



suitable as a General Manager and he had signed two contracts on SPK Industries' behalf without Mr Li's (the sole director and shareholder's) prior authorisation.

[2] Mr George was called to a meeting with Mr Li on 17 October and told he was unsuitable for the General Manager position but would be given work as a contractor instead. Mr Li followed this meeting with an email to Mr George which says:

*"Following our meeting this afternoon, I just put in writing for your record.*

*From your last 9 weeks performance we feel you are a nice person to work with.*

*But not suit SPK GM role. According contract signed, we would like to terminate the employment contract with 4 weeks notice. [...]" [stet]*

### **Issues**

[3] The issues to be determined include:

- (a) Was Mr George's dismissal justified?
- (b) If not, what if any remedies should be awarded?
- (c) What if any costs should be awarded?

### **Was Mr George's dismissal justified?**

[4] Justification is to be assessed in accordance with the justification test in s.103A of the Act. This requires the Authority to objectively determine whether how SPK Industries acted, and its actions were what a fair and reasonable employer could have done in all the circumstances at the time Mr George was dismissed.<sup>1</sup>

[5] When determining justification the Authority must consider the four procedural fairness tests set out in s.103A(3) of the Act. A fair and reasonable employer is expected to comply with its statutory obligations, not only in terms of the four procedural fairness tests in s.103A(3) of the Act but also with its good faith obligations under s.4 of the Act. Failure to do so undermines an employer's ability to justify its actions.

---

<sup>1</sup> Section 103A(2) of the Act.

[6] Mr George was never subject to a performance management or monitoring process. He had not received any warnings prior to his dismissal.

[7] Mr George was not given any advance notice that the meeting on 17 October was to discuss his ongoing employment or that one potential outcome of the meeting was the termination of his employment. He was not provided with any information before the 17 October meeting nor was he given any information at the meeting. He was not advised of his right to have a representative present with him at the meeting.

[8] I find that Mr Li did not go through the reasons why he believed Mr George was unsuitable as General Manager. Instead Mr George was asked to identify what he had achieved since starting work. After he took Ms Li through this Mr George was told he was unsuitable to be General Manager.

[9] I find that Mr Li did not provide Mr George with any specific details about the alleged performance concerns. After reviewing the information Ms Li relied on to support his view that Mr George it is clear that a fair and reasonable employer could not dismiss an employee for such matters even if they had been proven. However, I also consider that the matters relied on did not meet the required standard of the balance of probabilities.

[10] I find that a fair and reasonable employer could not have dismissed Mr George in all the circumstances. I also find that the way in which Mr George's employment was terminated is procedurally unfair. I find that Mr George's dismissal was substantively and procedurally unjustified.

### **What if any remedies should be awarded?**

#### *Mitigation*

[11] I am satisfied that Mr George took appropriate steps to mitigate his loss. He ended up moving his family to Invercargill to accept a job which he started on 03 March 2014.

#### *Lost remuneration*

[12] Mr George claims 13 weeks' lost remuneration. I am satisfied he lost in excess of that amount and that he should be compensated for that loss. SPK Industries is

ordered to pay Mr George \$26,250 (13 weeks x \$2019.23 per week) under s.128(2) of the Act.

*Distress compensation*

[13] Mr George has suffered considerable distress. He had other employment options at the time he accepted SPK Industries' offer of employment but decided to take the General Manager role on because he believed he could add considerable value to the business.

[14] His dismissal has had a severe impact on him. He fell into arrears with his mortgage and has had to have assistance from his family with that. He had to move his family to live for free with friends due to financial issues. He had to take his two children out of school and move his family to Invercargill to obtain work.

[15] His previously very good reputation in the plumbing industry has suffered and he has been on the receiving end of adverse comments about his dismissal. He has also been told that his short tenure with SPK Industries has set his career back because it is a black mark or red flag against him.

[16] Mr George's relationship has suffered in face of the serious financial consequences his unjustified dismissal has caused him. I accept Mr George's evidence that he has suffered a high level of humiliation and distress as a result of his unjustified dismissal.

[17] SPK Industries is ordered to pay Mr George \$10,000 under s.123(1)(c)(i) of the Act to compensate him for the humiliation, loss of dignity, and injury to feelings he suffered as a result of his unjustified dismissal.

**What if any costs should be awarded?**

[18] Mr George's actual legal costs are \$6,325. As the successful party he is entitled to a contribution towards his costs. I adopt the Authority's usual notional daily tariff based approach to costs which is currently \$3,500.

[19] This investigation meeting took one hour so the notional pro-rata notional starting tariff is \$500. Neither party identified any factors which should result in the notional starting tariff being increased or decreased and I am now aware of any.

[20] SPK Industries is ordered to pay \$500 towards Ms George's costs and to reimburse him \$71.56 for his filing fee.

**Rachel Larmer**  
**Member of the Employment Relations Authority**