

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 141
3257459

BETWEEN NIKITA GLASSON
Applicant

AND SOUTH PACIFIC MEATS
LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Paul Mathews, advocate for the Applicant
Roxy Robertson, counsel for the Respondent

Investigation Meeting: 10 December 2024 in Christchurch

Further Information
Received: 6 & 7 March 2025 from the Applicant
6 March 2025 from the Respondent

Date of Determination: 7 March 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Nikita Glasson was seasonally employed by South Pacific Meats Limited (SPM) at its Malvern plant in the stockyards department from about January 2021 until she was summarily dismissed on 23 March 2023.

[2] Ms Glasson says that she was unjustifiably dismissed and unjustifiably disadvantaged and has personal grievances against SPM. Ms Glasson's grievances were set out in correspondence on 26 April 2023. Ms Glasson sought to resolve matters in discussions or by mediation.

[3] In its reply on 3 May 2023, SPM set out why it considered it had justifiably dismissed Ms Glasson. It also said it would attend mediation.

[4] Despite mediation, matters were not resolved.

[5] In her statement of problem, Ms Glasson says that SPM ignored her requests for support with training a new staff member, thereby affecting her employment to her disadvantage by its unjustifiable action. Soon after Ms Glasson's last request for help, there was an incident between her and the new worker. Ms Glasson was then subject to a disciplinary process which resulted in her unjustified dismissal. Ms Glasson seeks compensation for each personal grievance and reimbursement of lost remuneration resulting from the dismissal.

[6] In its reply, SPM says that an unjustified disadvantage personal grievance was not raised within time and that it justifiably dismissed Ms Glasson following a proper process.

The Authority's investigation

[7] At a case management conference, issues were identified and timetabling arrangements were set for an investigation meeting. Later, the meeting was rescheduled and the matter was reassigned to me to investigate and determine the problem.

[8] Ms Glasson and her mother provided statements in support. Camille Kelly and Adam Grant are SPM's production manager and plant manager, respectively. They each provided statements. At the meeting, witnesses confirmed their statements and answered questions under oath.

[9] The parties also provided relevant documents prior to, at and following the investigation meeting.

[10] In this determination, I will state relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders.

[11] It is first helpful to outline what happened, before dealing with the issues.

What happened?

[12] Ms Glasson was first employed at SPM in January 2021 as a stockyards team member. There followed several periods of seasonal employment.

Ms Glasson trains a new worker

[13] In early 2023, Ms Glasson was asked to train a new worker in the yards on lamb production. Ms Glasson was told by co-workers that the new worker was autistic.

[14] Ms Glasson says that after an initial period, she started to experience difficulty getting him to follow instructions. Ms Glasson spoke to the stockyards supervisor, who said he would speak to him. A week or so later, Ms Glasson spoke to the supervisor a second time, who said he might re-assign him. That did not happen.

[15] Next, in response to an instruction, the new worker told Ms Glasson that she was not a supervisor, was just a worker like him and he did not have to listen to her. Ms Glasson spoke to Ms Kelly about this, in about February 2023. Ms Kelly told Ms Glasson that she would look into it and find a way they could work together.

[16] Ms Kelly's evidence is that she spoke to the supervisor, that he said he would monitor and support Ms Glasson and would pass that on to Ms Glasson. Ms Kelly says that a few days later the supervisor confirmed he had spoken to Ms Glasson who said she was happy to keep working with the worker.

[17] However, Ms Glasson says that after speaking to Ms Kelly, she did not hear back from her or the supervisor. There is no direct evidence to the contrary, so I accept Ms Glasson's evidence on that point.

[18] The following incident occurred perhaps a week or so after Ms Glasson spoke to Ms Kelly.

The incident - 2 March 2023

[19] On 2 March 2023, Ms Glasson was working with the new worker. She asked him to swap roles, as is standard. He refused, Ms Glasson repeated the request, he refused again and in response Ms Glasson called him "useless". Ms Glasson says she was angry, said something to a co-worker who she asked to cover her and left the work area to see Ms Kelly.

[20] Ms Kelly was not present. Ms Glasson then spoke to Mr Grant, the plant manager. Their evidence differs about that exchange, but it is not necessary to canvass the

differences. After their exchange, Mr Grant took Ms Glasson back to the department and arranged for Ms Glasson and the new worker to be separated. Work continued without further incident.

SPM's investigation

[21] There is a 2 March 2023 email from a different supervisor to Mr Grant with the subject line "Yards staff conflict 2/3/23". The email starts by saying that it contains the events of what happened in the yards that day. It then describes steps taken by the author to investigate the incident between Ms Glasson and the new worker, and a second exchange the same day between the new worker and another staff member. The author says that she had not personally witnessed the incident or the other exchange, but had spoken to other workers as well as Ms Glasson and the other staff member. She mentioned an employee (Kamal) who would have witnessed both situations. She had not had a chance to speak to Kamal directly.

[22] Regarding the incident, Ms Glasson next received a letter dated 8 March 2023 from Mr Grant. He invited Ms Glasson to attend a meeting to discuss allegations of serious misconduct "which may lead to a warning being issued you". Specifics were set out in the letter based on "Email from supervisor". A handbook and policy (relevant sections highlighted) were listed as enclosed, but the "Email from supervisor" was not. Ms Glasson was offered the opportunity to bring a support person.

[23] SPM provided copies of the handbook and the policy to the Authority after the investigation meeting. I accept the extracts were probably enclosed with the 8 March 2023 letter.

[24] The meeting was on 13 March 2023. Ms Glasson was accompanied by a support person. Mr Grant and Ms Kelly attended for SPM. Ms Glasson gave her account of the incident and how it started. She accepted some aspects of the allegations set out in the letter but disputed others. Ms Glasson suggested two people (Rob and Kamal) who could be spoken to regarding the incident. After the meeting, Ms Glasson returned to work. Ms Kelly made notes of the discussion, but these were not copied to Ms Glasson.

[25] At some point, an HR co-ordinator for SPM (Mr Sapi) interviewed Rob about his perception of the relationships between Ms Glasson and the new worker and the other

staff member involved in the second exchange with the worker. Mr Sapi noted Rob as saying that Ms Glasson and the other staff member involved in the second exchange pick on the new worker, always talk down to him, make him feel like he is useless, do that every day, do so deliberately, never do it to anyone else but just to the new worker. Rob is also noted as confirming that there was no threat of physical violence. The notes say that he “never saw her [Ms Glasson] once train him [the new worker]”.

[26] Ms Glasson next received a letter dated 21 March 2023 from Mr Sapi. Mr Sapi had not been part of the 13 March meeting, but said that he had determined that three of the allegations were substantiated and one was not, that it amounted to serious misconduct and he was proposing immediate termination of Ms Glasson’s employment pursuant to the employment agreement and the SPM Employee Handbook. Mr Sapi sought to meet with Ms Glasson before making his final decision.

[27] There was a meeting on 23 March 2023, attended by Ms Glasson, Mr Grant and Mr Sapi. Ms Kelly was not involved. Mr Grant asked if Ms Glasson had anything to add. Ms Glasson had an opportunity to respond and was then asked to leave the room.

[28] When Ms Glasson was invited back into the room, Mr Grant told her he was going to stick with the original decision.

[29] As a result, Ms Glasson’s employment ended that day.

[30] Mr Grant’s evidence is that Mr Sapi probably would have drafted Mr Grant’s 8 March 2023 letter and it was probably an error that the 21 March 2023 letter was in Mr Sapi’s not Mr Grant’s name. There is no reason to doubt this evidence. I accept that Mr Grant was the decision maker regarding the decision to dismiss Ms Glasson.

Issues

[31] SPM summarily dismissed Ms Glasson, so justification needs to be assessed.

[32] There is also a claim, said to be out of time, that Ms Glasson’s employment was affected to her disadvantage by unjustified (in)actions by SPM. It is convenient first to consider the dismissal and return to this point, if necessary.

[33] If a personal grievance is established, remedies including questions of contribution will need to be considered.

Unjustified dismissal claim

[34] Whether the dismissal was justified must be objectively determined by considering whether SPM's actions and how it acted, were what a fair and reasonable employer could have done in the circumstances at the time. In assessing justification, there are matters which I must consider as well as other factors I may consider if appropriate.¹

[35] A fair and reasonable employer would act in good faith, if dismissing an employee. The duty of good faith requires an employer who is proposing to make a decision that it likely to have an adverse effect on the continuation of an employee's employment, to provide the employee with access to relevant information and an opportunity to comment before the decision is made.²

[36] SPM is a substantial private sector business with sufficient in-house and other professional resources to enable it to fully investigate employment allegations before deciding to take action against its employees. In its handbook and its policy, SPM commits to fully investigate allegations.

[37] SPM raised concerns with Ms Glasson through the 8 March 2023 letter, but not all of its concerns.

[38] In the letter, SPM referred to its "Bullying and Harassment Policy" and "BULLYING AT WORK", as part of the context for specific allegations. Mr Grant alleged that Ms Glasson had deliberately used offensive or abusive language to the new worker by saying to him that he was useless and saying that he should "fuck off and work somewhere else". Mr Grant also alleged that Ms Glasson had threatened or intimidated the worker by saying "I'm going to punch you in the head" and that Ms Glasson had left her workstation without the supervisor's authority.

¹ Employment Relations Act 2000 s 103A.

² Employment Relations Act 2000 s 4(1A).

[39] In the 2 March 2023 email to Mr Grant, the supervisor claimed that Ms Glasson said something about the worker's work that was not constructive criticism, the worker ignored it and then Ms Glasson shouted at him that he was "useless". The contention that the incident flowed from Ms Glasson not being constructive in her criticism of the worker was not raised with Ms Glasson.

[40] The claims in Mr Sapi's notes that Ms Glasson and the other staff member "pick on", "talked down on", "of course" were aware of it and never did it to anyone else except the new worker were not raised with Ms Glasson. Nor was it raised with her that she had never been seen to train the new worker.

[41] The 2 March 2023 email and Mr Sapi's notes were not disclosed to Ms Glasson during the disciplinary process.³ The foregoing concerns were not canvassed in the 13 March 2023 meeting according to Ms Kelly's notes, nor are they set out in the 21 March 2023 "Re: Disciplinary Procedure- Decision" letter.

[42] Mr Grant said that he "didn't really" rely on the 2 March 2023 email. However, the 2 March 2023 email directly formed the allegations in Mr Grant's 8 March 2023 disciplinary letter, so it is likely that he relied on it.

[43] Mr Grant's evidence is that the disciplinary outcome changed from a proposed warning (8 March 2023) to a proposed summary dismissal (21 March 2023) because of the allegations in Mr Sapi's notes. He said that Mr Sapi's notes were given to Ms Glasson. However, I prefer Ms Glasson's evidence that the notes and the content were not disclosed to her. If they had been, Ms Glasson would have responded to its contents and her response would have been mentioned in the 21 March letter.

[44] Mr Grant also said that the allegation that Ms Glasson was a bully was not part of his decision making. I do not accept that evidence. Bullying was alleged in the 8 March 2023 letter to instigate a process that might lead to a warning. It changed after Mr Sapi's notes to a dismissal. It is likely that Mr Grant was influenced in that decision, as a result of Mr Sapi's information that alleged conduct covered by the policy regarding bullying.

³ It seems likely that Mr Sapi's interview of Rob and the notes followed the first disciplinary meeting, so could not have been raised initially. But they must have predated the final meeting.

[45] In summary, I find that there were concerns set out in the 2 March 2023 email and Mr Sapi's notes that were not raised with Ms Glasson. It follows too that Ms Glasson did not have a reasonable opportunity to respond to the undisclosed concerns.

[46] The non-disclosure of these documents also means that SPM did not comply with the duty of good faith to disclose relevant material and provide an opportunity to comment before making a decision.

[47] Ms Kelly's notes of the 13 March 2023 meeting record Ms Glasson saying that she told the new worker to "f off a couple of times", but not in the context alleged in the 8 March 2023 letter. Ms Kelly's note was not disclosed to Ms Glasson, so she never had the opportunity to correct that. I accept Ms Glasson's evidence that she did not say that in the 13 March 2023 meeting.

[48] SPM also interviewed the new worker. Mr Grant's evidence is that he would have had that material during Ms Glasson's disciplinary process. He did not disclose it to her at the time and SPM says it cannot now be located. The material was probably relevant to Mr Grant's consideration about Ms Glasson's employment, so in good faith it should have been disclosed.

[49] SPM did not sufficiently investigate the allegations against Ms Glasson. The 2 March 2023 email named a person who would have witnessed "both situations" and Ms Glasson specifically mentioned him as well. Ms Glasson drew attention to a potential language barrier, but SPM did not check with the witness to see if he had heard anything. In addition, there is no evidence that SPM checked with the staff member involved in the second incident, in light of Ms Glasson's explanation.

[50] The allegation was that Ms Glasson threatened or intimidated the new worker by saying she was going to punch him in the head. Ms Glasson's account was that she said to the other staff member that she needed to get out before she did something stupid and hit him. SPM rejected Ms Glasson's account without asking these two others about what had happened.

[51] CCTV footage available at the time did not include sound. Even so, SPM could have reviewed the footage to help establish whether the new worker's reactions were

consistent with the alleged “offensive or abusive language” by Ms Glasson and the allegation that she “threatened or intimidated” him.

[52] I also find that SPM did not genuinely consider all of Ms Glasson’s explanations in relation to the allegations in the 8 March 2023 letter.

[53] SPM initially alleged that Ms Glasson shouted at the new worker to “fuck off and work somewhere else”, even though that had been attributed to the other staff member in the 2 March 2023 email. In its 21 March 2023 letter, SPM decided that Ms Glasson called the worker “useless”, but had not told him to “fuck off and work somewhere else”. SPM considered and accepted Ms Glasson’s explanation regarding the first allegation.

[54] The second allegation was that Ms Glasson threatened or intimidated the new worker by saying to him “I’m going to punch you in the head”. The allegation set out in the 2 March 2023 email was not attributed to a specific source. As explained above, Ms Glasson’s account was not checked with others. Without explanation, SPM in the 21 March 2023 letter simply rejected Ms Glasson’s explanation. I find that SPM did not genuinely consider this part of Ms Glasson’s explanation.

[55] The third allegation was that Ms Glasson left her workstation without the supervisor’s authority. Ms Glasson accepted that she had done this, but explained the context.

[56] SPM did not genuinely consider Ms Glasson’s explanation as to the context in which she told the new worker he was “useless”, told the other staff member she needed to leave before she hit him and left her workstation without the supervisor’s authority. Ms Glasson said she had recently reported difficulties in getting the new worker to follow her instructions, without any substantive response. Then on this occasion, she had asked him to swap tasks but he refused to swap and said he did not have to listen to her. She removed herself to de-escalate the situation. Ms Glasson’s explanation in effect was that she was provoked, responded verbally but left so the situation did not get worse. However, SPM did not answer that or explain why it did not accept it.

[57] There is a disagreement in the evidence about how long SPM took to finalise its decision on 23 March 2023, after giving Ms Glasson an opportunity to respond to the 21 March 2023 letter. Both sides rely on recollection, but there is a brief note made by SPM

that indicates that it was a short meeting. It is not necessary to resolve that dispute as it adds nothing of significance at this point.

[58] The foregoing issues are not minor procedural defects. They also resulted in Ms Glasson being treated unfairly.

[59] I find that SPM unjustifiably dismissed Ms Glasson and she has a personal grievance.

Unjustified disadvantage claim

[60] The claim is based on SPM's failure to adequately respond and report back to Ms Glasson, following her having raised issues with her supervisor and Ms Kelly about the difficulties she was experiencing with training the new worker.

[61] I have treated those issues as a factor relevant to the unjustified dismissal.

[62] Given that, it is not appropriate to treat those issues as giving rise to a separate personal grievance.

Remedies

[63] There is a claim for \$35,000.00 compensation. However, it is submitted that compensation should be between \$18,000.00 and \$25,000.00.

[64] I accept Ms Glasson's evidence that she was shocked, hurt and unsure about what to do. Ms Glasson was more stressed, upset and worried as time passed. She faced financial pressure, had to borrow money from family and sell one of her cows to help pay costs. Ms Glasson's mother corroborates that evidence.

[65] The harm suffered by Ms Glasson places this case near the bottom of the middle range of cases of this type. I fix \$15,000.00 as appropriate compensation to remedy the proven distress, subject to what follows.

[66] Ms Glasson lost remuneration as a result of her personal grievance. I accept the calculations that show her actual loss amounted to \$13,273.00 (gross) and fix that as an appropriate award, subject to what follows.

[67] In deciding the nature and the extent of remedies to be provided, I must consider the extent to which Ms Glasson's actions contributed in a blameworthy manner to the situation giving rise to the grievance and reduce the remedies accordingly.

[68] Ms Glasson told the new worker he was useless, told the other staff member she had to leave or she would hit him and left her workstation without telling the supervisor. This conduct contributed in a blameworthy manner towards the situation giving rise to her personal grievance, particularly because Ms Glasson was subject to a final warning on an unrelated matter.

[69] A reduction of 50% is to be reserved for exceptional cases and care is required before imposing a reduction even at 25%.⁴ In *Maddigan*, the court fixed contribution at the level of 20%. In my assessment, the extent of Ms Glasson's contribution is at a similar level to that in *Maddigan*. Accordingly, I fix 20% as an appropriate level of contribution. There is no reason to distinguish between the remedies of compensation and reimbursement as to the impact of the reduction, so I will reduce both amounts accordingly.

Summary and Orders

[70] Ms Glasson was unjustifiably dismissed and has a personal grievance against SPM.

[71] To settle her personal grievance, South Pacific Meats Limited is to pay Nikita Glasson the following amounts within 28 days of this determination:

- (a) Compensation of \$12,000.00 under s 123 (1)(c)(i) of the Employment Relations Act 2000; and
- (b) Reimbursement of \$10,618.00 (gross) under s 123 (1)(b) of the Employment Relations Act 2000.

[72] Costs are reserved.

[73] If the parties are unable to resolve costs by agreement, the party claiming costs may lodge, and then should serve, a memorandum on costs within 28 days of the date of

⁴ *Maddigan v Director-General of Conservation* [2019] NZEmpC 190.

this determination. From the date of service of that memorandum the other party will then have 14 days to lodge and serve a reply.

[74] The parties can anticipate the Authority would determine costs, if asked to do so, on its usual “daily tariff” basis unless factors require an adjustment upwards or downwards.⁵

Philip Cheyne
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1