



# New Zealand Employment Relations Authority Decisions

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## Elsegood v Propellor Property Investments Limited (Auckland) [2017] NZERA 374; [2017] NZERA Auckland 374 (6 December 2017)

Last Updated: 15 December 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 374  
3008651

BETWEEN CHERIE ELSEGOOD Applicant

A N D PROPELLOR PROPERTY INVESTMENTS LIMITED Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Andrew Swan, Counsel for Applicant

Vance Leach, Counsel for Respondent

Investigation Meeting: 23 November 2017 at Auckland

Submissions Received: 20 and 23 November 2017 from Applicant

20 and 23 November 2017 from Respondent

Date of Determination: 6 December 2017

### DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

**A** The applicant Ms Cherie Elsegood was unjustifiably dismissed by the respondent, Propellor Property Investments Limited (Propellor).

**B** In order to settle Ms Elsegood's personal grievance claim, Propellor is to make payment of the following sums to her within 21 days of the date of this determination:

(a) \$15,000.00 compensation under [s.123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act) for humiliation, loss of dignity and injury to feelings in respect of her unjustifiable dismissal.

(b) \$14,583.32 gross in lost remuneration under [s128](#) of the Act together with interest from 18 April 2017 at the rate of 5% per annum until the date payment is made in full.

(c) \$1,679.00 agreed unpaid expenses.

(d) \$3,000.00 being the bonus due to her. C Costs are reserved.

### Employment relationship problem

[1] The respondent, Propellor Property Investments Limited (Propellor) is a property investment company. Ms Nikki Connors is the principal of Propellor. Ms Cherie Elsegood was engaged initially by Propellor as a contractor and subsequently as its employee, in an administrative role. Ms Connors and Ms Elsegood are first cousins, their mothers are sisters.

[2] In late January 2017, Ms Karen Devereux, the General Manager of Propellor raised some queries with Ms Elsegood about her business expenses. Following email exchanges about the business expenses, Ms Connors became very upset and sent Ms Elsegood a text message, on 27 January 2017. The text message told Ms Elsegood there was no point in her returning to work.

[3] Ms Elsegood took the text message to mean that she had been dismissed summarily by Propellor. Ms Elsegood did not return to work and immediately moved out of the apartment she shared with Ms Connors. Ms Elsegood says her dismissal by Propellor was unjustified. Ms Elsegood says the dismissal was extremely humiliating and it took her over 2 months to find another job.

[4] Ms Elsegood seeks remedies against Propellor, including reimbursement of business related expenses, an unpaid bonus, loss of remuneration for the period of time it took her to find another job and holiday pay. Ms Elsegood seeks compensation under the Act for the hurt, humiliation and injury to her feelings she says she suffered as a result of the unjustified dismissal.

### **Propellor's response**

[5] Propellor denies Ms Elsegood's claims. Propellor says that Ms Elsegood was engaged initially by it in 2014 as a contractor and subsequently an employee. Ms Connors says Ms Elsegood was generously remunerated by Propellor, she gifted Ms Elsegood a VW car, arranged for her to have the use of accommodation free of charge for 2 years and

for the remaining period of her employment, accommodation which was heavily subsidised by Propellor.

[6] Ms Connors and Ms Devereux say Ms Elsegood was aware of the items she was able to claim as business expenses and of the process for doing so. The process was for Ms Elsegood to provide authorised expense claims before being reimbursed for business related expenses. Ms Elsegood failed to submit expense claims for the 6 month period from June 2016 to December 2016. When she did finally submit her claims and receipts they appeared to include items she was not entitled to claim for.

[7] Ms Devereux and Ms Connors were concerned at the expenses being claimed and sought an explanation from Ms Elsegood. Ms Elsegood's response was not helpful in their view. Ms Connors emailed Ms Elsegood expressing her hurt and informing her they would need to discuss her ongoing employment. Ms Elsegood did not reply. Ms Connors tried unsuccessfully to telephone Ms Elsegood. Ms Connors eventually rang Ms Elsegood's daughter to check on Ms Elsegood.

[8] Ms Connors says she was extremely upset by what she saw as "fraudulent" expense claims by Ms Elsegood who had been treated so well by her and by Propellor. On 27 January 2017, Ms Connors sent what she described as an emotive text to Ms Elsegood to get her attention, as Ms Elsegood had failed to return her email and telephone messages. Ms Connors says she did not intend to dismiss Ms Elsegood.

[9] On 10 February 2017, Ms Devereux sent a letter to Ms Elsegood about her expense claims and asked her to attend a disciplinary meeting on 15 February 2017. Ms Elsegood did not attend the meeting and did not return to work as she was of the view she had been dismissed on 27 January 2017.

[10] Propellor considered that Ms Elsegood's actions amounted to an abandonment by her of her employment and accordingly that she has no claim against it. Propellor seeks payment of rent it says Ms Elsegood owes it. Unpaid rent totals \$12,000.

### **The investigation meeting**

[11] As permitted under [s.174E](#) of the Act, this determination has not set out all the evidence required. The determination states findings, relevant facts, legal issues and makes conclusions in order to efficiently dispose of the matter.

[12] The investigation in the Authority took place over one full day.

[13] Ms Elsegood filed a witness statement. For Propellor, Ms Nikki Connors, Ms Karen Devereux and Mr Martin Dale, Propellor's accountant, all filed witness statements.

[14] Each witness who filed a witness statement, with the exception of Mr Dale, attended the investigation meeting to answer questions. Mr Dale answered questions via telephone. Each witness either swore on oath or affirmed their evidence was true and correct. Each witness had the opportunity to provide any additional information and comments and did so.

### **The issues**

[15] The issues for the Authority to determine are as follows:

(a) Did the text message from Ms Connors to Ms Elsegood on

27 January 2017 amount to a dismissal?

(b) If it did amount to a dismissal, was the dismissal unjustified? (c) If not, did Ms Elsegood abandon her employment?

(d) If Ms Elsegood was unjustifiably dismissed by Propellor what remedies are available to her?

(e) If remedies are payable to Ms Elsegood, did she contribute to the dismissal, and if so, should the remedies be reduced by the Authority pursuant to [s.124](#) of the Act?

### **First issue – Did the text message from Ms Connors to Ms Elsegood on**

**27 January 2017 amount to a dismissal?**

### **Engagement of Ms Elsegood by Propellor – 2013/2014**

[16] Ms Elsegood, Ms Connors and Ms Elsegood’s daughter, Simone met for lunch at around the time of Simone’s wedding. During the lunch they discussed Ms Elsegood’s current job. Ms Elsegood was looking for a change. Ms Connors felt Ms Elsegood’s administrative skills would suit Propellor and offered Ms Elsegood a contract role providing administrative services to Propellor. Ms Elsegood accepted the role and

commenced at the start of 2014. The contract rate was \$45,000 plus GST per annum and Ms Elsegood issued GST invoices to Propellor, on a monthly basis during the time she was contracting to it.

### **Individual employment agreement**

[17] Ms Elsegood became an employee of Propellor in June 2016.

[18] There is a dispute as to whether Ms Elsegood was provided with an individual employment agreement at the time of her change from being a contractor to an employee. Ms Devereux says she provided Ms Elsegood with an employment agreement and asked her on a number of occasions to sign it and return it to her. She says Ms Elsegood failed to do so.

[19] Ms Elsegood denies this and says she saw an employment agreement for the first time in January 2017. She did not sign it. However, Ms Elsegood accepts that the employment agreement that she was given correctly sets out the terms of her employment.

[20] Ms Elsegood reported to Ms Devereux. Schedule 2 of the employment agreement sets out Ms Elsegood’s individual terms of employment including: hours of work, holidays, that she would be paid \$70,000 gross per annum, a bonus that would be payable upon achievement of certain targets, and that Propellor would pay “all work related consumables associated with the fulfilment of this role.”

[21] Paragraph 4 of the employment agreement included the following:

4.3 The employee is not authorised to incur debt in the name of the employer, nor expend personal monies with an intention of seeking recovery from the employer unless, such expenditure or debt is approved by the employer, i.e. prior provision of a verbal or written agreement.

### **Business expenses**

[22] Ms Elsegood says that each month she would submit her expense forms after reconciling them. Ms Elsegood says that for the months from June to December 2016, she had a number of personal issues and her workload was such that she was not able to submit her expense forms. Ms Elsegood says when Ms Devereux and Mr Dale asked for the expense forms she agreed to send all her receipts in a bag to Mr Dale so he could reconcile the expense claims. This, Ms Elsegood says, was because she had not been able to do the reconciliation herself.

[23] Ms Elsegood says she and Ms Devereux agreed that she could offset the expenses she was incurring each month against rent, her share of which was \$300 a week, for an apartment owned by Propellor in Kohimarama (the apartment). Ms Elsegood and Ms Connors shared the apartment. Ms Elsegood says she expected there to be a discussion about the expenses claimed and an agreement about what would be offset against rent she owed for the apartment she was sharing with Ms Connors. This did not occur.

[24] Mr Dale confirmed the arrangement that Ms Elsegood was to offset her expenses against rent she owed for the apartment. Mr Dale told the Authority that Ms Elsegood did provide monthly expense claims for a while and then stopped. Mr Dale says he was told that Ms Elsegood would be providing him with a “pile of expenses and that rent that should have been paid for accommodation, one would be offset against the other”.

[25] In Ms Devereux’s email to Ms Elsegood on 26 January 2017, she refers to the offsetting of expenses against rent owed by Ms Elsegood on the apartment.

[26] Ms Connors says the practice with business expenses is that if business expenses are incurred by an employee in the

course of their employment then the employee concerned is able to seek reimbursement by submitting a reconciliation statement to Ms Devereux. Ms Connors says Ms Elsegood was well aware of the process. However, the monitoring of expenses and expense claims was for Ms Devereux and not Ms Connors.

[27] I find there was an agreement between Ms Elsegood and Propellor that business expenses incurred by Ms Elsegood during June to December 2016 would be offset against rent owed by her for her share of accommodation in the apartment.

[28] It was also agreed with Ms Devereux and Mr Dale that Ms Elsegood would send receipts for expenses to Mr Dale to reconcile.

### **Events leading up to the text message from Ms Connors to Ms Elsegood –**

#### **27 January 2017**

[29] Between June 2016 and December 2016, both Ms Devereux and Mr Dale, spoke with Ms Elsegood at various times about submitting her expense claims. On 19 October

2016, Mr Dale sent her an email as follows:

Hi Cherie, just wondering how you were getting on with the reconciliation of your rent and expenses paid? Cheers Martin Dale

[30] Ms Elsegood responded:

You will have it tomorrow.

[31] Ms Elsegood did send Mr Dale her receipts towards the end of December 2016 before the office was due to close for the Christmas break. Some expenses were circled by Ms Elsegood and those payments were the ones Mr Dale understood she was claiming for.

[32] Mr Dale says he did not turn his mind to what expenses were claimable by Ms Elsegood, he was simply told to create a reconciliation of all the expenses and send a spreadsheet to the company, which he did.

[33] Mr Dale was not able to prepare the spreadsheet before Propellor's offices closed for the Christmas break.

### **Email communications regarding Ms Elsegood's expenses – 24 and 25 January 2017**

[34] On 24 January 2017 at 6.21pm, Mr Dale sent an email to Ms Devereux attaching the spreadsheet reconciling expenses. Mr Dale's email states:

...here is a breakdown of the expenses paid by Cherie, and the amount owed. I have all the receipts here if you want to see them.

[35] On 25 January 2017 at 9.44 am, Ms Devereux replied to Mr Dale's email:

Subject: RE: Expenses paid by Cherie.xlsx

Hi Marty, Nikki has just had a quick look at these and (as you can imagine) not happy).

Can you please send through all of the petrol receipts – Nikki has not

agreed to pay any petrol costs – ever – also the Bed Bath and Table receipts – the receipt for the coffees (again Nikki wants to check this) – Nikki reckons she paid for the Freedom Furniture thing so wants a receipt for that, the liquor – again what is this for? I'll tell you what, why don't you just send all the receipts to me so can go through with Nikki.

Thanks Marty,

Kind regards, Karen Devereux General Manager

[36] The spreadsheet prepared by Mr Dale included claims for petrol, mobile phone and various food, restaurant and liquor suppliers, including Glengarry, Liquor Mart, Countdown and New World.

### **Email from Ms Devereux to Ms Elsegood regarding expenses – 26 January 2017**

[37] At 4.10pm 26 January 2017, Ms Devereux sent an email to Ms Elsegood, firstly asking that she not discuss the subject matter of the email with other staff members and then proceeding to inform Ms Elsegood that Ms Connors did not accept petrol costs claimed, and a number of other items.

[38] The text message was accusatory in tone. It referred to receipts received which Ms Devereux stated had not been authorised by Ms Connors and requested an explanation in respect of them. The email then set out rules moving forward in respect of the company car, petrol receipts and other items of expenditure. The email stated:

... (1) The car will be kept at work for office use. It will have the key left with Kieran, so that when it is required for work purposes, it will be there. It will stay parked at the office at night and weekends unless authorised otherwise;

(2) All petrol receipts to have written on them what they were for, i.e.:

trip to Hamilton to show consultants stock, ... these expenses are to be submitted on the company expense claim form;

(3) All accounts must be sent through to Martin, this includes ALL accounts,...

**(4) You are not authorised to spend any of the companies money, or make any purchases without written permission by me;**

(5) All staff amenities are to be purchased by Jon with the \$40 float – I

have already spoken to him about this – he knows that he will send through the receipts when he has spent approx...\$30 of it and it will be reimbursed into his account each time to enable him to keep things in supply at the office.

(6) All stationery to be ordered through Jon;

(7) All coffees (when required by Nikki for her and clients/professionals) to be ordered by Jon.

(8) The rent will be taken at source each month and the balance will be paid into your account as normal.

(9) I know you advised that you wanted your bonus to go towards the

arrears which after the PAYE and KiwiSaver is taken (which is more than usual because you go into the next tax bracket of earning over

\$70K so it is deducted at some ridiculous rate), something like

37.4%, (I think Marty said); so what is left of the \$3,000 bonus once this is taken, is \$1,878.32. This will be put against the debt but that

still leaves a large shortfall of company rent arrears. We will discuss without delay how you will repay the remaining arrears of the

Company Apartment. After discussion and looking at the arrears, we believe that the (minimal) cost of residing at the Company Apartment to be too expensive for you and therefore advise that you seek

alternative accommodation. We are very saddened that a very generous arrangement has ended as it has. The Company has been

very generous to you over the last three years. For two of those years, you have lived at Propellor rent and expense free. We are disappointed with the outcome of what we believed a very caring and

generous arrangement for you to be able to live in accommodation at a highly discounted rate.

[39] Ms Elsegood says that she was often asked to buy such items as coffee and stationery for the office or for clients and she paid for those items personally and would be subsequently reimbursed by Propellor. The office ran reasonably loosely, Ms Devereux knew this and she was shocked that she was being threatened over receipts for coffee and other such office expenses that she thought she was able to claim for.

[40] Ms Elsegood says she felt humiliated by the email from Ms Devereux which she found aggressive and offensive.

[41] Ms Elsegood says that she had been behind in submitting her expense claims but that there were reasons for this which Ms Devereux was aware of, namely personal issues and the high workload. Ms Elsegood says that she was not spoken to before the email was sent to her on 26 January 2017 and that she expected to discuss the receipts that she had sent to Mr Dale and what expenses she could claim and what could not be claimed.

[42] Ms Elsegood had gone away for Auckland Anniversary weekend. Ms Elsegood replied to the email at 4.32pm on 26 January 2017 stating that she would respond the following week after she had taken some advice. Her email stated that there were to be no deductions from her wages “without her agreement, or court order”. With regard to the apartment, Ms Elsegood stated that this was a private arrangement with Ms Connors and it was not acceptable for Ms Devereux to be communicating with her about that matter.

[43] Following the email to Ms Elsegood, Ms Connors says she tried to telephone Ms Elsegood. Ms Elsegood denies this. It is accepted that Ms Connors did make contact with one of Ms Elsegood’s daughters, Chantelle, after the email was sent to Ms Elsegood to see whether she was okay. Chantelle returned the call to inform Ms Connors that Ms Elsegood was okay.

[44] On 26 January 2017, at 5.19 pm, Ms Connors sent an email to Ms Elsegood. The email stated:

Obviously, we need to discuss whether you are going to continue with Propellor because if you do then you will work with Karen to sort out a solution that suits us all. Cherie, not only have you lost my respect but our relationship as a family is severely at risk. You can pull back now, acknowledge you did not act in the most sensible way over all this and we move forward and try to mend bridges or we are at an end in all areas of our lives. I am so, so upset. I can’t believe you would treat me like this. Nikki.

#### **Text from Ms Connors to Ms Elsegood – 27 January 2017 at 4.03pm**

[45] On 27 January 2017 at 4.03 pm, Ms Connors sent Ms Elsegood the following text:

You have taken the car. You have cheated me, you have cheated the company, you have told your mother that I didn’t pay you over Christmas when you were paid on time – should have Karen send your mum proof(?) so you are also a liar. I think by your silence and unwillingness to work through this you have now made a decision that will define the rest of

your life. There is no point coming back to work and if I was you I would find somewhere else to live immediately. Let me know where to send your clothes and your furniture. I gave you an opportunity yesterday to come back from this but you ignored it. You will get a legal letter in due course. I will send a copy of this to Karen. I have asked Chantelle to see that you are okay but you and I are done Cherie.....

[46] Ms Elsegood did not reply to the text which she considered to be a dismissal by Propellor from her job. She felt humiliated, embarrassed and was in shock. Ms Elsegood did not contact Ms Connors, she said that she felt extremely vulnerable and that there was no other way she could interpret the text from Ms Connors, other than it being a dismissal.

#### **Events following 27 January 2017**

[47] Ms Elsegood was away at the time she received the text from Ms Connors. Upon her return, on 30 January, Ms Elsegood returned the keys, her swipe card, the car and moved out of the apartment she shared with Ms Connors. Ms Elsegood put all her furniture into storage and did not return to work.

[48] Ms Elsegood says that by 31 January her access to emails at work had been cut off and this was confirmed to be the case by Ms Connors. Ms Elsegood’s salary for January which was due to be paid to her on 5 February 2017 was not paid to Ms Elsegood.

[49] Ms Elsegood moved in with her elder daughter for a few weeks before moving to live with her other daughter and family for some time.

#### **Letter from Ms Devereux to Ms Elsegood – 10 February 2017**

[50] On 10 February 2017, Ms Elsegood received a letter from Ms Devereux asking her to attend a disciplinary meeting on 15 February 2017 to which she could bring a support person. Ms Elsegood says that she was of the view that she had been dismissed by text on 27 January, was no longer an employee and therefore was not going to attend the disciplinary meeting.

[51] It is my view that even on its own, the text from Ms Connors to Ms Elsegood on

27 January 2017 at 4.03 pm could not be interpreted in any other way than Ms Elsegood being summarily dismissed and that she was required to move out of the apartment that she had been sharing with Ms Connors.

[52] The text message in my view was a clear and unequivocal expression of Ms Connors’ intention on behalf of Propellor to dismiss Ms Elsegood. Ms Elsegood acted on the words of the text, did not return to work and returned Propellor’s property and moved out of the apartment.

[53] It is my view that Ms Connors intended to dismiss Ms Elsegood and this was confirmed by events following the text of 27 January 2017. Ms Elsegood’s access to her emails was blocked and she was not paid her salary when due on 5 February 2017.

[54] Neither Ms Devereux nor Ms Connors made contact with Ms Elsegood to clarify why she was returning the car and the

keys and why she was not returning to work. For 2 weeks following the text, neither Ms Devereux nor Ms Connors contacted Ms Elsegood. It was only after Ms Devereux sought advice, that a disciplinary letter was sent to Ms Elsegood asking her to attend a disciplinary meeting. I find that Ms Elsegood was dismissed summarily by Propellor on 27 January 2017.

### **Second Issue – If the text message did amount to a dismissal, was the dismissal unjustified?**

[55] It is for Propellor to establish that Ms Elsegood's dismissal was justified. Section

103A of the Act sets out the test of justification. Under the test, the question of whether the dismissal of Ms Elsegood was justifiable must be determined, on an objective basis, by considering whether Propellor's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[56] In applying s.103A of the Act, the Authority must also consider four particular factors set out at s.103A(3), as well as any others it thinks appropriate. The test is to be applied with the proviso that a dismissal must not be determined to be unjustifiable solely because of process defects if they were minor and did not result in the employee being treated unfairly.

[57] In my view dismissing Ms Elsegood by text message was not the action of a fair and reasonable employer. If Propellor had concerns about Ms Elsegood's expense claims, these should have been raised with her and discussed. Rather, an email was sent to her by Ms Devereux which was accusatory in nature and which set out arbitrary rules in relation to the way in which expense claims were to be paid in the future along with a number of other matters affecting Ms Elsegood's employment.

[58] When Ms Elsegood responded that she wished to seek advice, Ms Connors became angry and upset and sent her an email about the matters and the following day a text dismissing her.

[59] The thrust of the communications by both Ms Devereux and Ms Connors were that Ms Elsegood was guilty of defrauding Propellor by submitting fraudulent claims. These are serious allegations and should have been discussed with Ms Elsegood so that she was able to have her side of the story heard and considered by Propellor. Certainly, at the Authority's investigation meeting, Ms Elsegood denied submitting fraudulent expense claims. Propellor's failure to provide Ms Elsegood an opportunity to respond to the allegations was a serious failure to comply with the principles of good faith and procedural fairness.

[60] Ms Elsegood's dismissal by Propellor was unjustified.

### **Third issue – If the text message of 27 January 2017 was not a dismissal, did Ms Elsegood abandon her employment?**

[61] I have found the text message did amount to a dismissal. I do not accept Propellor's claim that Ms Elsegood was not dismissed and that she abandoned her employment.

### **Fourth issue – If Ms Elsegood was unjustifiably dismissed by Propellor what remedies are available to her?**

[62] Ms Elsegood gave evidence of her shock and humiliation when she received the emails of 26 January 2017 from Ms Devereux and Ms Connors and the text dismissing her on 27 January 2017. Ms Elsegood spoke of the deterioration in her health following her dismissal, her depression and anxiety attacks. Ms Elsegood suffered a painful bout of shingles, lost weight and made regular visits to the Doctor during January, February, March and April 2017. Medical certificates were provided to the Authority.

[63] Ms Elsegood had to leave her accommodation immediately and so went to stay with her daughters. She was not paid for the month of January 2017 and did not receive holiday pay, the bonus she expected or reimbursement of her business related expenses. Ms Elsegood applied for some positions on-line and told the Authority that she was unable to obtain another job for over 2 months. Ms Elsegood finally obtained a temporary

job with her former employer, Auckland Council on 18 April 2017. That position ended on 29 September 2017.

### **Compensation under s.123(1)(c)(i) of the Act**

[64] Ms Elsegood seeks compensation for humiliation loss of dignity and injury to feelings in respect of her unjustifiable dismissal.

[65] Ms Elsegood seeks the sum of \$15,000. I consider this to be an appropriate award. I order Propellor to pay Ms Elsegood the sum of \$15,000 compensation within 21 days of the date of this determination.

### **Loss of remuneration under s.128(1) of the Act**

[66] Ms Elsegood was unable to obtain another job until 18 April 2017. Ms Elsegood seeks reimbursement of two and a half months lost remuneration pursuant to s.128 of the Act. This amounts to \$14,583.32, being the amount of \$5,833.33 a month for

the two and a half months lost remuneration as a result of Ms Elsegood's unjustified dismissal.

[67] I order Propellor to pay Ms Elsegood the sum of \$14,583.32 gross within 21 days of the date of this determination.

### **Reimbursement of expenses**

[68] By consent, the parties agree that Ms Elsegood is entitled to unpaid expenses totalling \$1,679.00. I order Propellor to pay Ms Elsegood the sum of \$1,679.00 within 21 days of the date of this determination.

### **Bonus**

[69] Ms Elsegood was expecting a bonus of \$3,000. This was not disputed but Propellor wished to offset this amount against Ms Elsegood's rental arrears. The issue of rental arrears is not a matter the Authority has jurisdiction to deal with.

[70] I order Propellor to pay Ms Elsegood the sum of \$3,000 being the bonus due to her within 21 days of the date of this determination.

### **Holiday pay**

[71] Ms Elsegood has finally been paid holiday pay owing to her.

### **Interest**

[72] Ms Elsegood seeks the payment of interest on the lost remuneration. The Authority has the power to award interest under clause 11 of the Second Schedule of the Act at the rate prescribed by s 87(3) of the [Judicature Act 1908](#), which is currently 5% per annum.[1]

[73] I consider it reasonable and fair that Ms Elsegood is paid interest on the lost remuneration. Ms Elsegood has not had the use of the whole of her remuneration since 18

April 2017.

[74] Propellor is ordered to pay interest on the lost remuneration of \$14,583.22 from

18 April 2017 at 5% per annum until the date payment is made in full.

### **Fourth Issue – If remedies are payable to Ms Elsegood, did she contribute to the dismissal, and if so, should the remedies be reduced by the Authority pursuant to s.124 of the Act?**

[75] Propellor claims any award of remedies should be reduced by the Authority because Ms Elsegood contributed to her dismissal. Propellor claimed Ms Elsegood was attempting to file fraudulent expense claims, this ultimately led to her dismissal. Without an opportunity to discuss the expense claims, it was not possible to form the view that Ms Elsegood's actions in submitting her expense claims were fraudulent and amounted to serious misconduct.

[76] I do not consider Ms Elsegood contributed to her dismissal. Therefore remedies awarded will not be reduced.

[1] [Judicature \(Prescribed Rate of Interest\) Order 2011](#).

### **Costs**

[77] Costs are reserved. Ms Elsegood has 14 days within which to file a memorandum as to costs. Propellor has 14 days from receipt in which to file its memorandum as to costs in reply.

**Anna Fitzgibbon**

**Member of the Employment Relations Authority**

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