PCM is administered by staff of PAK, with PAK charging PCM for this time and expense.

[15] PAK responded on 25 October asserting that because Ms Danks could see the bank accounts it did not need to provide her with any of the financial information supporting the rationale for the restructure. It was also suggested that she had breached the confidentiality

clause in her employment agreement by discussing a financial transaction she was aware of with her solicitor.

[16] Instead of providing any data or information supporting the proposal, reasons for not providing it were given, and Mr Humphries eventually suggested they meet on 31 October and said she would have an opportunity to ask questions then. The handwritten notes taken by Ms Danks' lawyer record the reasons discussed at the meeting as being:

- Maternity leave
- Property management of FMG coming to an end
- Efficiency
- PCM dire and losing \$9,000.00 per month (crane - involved a huge loan from PAK Holdings).

[17] The next day PAK wrote to Ms Danks advising it would defer making a decision until the directors had had a further opportunity to discuss the feedback. On 8 November 2019, PAK wrote again terminating Ms Danks' employment.

[18] On Tuesday 12 November, while Ms Danks was working out her notice, Mr Humphries says Ms Danks requested a meeting with him. Ms Danks says on 13 November he approached her, and they went into his office and Ms Danks was told to leave now and that her remaining notice would be paid out in lieu.

[19] Mr Humphries evidence about this conversation was that he had decided that it would be best for all that Ms Danks finish up that day with her remaining notice of seven days being paid out. He noted that Ms Danks accessed the electronic payroll system and set up her own pay and that she sent out an email to all of staff entitled "Thursday race meeting farewell all" which stated somewhat controversially that "another one bites the dust" and provided her personal contact numbers. Ms Danks says that the staff Christmas function was to happen the next day and she had intended to say her farewells then. Because it was clear that she was not going to be attending she sent that email and considering she did the payroll she considered it prudent to set up her own final pay.

[20] On Wednesday 11 December, Ms Danks raised a PG and requested her wage and time records.

**Redundancy - test of justification**

[21] In considering an employer's decision on redundancy, the Authority does not substitute its own judgment for the employer's assessment of whether a position was surplus to its needs. Rather, when called on to consider if a dismissal for redundancy was justified, the Authority must determine, on an objective basis, whether the employer's actions, and how the employer acted, met the statutory standard of what a fair and reasonable employer could have done in all the circumstances at the time.<sup>1</sup>

[22] When questions are raised about the commercial rationale for an employer's decision, or alternative motives are alleged for the selection of a position and an employee for redundancy, the Authority's evaluation may consider whether the employer's decisions were made for genuine business reasons and not as a pretext for dismissing a disliked employee.<sup>2</sup>

[23] The Authority must also consider whether the employer's process for making and carrying out that decision was fairly conducted. Fairness in this context includes meeting the statutory good faith obligations placed on an employer proposing to make a decision likely to have an adverse effect on the continuation of a person's employment. Employees likely to be affected should have access to information relevant to the continuation of their employment and an opportunity to comment on it before a decision is made. How much must be done to meet those obligations of fairness and good faith will vary to some degree with regard to the resources available to the particular employee.<sup>3</sup>

**Genuine business reasons**

[24] Ms Danks claims that the restructuring was not for genuine business reasons for two main reasons. Firstly, there was conflicting information about the rationale for the restructure and a new proposed role was very similar to Ms Danks existing role and she was not considered for that role.

*Financial reasons - submissions*

[25] PAK maintains that the restructuring was for genuine business reasons and any financial reasons were only part of the overall business reasons being relied on. Mr Humphries

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<sup>1</sup> Employment Relations Act 2000, s 103A.

<sup>2</sup> *Grace Team Accounting Limited and Brake* [2014] NZCA 541 at [85].

<sup>3</sup> Employment Relations Act 2000, s 4(1A) and s 103A(3) – (5).

gave evidence that in late 2017, PAK commenced moving to a paperless administration process using construction software (CAT), they moved the accounting system to Xero Accounting and the payroll to I/Payroll to integrate into the CAT system. By 2019 this system had removed the double handling that occurred with the manual system and most of the quantity surveyors and project managers were able to do a significant amount of their own administration, for example invoicing, online rather than being printed, approved and entered manually on spreadsheets. Four people were issued with tablets allowing for ordering and timekeeping to be done electronically, meaning four people no longer attended the office to drop off timesheets for manual entry and paper order books became obsolete. Project management and invoicing effectively became paperless.

[26] Mr Humphries gave evidence of the interconnected nature of PCM and PAK. He said that the directors of the companies met on a regular basis to discuss the performance of each of the ten associated companies and future planning. Financial performance was discussed on a quarterly basis with the accountant

[27] Mr Humphries said the timing of the restructure was due to several factors as set out in the letter to all staff dated 10 October but included the fact that a Quantity Surveyor was about to go on maternity leave; a large commercial property management contract had ended due to the building being sold; electronic processes were fully integrated into the business; tasks of the current staff had changed and needed reviewing for business efficiency; and a need to reallocate financial resources to productive areas of business.

[28] Mr Humphries said that ultimately due to many factors the directors wished to reorganise the office for efficiency which would also result in increased financial resources. Amongst other things, a need was identified to employ a new project manager, and a person to undertake a role of social media marketing. This would involve creating and maintaining a new website which would be the digital platform for advertising house/land packages and recruitment. In evidence Mr Humphries told the Authority that PAK was “propping up” PCM.

#### *Financial reasons - conclusion*

[29] The letter advising of the proposed redundancy said “...however, the outlook for PCM is not so good and this may have an impact on PAK holdings.” The letter terminating Ms Dank’s employment recorded the financial reason in these terms:

“PCM’s precarious financial position which may affect PAK holdings supply chain of precast panels to be able to tender and design-build efficiently...”

[30] Then, submissions on behalf of PAK provided that it was trading profitably, and it was never held out that the company was struggling financially.

[31] Those submissions ignore the link between PCM and PAK, the overall structure of Mr Humphries businesses and side steps the rationale given during the process to Ms Danks. I consider that it was fair and reasonable for PAK to provide information to Ms Danks about the financial viability of PAK and PCM.

[32] Mr Humphries evidence about the newly incorporated automated systems and the business strategy for the future was compelling but this level of detail and explanation was not available to Ms Danks at the time, which means that I consider the failure to provide financial information be a process flaw rather than whether there was a genuine business reason for considering restructure.

#### **No ulterior motive established**

[33] Ms Danks was clearly of the view that there was an ulterior motive to the redundancy. She provided evidence of the way in which she came to be hired and Ms Murphy’s involvement in that and when there were issues with Ms Danks’ performance. Mistakes were raised with Ms Danks and she says it was Ms Murphy who was at the meetings with the Director to discuss those errors with her.

[34] Ms Danks requested a significant amount of additional disclosure from PAK which was also provided to the Authority. It consists predominantly of emails and correspondence between the parties relating to the various issues that came up in relation to reviews of Ms Danks’ work. Ms Danks maintains that she was correct in relation to some of the matters Ms Murphy raised with her, for example, the tool allowance. In her view some of the directions that Ms Murphy had given her were incorrect. She gave evidence about a meeting that was held on 2 October regarding errors in the payroll where she says Ms Murphy became very firm in her approach towards Ms Danks to the extent there was table slapping and shouting from Ms Murphy at that meeting.

[35] Mr Humphries was at the meeting. He denied that he saw any of that specific conduct, but he did accept the meeting became heated and that there was a clear difference of opinion

between Ms Danks and Ms Murphy. Ms Murphy was unable to give evidence about that meeting because as referred to above she was acting as PAK's representative.

[36] Ms Danks, relying on the history between her and Ms Murphy, and their deteriorating relationship, together with the fact that the financial information was not forthcoming, was certain that the restructure was for an ulterior motive and not genuinely for financial reasons. The other piece of information that she relies on is the fact that the newly created position was not substantially different from the role of Office Manager that she already held.

[37] I do not consider an ulterior motive to have been established in that efficiency reasons are genuine business reasons for proposing restructure, but as I have found above, there were issues regarding the process that followed and the failure to provide financial information or data supporting the rationale for disestablishing Ms Danks' role.

### **Fair process**

[38] The duty of good faith in s 4(1A)(c) of the Act provides the following obligation on employers when they are proposing redundancy:

(1A) The duty of good faith in subsection (1) –

...

(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and

(c) without limiting paragraph (b), requires an employer who is proposing to make a decision that will or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected-

- (i) access to information, relevant to the continuation of the employees' employment, about the decision, and
- (ii) an opportunity to comment on the information to their employer before a decision is made.

[39] On Thursday 10 October 2019 four staff members were advised in writing of a proposed restructuring. The reasons given for the proposal were set out in the letter and written

feedback regarding the proposal was requested to be provided by Friday 18 October. Meetings with affected staff were planned to occur prior to 25 October and any final decision was intended to be made prior to 1 November 2019.

[40] One of the reasons given for the proposal was the financial situation of PAK and PCM. Because of that, through her representative, Ms Danks requested on more than one occasion financial information about the current outlook for PCM, how this could impact on PAK and the expected additional compliance costs and the other contractors tendering for projects.

[41] The first written request referenced the expensive item that Ms Danks knew PCM had purchased. In response, Mr Humphries said he was “disconcerted” that Ms Danks would discuss confidential information about the expensive item in breach of the employment agreement, with her lawyer. His letter went on to say:

“In any event, as you were advised, we are not relying solely on the current financial position of either PCM or PAK for the restructuring proposal. As prudent business owners with the responsibility to all our employees we regularly assess our situation and plan to ensure we operate the businesses in a manner that is consistent with our duty as Director and Employers.”

[42] On Wednesday 16 October, the directors met to discuss a without prejudice offer from Ms Danks’ lawyer which they rejected saying there were no grounds for without prejudice discussions as there was no dispute between the parties at that stage. They said Ms Danks had an opportunity to consult regarding the proposal without any predetermination. An extension in time was requested and given for Ms Danks to provide further information and feedback.

[43] On Tuesday 22 October, Ms Danks requested further information regarding the business reasons for restructure. Ms Danks also questioned why redeployment into the new role had not been considered. Mr Humphries then asked her to provide information indicating what relevant skills she had, presumably so that redeployment into the new role could be considered. The social media/marketing aspect of the role was the only part she said she did not already do, and she was willing to undergo training so she could undertake the role.

[44] On 25 October, Mr Humphries proposed a meeting with Ms Danks indicating she could ask questions then. There was more communication between them. Mr Humphries wanted further clarification of what further information was required from PAK and reiterated that he was willing to meet her to discuss any queries that she had.

[45] On Tuesday 29 October, Ms Danks further specified her request for information:

- (i) The current outlook for PCM and how this could impact PAK
- (ii) The expected additional compliance costs; and
- (iii) The other contractors tendering for projects.

[46] On Wednesday 30 October Mr Humphries wrote to Ms Danks again and advised that she had not responded to the questions posed to her from him. He stated that the meeting was for 3.00 pm the next day and any questions she or her representative had could be answered at the meeting.

[47] On Thursday 31 October, the meeting occurred with Ms Danks, her representative, Mr Humphries and Mr Decker another director who took notes. Ms Danks' lawyer provided Ms Danks' feedback in writing.

[48] A without prejudice discussion took place and the meeting concluded with no agreement. Mr Humphries decided to take some more time to consider her feedback. Ms Danks took some leave and then on Friday 8 November, Ms Danks was advised that her role was superfluous and was therefore being disestablished for the following reasons:

- PCM's precarious financial position which may affect PAK Holdings supply chain of precast panels to be able to tender and design-build efficiently, and
- The FMG Property Management contract ceasing, freeing up the Business Manager's time to be able to manage the financial side of the businesses (keeping this responsibility within one role), and
- An intermediate QS role being temporarily vacant for 12 months due to maternity leave, and
- A need to update our marketing platform making more use of social media sites an promoting the business (and properties for sale) through a regularly updated website, and
- Having the payrolls being completed by an external provider, and

- The high likelihood of increased compliance and associated costs for proposed changes to the Building Act early next year and requirements for Health and Safety.

[49] Ms Danks was given two weeks' notice with the last day of work to be Friday 22 November. In addition, individual letters were sent to all affected and non-affected office staff and all other staff advising of the restructuring amongst other things.

*The new role*

[50] A task list for the new role was provided as follows:

- (a) Social media/marketing
- (b) Contacts database/file management
- (c) Vehicle compliance
- (d) Training and compliance diary and book
- (e) Barbeque bookings and maintenance
- (f) Office stocks (including uniforms, PPE and stationery)
- (g) Answering phones and greeting visitors (including PAK Design)
- (h) All other general office duties

[51] Mr Humphries gave evidence about an identified need to increase digital marketing and have an online presence. The PAK website had not been updated since 2017 and PAK wished to move to a new website platform that could be updated very regularly with photos, land, and house packages for sale and more relevant up to date information. Incorporated into this digital marketing was the perceived need for a greater social media presence on Facebook and Instagram as an example.

*Outsourcing payroll*

[52] Another reason for the restructure given by Mr Humphries was the need to outsource payroll to save time and to increase employee confidentiality about rates of pay and hours of work. Ms Danks' evidence was it took four hours to do the payroll meaning it was a very small

part of her work. This evidence was not refuted because Mr Humphries did not know exactly how long it used to take and Ms Murphy, who said she had some knowledge of payroll, was unable to give evidence at the investigation meeting because she was representing PAK and had not provided a written brief.

[53] Mr Humphries accepted that even when payroll was outsourced there was still a degree of inputting required in the office so it now took a couple of hours to collate the pay information in house before it was sent externally for processing. This means that the rational provided by Mr Humphries for outsourcing this aspect of Ms Danks' role was not borne out in the change, in that there was still no confidentiality in general, and the time saved was negligible.

*The decision makers' knowledge*

[54] Under cross examination Mr Humphries admitted that he was unfamiliar with the tasks that Ms Danks performed on a daily basis in the Office Manager role. He also agreed that he was the decision maker in relation to the final decision to restructure and that he decided that role was superfluous to the needs of the business. Ms Humphries accepted that the various letters to Ms Danks were reviewed by Ms Murphy but said Ms Murphy was not involved in any of the decision making.

*Was the process PAK followed a fair process?*

[55] Despite a shift in position away from financial reasons after Ms Danks requested supporting financial data and information, I am satisfied that the financial outlook for PAK based on its connection with PCM, formed a major part of the rational for restructure provided to Ms Danks. This means financial information and data was relevant to the overall decision making about the proposed restructure and this information should have been provided to Ms Danks.

[56] While the process adopted by PAK included time for consultation and information about the proposal was provided in the initial letters to affected employees, further information was not forthcoming. After the meeting on 31 October PAK took time to consider Ms Danks' submissions but there is no evidence of any meaningful consideration of her feedback. The request to be considered for redeployment into the new role was not addressed and is not referred to in the final termination letter. The final reasons given in the letter terminating Ms

Danks employment simply restate the original rationale for the restructure with no reference to any of the feedback provided.

[57] I am satisfied that PAK's process in making and carrying out the decision about Ms Danks role was not fairly conducted. The statutory good faith obligations set out above that applied to PAK at the time it proposed redundancy required it to provide access to information relevant to the continuation of Ms Danks' employment and an opportunity to comment on it before a decision is made.

[58] While efficiency reasons formed part of the underlying rationale, the financial viability of PCM, and therefore PAK, was part of this, and Mr Humphries should have been open to discussion and provision of the information requested. The correspondence between the parties and the evidence at the investigation meeting was that Mr Humphries was not open to any discussion about provision of financial information to Ms Danks.

[59] In addition, when a decision maker accepts they were unfamiliar with a role they are disestablishing, because it was superfluous to the company's business needs, it is unlikely on an objective basis that they have acted as a fair and reasonable employer in accordance with the test set out in s 103A of the Act.

### *Conclusion*

[60] For those reasons, despite it likely being there were genuine business reasons based on efficiencies, these were not the reasons provided to Ms Danks. The main reason was a financial reason and was about the fact that PCM was in difficulty and that this would have a direct impact on PAK, the need for the other efficiencies flowed from there. Information about that should have been provided to Ms Danks when it was requested.

[61] There were several failings that meant the process was unfair for Ms Danks. Ms Danks received no answer to her request to be considered for the new role, and the final termination letter contains no reference to any of the matters raised by Ms Danks. The failure to consider Ms Danks responses, the rationale for the outsourcing of payroll and the decision maker having no knowledge of what Ms Danks' role entailed are all reasons why I have concluded there were defects in the process that were unfair.

[62] I am satisfied by the evidence in this case that PAK Holdings has not acted as a fair and reasonable employer towards Ms Danks and that the termination of her employment for redundancy is therefore an unjustified dismissal.

### **Was Ms Danks disadvantaged?**

[63] I have already found the dismissal unjustified. Ms Danks has also claimed for an unjustified disadvantage on the basis of the same actions by her employer that led to her termination on the grounds of redundancy.

[64] I find those aspects of the claim already form an integral part of my finding that there was a constructive dismissal and as such I do not intend to consider those as separate matters.

### **Remedies**

[65] Having established her employment ended by way of an unjustified dismissal, Ms Danks is entitled to an assessment of remedies for her personal grievance.

#### *Lost wages*

[66] The Authority must, where an employee has a personal grievance and has lost remuneration as a result, order the employer to pay the lesser of a sum equal to lost remuneration or to 3 months ordinary time remuneration.<sup>4</sup> In this case I am asked by Ms Danks to exercise the Authority's discretion in s 128(3) of the Act and make an order for lost wages for 36 weeks. Having reviewed the evidence on lost wages, there was insufficient information regarding the total period of time before Ms Danks recommenced employment for me to be satisfied that it would be appropriate to exercise that discretion.

[67] Ms Danks' weekly net pay was \$941.86. I therefore consider that reimbursement in the amount of \$12,244.18 would be appropriate.

#### *Compensation for humiliation, loss of dignity and injury to feelings*

[68] Ms Danks' evidence established that she suffered injury to her feelings and was humiliated by being given no choice about whether she worked out her notice, which meant

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<sup>4</sup> Employment Relations Act 2000, s 123(1)(b) and s 128(2).

she could not say goodbye to her colleagues at the Christmas function. Not being provided with information that a fair and reasonable employer would have provided and being the only person made redundant added to her humiliation and distress.

[69] Considering the distress experienced by Ms Danks, the evidence of ongoing effects on her, and the general range of awards in similar cases, an appropriate award of compensation under s 123(1)(c)(i) of the Act is \$10,000.00. This is the amount PAK must pay Alison Danks within 28 days of this determination as compensation for humiliation, loss of dignity and injury to her feelings.

#### *Contributory conduct*

[70] Under s 124 of the Act the Authority must consider whether any remedies awarded should be reduced due to the extent to which the actions of the employee contributed to the situation giving rise to the personal grievance.

[71] In this case, I do not find any aspects of Ms Danks' conduct contributed to the situation. The termination was by way of redundancy which is a no-fault termination.

#### **Orders**

[72] PAK Holdings Limited is ordered to make the following payments to Alison Danks:

- (a) Lost wages amounting to \$12,244.18 under s 123(1)(b) of the Act; and
- (b) The sum of \$10,000.00 under s 123(1)(c)(i) of the Act as compensation for the hurt and humiliation suffered by Ms Danks because of her unjustified dismissal.

#### **Costs**

[73] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Ms Danks may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum PAK

Holdings Limited 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.

[74] If the Authority were asked to determine costs, the parties could expect the Authority to apply its usual daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>5</sup>

Sarah Kennedy  
Member of the Employment Relations Authority

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<sup>5</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)