



# New Zealand Employment Relations Authority Decisions

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## Enright v Fire Protection Inspection Services Limited (Auckland) [2017] NZERA 398; [2017] NZERA Auckland 398 (22 December 2017)

Last Updated: 15 January 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 398  
3008471

BETWEEN JOHN ENRIGHT Applicant

AND FIRE PROTECTION INSPECTION SERVICES LIMITED

Respondent

Member of Authority: Eleanor Robinson

Representatives: Natalie Tabb, Counsel for Applicant

Ian Davidson, Advocate for Respondent

Investigation Meeting: 21 November 2017 at Auckland

Submissions received: 6 November 2017 from Applicant

11 October and 20 December 2017 from Respondent

Determination: 22 December 2017

DETERMINATION OF THE AUTHORITY

### Employment Relationship Problem

[1] The Applicant, Mr John Enright, claims that he was unjustifiably dismissed by the Respondent, Fire Protection Inspection Services Limited (FPIS), and/or that he was unjustifiably disadvantaged by the actions of FPIS during a prospective sale of business process in which FPIS did not act in good faith towards him.

[2] Mr Enright claims in the alternative that his employment was constructively terminated by FPIS.

[3] FPIS denies that there has been any unjustifiable action and that Mr Enright voluntarily resigned from his employment with FPIS.

### The issues

[4] The issues for determination are whether or not Mr Enright was:

- unjustifiably dismissed, either constructively or actually, or voluntarily resigned from his employment
- unjustifiably disadvantaged during the prospective sale process

### Background Facts

[5] FPIS is a medium-sized company and New Zealand's foremost inspector of fire

safety systems.

[6] Mr Enright was employed by FPIS as the Finance and Administration Manager. He reported to Mr Geoff Cardale, General Manager, and had a team of approximately 5 administrative employees reporting to him. His duties included normal accountancy functions, the profit and loss ledgers, the monthly accounts, budgets and supervision of the administrative and accountancy staff.

[7] He was part of the senior management team and attended quarterly directors meetings for which he prepared the minutes. As part of the senior management team Mr Enright was privy to the fact that the directors of FPIS had been seeking to sell the business for some time prior to October 2016.

[8] During 2016 FPIS entered into discussions with Aon under which Aon was proposing to acquire the book of business, assets and certain liabilities of FPIS.

[9] Mr Cardale and Mr Enright attended a meeting with two FPIS directors in October

2016, one of whom was Mr David Hipkins, director and shareholder. During the meeting Mr Enright and Mr Cardale were informed that FPIS was hoping to achieve a sale of its business to Aon.

[10] Mr Enright and Mr Cardale were asked to compile a list of information on a confidential basis as requested by Aon for the purpose of its due diligence process. They were confidentially advised that the sale to Aon was subject to approval by the Commerce Commission.

[11] Mr Enright said from the October 2016 meeting he formed the impression that there was a real possibility that the sale process would result in the loss of his employment as his understanding was that Aon would only be interested in offering employment to FPIS technical and administrative employees if the sale proceeded.

[12] During October and November he and Mr Cardale prepared the information as requested and sent it to Aon.

[13] Mr Hipkins contacted the EMA during October 2016 to obtain employment advice on how to proceed as regards informing the employees of the prospective sale to Aon, and to ensure that FPIS followed a fair procedure.

#### *Meeting 7 November 2016*

[14] Mr Hipkins said that he held a meeting with all the FPIS employees, both in Auckland and by means of video link to the employees based at satellite offices and advised them of the prospective sale to Aon by reading out a pre-prepared letter. The letter included the following the information:

...

*Our shareholders have therefore entered into discussions with Aon. As a result of these discussions, Aon is proposing to acquire the book of business, assets and certain liabilities of FPIS. Our shareholders have agreed with Aon's proposal.*

*We will introduce you to the Aon team as soon as possible. Aon will offer employment opportunities to a number of FPIS staff although at this stage it is uncertain how many will be required ... For those that do not move to Aon, a consultation process will be commenced following the due diligence process.*

...

*This acquisition requires clearance by the Commerce Commission and as soon as this is received we expect that we can provide you more detailed information in respect of next steps and timing.*

[15] The letter concluded: *"If you have any personal questions ... please contact David Hipkins (telephone number provided)".*

[16] Mr Hipkins said that a number of employees had contacted him after the meeting on 7

November 2016 with enquiries about the proposed sale, although Mr Enright had not done so.

[17] Mr Enright said he had formed the view that the sale would proceed and the decision by the Commerce Commission was merely a formality.

[18] Mr Hipkins explained that the fact that the sale had to be reviewed by the Commerce Commission meant it was not certain because the Commerce Commission had to evaluate the business implications of the sale. He said he had never told Mr Enright or any other employee that the Commerce Commission approval was a formality, or any other words to that effect, although he had conveyed that Aon considered the sale would go through.

[19] Mr Hipkins said he had also mentioned that if the sale was approved, FPIS intended to make a financial payment to any employee whose position was disestablished as a result.

No specific commitments had been made because the amount available to make such payments would depend on the level of money FPIS had available following the sale to Aon.

[20] Mr Enright said he became anxious during December as a result of his concern at what would happen to him if he was not offered a role at Aon. He was also concerned as to the amount of redundancy payment he would receive and how long that would last until he managed to obtain alternative employment which was exacerbated by the fact that he had previously experienced a period of unemployment.

[21] From the meeting in October 2016 he considered his job had changed and was 'on hold'. He considered that what he would normally be doing was either no longer necessary or that he could not do things he would normally expect to do.

[22] During the investigation meeting Mr Enright said he had ceased preparing budgets although he received no instruction to do so, and when he informed one of the directors of this no objection had been raised.

[23] Mr Hipkins said that Mr Enright had not been instructed to change his duties during October and November and normal financial information for FPIS was still required. However no additional duties were allocated to Mr Enright or Mr Cardale because of the extra work involved in the information collation required by Aon.

[24] The Commerce Commission had advised Aon and FPIS that a decision would be released on 23 December 2016. This information was widely known within FPIS with employees checking the Commerce Commission website regularly, as Mr Enright confirmed he and his partner did.

#### *Aon interviews December 2016*

[25] Aon interviewed all the FPIS employees, including Mr Enright, during December 2016. The interviews were completed by 20 December 2016. Mr Enright said he had been interviewed by the Aon General Manager Marketing & Corporate Risk and had been informed that there was no role available for him.

[26] Mr Hipkins was advised by Aon following completion of the interviewing process on 20 December 2016 which FPIS employees they wanted to employ if the sale was approved by the Commerce Commission. There were three FPIS employees to whom Aon was not proposing to offer employment, including Mr Enright and Mr Cardale.

[27] Aon proceeded, following completion of the interview process, to offer provisional employment agreements to the successful FPIS employees.

[28] Mr Hipkins, knowing that Mr Enright and the other two employees not selected by Aon would be aware that the other FPIS employees were receiving the provisional employment agreements, had decided to hold individual consultation meetings with them. He wanted to provide them with an understanding of what would happen in their particular situations.

[29] Accordingly he had been invited them to attend meetings with him. Mr Enright was invited to attend a meeting on 22 December by means of an email dated 21 December 2017 which stated:

*Dear John,*

*As you are well aware the company is proposing to merge with Aon Limited (subject to Commerce Commission approval). We would like to invite you to a meeting on Thursday 22nd December at 11.30am at the FPIS Auckland offices to discuss this event.*

*Please be advised that the nature of the meeting is to discuss restructuring, however this is subject to the Commerce Commission giving their approval to the proposed merger. Should you so desire, you can bring along a support person to the meeting.*

*The meeting will be held with Mr Ian Davidson from the EMA who is assisting the FPIS business with HR support and the undersigned.*

*If for any reason you cannot make the scheduled time please contact the undersigned.*

[30] Mr Enright said he had believed that nothing would occur until after the Christmas break to which he had been looking forward, and he did not want to attend the meeting on 22

December 2016. In addition, his advocate had not been available to attend on the suggested date and support him at the meeting. He had been aware that the other employees were receiving provisional employment agreements, and he felt angry about the situation.

[31] He contacted Mr Hipkins and asked if the meeting could be postponed, to which Mr

Hipkins had agreed by email dated 21 December 2016 stating:

*Yes John, no drama. I realise that the timing is not good hence happy to move to a time in the new year if you are unable to get your support person along.*

*I am back on the 16th hence sometime during this week would be good.*

[32] The Commerce Commission did not release its decision on the FPIS sale to Aon on 23 December as it had advised.

*January 2017*

[33] FPIS had a shutdown period over the Christmas/ New Year period with a return date of 11 January 2017. Mr Enright said he normally did not return to the office until after the closedown period, but, given the situation, he wanted to retain his leave entitlement until after his employment ended and to return to the office earlier than 11 January 2017. However one of his team members had informed him he could not do so. He believed she had done so because she was aware he was going to lose his job and did not want to assist him.

[34] When questioned at the Investigation Meeting Mr Enright said that he had told his manager Mr Cardale that he wanted to return to work before 11 January 2017, but he had told him not to return until the 11th.

*Meeting 23 January 2017*

[35] Mr Enright met with Mr Hipkins and Mr Davidson on 23 January 2017. He was represented during that meeting by Mr Clive Bennett of the Employment Law Centre. Mr Enright said during the meeting Mr Hipkins advised him that FPIS no longer needed his services, but qualified his statement by saying: *"if the sale did not go through"*.

[36] Mr Hipkins said he had informed Mr Enright that if the sale to Aon was approved by the Commerce Commission he would not be offered employment by Aon but that Aon might review its decision once they had a clearer picture of the FPIS business.

[37] Mr Hipkins said he had concluded the meeting with Mr Enright on 23 January, saying he would hold a consultation meeting with him once the sale was given approval by the Commerce Commission and FPIS' future was clear.

[38] He had also said if Mr Enright's position became redundant because of the sale of the business to Aon, FPIS would make him a redundancy payment, although he had no contractual entitlement to one. However, he did not specify a sum as this was contingent on the sale's final settlement figure. He had also wanted to use the payment as an incentive for the affected employees to remain with FPIS during the sale transition period.

[39] Mr Enright said that he understood Mr Cardale had also been interviewed on 23 January and had been offered some temporary work after being made redundant, to complete the winding up of FPIS.

[40] Mr Hipkins said he saw a need for FPIS to employ Mr Enright for at least a month after the sale was completed, however, this may have extended for a longer period. He could not recall whether or not he had conveyed this information to Mr Enright during the meeting on 23 January 2017.

[41] At the time of the 23 January 2017 meeting, the Commerce Commission decision was expected on 9 February 2017.

[42] Mr Enright said that by this stage he had been feeling extremely stressed. He had become less diligent in aspects of his work, which had led to a heated altercation with one of the team who reported to him.

[43] During February Mr Enright said he had asked Mr Bennett about the possibility of negotiating a settlement agreement, however, FPIS did not want to respond or enter into negotiations.

[44] Mr Hipkins said that he considered FPIS had been acting in accordance with employment law as regards Mr Enright, and therefore saw no reason to agree to a settlement agreement.

[45] The Commerce Commission had not issued a decision on 9 February.

*Alternative employment*

[46] At the end of February and with the new decision date of 3 March 2017 for the Commerce Commission decision, Mr Enright said he felt that he no longer wanted to be employed by FPIS. He had been feeling extremely stressed and that he was receiving no support from FPIS.

[47] As a result he saw his GP on 21 February 2017, informing Mr Cardale that he would be on sick leave until Friday 3 March 2017.

[48] During the time that he was on sick leave his partner had obtained him an introduction to a possible alternative employment role which he had followed up and was successful in the interview process, commencing alternative employment on Monday 6 March

2017.

[49] The Commerce Commission had declined the FPIS/Aon sale on 3 March 2017.

[50] When Mr Enright did not return to work as expected on 6 March 2017 Mr Hipkins said Mr Cardale had contacted him and informed him that he had tried to call Mr Enright, but Mr Enright had not been clear as to what he intended in regard to returning to work.

[51] As a result Mr Hipkins had advised Mr Cardale to seek clarification from Mr Enright of his intentions by means of a letter which was emailed to Mr Enright and dated 7 March

2017. The letter stated:

*It is noted that you have not returned to work at the completion of your sick leave, and no further leave has been requested, nor have you returned to work.*

*If you accepted other employment whilst in the employment of FPIS, this would be a breach of your employment contract.*

*Please confirm whether or not you intend to return to work to FPIS, if not return your vehicle, fuel card, company phone and keys to us.*

*Once returned Carolyn will process your final pay including payment of any holiday pay owing.*

[52] Mr Hipkins said the FPIS property was subsequently returned by Mr Enright to FPIS, and at that point it became clear that Mr Enright had terminated his employment.

[53] As a result of the Commerce Commission not approving Aon's purchase of FPIS, FPIS continued in business with all existing employees under its existing structure. Mr Hipkins said that as Mr Enright had left employment at that stage, FPIS had needed to recruit a full time replacement for his position.

## **Determination**

**Was Mr Enright unjustifiably dismissed, either constructively or actually, or did he voluntarily resign from his employment from FPIS?**

### *(i) Dismissal*

[54] FPIS did not dismiss Mr Enright. He was expected to return to work after a period of sick leave on 6 March 2017 and when he did not do so, FPIS wrote to him asking him to confirm whether or not he intended to return to work

[55] If he did not do so, he was requested to return the company property which had been provided to him for use during his employment. FPIS viewed the return of the property as confirmation that he had terminated his employment.

[56] I find no evidence of an actual dismissal.

[57] I determine that FPIS did not dismiss Mr Enright.

### *(ii) Constructive Dismissal*

[58] An employee is usually entitled to resign from their employment on a unilateral basis. The agreement of the employer to such unilateral notice is not required; the employee

responsible for the unilateral act, in this case resignation, is simply telling the employer what is going to happen. As observed by Goddard CJ in *Stiffe v Wilson & Horton*:<sup>1</sup>

*Where either party to an employment agreement gives notice, it is well settled that the contract will terminate according to the tenor of that notice. It is not open to either party to withdraw or vary that notice without the consent of the other.*

[59] There is no obligation on the employer to dissuade the employee from leaving, although he or she may choose to do so in some cases. An employee who has resigned has not been dismissed.

[60] A constructive dismissal occurs where an employee appears to have resigned, but the situation is such that the resignation has been forced or initiated by an action of the employer.

[61] Therefore in examining whether a constructive dismissal has occurred two questions arise:

- i. First, has there been a breach of duty on the part of the employer which has caused the resignation, and
- ii. Second, if there was such a breach, was it sufficiently serious so as to make it reasonably foreseeable by the employer that the employee would be unable to continue working in the situation, that is, would there be a substantial risk of resignation.

[62] The starting point for any enquiry into whether or not there has been a constructive dismissal relies upon establishing the terms of the employment agreement and whether there had been a breach of the terms of that contract serious enough to warrant the employee leaving the employment of the employer.<sup>2</sup>

[63] The individual employment agreement between FPIS and Mr Enright (the Employment Agreement) contained clauses relating to restructuring and redundancy. It had been signed by Mr Enright on 27 February 2015.

[64] Clause 27 of the Employment Agreement entitled 'Employee Protection Provision'

addressed a restructuring process defined in the clause as: *the sale, transfer, or contracting*

<sup>1</sup> 5/12/00 AC 94/100, AEC 106/00 at para 21

<sup>2</sup> *Wellington Road Transport etc IUOW v Fletcher Construction Co Ltd* (1983) ERNZ Sel Cas 59, as referred to in *Wellington etc Clerical etxc IUOW v Greenwich* (1983) ERNZ Sel Cas 95 [1983] AC]

965 (at pp 112-113: p 985)+

*out of all or part of our business*". It provided that FPIS would negotiate with the new employer regarding whether or not it offered employment to employees. In the event that employment was not offered it stated: '*... your redundancy entitlements will be determined in accordance with clause 24 of this agreement*".

[65] Clause 24 of the Employment Agreement defined redundancy and stated that there was no right to a redundancy payment if the employee transferred to an alternative position with the new employer on substantially the same terms and conditions of employment. There was no provision for a redundancy payment in the event that the employee was not transferred.

[66] In the event that the employee's position became surplus to the needs of the business, notice of termination would be in accordance with the provisions of clause 23.1 of the Employment Agreement, namely four weeks' notice in writing by either party.

[67] The situation in which FPIS and Mr Enright found themselves was unusual in that any sale of FPIS to Aon was conditional upon the approval of a third party, the Commerce Commission. Until such time as that approval was given the sale of FPIS to Aon was provisional only, there had been no sale and consequently no redundancy situation affecting Mr Enright.

[68] During December 2016 Aon had interviewed the FPIS employees, concluding that process on 20 December 2016 and subsequently providing provisional employment agreements to those FPIS employees to whom it intended to offer employment if the Commerce Commission approved the sale.

[69] At that stage both FPIS and Mr Enright were aware that if the sale to Aon was approved, Mr Enright's position would be redundant.

[70] In a redundancy situation a fair and reasonable employer must, if challenged, be able to establish that he or she has complied with the statutory obligations of good faith dealing pursuant to [s.4](#) of the [Employment Relations Act 2000](#) (the Act) which requires the parties *inter alia* to be '*responsive and communicative* in their dealings with each other.

[71] Good faith dealing includes consultation "*as the fair and reasonable employer will comply with the law*" Mr Enright's position was not redundant at the time of the proposed meeting to be held on 22 December 2016. However Mr Hipkins, being aware that some of the FPIS employees had been provided with provisional employment agreements by Aon and knowing that Mr Enright and two other FPIS employees had not be offered employment,

decided to meet with them to advise on the process to be followed for them should the Commerce Commission approve the sale of FPIS to Aon.

[72] The letter to Mr Enright dated 21 December 2016 made it clear that the purpose of the meeting was to discuss

restructuring: “however this is subject to the Commerce Commission giving their approval to the proposed merger.”

[73] I find that the meeting was not a commencement of consultation proper regarding the redundancy because the redundancy situation had not arisen at that stage; rather Mr Hipkins said he intended it to be in the nature of a “heads up” of the prevailing situation and a potential redundancy situation which was contingent upon the Commerce Commission approving the sale. Had the sale to Aon been approved then at that point there would be consultation about his work, possible termination and redundancy compensation.

[74] Accordingly Mr Hipkins informed Mr Enright that there would be a further consultation meeting arranged after the Commerce Commission decision was known and consequently sale to Aon occurred with the accompanying loss of Mr Enright’s position. I consider this to have been the action of a fair and reasonable employer in the circumstances at that time.

[75] There had been no dismissal by FPIS, and I find that there was no action had been taken by FPIS with the intention of making Mr Enright resign from his employment.

[76] Mr Hipkins had been aware at the time of the rescheduled meeting on 23 January

2017 that Mr Enright had been seeking alternative employment, and therefore it would have been reasonably foreseeable by FPIS that Mr Enright might resign from his employment.

[77] However I find that there had been no breach of duty on the part of FPIS which had led to that situation.

[78] I determine that Mr Enright was not constructively dismissed by FPIS.

### *(iii) Resignation*

[79] Mr Enright had applied for alternative employment whilst on sick leave. He had accepted alternative employment and commenced it on 6 March 2017 without either advising FPIS that he had resigned or providing the four weeks’ contractual notice in writing.

[80] His actions in returning the company vehicle and other property to FPIS in response to the request in the letter dated 7 March 2017 that he do so if he did not intend to return to work at FPIS confirmed to it that he had terminated his employment.

[81] I find that Mr Enright accepted alternative employment at a time when his employment with FPIS had not been confirmed as redundant, and FPIS had taken no action to terminate it.

[82] I determine that Mr Enright voluntarily resigned from his employment with FPIS.

### **Was Mr Enright unjustifiably disadvantaged during the prospective sale process?**

[83] The duty of good faith as set out in [s 4](#) of the Act imposes a duty on employers and employees to deal with each other in good faith.

[84] The duty of good faith is a two edged sword in that it applies to both the employer and the employee in an employment relationship. In particular employers and employees are to be “*active and constructive*” and “*responsive and communicative*”<sup>3</sup> with each other with a view to maintaining a productive employment relationship.

[85] As a member of the senior management team, Mr Enright had been cognisant of the financial position of FPIS and that the directors and shareholders had been seeking a sale for some time prior to entering into negotiations with Aon.

[86] Mr Enright was made aware in October 2016 that FPIS was intending to enter into a sale process to sell its book of business, assets and certain liabilities to Aon, but was also aware that a sale was dependent upon Aon completing a due diligence process and, more importantly, the Commerce Commission approving the sale.

[87] Mr Enright said he had formed the view from the meeting in October 2016 that if the sale to Aon did not proceed FPIS would not be able to survive financially and his employment would end.

[88] During the meeting held on 7 November 2016 Mr Hipkins had invited employees with questions to contact him, providing his telephone number. However Mr Enright had not contacted Mr Hipkins to confirm if his view that FPIS would be unable to survive should the sale to Aon not proceed and his employment with FPIS therefore not continue was correct. Nor did he advise Mr Hipkins that he was feeling stressed as a result of this perception.

[89] Pending the expected decision by the Commerce Commission on 23 December 2016, Aon conducted interviews with FPIS employees including Mr Enright during December 2016.

The interviews were concluded on 20 December 2016 and Mr Hipkins was advised by Aon of

who it wished to employ. It was only at this point that FPIS as Mr Enright's employer knew that his on-going employment was at risk if the sale proceeded.

[90] Accordingly Mr Hipkins wrote to Mr Enright by letter dated 21 December 2016 to invite him to a meeting to discuss the situation and future steps. I consider this was appropriate and timely action on the part of FPIS.

[91] It was at Mr Enright's request that the meeting was delayed until 23 January 2017.

[92] At the meeting on 23 January 2017 Mr Enright was accompanied by his support person, Mr Bennett. There is no evidence that he asked Mr Hipkins to confirm during this meeting his view that FPIS would be unable to survive should the sale to Aon not proceed with the contingent loss of his employment with FPIS. Nor did he advise Mr Hipkins that he was feeling stressed as a result of this perception and the prospect of the immediate loss of his job if the sale did proceed.

[93] Whilst Mr Enright's evidence was that a previous period of unemployment had exacerbated the stress he was experiencing as a result of the prospective sale process, he had also not explained this to FPIS.

[94] Mr Hipkins could not recall whether or not he had told Mr Enright that even if the sale to Aon was approved, there would be ongoing work to be completed and therefore ongoing employment for him. If he had done so, this may have had the effect of allaying Mr Enright's concerns and reducing the level of stress he was experiencing.

[95] I observe that Mr Enright was under a duty to be responsive and communicative, but he failed to advise Mr Hipkins of his concerns either following the invitation to raise personal questions given in the letter and meetings of 7 November 2016 or at the meeting held on 23

January 2017. Mr Bennett, as Mr Enright's professional advisor did not raise any concerns on behalf of Mr Enright at the meeting held on 23 January 2017.

[96] Mr Enright referred to the first offer to settle the matter made by Mr Bennett which he believed should have indicated to FPIS that he was under stress.

[97] That letter is not before the Authority, however I note that the duty under the Act is to be "*responsive and communicative*", this requires more than expecting an employer to guess how an employee is feeling when they have not communicated this.

[98] At the date of the 23 January 2017 meeting the decision from the Commerce Commission was expected on 3 February 2017 but this was further delayed until 3 March 2017.

[99] Clearly the prospective sale of FPIS to Aon was an unsettling situation for all FPIS employees, but the impact upon Mr Enright was greater because he had not been offered ongoing employment with Aon in the event that the sale proceeded, although he was not aware of that until December 2016.

[100] Until that point his view that his employment would not continue irrespective of whether or not the sale to Aon proceeded had been formed in reliance upon his own impressions for which he had not sought any confirmation from Mr Hipkins despite the opportunities provided to do so.

[101] There was no further meeting between FPIS and Mr Enright in the period after 23 January 2017 and his going on sick leave on 21 February 2017, four weeks later.

[102] Whilst FPIS was dependent upon the outcome of the Commerce Commission decision, I consider that a fair and reasonable employer would have appreciated that the uncertainty of ongoing employment would be stressful to an employee in Mr Enright's position.

[103] I note that Mr Enright's evidence was that he had not been advised that his employment would continue for some time irrespective of whether or not the sale to Aon proceeded, and Mr Hipkins was unable to confirm that this information had been communicated to him. Had it been provided, this may have lessened the anxiety Mr Enright was experiencing.

[104] I consider that a fair and reasonable employer would have ensured that Mr Enright was made aware that there would be a period of ongoing employment whether or not the sale to Aon proceeded, and have (i) made enquiries as to Mr Enright's well-being during the four week period following the meeting on 23 January 2017 and (ii) offered him some support during this time.

[105] FPIS failed to do so, and I find this to have been a breach of good faith on its part.

[106] I determine that Mr Enright was unjustifiably disadvantaged in his employment by FPIS.

### **Remedies**

[107] Mr Enright had obtained alternative employment whilst still employed by FPIS, and therefore there is no entitlement to lost wages.

*Compensation for Hurt and Humiliation under s 123 (1) (c) (i) of the Act.*

[108] Mr Enright suffered stress during the period between October 2016 and the date he left FPIS employment, however prior to the confirmation towards the later part of December

2016 that there would not be ongoing employment for him with Aon if the sale proceeded, this was his impression unsubstantiated by evidence.

[109] I have found that in the period 23 January to 6 March 2017 FPIS unjustifiably disadvantaged Mr Enright by its failure to enquire about his well-being or whether or not he required any support.

**[110] I order that FPIS pay Mr Enright the sum of \$2,500.00, pursuant to s 123(1) (c) (i) of the Act.**

### *Contribution*

[111] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[112] I have found that Mr Enright did not communicate his concerns to his employer.

[113] Moreover he sought other employment whilst on sick leave, and commenced this whilst still employed by FPIS without either notifying it or providing the contractual period of notice in breach of the Employment Agreement. This was also a breach of the duty of good faith duty he owed to FPIS.

[114] I reduce the amount ordered to be paid to Mr Enright by FPIS as compensation to be reduced by 40% pursuant to s.123(1)(c)(i) of the Act.

### **Costs**

[115] Costs are reserved. The parties are encouraged to resolve the matter between them. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

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

**Eleanor Robinson**

**Member of the Employment Relations Authority**