IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2014] NZERA Auckland 215
5431815

	BETWEEN	BASANT GOVIND Applicant
	AND	VIP STEEL PACKAGING (NZ) LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Helen White, Counsel for the Applicant Daniel Erickson, Counsel for the Respondent
Investigation Meeting:	27 and 28 February 2014
Determination:	5 June 2014

DETERMINATION OF THE AUTHORITY

A. VIP Steel Packaging (NZ) Limited (VIPL) acted unjustifiably in dismissing Basant Govind.

B. Within 28 days of the date of this determination VIPL must settle Mr Govind's personal grievance by paying him the following remedies:

(i) Lost wages for the period from 5 July 2013 to 3 January 2014 (less earnings made by him in that time and less a reduction of 20 per cent to be made for contributory conduct); and

(ii) Compensation for the benefit of health insurance in that period; and

(iii) $5600 as compensation under s123(1)(c)(i) of the Employment Relations Act 2000 (an amount that has been

reduced by 20 per cent due to contributory conduct).

C. Costs are reserved.

Employment relationship problem

[1] VIP Steel Packaging (NZ) Limited (VIPL) dismissed Basant Govind from his job as Quality Safety & Environment co-ordinator at its Avondale factory on 4 July 2013.

[2] Another employee – the site's stores co-ordinator Randall Todd – was dismissed at the same time following an investigation of how the two men had carried out some of their work on 20 June 2013. The Authority jointly investigated the grievance each man raised about their dismissal. Separate determinations about both applications have been issued at the same time.

[3] VIPL Business Manager Andrew Park made the decision to dismiss both men. In a letter dated 8 July 2013 that he wrote setting out his reasons for dismissing Mr Govind, Mr Park said he had lost confidence in Mr Govind's ability to perform his role due to an incident on 20 June 2013 and, from an investigation of that incident, decided Mr Govind had committed serious misconduct by working in an unsafe manner and failing to follow health and safety procedures.

[4] On 20 June Mr Govind worked on a stocktaking exercise with Mr Todd and logistics officer Sharmainne Cassidy. They were counting the stock of steel drums made on site and stored under an open-sided, sloping-roofed canopy. The drums were on pellets stacked closely together and four high. The three employees arranged for Ms Cassidy to count drums at ground level while Mr Govind went up in a 'cage', raised about 3.5 metres high on a forklift driven by Mr Todd, to count along the top of the stacks.

[5] Three sides of the cage were about 900 mm high while the fourth side, the back, had a frame standing a little over two metres tall. The base had two steel 'sleeves' into which the forks were inserted until the back of the cage touched or was close to the hoist or mast of the forklift and then lifted. Two sides of the cage had a length of link chain so it could be shackled to the forklift hoist.

[6] Mr Park himself witnessed some of the relevant events on 20 June as he had gone into the canopy area when Mr Govind was up in the cage and Mr Todd was operating the forklift. Mr Park noticed a gap between the back of the cage and the hoist. He directed Mr Todd to lower the forks and to push the cage back against the hoist. He then helped secure the chains. Mr Park did not ask, and was not told, at that time why there was a gap.

[7] Later information suggested the gap resulted from the back frame of the cage colliding with a roof beam and, as a result, the cage moved along the forks. The question of what Mr Todd and Mr Govind knew or saw of that movement at the time of the collision later became a hotly contested issue.

[8] However on 20 June, after seeing the cage was chained, Mr Park left the canopy area to continue with his own duties and Mr Todd raised the cage on the forks with Mr Govind in it so he could continue counting the drums. According to Mr Govind the back of the cage also came into contact with a roof beam on one more occasion shortly before they finished the count.

[9] Mr Park did not find out about the cage colliding with the roof beams until the following Monday morning, 24 June. That morning he asked Mr Govind why there was a gap between the cage and the back of the hoist on 20 June. Mr Govind then told him of two collisions and Mr Park decided to hold a formal investigation into the conduct of both Mr Govind and Mr Todd.

[10] Ms Cassidy was not subject to a formal investigation about her role in the events of that day but Mr Park did later interview her as a witness. Mr Park had asked her on 21 June about the gap between the hoist and the cage but she did not tell him then that she had heard the cage collide with a roof beam. Neither did she fill out any incident report about events that day.

[11] Similarly, Mr Park did not complete a 'near miss' report (on 20 June or the next day) about having seen the gap between the cage and hoist and intervening on 20 June. On 10 July, six days after he dismissed both Mr Todd and Mr Govind, Mr Park did complete and submit a "*flash report*" setting out his account of events and his subsequent investigation and dismissal of the two men. The flash report was in a

form or template provided in the VIPL safety manual that included a note stating: "*This report must be sent out on the day of the incident*".

[12] In its closing submissions VIPL summarised the reasons given for Mr Govind's dismissal, as stated in its 8 July letter to him, as being because he:

(a) worked in an unsafe manner, particularly by failing to conduct a risk assessment before conducting the count and failing to stop and reassess the situation after the first collision on 20 June; and
(b) failed to follow health and safety policies and procedures, particularly by failing to report the incident on 20 June 2013; and
(c) showed a lack of understanding of health and safety systems.

[13] VIPL said Mr Govind was not dismissed for failing to implement its new PSMS, which referred to a new safety manual and set of forms introduced in the business around a year earlier. During Mr Park's investigation he found that Mr Govind had not replaced the old manual and forms with the newer material but this was not mentioned in the letter of dismissal to him.

The Authority's investigation

[14] The Authority's investigation received written and oral evidence from Mr Govind; Mr Todd; Ms Cassidy; Mr Park; VIPL human resources consultant Andrea Smith; VIPL production manager Andrew Waelen, who attended one of Mr Park's three investigative or disciplinary meetings with Mr Govind; VIPL project manager Alan Dorset, who attended two of those meetings as Mr Govind's support person; and VIPL production scheduler Kerry Roberts, who was Mr Todd's support person in three investigative or disciplinary meetings with Mr Park.

[15] Each witness, under oath or affirmation, confirmed their written statements and answered questions from the Authority member and the parties' representatives. The representatives also provided closing submissions.

[16] As permitted under s174 of the Employment Relations Act 2000 (the Act) this determination has not set out all the evidence and submissions received but has made findings of fact and law and expressed conclusions on the issues for resolution.

[17] In light of the evidence and submissions, those issues were:

(i) Had VIPL fully and fairly investigated its concerns about Mr Govind's conduct?

(ii) Following that investigation, was its decision to dismiss him one a fair and reasonable employer could have made (including whether VIPL's actions towards Mr Govind were justifiably different from its treatment of Ms Cassidy and Mr Park in respect of the incident on 20 June 2013)?

(iii) If the answer to (i) and/or (ii) was 'no', what remedies were then due to Mr Govind, considering:

  (a) lost wages; and

  (b) compensation for the loss of the benefit of health insurance; and

  (c) compensation for hurt and humiliation?

(iv) Should any remedies awarded to Mr Govind be reduced due to blameworthy conduct by him that contributed to the situation giving rise to his grievance?

(v) Whether either party should contribute to other party's costs of representation?

Was VIPL's investigation full and fair?

[18] A dismissal was justified if that was what a fair and reasonable employer could have done in all the circumstances at the time. In applying that test the Authority must have considered whether VIPL sufficiently investigated its allegations about Mr Govind's conduct, whether he was given a reasonable opportunity to respond to all VIPL's concerns, and whether Mr Park (on behalf of VIPL) genuinely considered Mr Govind's explanations before dismissing him. The Authority must have regard to the resources of VIPL and only have taken account of any defects in the process followed by VIPL that were more than minor and resulted in Mr Govind being treated unfairly.[1]

[19] VIPL submitted that, apart from some minor procedural flaws, its investigation of Mr Govind's conduct met the statutory standard. Mr Govind was given notice of the meetings held with him, advised that he could bring a support person (although VIPL accepted, as a matter of best practice, this could also have referred to a representative as well), checked his account with other witnesses, advised him of preliminary findings and gave him the opportunity to comment on those and other matters that he wished to have taken into consideration, and provided

[1] Section 103A of the Act.

an opportunity for further feedback on Mr Park's conclusions before Mr Park decided to dismiss him.

[20] While that fairly summarised the superficial procedural steps taken, I concluded the investigation conducted by Mr Park, with Ms Smith's assistance, was not sufficiently full and fair for the following reasons:

(i) Mr Park's role as witness and fact-finder tainted the process he followed and the conclusions he drew; and

(ii) There were allegations about Mr Govind's actions and performance that affected Mr Park's decision but were not fairly put to Mr Govind as allegations with a proper opportunity to respond; and

(iii) Mr Park approached the investigation with a pre-conceived notion of the outcome being dismissal.

(i) Witness and fact-finder

[21] A manager making a disciplinary decision may rely on her or his own observations of the conduct in question but must be able to show that involvement, as both witness and decision-maker, was such that an objective observer would conclude she or he had brought an unbiased mind to considering and deciding the outcome.[2]

[22] VIPL submitted Mr Park was involved as witness to only part of the events in question – having seen the gap between the cage and the hoist – and was unaware of a collision between the cage and a roof beam. However I have concluded Mr Park's involvement as a decision-maker about Mr Govind's conduct was fatally flawed because, in finding facts and making decisions, Mr Park applied standards that he had not met himself that day or in his own subsequent conduct. I reached that view by considering Mr Park's own actions against the three reasons, as summarised in VIPL's closing submissions, for Mr Govind's dismissal.

A. Inadequate risk assessment

[23] Mr Park's 8 July letter said Mr Govind's use of the cage to conduct a pallet count was a 'non-standard task' for which Mr Govind knew a risk assessment and safety analysis should have been done before starting. However Mr Park had himself

[2] *Walker v Firth Industries* [2014] NZEmpC 60 at [45] (EC) and *Allen v C3* [2012] NZEmpC 124 at [25]-27].

used the cage lifted on a forklift on at least two occasions – once some weeks earlier to look at work being done by contractors on the canopy roof and once on 20 June when he and an auditor used it to look at the top of the drum stacks. He also had Mr Todd use the cage again on 25 June to act out scenarios of how Mr Todd and Mr Govind had used the cage on 20 June. There was no compelling evidence that on those occasions Mr Park had conducted the kind of assessment he found lacking in Mr Govind. For his 20 June use he gave what I considered to be rather weak evidence that he had checked the chain and looked at the roof beam but had not mentioned anything to Mr Todd about having done so.

[24] If Mr Park had, in fact, conducted the sort of risk assessment and safety analysis that he said Mr Govind failed to do, he might have identified that the cage's rusty state made it potentially unsafe to use, that it lacked a current warrant and that Mr Todd was not specifically trained in its use on the forklift. Those factors later resulted in the cage being removed from use but Mr Park could have identified them earlier as part of his own use of it if he had done such risk assessment before a 'non-standard task'.

B. Failure to follow procedures, including not reporting

[25] Mr Park's 8 July letter said Mr Govind showed a fundamental lack of understanding of health and safety management and should have been aware that the first step of procedure for the incident was to notify his manager (that was Mr Park). He said Mr Govind acknowledged failing to report the near misses to him in either written or verbal format until asked on 24 June about the cage not being properly chained on 20 June.

[26] On 20 June Mr Park saw what he later described, in the 'flash report' that he wrote on 10 July, as an "*unsafe act*" and an "*unsafe situation*" – referring specifically to the gap between the cage and the hoist (although he did not then know the reason for it). What he saw impressed him as sufficiently serious to immediately intervene and halt the activity. But after helping link up the chains, he did not appear to regard it as a matter that required an incident report. Yet VIPL's incident reporting procedure required that "*all incidents … including near miss … events, no matter how minor, shall be reported as outlined in the incident … flow chart and recorded in the*

site register". It stated the report "*should be completed by the Supervisor or Manager and submitted to the Health and Safety Co-ordinator within 24 hours of the incident* ...". The policy also stated that the Plant Manager (in this case Mr Park) and the Safety Coordinator (in this case Mr Govind) had "*a particular responsibility*" for the reporting and recording.

[27] Despite this Mr Park did not complete an incident report for what he saw on 20 June within 24 hours. Neither did he complete an incident report for what he described as a near-miss when he saw Mr Todd knock a drum off a pallet being loaded into a container on 21 June.

[28] It was not satisfactory to suggest, as Mr Park did, that he did not need to notify himself as manager about what he saw on 20 and 21 June. That is self-evident but did not dispense with the need for him (and with any other employee) to complete the next step of VIPL's incident reporting procedure. The step was fundamental to the integrity of the safety system so that such information about actual or potential situations and practices was then available to senior managers, safety advisors and human resources managers for audits and follow-up rather than being held (and potentially overlooked or tolerated) on particular sites. That sense of perspective was lost by Mr Park taking the role of witness and decision-maker. As a judge in his own cause, he then did not hold himself to the same standard about lodging incident reports that he found Mr Todd and Mr Govind so unsatisfactorily fell below.

C. A lack of understanding of health and safety systems

[29] Mr Park's 8 July letter said Mr Govind demonstrated a lack of understanding of the safety management systems in place and there were areas of the system that Mr Govind incorrectly believed did not apply to him.

[30] This referred to one explanation given by Mr Govind for not initially telling Mr Park about the roof beam collision. Mr Govind had said he thought the requirement to notify a supervisor or manager applied to shop floor production workers rather than himself as QSE co-ordinator. Mr Park was plainly justified in finding that an inadequate excuse but the difficulty he then had was his own concurrent failure to follow the precise steps of the procedure, specifically writing

incident reports about what he subsequently described as unsafe acts or near misses that he saw at the site on 20 and 21 June.

[31] Mr Park's own grasp of the detail of the company's health and safety system was also highlighted in his evidence on two other points. He referred to 'refamiliarising' himself with the site safety procedures by looking at the manual and its flowchart for incident reporting and recording, prior to a meeting with Mr Govind on 27 June. As Mr Park did so Ms Smith pointed out that the manual he was looking at should have been replaced with a newer version introduced a little over a year earlier. Mr Park also found Mr Govind had left the old stock of incident report forms in the site office and staff cafeteria and not swapped them for a newer version. While Mr Govind was primarily responsible for making those changes, it was also significant, I considered that more than a year had gone by without Mr Park becoming aware that the latest company documentation was not in use (although, in fairness to both Mr Govind and Mr Park, both the old and new manuals had, for all relevant purposes, identical wording and requirements regarding incident reporting and recording). The policy gave both him and Mr Govind "*a particular responsibility*" for such matters in their business unit.

[32] And while those facts did not absolve Mr Govind of his responsibilities, Mr Park's role as decision-maker meant he did not compare his own actions relative to Mr Govind's shortcomings as critically or objectively as someone not so closely involved may have done.

[33] There were practical alternatives to Mr Park carrying out VIPL's investigation. The company was part of a wider commercial group employing a number of managers and human resources advisors. It had the resources to have another unit manager or one of those advisors conduct the investigation.[3] If it had done so, more may have been made by such an investigator of Mr Park's own role and activities on the day and subsequently (as a matter of context in assessing both the safety risk and appropriate sanctions). As a result I concluded there was a reasonable level of doubt that, objectively assessed, Mr Park could bring and did bring an unbiased mind to his investigation and disciplinary decisions. The result was the investigation of the allegations against Mr Govind was not as full and fair as could have been carried out

[3] Section 103A(3)(a) of the Act.

by a fair and reasonable employer in the circumstances. Against that standard, VIPL's actions were unjustified.

(ii) Not all allegations were fairly put to Mr Govind for his response

[34] VIPL's actions were also unjustified because Mr Park and Ms Smith had concerns about Mr Govind's conduct and performance that were not fairly or fully raised with him but which, as a matter of fact, clearly influenced Mr Park's decision to dismiss him.[4]

[35] Those concerns or allegations were that:

(i) Mr Govind said he had filled out an incident form on 21 June but Mr Park suspected Mr Govind had in fact hurriedly (and inaccurately) completed the form only after being asked to hand it over on 25 June.

(ii) Although (as Ms Smith said in her oral evidence) Mr Govind had good audit results as the site safety officer, she thought he was not a strong leader in the workplace and Mr Park had doubts about Mr Govind's competence because, when a worker had cut his hand badly in March, Mr Govind (in Mr Park's opinion) had not appeared to know the reporting procedure for a serious harm incident.

[36] The first concern arose because, after Mr Govind was interviewed on 25 June, Mr Waelen accompanied him to get the incident form Mr Govind said he had completed about the 20 June incident. Mr Waelen waited for a few moments outside Mr Govind's office before Mr Govind handed over the form. When Mr Waelen passed the form on to Mr Park he said that he thought Mr Govind had quickly filled in the form while he was waiting. Mr Waelen's evidence did not disclose anything he saw or heard that led him to that view but he admitted he passed his suspicion on to Mr Park.

[37] What Mr Govind had written on the form was brief, had 22 June and not 20 June as the date of the incident, and had an incorrect calculation of the risk rating for the incident. However if Mr Park believed, as I concluded he did, that Mr Govind's actions in filling in and handing over the form were not merely inadequate but actively dishonest, that was an allegation Mr Park should have fairly and clearly made

[4] Section 103A(3)(b) and (c) of the Act.

openly to Mr Govind. Mr Park did ask him about the form and its contents and Mr Govind did subsequently provide a more complete and accurate form (which included suggested corrective actions about use of the forklift cage) however he was never told of Mr Park's true views on what had happened with the first form that he handed in.

[38] Neither was Mr Govind fairly advised of the views of Ms Smith and Mr Park about his performance in his role generally and over matters that went back several months. That was a breach of VIPL's general obligation to address performance matters openly and to provide guidance and time to improve before taking disciplinary measures.[5]

[39] Mr Govind did have explanations to offer about the negative evidence of Mr Park and Ms Smith about his performance. Those explanations related to both his workload and a different view of the facts in relation to specific examples. However my role was not to judge the respective merits of those competing views. Rather they were matters that should properly, earlier and openly have been addressed by VIPL. Its failure to have done so was not what a fair and reasonable employer could have done in all the circumstances at the time so VIPL's action, in that respect, was unjustified.

(iii) Pre-determination

[40] Mr Park's witness statement referred to an earlier safety incident in May 2013 involving a different employee seen standing underneath a six tonne load of steel body sheet being moved overhead by a crane. A disciplinary investigation of that incident resulted in the employee being issued with a final written warning.

[41] Mr Park talked about the outcome of that disciplinary process at a regular staff meeting with his senior leadership team at the site. Mr Govind, Mr Todd, Ms Cassidy, Mr Waelen and Ms Roberts attended the meeting. Mr Park recalled that he "*made it clear to staff that any future serious breaches of health and safety would result in dismissal*". He said he told them that they "*must demonstrate safety leadership going forward*".

[5] *Trotter v Telecom Corporation of New Zealand* [1993] 2 ERNZ 659 at 679.

[42] Considered in the totality of the evidence, both from him and others, Mr Park's comment revealed the approach he subsequently took in his disciplinary investigation of Mr Govind was unfairly focussed on dismissal as an outcome.

Disparity

[43] VIPL submitted Ms Cassidy was effectively a bystander to the relevant events, as she was not in the cage or in control of the forklift. In not filing an incident report, it said she had done only one thing wrong and not, as the two men had, a number of things wrong. On that basis it submitted any apparent disparity in Mr Park's treatment of her, in comparison to the investigation and dismissal of Mr Govind and Mr Todd, was superficial.

[44] The difference however is that, from the outset, Mr Park took no demonstrable steps to even consider Ms Cassidy as a potential subject of a disciplinary investigation. He excluded her without inquiry. But, rather than amounting to an unjustified disparity, that reflected a level of pre-conception or pre-determination he brought to his inquiries regarding the two men. Its other relevance was that he demonstrated that he considered the appropriate level of sanction for matters such as not filing an incident report after witnessing a 'near miss' incident – which was the one thing Ms Cassidy, in VIPL's submission, did wrong – was informal counselling. He 'had a word' with her, while for Mr Govind and Mr Todd inadequate reporting was a factor, in Mr Park's view, that warranted their dismissal.

[45] VIPL also submitted there was no disparity of treatment between Mr Park and Mr Govind. Mr Park's circumstances, it said, were markedly different as he was not involved in the stocktake work using the cage and the forklift, except to take immediate action to make the situation safe when he saw the gap on 20 June. And while Mr Park had later used the cage himself that day, going up in it with the auditor, he had checked the safety chains first. Also, if Mr Park was at fault for not doing an incident report about what he saw on 20 June, VIPL submitted that was one failing compared to the many failings of Mr Govind and Mr Todd on and after that day.

[46] I doubt a reasonable employer could fairly frame Mr Park's conduct so narrowly. Paragraphs [22] to [33] of this determination set out findings about his own role and activities on and after 20 June that such an employer would want to

objectively assess in relation to both the seriousness of Mr Govind's actions or omissions and the appropriate levels of sanction.

[47] They also amounted to disparities of treatment between Mr Govind and Mr Park, they were not adequately explained (because Mr Park did not objectively apply the standards to himself that he found Mr Govind failed to observe), and the dismissal of Mr Govind would not have been justified notwithstanding the disparity between the treatment of him and Mr Park.[6] If Mr Park had, in the counterfactual scenario, been included (along with Mr Govind, Mr Todd and Ms Cassidy) as a subject rather than the decider in a full and fair investigation by a different manager or advisor in the group of companies assessing matters more objectively, a much more likely outcome would have been a decision that there was a systemic or holistic problem about the understanding and operation of VIPL's safety policies and procedures at the site (and about which Mr Park could not be criticised for being concerned about). The solution to that problem, more likely, would have been better training and monitoring rather than such severe disciplinary sanctions.

An unjustified decision

[48] For the reasons given above, relating to how Mr Park carried out his investigation of allegations about Mr Govind's conduct and the decisions he made on the basis of that investigation, I concluded VIPL had not met the burden of showing it had acted as a fair and reasonable employer could have done in all the circumstances at the time. The defects in what Mr Park did and how he did it were more than minor and resulted in Mr Govind being treated unfairly. As a result VIPL's decision to dismiss Mr Govind was unjustified. Mr Govind had a personal grievance for which he was entitled to have remedies considered.

Remedies

Lost wages

[49] Mr Govind's evidence established that he made reasonable endeavours to mitigate his loss of wages as a result of his dismissal. He provided information about his job applications and interviews. His chances of appointment as the result of any

[6] *Chief Executive of the Dept of Inland Revenue v Buchanan (No 2)* [2005] ERNZ 767 (CA) at [45].

of those interviews were hindered by having to tell a prospective employer that his last job ended as the result of dismissal on the grounds of serious misconduct. Despite that he was successful in gaining some work and earnings.

[50] I considered the appropriate period for an award of lost wages, broadly assessed and allowing for the contingencies of life, was six months. Under s123(1)(b) and s128(3) of the Act VIPL must pay Mr Govind what he would have, but for his dismissal, earned or been paid in the period for the weeks from 5 July 2013 to 3 January 2014. From that amount VIPL may deduct the sums that Mr Govind gave evidence of earning in that period.

Compensation for loss of a benefit

[51] Under s123(1)(c)(ii) of the Act VIPL must also compensate Mr Govind for the lost value of the Southern Cross health insurance provided as a term of his employment. The evidence was unclear as to whether that was the payment of the amount of the premium for an individual policy paid by the employee or whether that was paid directly by the employer as a part of a group policy. If a payment for the value of an individual premium was paid, VIPL should pay the equivalent dollar amount for the six month period. If the company paid under a group policy, it should reimburse Mr Govind for the value of any actual medical and related health costs incurred in that period that would otherwise have been covered by the relevant company policy.

Compensation for humiliation, loss of dignity and injury to feelings

[52] Mr Govind said he was really humiliated by his dismissal. His religious community group shunned him because they believe he must have done something bad at work. Members of his extended family believed he had done something "*nasty*" and was hiding or denying it. He also referred to missing his contact with the VIPL employees he used to work with. I have accepted that evidence established that he had found the experience of his unjustified dismissal humiliating and suffered a loss of dignity and injury to his feelings as a result. Taking the particular circumstances of the case and the general range of awards I concluded $7000 was the appropriate award of compensation under s123(1)(c)(i) of the Act.

Reduction for contribution

[53] Mr Govind accepted that he was at fault for not checking the cage was chained before he got into it on 20 June. Given his particular role and training as the site's QSE co-ordinator, he could also be expected to be familiar with and closely follow the company's safety procedures, both in his daily work and after a potentially serious incident (such as the cage collision). However, because Mr Park's investigation was not full and fair, it was difficult to determine the extent to which that, rather than solely VIPL's unjustified actions, contributed to the situation giving rise to his grievance. Mr Govind did concede, in answer to a question from VIPL counsel, that he would not have objected if he had received a final written warning.

[54] Taking that into account and the fact that he – along with Mr Todd, Ms Cassidy and Mr Park – did not meet the requirements of VIPL's safety procedures in how they dealt with the 20 June incident, Mr Govind contributed towards the situation that gave rise to his grievance. Under s124 of the Act those actions required a reduction of the remedies awarded which I have set at 20 per cent – but in relation to the lost wages and distress compensation elements only (not lost benefits).

Costs

[55] Costs are reserved. The parties are encouraged to resolve any issue of costs themselves. If they are not able to do so and an Authority determination of costs is necessary, Mr Govind has 28 days from the date of this determination to lodge and serve a memorandum on costs. VIPL would then have 14 days to lodge a reply memorandum. The parties could expect the Authority to determine costs on its usual daily tariff basis, subject to what their memoranda might say about factors in the particular case requiring an upward or downward adjustment of that tariff on the basis of the principles stated in *PBO v Da Cruz*.[7]

Robin Arthur
Member of the Employment Relations Authority

[7] [2005] 1 ERNZ 808 (EC).