

A prohibition on publication order has been put in place relating to information in this determination see: paragraph 1

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 49
5341351

BETWEEN	HAMISH DAVIDSON Applicant
AND	MIKE RITTON-THOMAS t/a TOTARA HILLS Respondent

Member of Authority:	P R Stapp
Representatives:	Piers D Hunt, Counsel for the Applicant Gary Tayler, Advocate for the Respondent
Investigation Meeting:	21 September 2011 and 7 December 2011 at Napier
Submissions Received:	28 September 2011 and 4 and 7 October 2011 and 7 December 2011 from the Applicant 21, 27 and 29 September 2011 and 7 December 2011 from the Respondent
Determination:	26 April 2012

DETERMINATION OF THE AUTHORITY

Prohibition on publication of certain information

[1] An interim order suppressing from publication the respondent's financial details was put in place up and until the investigation meeting. At the investigation meeting the order was made permanent. For completeness the evidence of financial information provided by the respondent is now permanently prohibited from publication. This is commercial sensitive information and the confidentiality of the information outweighs its release in the interests of justice. This order was consented to.

Employment relationship problem

[2] Mr Hamish Davidson was employed by Mr Michael Rittson-Thomas at *Totara Hills* farm in the Hawkes Bay, as a farm manager.

[3] During the employment, Mr Davidson had discussions about his performance, and an improvement plan was agreed. Mr Davidson had also received warnings during his employment. Mr Davidson claimed that he was bullied while he was at work and came to the view that Mr Rittson-Thomas wanted to get rid of him. Mr Rittson-Thomas denied the claim. In July 2010 and September 2010, Mr Rittson-Thomas says that he met with his lawyer and bank about a redundancy procedure and farm expenditure reductions, respectively. As a result Mr Rittson-Thomas met to consult with his employees to get suggestions, and then made a decision to make Mr Davidson's position on the farm redundant. He says that he gave Mr Davidson an opportunity to apply for a junior shepherd's position.

[4] Mr Davison has claimed that the redundancy was a sham (because of the performance issues and because Mr Rittson-Thomas wanted him to leave), and thus, the redundancy was not genuine.

[5] Mr Davidson claimed remedies including lost wages, compensation for humiliation and hurt, Kiwi Saver contribution, internet disconnection fee, and payment of any remaining outstanding holiday pay. Mr Rittson-Thomas denied the claims.

[6] Mr Rittson-Thomas calculated the holiday pay, but deducted an amount owing for repairs and telephone, and relied on the employment agreement to do this. Mr Rittson-Thomas has further claimed a sum of money from Mr Davidson for damage to the cottage and is seeking the recovery of an overpayment of holiday pay. Both parties are seeking costs.

The issues in the matter

[7] There are a number of factual issues that have emerged between Mr Davidson and Mr Rittson-Thomas. These include:

- a) Was there any Kiwi Saver arrangement between Mr Rittson-Thomas and Mr Davidson?

- b) Did Mr Davidson work 90 straight days when he commenced work?
- c) Did Mr Davidson work Saturdays and Sundays?
- d) Was Mr Davidson bullied during his employment?

[8] The next issues are more general relating to the law and they are:

[9] Was the redundancy genuine, or was Mr Davidson's dismissal for some other reason and/or ulterior motive?

[10] Are issues relating to the fairness of the dismissal a part of the claim? What part does the claim of bullying play in the matter?

[11] Section 103 A of the Employment Relations Act 2000 applies (prior to 1 April 2011 for the "would" test to apply).

[12] Is Mr Davidson owed any holiday pay?

[13] A counter-claim from Mr Rittson-Thomas gives rise to the following issues:

- a) Has Mr Rittson-Thomas incurred any damages caused by Mr Davidson, and if so is Mr Davidson required to pay Mr Rittson-Thomas for such damages?
- b) Does Mr Davidson owe Mr Rittson-Thomas any money for an internet connection?
- c) Is there an overpayment of holiday pay to be refunded by Mr Davidson to Mr Rittson-Thomas?

[14] Which party is entitled to costs and how much?

[15] Following the first investigation meeting written submissions and additional information were received from both parties. Mr Hunt objected to the way Mr Tayler replied in writing where he copied Mr Hunt's submission and inserted his response underneath each submission. This did not bother me because I was able to reconcile accurately Mr Hunt's submission by reading his original submission and aligning it with Mr Tayler's reply. There was nothing incorrect and/or inappropriate about what Mr Tayler did. Nevertheless I had the written submissions, which I have read, and a

resumed investigation meeting enabled all the remaining matters to be disposed of. Both parties therefore had an opportunity to raise and discuss anything bothering them and to make oral submissions in closing out their cases.

The facts

[16] Mr Davidson started work for Mr Rittson-Thomas on 11 August 2009. There was another senior stock manager (Mr Barrie Crosse) and a farm worker employed on the farm. Mr Davidson was paid weekly on a \$36,000 per annum salary. There was an employment agreement signed off by both parties that included a deductions authority and a Kiwi Saver clause. Mr Davidson reported to Mr Rittson-Thomas under the employment agreement (clause 6). This does not support Mr Rittson Thomas's evidence that Mr Davidson reported to Mr Crosse. Indeed Mr Crosse and Mr Davidson did not support Mr Rittson Thomas on the reporting arrangement. The employment agreement did not include any provision in regard the internet connection. Mr Davidson says he asked at the commencement of his employment for Kiwi Saver.

[17] There was no deduction made for Kiwi Saver made from Mr Davidson's pay at any time during his employment, and Mr Rittson-Thomas says that Mr Davidson specifically said that he did not want to join the Kiwi Saver scheme when he started work. Despite the claim Mr Davidson did not reply to Mr Rittson Thomas's evidence (written statement in reply dated 18 August 2011). However, Mr Davidson says that he was unaware the deductions had not been made until his employment ended because he did not receive any pay slips.

[18] Mr Davidson and his partner, Ms Amy Skogstad Archer, used a cottage provided on the farm by Mr Rittson-Thomas. There was a tenancy agreement, which was signed off by Ms Skogstad Archer. Mr Davidson has pointed out that the arrangement and the use of the cottage was provided for under the employment agreement. As Mr Davidson had arrangements relating to accommodation those are matters within the Authority's jurisdiction, however the tenancy arrangement between Mr Rittson-Thomas and Ms Skogstad Archer is a separate matter since she was not an employee.

[19] Mr Davidson also alleged that he had to work 90 straight days when he started work and that he worked on Saturdays and Sundays. Mr Rittson-Thomas denied the

claim. Later in his employment Mr Davidson was put on weekly timesheets because of accusations from Mr Crosse and Mr Rittson-Thomas that Mr Davidson was absent from work without permission. Mr Davidson denied that claim, but says he took his partner to anti natal classes on Fridays. He denied saying to Mr Crosse that he was having “boozy” lunches when he took Ms Skogstad Archer to the anti natal classes. She says she would not allow him to drink when they had lunch before returning to the farm. There have been some timesheets produced that were introduced after the period Mr Davidson says he had to work the 90 straight days. I requested the timesheets to be produced, but find that they do not help me. There are no other diaries and papers to confirm what Mr Davidson said. It therefore has not been established by Mr Davidson that he did actually work the full hours claimed and/or on Saturdays and Sundays to associate this with the conditions he says he had to put up with on the farm. Also, I am influenced by the fact Mr Davidson never complained earlier if there was a problem at that time.

[20] Mr Davidson claimed that Mr Rittson-Thomas started to abuse him with swearing, and calling him “boy”, “stupid”, “thick” and “lazy”. Ms Skogstad Archer told me of the impact she observed on Mr Davidson during his employment, but did not hear the comments. Mr Davidson claimed that Mr Rittson-Thomas said to him that “[y]ou are not going to last long here boy”, which Mr Davidson took to mean that Mr Rittson-Thomas was hoping he would leave. Mr Rittson-Thomas denied this entirely. However Mr Rittson Thomas did concede under questioning that once he may have called Mr Davidson “boy” and that Mr Davidson did take offence with the comment. It is more than likely that the men had a robust relationship but the extent of any derogatory comments remains inconclusive, I hold, because of the claims and denials and lack of any else being able to corroborate what did happen.

[21] On 3 September 2010, Mr Rittson-Thomas met the workers (including Mr Davidson) on the farm for a discussion. This was apparently about the need to reduce expenditure. Mr Crosse was included. Mr Rittson Thomas says that he relied on several years of drought and poor prices to explain the situation with regard to the farm’s expenditure and outlook. He was looking for ideas from the employees to reduce costs. They made suggestions on 7 September 2010.

[22] On 1 November 2010, Mr Rittson-Thomas met with the staff again for more suggestions with regard to any ideas on cost savings and he talked to them from a

prepared document, which he used at the time. He indicated that one of the farm manger's positions would be redundant and would make a decision after Mr Crosse and Mr Davidson had time to think about it. At the Authority's investigation meeting held on 7 December 2011 Mr Davidson claimed that at the end of the meeting he and the other employees, including Mrs Crosse, had a discussion that it would be him (Mr Davidson) who would be made redundant. Mr Crosse denied that this conversation took place.

[23] Mr Rittson-Thomas had a follow-up meeting on 8 November 2010 for any more input. On 9 November 2010, Mr Davidson was informed by Mr Rittson-Thomas that he was redundant. The decision was confirmed in writing dated 9 November 2010 with the reason for redundancy being that the job loss was as a result of "*market and seasonal factors*". Mr Davidson was given notice, but not required to work the notice out. He was given time to vacate the cottage. Mr Davidson and his partner vacated the cottage on 7 December 2010. Since then an argument has arisen over repairs and maintenance on the cottage and who was responsible for a letterbox being knocked into a ditch (Mr Davidson or the bulls). Caroline Walton-Green, Mr Rittson-Thomas' partner, gave evidence of her assessment of the damage to the cottage and lack of upkeep she alleged was caused by Mr Davidson and Ms Skogstad Archer. She has provided quotes to repair the damage, but no costs have actually been incurred. The quotes have been provided after Mr Davidson and Ms Skogstad Archer left the cottage and they had no involvement in any inspection of the property. New tenants went into the cottage upon being employed. Mr Davidson denied causing any damage other than fair wear and tear to the cottage and denied that there was any intentional damage to the letterbox. He explained that the letterbox, if it was in the ditch, was because of possibly of it being knocked over by the bulls on the property. Mr Davidson claimed he had to pay for the internet to be disconnected.

[24] On 21 December 2010, Mr Davidson's lawyer (at the time) raised a personal grievance:

- (a) Challenging the genuineness of the redundancy because of the way Mr Rittson-Thomas had carried out the process that Mr Davidson believed was an excuse to get rid of him, because he had been bullied and harassed and Mr Rittson-Thomas did not want him working on the farm.

- (b) Disputing the holiday pay being withheld by Mr Rittson-Thomas;
- (c) Requesting \$5,000 compensation.

[25] Also, Mr Davidson made a claim that Kiwi Saver had not been deducted. In a counter-claim Mr Rittson-Thomas is seeking to recover an over-payment of holiday pay discovered during these proceedings. The parties went to mediation. The Authority is required to determine the matters.

[26] Mr Davidson engaged Mr Hunt, and he formally revoked any authority for deductions to be made to any wage payments and lodged two amendments to the statement of problem clarifying the remedies and the correct respondent. This was well after the employment had ended. The revocation has little relevance I hold, but the other two amendments have been helpful.

Determination

[27] Mr Rittson-Thomas's justification for the redundancy has to be assessed in regard to the following matters:

- a) First the law requires an assessment of what a fair and reasonable employer would do that includes a scrutiny of the employer's actions. It is artificial to separate process from substance when considering redundancy because of the requirements for consultation and input. I hold that at the commencement of the matter Mr Davidson was not much focussed on the procedure followed but was more concerned about the genuineness of the redundancy because he thought that there was an ulterior motive. In this case there was consultation and the opportunity to provide input given to Mr Davidson. There were meetings and notes that support the discussions taking place including Mr Rittson Thomas meeting the employees. There is no evidence that these arrangements were deliberately part of any plan to single out Mr Davidson and get rid of him from the farm.
- b) Second, however, the letter of dismissal was that the job loss was as a result of "market and seasonal factors", without any comment and/or details on the influences directly associated with that. After the event Mr Rittson Thomas has tried to use publications that support

changing stock numbers and drought conditions. He did not rely on the publications at the time of his consultation and there was no detail provided that related to his farm. A fair and reasonable employer would have provided the information for consideration at the time and used it in his consultation. Indeed Mr Rittson-Thomas's discussions with the bank, lawyer and accountant presumably would have involved some detail, but nothing has been produced to support that I hold.

- c) Mr Davidson denied Mr Rittson-Thomas's evidence about the drought and said that the seasonal factors were not that bad. He tried to make his own assessment of costs, but it was only an assessment, I hold. There was no corroborative evidence produced by Mr Davidson.
- d) Third, there is a defect in the process. There is no explanation from Mr Rittson-Thomas explaining the decision on selecting Mr Davidson's position to go. Mr Rittson-Thomas included Mr Crosse in the consultation meetings and I hold it is entirely open to reasonably conclude that he was as much affected by the process as was Mr Davidson, but clearly Mr Rittson-Thomas had decided that Mr Crosse was more preferred without any direct involvement from them. The failure to have a selection process in place meant that Mr Davidson lost an opportunity to put himself forward for selection before the decision, although he was offered an alternative in a lesser paid position after the decision had been made. Indeed when the meeting with Mr Davidson occurred on 9 November the purpose of that meeting was to give Mr Davidson the decision that had been made. Prior to that the meetings only involved consultation on ideas and suggestions on what to do.

[28] The threshold to support a genuine redundancy for genuine commercial reasons is not too high, and the evidence against it here is as follows:

- a) That Mr Rittson-Thomas produced no independent evidence from his bank and accountant of their advice, the financial and commercial imperatives and the detail of the market and seasonal factors for his farm operation that he was relying on.

- b) That Mr Rittson-Thomas relied on reducing expenditure without supporting detail used at the time.
- c) The financial details have not been open to full scrutiny and examination with any independent input.

[29] However, it was more likely than not that Mr Rittson-Thomas did not have any ulterior motives and the redundancy decision was genuine to make savings because:

- a) Mr Crosse attended the meetings and his position could have been affected.
- b) Mr Rittson-Thomas did keep notes to record what happened at the time and including the issues.
- c) The alternative of a farm worker position being available but on less pay.
- d) Mr Davidson reported to Mr Rittson-Thomas and not Mr Crosse under the employment agreement.
- e) The notes convey discussions on expenditure, cost cutting and the staff provided input to the problem without actually challenging the validity of what Mr Rittson-Thomas had raised.
- f) Mr Rittson-Thomas has provided the names of the people he says he consulted on expenditure, the law and making savings, although he did not call them to give their evidence (names in the timeline of events). I accept that Mr Rittson-Thomas probably did go to the bank and his accountant for advice because he says he did that and his evidence on this was not challenged. He was relying on his own notes and information based on advice from the bank and accountant to reduce staff numbers by one.
- g) Mr Crosse contradicted Mr Davidson on the climatic conditions and seasonal matters relating to stock. He referred to the drought, and things being tough.

- h) Mr Rittson-Thomas was able to confirm from his diary matters that he had referred to in his notes, although some dates were without entries.
- i) There is documented evidence of a performance management plan that is entirely open to an employer to implement. I am satisfied the employment management plan was a separate matter.
- j) There were two warnings about Mr Davidson's alleged absence before Mr Davidson was required to complete timesheets. The warnings were not challenged by Mr Davidson at the time and he followed the instruction to provide timesheets in regard to his work and time.
- k) The evidence in regard to the claims and denials from Mr Davidson and Mr Rittson-Thomas respectively, about the behaviour on the farm, has been too inconclusive to draw any inferences, I hold.

[30] I can not find that Mr Rittson-Thomas had an ulterior motive to get rid of Mr Davidson. I accept that Mr Davidson may have felt very vulnerable given that performance management plan, the warnings, and Mr Crosse's role on the farm. Moreover Mr Rittson-Thomas has not helped in the matter by putting the employees on notice of a decision without having any selection criteria and a process for selection on which position he would keep in place. It begs the question that in the absence of this would anything different have happened? I will return to this later.

[31] Whilst there were problems identified in personal relationships Mr Davidson never made any complaint about any bullying, until this application was made in the Authority, and his allegations have not been particularised in any sufficient detail to support his claims, I hold.

[32] Mr Hunt made an attempt to draw in Mr Rittson-Thomas' other business and financial arrangements because Mr Davidson says Mr Rittson-Thomas is a rich man. I am not satisfied that a proper link between Mr Rittson-Thomas and his other business activities and the running of the Totara Hills has been established. In any case the law does not require any consultation on such a broad front and in this case because *Totara Hills* farm was run separately and personally by Mr Rittson-Thomas I can not draw any conclusions that Mr Rittson-Thomas's other activities are relevant and were necessary to consult over. He is entitled to run that farm as a separate business entity. Indeed Mr Davidson never raised this as an issue at the time. Finally

the employment relationship problem is between Mr Davidson and Mr Rittson-Thomas in the *Totara Hills* farm business, and no other entity.

[33] Mr Davidson also has claimed that Mr Crosse told him at the cottage that Mr Rittson-Thomas was looking for an excuse to sack him. Also he claimed that after the meeting on 1 November he was told that he was the one affected. However, on the former point Mr Crosse was able to explain that any comment he made needed to be considered in context and I accept that, given the evidence relating to the two warnings, the performance plan and the relationship matters that started to emerge. On the latter allegation this was raised too late and the documentation does not support it to be plausible I hold. Thus, I am satisfied that there was no predetermination to get rid of Mr Davidson under the guise of redundancy. Certainly there was nothing established in cross examination that there was any plan between Mr Rittson-Thomas and Mr Crosse to get rid of Mr Davidson and to support any comment being made to support Mr Davidson's allegation.

[34] The evidence of Mr Davidson being called "boy", "stupid", "thick" and "lazy" has been made for the first time by Mr Davidson in his first written brief, thus I am not prepared to accept them as factors affecting the employment given the emphatic denial from Mr Rittson-Thomas that he directed any such comments personally at Mr Davidson and the explanation that there was some swearing used on the farm. I am not satisfied that Ms Skogstad Archer's evidence of what she says she observed about Mr Davidson's distressed demeanour during his employment would have been associated with bullying. Instead it could have related to him trying to cope with the performance demands from Mr Rittson-Thomas and the personal matters in the relationships on the farm, which included Mr Crosse. Finally the statement of problem when it referred to bullying and harassment provided absolutely no details and specifics for me to agree with Mr Davidson that the behaviour he says he experienced amounted to bullying and harassment.

[35] I hold that Mr Rittson-Thomas did not follow a proper transparent and fair selection in regard to the position which would go once the consultation had occurred. His decision was unilateral and in a process that Mr Davidson had no real opportunity to influence Mr Rittson-Thomas on an individual basis once the consultation had been completed. Mr Rittson-Thomas's failure to produce information at the time to support his contention means that he has left open the situation whereby Mr Davidson has

challenged his decision and has come away from the process genuinely believing there has been some ulterior motive, albeit I hold there was not. Mr Rittson-Thomas in his letter dated 9 November provided no analysis of the basis for his decision for the reduction of one position and that it would be Mr Davidson's.

[36] I am also supported in my conclusion by the following evidence:

- a) That Mr Rittson-Thomas did not keep proper wage and time records.
- b) That Mr Rittson-Thomas did not get the Kiwi Saver correct and was in breach of the Kiwi Saver clause in the employment agreement.

[37] I conclude that Mr Davidson has a personal grievance because of the failure of Mr Rittson-Thomas to properly involve Mr Davison in the selection/decision and avoid any loss of opportunity after the consultation meetings.

Other claims

[38] It has been discovered by Mr Tayler that Mr Davidson has been overpaid holiday pay by the calculations having been reworked. Thus, while on the face of it at the end of the employment there was a deduction made this in effect means Mr Davidson is not owed any money for holiday pay. Because he suffered a reduction without any fair input into the calculations and the belatedly reworked calculations, I hold that in equity and good conscientious he does not have to pay any money to Mr Rittson-Thomas. In any event the right to deduct with authority existed under the employment agreement at the time. Even although that right could be relied upon by Mr Rittson-Thomas the way he went about it was based on what I hold was a genuine belief that the property was not left in order, and not up to his and Caroline Walton-Green's standard. Mr Rittson-Thomas should have properly consulted Mr Davidson on his assessment of any sum for deductions, but this omission is not enough for a penalty in the matter given the right to make a deduction, I hold. This is not a matter for a penalty.

[39] I have decided to dismiss the claim for the damages that Mr Rittson-Thomas alleged were caused by Mr Davidson. My main reason for this decision is that the sums claimed are only estimates based on suspicion without any direct evidence to assess even on the balance of probabilities that Mr Davidson deliberately and wilfully caused the damage to the cottage and the letterbox. No expense has been incurred yet

on the items claimed. However I hold that the way the cottage was left by Mr Davidson shocked and upset Ms Caroline Walton-Green when she inspected the cottage. Their standards certainly were different.

[40] The employment agreement makes provision for Kiwi Saver as follows:

8.2 *In addition to the above hourly rate/salary, the Employer will contribute in each pay period the minimum required by the provisions of the Kiwi Saver Act 2006 to the Employee's specified superannuation scheme/to to the Employee's Kiwi Saver Scheme.*

[41] Furthermore the employment agreement made provision for any variation to the employment agreement to be recorded in writing (clause 36). There was no variation to support what Mr Rittson-Thomas says Mr Davidson said. The employer was required to make the deduction and comply with clause 8.2 of the employment agreement. Without any documentation of any opting out and or a contributions holiday of Kiwi Saver Mr Rittson-Thomas was required to comply with making deductions and the employer's contribution, I hold.

[42] Mr Davidson was entitled to Kiwi Saver for the following reasons:

- a) That the employment agreement required Mr Rittson-Thomas to contribute in each pay period the minimum required under the Kiwi Saver Act 2006.
- b) That Mr Rittson-Thomas could not produce any documentation that Mr Davidson had opted out of Kiwi Saver as required by ss 15, 17 and 19 of the Kiwi Saver Act 2006.
- c) That Mr Rittson-Thomas could not produce any documentation that Mr Davidson had applied for a Kiwi Saver contributions holiday under ss 102 and 103 and 104 of the Kiwi Saver Act 2006.
- d) That it is more likely than not that Mr Davidson was unaware that his deductions had not been made until his employment ended when he had up until not then received any pay slips.
- e) That Mr Davidson says he had Kiwi Saver with his previous employment means he was enrolled for Kiwi Saver. This contradicted

what Mr Rittson-Thomas says that Mr Davidson said at the start of the job that he did not want to join the Kiwi Saver scheme.

- f) That Mr Rittson-Thomas has not been able to contradict that Mr Davidson was enrolled for Kiwi Saver, Mr Davidson had Kiwi Saver in his previous job, and that Mr Davidson had not applied for opting out and/or a contributions holiday. Therefore, I have to accept Mr Davidson's claim.

[43] Mr Davidson is entitled to the minimum contributions from Mr Rittson-Thomas under the Kiwi Saver Act 2006 arising from Mr Davidson's employment under the employment agreement. The equivalent contribution needs to be calculated from the deductions that should have been made during Mr Davidson's employment.

[44] Mr Davidson requested the payment of a disconnection fee for the computer when he left the farm. There was no contractual term around this, but the benefits of the connection were mutual for both parties and for Mr Davidson's personal use too. Thus I decline the claim.

[45] I note that the wage records are based on an accounting package that does not meet all the requirements under the Employment Relations Act 2000. Whilst this has not helped, because of the conflict over the holiday pay, it has not unnecessarily hindered the investigation given the outcome. Better records might have avoided problems over the calculations for holiday pay. This is not a matter for any further action from me. Indeed Mr Rittson-Thomas has indicated he will endeavour to correct the matter.

[46] There are no sums for interest as claimed.

Remedies for personal grievance

[47] Mr Davidson is entitled to the consideration of remedies since he has a personal grievance. This raises a question of whether or not there would have been a position for him if the redundancy had been carried out properly. He was replaced with a farm worker on less pay. This was a position that Mr Davidson did not want. His position ceased to exist except that he lost the opportunity to be considered fairly in a selection that a fair and reasonable employer would have put in place given the two positions and reduction to one senior position. Given that there was an

underlying commercial reason to reduce the number of positions, and that if there had been a selection properly conducted, it seems more likely than not, that the outcome would not have been any different. I am not satisfied that there is a linkage between Mr Davidson's loss of job and a loss of wages. Mr Davidson says he looked for alternative work involving 4-5 jobs, one interview and offered a job. His job finished on 9 November He started a new job on 8 January. It took him 2 weeks to get another job, but could not start for 7 weeks. Mr Davidson received 4 weeks pay from Totara Hills. There has been the claim made by the respondent that Mr Davidson went to Wanaka on a pre-planned holiday during the period in between jobs. I hold that was entirely reasonable given his parents assisted him and he needed accommodation once he moved from the farm and had mitigated his loss by getting another job. Finally I hold that the information produced by Mr Rittson-Thomas on the climatic conditions and seasonal matters relating to stock in the district support his contentions as opposed to Mr Davidson's unverified evidence and memory. I hold that there has been no loss of wages given the correct notice being paid for redundancy and the likelihood that his position would have ceased.

[48] This is a matter for compensation, but at the lower end of the scale because of the failure of the employer not to properly engage Mr Davidson in a process where Mr Davidson has come away with the genuine belief that his employer wanted to get rid of him which could have been avoided with a proper selection process instead of a unilateral decision. The compensation has to be at the lower end of the scale relating to the breach of process and the impact of that on Mr Davidson because:

- a) The redundancy was justified on genuine commercial grounds to reduce one position following a discussion Mr Rittson-Thomas had with his bank lawyer and accountant and consultation with the staff.
- b) The only defect was a failure to properly select and if there had been a selection properly conducted the outcome would probably not have been any different.

[49] I accept that Mr Davidson had lost feelings and been hurt about what happened. I have assessed compensation in the amount of \$4,000, which I have based on the original personal grievance raised on 21 December 2010.

[50] There was no contribution and blameworthy conduct on Mr Davidson's part since the process was Mr Rittson-Thomas's responsibility.

Summary of orders

[51] Mr Rittson-Thomas is required to meet the obligation to meet the minimum requirements under the Kiwi Saver Act 2006 in accordance with the employment agreement.

[52] Mr Rittson-Thomas is required to pay Mr Davidson \$4,000 compensation under s 123 (1) (c) (i) of the Employment Relations Act 2000.

[53] Costs are reserved.

Paul Stapp
Member of the Employment Relations Authority