

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 128
3062032

BETWEEN JARED HAYDON-GLIDDON
Applicant

AND GAMESON SHAREMILKING
PARTNERSHIP
Respondent

Member of Authority: Helen Doyle

Representatives: Phillip de Wattignar, advocate for the Applicant
Wayne Todd, counsel for the Respondent

Investigation Meeting: 4 February 2020 at Dunedin

Submissions Received: 4 and 19 February 2019 from the Applicant
12 February 2019 from the Respondent

Further information received

Date of Determination: 26 March 2020

DETERMINATION OF THE AUTHORITY

- A Jared Haydon-Gliddon was unjustifiably disadvantaged and dismissed by Gameson Sharemilking Partnership.**
- B Gameson Sharemilking Partnership is to pay to Mr Haydon-Gliddon sums as set out below taking contribution into account:**
- (a) Lost wages in the sum of \$6,280 gross.**
 - (b) Compensation in the sum of \$11,700 without deduction.**
- C Costs are reserved and failing agreement a timetable set for submissions.**

Employment Relationship Problem

[1] Jared Haydon-Gliddon worked for Gameson Sharemilking Partnership (the Partnership) as a Team Member-Intermediate. His individual employment agreement (the employment agreement) provided that his employment was for a fixed term commencing in or about the start of June 2018 and ending on 31 May 2019 or by two weeks written notice. His role included milking and related duties and farm maintenance.

[2] Mr Haydon-Gliddon was paid \$55,000 per annum and had the use of accommodation for his family. His total remuneration package including accommodation was set out in the employment agreement as \$62,800 per annum.

[3] Shelley and Brendon Gameson formed the partnership Gameson sharemilking and had the sharemilking contract with the farm owners of a property in Oamaru.

[4] On 6 October 2018 Mr Haydon-Gliddon heard about a threat made by Mr Gameson and he believed that his family were in danger. The threat was not made directly to Mr Haydon-Gliddon but was a statement that Mr Gameson made to his wife in their home.

[5] Mrs Gameson became concerned about her husband's well-being and contacted the police. Mr Haydon-Gliddon and his partner, Sarah, were advised to leave the farm area so that a search could be conducted. The following morning they were told that Mr Gameson had been arrested and they were allowed to return to the farm.

[6] When Mr Gameson was located by the police he was arrested and charged with threatening to kill Mr Haydon-Gliddon. On or about 8 October 2018 he was bailed to his parents' address which was off the farm property. One of his bail conditions was that he must not have contact with Mr Haydon-Gliddon. The evidence supported that he complied with the bail conditions. After 6 October 2018 he did not have any involvement with the running of the farm due to his mental state and the bail conditions. Mr Gameson admitted making the threat to the police and was subsequently convicted and sentenced to supervision.

[7] This is relevant background to the employment relationship problems before the Authority.

[8] Mr Haydon-Gliddon says that there are two actions of his employer that were unjustified and caused him disadvantage. His suspension and an alleged failure by the Partnership to comply with health and safety obligations.

[9] He also says that his dismissal on 15 October 2018 was unjustified. He seeks reimbursement of lost earnings until the end of the fixed term agreement in the sum of \$38,656 together with compensation for humiliation, loss of dignity and injury to feelings in the sum of \$20,000.

[10] The Partnership do not accept that the suspension was an unjustified action that caused disadvantage to Mr Haydon-Gliddon and do not accept that it failed to comply with health and safety obligations. The Partnership does not accept that Mr Haydon-Gliddon was unjustifiably dismissed.

The Issues

[11] The Authority needs to consider the following issues in this case:

- (a) The test for justification
- (b) Was there a breach by the Partnership of its health and safety obligations and, if so, did that disadvantage Mr Haydon-Gliddon?
- (c) Was Mr Haydon-Gliddon's suspension on 9 October 2018 unjustified and did it cause him disadvantage?
- (d) What were the reasons for Mr Haydon-Gliddon's dismissal?
- (e) Was there a full and fair investigation into the conduct about the Snapchat, at the end of which a fair and reasonable employer could conclude serious misconduct?
- (f) Could a fair and reasonable employer have reached the decision to dismiss?
- (g) If the dismissal and/or the actions are found to be unjustified then then what remedies should be awarded? This may involve consideration of the fixed term nature of the employment agreement and any issues of mitigation.

The test for justification

[12] When the Authority considers justification for the actions of the Partnership and the dismissal it does so by applying the test of justification in s 103A of the Employment Relations Act 2000 (the Act). In determining justification of actions or a dismissal the Authority does not consider what it may have done in the circumstances. It is required to consider on an objective basis whether the actions of the Partnership and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time of the threat, the suspension and the dismissal.

[13] As part of this process the Authority must consider the four procedural fairness factors set out in s 103A(3) of the Act. These are whether the allegations against Mr Haydon-Gliddon were sufficiently investigated; concerns were then raised with him, he had a reasonable opportunity to respond to them and his explanations were considered genuinely by the Partnership before dismissal. The Authority may take into account other factors as appropriate and must not determine an action or a dismissal to be unjustified solely because of defects in the process if they were minor and did not result in Mr Haydon-Gliddon being treated unfairly.

[14] The Partnership could also be expected as a fair and reasonable employer to comply with the good faith obligations set out in s 4 of the Act.

Was there a breach by the Partnership of its health and safety obligations that disadvantaged Mr Haydon-Gliddon?

[15] This claim was clarified in Mr de Wattignar's submission as being about the threat made on the evening of 6 October 2018 and breach of health and safety obligations as a result. Mr Gameson was arrested on the evening of the threat and a few days later bailed away from the farm with a condition that he has no contact with Mr Haydon-Gliddon. There is no evidence that the bail conditions were breached.

[16] A farm consultant, Richard Strowger, was asked by the owners of the property to take over the day to day management of the property in conjunction with the share milker and staff in the circumstances. He was asked to set a grazing management plan and organise the work to be completed. Mr Strowger had a conversation with Mr Haydon-Gliddon on 9 October 2018. Whilst Mr Haydon-Gliddon was upset and angered by the threat and had

concerns for his family there was no evidence to support that he felt particularly unsafe himself. Some support for this is found from his acceptance under questioning at the Authority investigation meeting that he told Mr Strowger he was going to make Mr Gameson pay for the threats. In his evidence at the Authority investigation meeting Mr Haydon-Gliddon said that by “pay” he meant go through the Authority processes.

[17] Mr de Wattignar stated in his submission that it was the threat by Mr Gameson that effectively terminated the employment relationship. I agree there is evidence to support that Mr Haydon-Gliddon, before his dismissal but following the threat, had expressed a view that he did not want to continue to work for the Partnership. The reason however for the end of the employment relationship was that Mr Haydon-Gliddon was actually dismissed. The fact of dismissal is not disputed by the Partnership.

[18] It was submitted by Mr de Wattignar that Mr Haydon-Gliddon was not updated about the situation with Mr Gameson. I am not satisfied from the evidence that there was complete disregard about how the events of 6 October 2018 would have impacted on Mr Haydon-Gliddon. Mrs Gameson said that she did inquire how he felt about things and that he responded he was not scared of Mr Gameson. I find her evidence about that more likely than not because it was consistent with other evidence about how Mr Haydon-Gliddon felt. Mr Strowger talked to Mr Haydon-Gliddon about the threat to find out more about what had occurred. I accept that the notes¹ Mr Strowger took of the exchange are more likely than not accurate. Mr Haydon-Gliddon also knew that Mr Gameson was not to be bailed to the farm after his arrest.

[19] The threat to kill was dealt with initially by involvement of the police which was a practicable step to minimise the risk to Mr Haydon-Gliddon at the time. Ongoing concerns were reduced by the bail condition that Mr Gameson reside off the farm and that he have no contact with Mr Haydon-Gliddon. Reasonably practicable steps to minimise the potential health and safety risk that could follow such a threat were taken therefore. Mr Haydon-Gliddon knew that he was reporting after the threat to Mrs Gameson and Mr Strowger

[20] I do not find that the claim for a health and safety breach for a failure to provide a safe working place is made out on the evidence.

¹ Bundle of documents at pg. 32

[21] I accept that the threat to kill is a relevant factor to be considered with the other employment relationship problems.

Was Mr Haydon-Gliddon's suspension on 9 October 2018 unjustified and did it cause him disadvantage?

[22] It is useful to set out what happened on the farm between the date of the threat on 6 October 2018 and the date Mr Haydon-Gliddon was suspended on 10 October 2018.

[23] On 7 October 2018 Mrs Gameson was present at the farm with wider family members. Mr Haydon –Gliddon helped out with the farm work even though it was his day off which was appreciated by Mrs Gameson.

[24] On 8 October 2018 Mr Haydon –Gliddon worked on the farm.

[25] On 9 October 2018 there was a meeting that involved Mr Haydon-Gliddon, Mrs Gameson and Mr Strowger. There was discussion about plans for running the farm. Mr Haydon-Gliddon went out in a vehicle with Mr Strowger to inspect the farm. The evidence supports that he advised Mr Strowger he was no longer interested in continuing on the farm long term as “his heart was not in it.” Mr Strowger recorded in his typed out notes of the conversation that Mr Haydon-Gliddon said “I don't give a shit about this place I owe it nothing.” Mr Haydon-Gliddon did not accept that he said those words exactly and/or that he used the word “shit.” He agreed that he made comments that he did not want to work with somebody who threatened his family. He agreed that Mr Strowger told him that some good may come out of it and that if he worked hard Mr Strowger could give him a good reference. Mr Strowger asked Mr Haydon-Gliddon to attend to some farm duties.

[26] Later that day Mrs Gameson asked Mr Haydon-Gliddon's partner Sarah if she could have a car back that she had lent her and the family. I am satisfied from the evidence that the loan of the vehicle was not work related and in fact had occurred before employment commenced. The evidence supported that Mr Haydon-Gliddon may have viewed the request to return the car as a retaliatory action for his views that Mr Gameson not return to the farm and be bailed elsewhere.

[27] There is a dispute about what was said by Sarah and Mrs Gameson at the time of the request to return the car. I do not need to resolve that dispute. It is enough for present purposes that as a result of what Sarah relayed to Mr Haydon-Gliddon about the conversation he got very angry and sent a Snapchat to Mr Gameson. A friend of Mr Gameson's recorded the Snapchat and it was made available to the Authority and Mr de Wattignar. The Snapchat was as follows:

Fuck you you piece of shit, tell your wife about ----- why don't you, you piece of shit, and I'm going to get you.

[28] Mr and Mrs Gameson said in their evidence that they were concerned about the Snapchat. Mr Gameson said that his mental health was not good at that time and he felt that the message was aggressive and the threat was genuine. Mrs Gameson said that she felt the Snapchat was very aggressive and that she was scared for her safety. She talked to Mr Strowger about the message on 10 October 2018.

[29] A letter to suspend Mr Haydon Gliddon was prepared following the discussion. Mr Strowger said that he wanted to see if suspension could be avoided.

[30] There was a dispute in the evidence about whether Mr Strowger engaged with Mr Haydon-Gliddon before the letter was provided. Mr Strowger said that there was a discussion at which Mr Haydon-Gliddon refused to engage about the Snapchat except to admit that he sent it and then became heated and walked away. Mr Haydon-Gliddon did not accept that there was any discussion about the Snapchat. Mr Strowger had other concerns about animal welfare issues because Mr Haydon-Gliddon had not attended to the task he had asked him to undertake the day before.

[31] Having heard the evidence I conclude that it is more likely than not that Mr Strowger understood, before the letter of suspension was provided, that Mr Haydon-Gliddon accepted he had sent the Snapchat. Mr Strowger also formed a view that Mr Haydon-Gliddon was not committed to undertaking the tasks they had talked about the day before and there was likely an exchange about that.

[32] I could not safely conclude that Mr Haydon-Gliddon was asked about and refused to engage further about the Snapchat. Had that occurred then I would have expected some reference in Mr Strowger's notes. The only reference in the notes is about questioning Mr Haydon-Gliddon about the Snapchat and that he said he had sent it. Even if I am wrong

about that the evidence is clear that Mr Haydon-Gliddon was not asked about the Snapchat in the knowledge that suspension or dismissal was a possible outcome.

[33] About 40 minutes after the discussion Mr Strowger proceeded to give Mr Haydon-Gliddon the suspension letter.

[34] The suspension letter referred to Mr Haydon-Gliddon sending a threatening Snapchat and also to bullying and threatening behaviour being under investigation. It provided that Mr Haydon-Gliddon was suspended from work and not allowed on any part of the farm except for his house residence. Any property of the Partnership was to be returned. Mr Haydon-Gliddon was not allowed to talk to any staff of the Partnership whilst the investigation was being undertaken but he could discuss matters with Mr Strowger. He was advised that the results of the investigation may result in outcomes from no action to a final dismissal.

Conclusion about suspension

[35] Clause 8 of the employment agreement deals with termination of employment and provides about suspension at (c) as follows:

(c) In the event of proven serious misconduct or gross negligence by the Employee, termination without notice will occur. The Employer may suspend the Employee on pay pending an investigation into any suspected serious misconduct or gross negligence involving the Employee. The Employee must remain available to answer work related questions and attend meetings during your suspension.

[36] A threat may amount to serious misconduct. At that time Mrs Gameson was on the farm by herself and was responsible for the employees, including Mr Haydon-Gliddon. I accept her evidence that she felt unsafe because of the Snapchat even though it was not directed to her. A fair and reasonable employer could have reached the decision to suspend in all the circumstances for the threat.

[37] The aspect that calls for closer examination is the procedural fairness of the suspension.

[38] The Employment Court in *Graham v Airways Corporation of New Zealand* confirmed that there is “no immutable rule” that an employee must be told the employer proposed to suspend with a view to giving the employee an opportunity to persuade otherwise.² There was reference in *Graham* to a need to be flexible and sensible about each case. A passage in

² *Graham v Airways Corporation of New Zealand* [2005] 1 ERNZ 587

an earlier Employment Court judgement in *Tawhiwhirangi v Attorney-General in respect of Chief Executive Department of Justice* was referred to in *Graham* to support the need for flexibility.³

[39] I do not find that Mr Haydon-Gliddon had an opportunity to respond to concerns about the Snapchat in the knowledge that suspension was considered and no opportunity to have his explanations considered before he was suspended. There was no evidence of the bullying concerns being raised earlier. Mr Haydon-Gliddon was handed a letter that stated he was suspended. Although Mr Todd submits that there was opportunity for comment at that time it was more along the lines of whether Mr Haydon-Gliddon had any questions rather than his input about suspension. The letter was very clear about the suspension happening at the stage when the letter was provided. There was no advice about the next step in the process of investigation in the suspension letter.

[40] The procedural fairness factors that the Authority must have regard to in s 103A(3)(c) and (d) of the Act are not satisfied and not simply in a minor way that did not cause unfairness. The obligations of good faith to be responsive and communicative were also not met.

[41] Whilst suspension was substantively justified it was implemented in a procedurally unfair manner.

[42] Mr Haydon-Gliddon has a personal grievance that he was unjustifiably disadvantaged by the suspension. There was no further process between suspension and dismissal and in those circumstances I intend to consider any remedies on a global basis.

What were the reasons for Mr Haydon-Glidden's dismissal?

[43] Mrs Gameson made the decision to dismiss Mr Haydon-Gliddon. The letter of dismissal was given to him on 15 October.

[44] The letter provided that the allegations of bullying were not able to be established after investigation by Mr Strowger. It stated that the Snapchat was serious misconduct and Mr Haydon-Gliddon had directly threatened to harm Mr Gameson.

³ *Tawhiwhirangi v Attroney General* [2005] 1 ERNZ 546 at 558

[45] There was reference to other recent concerns in the letter about animal welfare. When questioned at the Authority investigation meeting Mrs Gameson confirmed that the Snapchat was the reason for dismissal and not the animal welfare concerns.

[46] I accept that the Snapchat was the reason for Mr Haydon-Gliddon's dismissal.

Was there a full and fair investigation into the conduct about the Snapchat at the end of which a fair and reasonable employer could conclude serious misconduct?

[47] Mr Todd submits that the process was that of a fair and reasonable employer in all the circumstances and that the Partnership had limited resources.

[48] There was no process aside from the very limited discussion which I have found, in all likelihood, took place with Mr Haydon-Gliddon before he was suspended. The discussion was held without Mr Haydon-Gliddon having knowledge that there was to be a disciplinary process or that a disciplinary outcome could be dismissal. Mr Haydon-Gliddon was not advised to have a support person present when he was asked if he had sent the Snapchat. After Mr Haydon-Gliddon was suspended he was not contacted about the concerns in the letter of suspension but simply given the letter of termination.

[49] Mr Todd submits that the Partnership had limited resources and there was a great deal of stress for the Partnership at the time. I accept Mrs Gameson was under a great deal of stress at the time. Her husband was facing criminal charges and bailed off the farm and his mental health was not good. She was left to manage the farm and did not have her husband's experience in doing so. There was evidence that one of Mr Gameson's children was seriously ill and the property owner was concerned about the Partnership's ability to fulfil its requirements under the share milking contract. Mr Strowger was, however, available as a resource.

[50] The reason for dismissal was the Snapchat. It would not have taken a significant amount of resource for the Partnership to have put the allegation to Mr Haydon-Gliddon and set up a meeting to hear his explanation, including any mitigating factors, of why he had sent it.

[51] Mr de Wattignar submits that there was pre-determination from the date of the suspension letter and relies on the request to return all property belonging to the Partnership.

I accept that most of the property Mr Haydon-Gliddon would have returned was essential farm equipment needed to undertake tasks on the farm. Mr Haydon-Gliddon did not dispute that. The absence of a process after suspension does support a likelihood of pre-determination of dismissal as an outcome.

[52] The procedural fairness factors set out in s 103A(3) of the Act were not satisfied in this case. Before dismissing Mr Haydon-Gliddon the Partnership did not put its concerns to him about the Snapchat and give him a reasonable opportunity to respond to the concerns. As a result the procedural fairness factor in s 103A(3)(d) of the Act that require a genuine consideration of the response was not satisfied. There were aspects that could also support pre-determination.

[53] These defects in the process are fundamental and not minor and they did result in unfairness.

[54] The dismissal was procedurally unfair.

Substantive justification

[55] The employment relationship was still on foot when Mr Haydon-Gliddon sent the Snapchat to Mr Gameson. Had the Snapchat been immediately following knowledge of the threat or within hours the action could have been seen differently.

[56] The Snapchat was some three days later, after Mrs Gameson asked Sarah for the return of a vehicle. Possibly Mr Haydon-Gliddon saw that as a retaliatory action. The tone in the Snapchat is angry and aggressive and contains on its face a threat to his employer. This is the sort of conduct that a fair and reasonable employer could conclude amounted to serious misconduct because it goes to the heart of trust and confidence in the relationship and is undermining of that to a significant degree.

[57] There are some unusual factors in this case and they would impact on whether or not a fair and reasonable employer could have reached a decision to dismiss. I will turn to that shortly.

[58] For the reasons set out above however I find that there was substantive justification for the dismissal.

Could a fair and reasonable employer have made the decision to dismiss?

[59] I have found that the process undertaken by the Partnership was unfair. Had there been a fair process the earlier threat made by Mr Gameson would have been considered and weighed with the later conduct. There would have needed to have been consideration of any explanation to the “I’m going to get you” statement. Mr Haydon-Gliddon said in his evidence that what he meant by that was an Authority process would follow rather than a threat to harm.

[60] Whilst there was substantive justification, a dismissal was not inevitable had a fair process taken place.

[61] The decision to dismiss was not one that a fair and reasonable employer could have reached in all the circumstances.

[62] Mr Haydon-Gliddon has a personal grievance that he was unjustifiably dismissed. He is entitled to consideration for the remedies he has claimed.

Remedies*Lost Wages*

[63] Mr Haydon-Gliddon seeks reimbursement of wages for the balance of the fixed term agreement from the date his employment was terminated on 15 October 2018 to 31 May 2019. That is 32 weeks lost wages.

[64] The share milking contract between the Partnership and the farm owners was terminated on 23 November 2018. Mrs Gameson said that this was because there was not enough staff to fulfil the contract and continued uncertainty about Mr Gameson’s health. Mr Strowger agreed that staffing was an issue but said in his evidence that the management of the farm, leading up to the point of termination of the Partnership contract with the farm owner, was poor. The Partnership was given a 10 day notice to rectify the situation but Mr Strowger said without Mr Gameson there was no credible person to run the farm. Mr Strowger said that there was a lack of awareness about the bigger issues until 9 October 2018. Concerns identified from that date included management of mastitis and a conclusion that the lack of management systems caused some of the problems discovered at that point.

[65] Mr Haydon-Gliddon had a fixed term agreement that was expressed to end either on 31 May 2019 or by two weeks written notice. Clause 2.1 of the employment agreement sets out the reasons for the fixed term nature of the role and the potential reasons for termination of employment, as required by s 66 of the Act. They were due to the employer being on an annual contract, the cows being dried off and early termination or cancellation of the Employer's contract.

[66] There are also provisions in the employment agreement for termination with and without notice, including for proven serious misconduct or gross negligence.

[67] There have been a number of employment cases that have considered a dismissal within a fixed term agreement. The starting point is that an employer is liable for wages to the end of the fixed term unless the employment agreement provides otherwise.⁴

[68] In this case before the end of the fixed term on 31 May 2019 there was an early termination of the Partnership's contract with the farm owner. This occurred five weeks and four days after Mr Haydon-Gliddon's employment was terminated. The employment agreement provided in clause 2.2 that it would end on the expiry date of 31 May 2019, or, if either party terminates the agreement by two weeks written notice. One reason for the employment agreement ending in that way was early termination or cancellation of the Employer's contract.

[69] An assessment of reimbursement of lost wages is not an easy matter in this case. Mr Haydon-Gliddon is of the view that it was the action of Mr Gameson in making a threat to kill him that resulted in the Partnership's contract with the farm owner being terminated. Mr Todd submits that lost wages should be limited to two weeks being the notice period.

[70] I accept that Mr Haydon-Gliddon would have expected to have worked until the end of the season on 31 May 2019. There was then the threat from Mr Gameson. After the threat Mr Haydon-Gliddon became upset and disillusioned with the job, he expressed views along the lines to Mr Strowger that he was not "busting a gut for Mr Gameson" and that he would leave. He then sent the Snapchat and was dismissed.

[71] The bail conditions meant Mr Gameson was not in a position to undertake the management of the farm in the usual way and that did contribute to the termination of the

⁴ *Watkins v Bacica* 1996 1 ERNZ 594 and *Jesudhass v Just Hotel Limited* (2009) 6 NZER 380

share milking contract. The evidence also supports that he was unwell. I note that even after Mr Haydon-Gliddon's dismissal Mr Gameson was unable to undertake the management of the day to day running of the farm to try to maintain the contract. There also appeared, from the evidence of Mr Strowger, to be some wider concerns that led to the termination of the contract. I do not conclude from all of this that it was only the threat and consequent inability of Mr Gameson to run the farm that caused the termination

[72] Mr Haydon-Gliddon said that he made some attempt to look for other roles but that it was difficult for him to get other farm work partway through the season. There was no evidence provided about those attempts but I accept that he was in the difficult position of looking for work part-way through the season when most farms would have secured their staff. Mr Haydon-Gliddon said that he then assumed responsibility for the care of his children and his partner worked full time. Whilst that decision was one he could make, it is more difficult to conclude that the loss of remuneration that flowed from that point was caused as a result of the personal grievance rather than a decision to assume responsibility for childcare.

[73] Section 128 of the Act provides that the Authority must, whether or not it provides for any other remedy, order the employer to pay to the employee the lesser of a sum equal to lost remuneration or to 3 months ordinary time remuneration.

[74] I have taken into account the provisions of the employment agreement about early termination with two weeks' notice. The agreement between the parties recognised that possibility. I have taken into account that I could not be satisfied to the required standard that the consequences that flowed from the threat to kill were the only reasons for the termination of the share milking contract with the farm owners. In concluding this I have relied on the fact that even after Mr Haydon-Gliddon was dismissed, Mr Gameson was still too unwell to return to the farm and assume responsibility for it. However I do accept that if there had not been a threat then the contract may have remained on foot for a longer period, and I take into account the requirement for a notice period of two weeks. I have weighed the limited mitigation evidence with a decision to assume childcare responsibilities impacting on the causal link for loss. I conclude an appropriate award for lost wages should, subject to any issue of contribution, be eight weeks loss of income. That is the weekly sum of \$1207.70 gross multiplied by eight weeks which is \$9,661.54 gross.

Compensation

[75] Under this head the Authority is considering a claim for humiliation, loss of dignity and injury to feeling that arises for Mr Haydon-Gliddon from the two grievances found to be established. That is the unjustified action about the process for suspension and the unjustified dismissal. Mr Haydon-Gliddon seeks \$20,000 under this head.

[76] Mr Haydon-Gliddon was reasonably understated about the impact on him for this claim. Whilst I accept that the suspension would have come as a bit of a surprise there was very limited evidence about the impact the lack of process had and I do not conclude it was significant. A global award will reflect that. The evidence about the dismissal was more compelling. After the dismissal Mr Haydon-Gliddon and his family, which included young children, could not find anywhere to live. They ended up going into emergency accommodation in a motel for eight weeks. He said that his partner was upset and they were homeless with the children in the motel for that period. In short he lost his home and job. Mr Haydon-Gliddon described this as a “bit of a hard trip.”

[77] There was considerable financial and security impact on Mr Haydon-Gliddon when he was dismissed. He expected to have retained his employment for the season.

[78] Awards of compensation have increased and that is a factor emphasised by a number of recent Employment Court cases. Subject to findings about contribution a global award for compensation of \$18, 000 is appropriate in this case.

Contribution

[79] Section 124 of the Act requires that the Authority, where it has determined that an employee has a personal grievance, consider the extent to which the employee contributed towards the situation that gave rise to the personal grievance when deciding the remedies.

[80] Mr Todd submits that there is a direct causal link between Mr Haydon-Gliddon’s conduct in sending the Snapchat with a threat the he was going to get Mr Gameson, and the grievance.

[81] Mr Haydon-Gliddon said in his evidence that his threat to get Mr Gameson was about proceedings in the Authority. He agreed that he was not specific and clear about that in the Snapchat and left that vague. I have carefully considered the evidence including the tone of

the Snapchat and the facial expressions during it. It is aggressive conduct. Mr Haydon-Gliddon accepted he was angry at the time he sent the SnapChat. I find on the balance of probabilities that “I am going to get you”, being a different way of saying I am intending to pursue a personal grievance and get some money, is a less likely explanation.

[82] I find that there was blameworthy conduct on the part of Mr Haydon-Gliddon that contributed to the circumstances that gave rise to the personal grievance. Had there not been the earlier threat by Mr Gameson then this is a case where the Authority may have considered the conduct, in sending a Snapchat of that nature, was so egregious with consideration of equity and good conscience no remedy should be given - *Xtreme Dining Ltd (t/a Think Steel) v Dewar*.⁵

[83] There was, however, the earlier threat that I take into account with the damage that it did to the relationship. I consider that the conduct by Mr Haydon-Gliddon, which I have found was serious misconduct, was of a more severe nature than that in a recent Employment Court judgment where there was a reduction of 20% for conduct found to be serious misconduct.⁶ I find that this case falls more towards the upper range of blameworthy contributory conduct, that in an exceptional case justifies a 50% reduction, than the mid-range where there is significant blameworthy conduct justifying a 25% reduction.

[84] I conclude a reduction of 35% is justified in all the circumstances in this case. In respect of compensation this includes the global amount for both grievances.

Orders made

[85] Applying contribution as assessed to the amounts indicated above for lost wages and compensation the Authority orders Gameson Milking Partnership to pay Jared Haydon-Gliddon as follows:

(a) Reimbursement of lost wages in the sum of \$6,280 gross.

(b) Compensation in the sum of \$11,700 without deduction.

⁵ *Xtreme Dining Ltd (t/a Think Steel) v Dewar* [2016] NZEmpC 136, [2016] ERNZ 628

⁶ *Maddigan v Director –General of Conservation* [2019] NZEmpC 190

Costs

[86] I reserve the issue of costs. Mr de Wattignar has until 8 April 2020 to lodge and serve submission as to costs and Mr Todd has until 22 April to lodge and serve submission in reply.

Helen Doyle
Member of the Employment Relations Authority