

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 208  
3238679

BETWEEN            JAYSON KING  
                                 Applicant

AND                    KAAMADHENU AGRIBUSINESS  
                                 LIMITED  
                                 Respondent

Member of Authority:     David G Beck

Representatives:         Hayley Johnson, advocate for the Applicant  
                                 Benjamin Kade Coleman, counsel for the Respondent

Investigation Meeting:    26 and 27 February 2024 in Timaru

Submissions Received:    14 March 2024 from the applicant  
                                 14 March 2024 from the respondent

Date of Determination:    11 April 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]         Jayson King worked for Kaamadhenu Agribusiness Limited (Kaamadhenu) as a herd manager at three dairy farms from 5 January 2022 until his employment ended on 15 April 2023, in disputed circumstances.

[2]         Mr King has two sets of complaints concerning the way Kaamadhenu interacted with him – these are that:

(a) Mr King was the subject of an unjustified warning on 15 December 2022.

(b) Mr King says he experienced difficulties in his relationship with his immediate manager and co-worker that impacted his well-being and that the concerns were brought to Kaamadhenu's attention but they failed to act fairly and reasonably in response to his concerns.

[3] Mr King was not satisfied with how he was being treated and signalled an intention to resign but was then dismissed.

[4] Kaamadhenu denies acting unjustifiably towards Mr King and says it made significant efforts to accommodate Mr King's concerns and that he voluntarily resigned and was not constructively dismissed. Regarding the alternate claim, that Mr King was unjustifiably dismissed, Kaamadhenu say they issued a notice of termination during what they considered to be Mr King's notice period but say the wording used was "perhaps unfortunate" as their intention was to accept and/or rely upon, Mr King's prior oral resignation.

[5] Mr King has raised personal grievances for unjustified actions causing disadvantage and an unjustified dismissal claim. The matter remained unresolved and the employment relationship has been brought before the Authority by Mr King.

### **The Authority's investigation**

[6] Mr King's claims have been the subject of my two-day investigation. The claims I investigated and now must determine are:

- (a) Unjustified disadvantage claims that Kamadhenu took disciplinary action against Mr King that resulted in a written warning that was unjustified and then failed to adequately deal with Mr King's concerns about his immediate manager and co-worker and that such omission amounted to a breach of duty.
- (b) Whether Mr King was unjustifiably dismissed (constructively or otherwise).
- (c) A claim for a penalty against Kaamadhenu's because of their failure to provide requested wage and time records.

[7] Mr King and his partner Mary Joy Eseo provided written statements and gave evidence at the investigation meeting. For Kaamadhenu I heard from their directors: Dr Siddharth Tushar Vaishnav and Amjad Pasha; John Torman, Farm Operations Manager; Alton Augustine, Farm Manager; Dave Del Mundo, Farm Manager, Pyare Lal, Farm Assistant and Mary Jane Del Mundo, Farm Assistant who all also provided written statements. I was also ably assisted by Thelma Bell, an interpreter. The parties' representatives subsequently provided written submissions.

[8] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence. I have carefully considered the helpful submissions received from both parties and refer to them where appropriate and relevant.

### **The issues**

#### *Unjustified actions causing disadvantage.*

[9] An unjustified action causing disadvantage personal grievance is detailed in s 103(1)(b) of the Act – it provides that an employee may have a personal grievance where their employment or any condition of employment is or was affected to their disadvantage by some unjustified action by their employer.

[10] In this matter questions that need to be addressed are:

(a) Were there any unjustified actions of Kaamadhenu that impacted Mr King?

(b) If so, did the actions cause any disadvantage to Mr King's employment or any condition of that employment?

#### *Unjustified dismissal*

[11] The first issue in these circumstances is to establish whether Mr King was dismissed or whether he resigned. To determine this, I need to analyse what went on between the parties including whether there was a breach of duty potentially giving rise to a constructive

dismissal and Mr King's 'involuntary' resignation or in the alternate, was this an actual dismissal prompted by Kaamadhenu concerns about Mr King's performance and/or attendance issues.

[12] In either scenario above, I must then determine the second issue – was the dismissal justified?

*Penalty for breach of s 130(2) of the Act*

[13] The issue here is, did Kaamadhenu when approached by Mr King's representative, comply with a request to supply Mr King's wage and time record and if not, is it appropriate to consider imposing a penalty under s 130(4) of the Act.

[14] The matters I must have regard to if I consider a breach has occurred and a penalty is warranted, are set out in s 133A of the Act and relevant case law.<sup>1</sup>

#### **Steps to investigate Mr King's claims.**

[15] I first deal with the claims of unjustified actions and/or breach of duty by Kaamadhenu.

[16] Mr King suggests Kaamadhenu:

- (a) Placed his employment in ongoing jeopardy by giving him an unjustified written warning on 15 December 2022; and thereafter:
- (b) failed to ensure Mr King's concerns about his immediate manager and co-worker impacting his health and well-being were properly investigated and/or resolved.

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<sup>1</sup> Including the full Employment Court decision of *Borsboom v Preet PVT Limited* [2016] NZEmpC 43.

## **What caused the employment relationship problem?**

[17] Mr King who is a Philippines national, commenced working for Kaamadhenu on 5 January 2022, as a permanent full time herd manager on a dairy farm. All of Mr King's employment was the subject of individual employment agreements.

[18] Kaamadhenu is a Waimate based business that is contracted by farm owners to run their dairying operations. It employs various farm workers up to a Farm Operations Manager and was incorporated in November 2016.

[19] Initially, Mr King worked at a farm near Waimate but then was transferred to another farm in the Waitaki district in June 2022. Mr King then moved to a role at a third South Canterbury farm in September 2022. At the latter farm, Mr King says he struggled with the sole-charge role workload, hours, and milking tasks without adequate support. In early December 2022, Kaamadhenu hired a farm manager and farm assistant (the Del Mundos) to work with and oversee Mr King. Mr Del Mundo says he was hired to train Mr King to take over as a farm manager (Mr Vaishnav also indicated they saw this potential in Mr King).

[20] Mr King described an uneasy relationship with Mr Del Mundo soon emerged and was of the view Mr Del Mundo was reporting negative comment about Mr King to the operations manager (Mr Torman).

[21] Matters came to a head on 15 December. On this day Mr Del Mundo was not working and absent from the farm. Mr King was working alongside Mrs Del Mundo and had arrived late for milking. Mrs Del Mundo says she had cause to believe Mr King was still under the influence of alcohol from the previous evening and she called Mr Torman and Mr Vaishnav to report her concerns.

[22] Mr Vaishnav then prepared a letter of complaint for Mrs Del Mundo to sign after discussing the matter with her but did not disclose this to Mr King. Later the same day, Mr Vaishnav says he called Mr King while driving between appointments, and put the incident to him for a response saying Mrs Del Mundo had made a statement against him. Mr Vaishnav says Mr King acknowledged his wrongdoing but also raised issues of concern about Mr Del

Mundo. Mr Vaishnav says he told Mr King not to worry he did not consider this more than misconduct and he was to work on “keep doing what you are doing”.

[23] In contrast, Mr King could not recall the conversation details beyond Mr Vaishnav asking why he was late and that Mrs Del Mundo had said he was still drunk when he turned up.

[24] By an email of mid-afternoon 15 May, Mr Vaishnav issued a written warning termed a “First Notice of Misconduct” to Mr King, despite it then being described as a “first warning letter” it continued, “if another misconduct is repeated the next step will be a 4-week termination notice”.

[25] I observe the warning made no mention of Mr King’s acceptance of wrongdoing – it objectively reads as a final written warning. Mr King says he also rang Mr Vaishnav after receiving the warning letter and was told by him not to think too much about it as it was just a formality.

[26] In a statement to the Authority, Kaamadhenu initially claimed “as part of the investigation” Mr Pasha also spoke to Mr King and Ms Eseo about the 15 December incident and claimed Mr King accepted he had engaged in serious misconduct. No notes were provided about this conversation that during the investigation, Mr Pasha recalled happening on 22 December. During this discussion, Mr Pasha says Mr King was worried about his job and he also went over concerns he had with the Del Mundos running him down to management. Mr Pasha says he told Mr King not to worry about gossip.

[27] Mr King responded to the warning letter in an email of 7 January to both directors. In this email, Mr King apologised for being late for milking on 15 December (he says it was his first time). Mr King denied being intoxicated at work. Mr King then proceeded to express concerns about how the farm was being run and managed by the Del Mundos. As English is not Mr King’s first language, the email was a bit discursive and cryptic but it was sufficient to alert the Kamadhenu directors that all was not well. Mr Pasha responded saying he would

“look into it” and reiterated “as we discussed before you do what you have been told and what best you can do don’t worry about any gossips just focus on the job I keep observing”.

[28] Counsel for Kaamadhenu suggested the email response showed Mr King that his concerns had been acknowledged and he was informed they “would be investigated and responded to”. Despite this, Mr Pasha’s evidence during the investigation was he did not disclose the email to Mr Del Mundo but had a conversation with him about concerns raised by Mr King. Mr Pasha says Mr Del Mundo’s reply was that Mr King was just making excuses, gave some negative examples of Mr King’s interactions with him and posited that he just did not like the Del Mundos and wanted to take revenge against them. Mr Pasha says he did not get back to Mr King as indicated in his email response.

[29] Mr Vaishnav says they sent Mr Torman to investigate the concerns about the Del Mundos. However, Mr Torman in evidence when asked had Mr Vaishnav briefed him on Mr King’s complaints about working with the Del Mundos said, no and appeared unaware of being deputed to investigate matters. Mr Torman recalled being told it was Mr Vaishnav’s intention to meet with Mr King to discuss his concerns about Mr Del Mundo. Mr Torman says Mr Del Mundo would often relate concerns about Mr King to him and he would rather than attempt resolution, pass them on to the directors.

[30] Mr Vaishnav sensibly conceded in giving evidence, that he got it (the warning) badly wrong. In submissions for Kaamadhenu, counsel suggested there were “several technical flaws during this process”. These were said to include: that Ms King was not provided with Mrs Del Mundo’s letter of complaint; no meeting was convened with Mr King; Mr King was not apprised of his right to seek representation and Mr King had no reasonable time provided for an opportunity to respond to the allegations prior to him receiving a written warning. In defence of Mr Vaishnav’s actions counsel suggested he was unaware of the need to go through a formal process as he believed Mr King had accepted his wrongdoing.

[31] I find the flaws described went well beyond mere technicalities and they were not actions of an employer being fair and reasonable. Applying s 103A(5) of the Act I find they were not minor defects and they cumulatively resulted in Mr King being treated unfairly.

[32] I was also not convinced that Mr King had conceded he had been impacted by alcohol to Mr Vaishnav, although Ms Eseo did say during the investigation meeting that Mr King had been drinking whiskey late the night in question with a relative (up to midnight) before he reported for work late (around 6 am) but Mr King says he completed all the tasks allocated to him.

*Setting up 7 February meeting*

[33] Regarding what happened after the warning letter was issued and whether the concerns Mr King identified were addressed, my investigation was hampered by Kaamadhenu's witnesses' poor recall of events and their disclosure that their written statements of evidence had been prepared for them by Mr Vaishnav (that were objectively self-serving).

[34] Mr Vaishnav at times in giving evidence, contradicted what other witnesses had said and claimed they had turned against him. This made it difficult to obtain a credible or coherent account from Kaamadhenu's perspective.

[35] What did emerge, is that Mr King communicated he was stressed and in fear of losing his job and that Mr Pasha tried to informally reassure him this was not the case. At the same time, Mr King's relationship with the Del Mundos deteriorated and he became isolated.

[36] The next key event was a meeting on 7 February 2023. The purpose of this meeting and who called it, was a matter of some disputation and hazy recall. I record that neither party provided a detailed outline in their written evidence nor produced any corroborating documentation, of what occurred during the 7 February meeting which did not assist my investigation.

[37] From Kaamadhenu's oral evidence there was a suggestion that prior to the meeting the solution they foresaw, was to move the Del Mundos to another larger farm and bring in a new farm manager (Mr Augustine) to work alongside Mr King. This suggestion of the meeting's purpose was not previously alluded to.

[38] The evidence suggested, the 7 February meeting, was initiated by Mr Vaishnav calling Mr King on the day of the meeting (although he suggested it was Mr King who asked for it to discuss his level of distress) principally to discuss performance concerns Kaamadhenu had about Mr King. Unfortunately, there was no meeting invite or communication prior to the meeting setting out an agenda and identifying any issues of concern Kaamadhenu purportedly wanted to discuss. There were no notes taken of the meeting's discussion.

*The 7 February meeting*

[39] Mr King says he attended the meeting with Ms Eseo as his support. Also present at the meeting were: Mr Vaishnav, Mr Torman, Mr Lal, Mr Augustine, and Mr Pasha arrived toward the end of the meeting. Mr Vaishnav says Mr Del Mundo also attended but Mr Del Mundo said that was not the case and no one else could recall him being at the meeting. Mr Lal and Mr Torman (who also arrived late) appeared to not know why they were present at the meeting and had not been briefed about the purpose of the discussion.

[40] It was agreed that at the beginning of the meeting, Mr Augustine was introduced to Mr King and invited to converse with him in Tagalog. However, Mr Augustine's evidence was he was not briefed on any plan that he would be Mr King's new manager and that he had to explain this to him, nor was he aware of tension between Mr King and Mr Del Mundo. Mr Augustine says they just greeted each other in Tagalog as it was the first time they had met and he had no idea what was going on.

[41] Mr Vaishnav says after this conversation, Mr King outlined he was not happy in his job and then "so I told him of various options available to him". Mr Vaishnav says the options he detailed where Mr King could transfer to another farm or it may be possible to transfer Mr Del Mundo and Mr King could remain where he was.

[42] Whereas Mr King asserts that the only two options given were he transfer to another farm or he could leave Kaamadhenu and Mr Vaishnav would help him find another farming job. Mr Pasha confirmed that although he was late to the meeting, afterwards Mr Vaishnav

briefed him that the options put were as Mr King described and Mr Augustine recalled the same.

[43] I consider it is more likely than not, that the option of moving Mr Del Mundo to another farm was not put to Mr King at the 7 February meeting or anytime thereafter.

[44] As a result, experiencing distress and believing he was not wanted by Kaamadhenu and conscious they were not prepared to resolve his issues with Mr Del Mundo, Mr King said he intended to resign at the end of the season (usually early June).

[45] When asked how Mr Vaishnav responded to his signalling he would resign, Mr King acknowledged that he was told he could reconsider his resignation and at the time it was not asked for in writing (a requirement of his employment agreement). Mr King also confirmed that for the immediate period up to 15 February, he made no contact with Mr Vaishnav to indicate he was thinking about resiling from his verbal resignation. Likewise, Mr Vaishnav did not formally communicate any options to Mr King.

[46] Mr Vaishnav says he also took Ms Eseo aside during the 7 February meeting and told her the resignation was not necessary as there were transfer options.

#### *Post 7 February events and dismissal*

[47] On 15 February at around 10 am, Ms Eseo without Mr King's knowledge, texted Mr Vaishnav to inquire what would happen if Mr King did not supply a "resignation letter". The text also alluded to there being no issues when the Del Mundos' were absent.

[48] In response Mr Vaishnav indicated he would have to terminate Mr King's employment unless he got his resignation as they had employed someone else on the strength of Mr King's verbal resignation. Ms Eseo asked: "But why jayson need to terminate ??? he do something wrong ???". To which Mr Vaishnav replied: "It's not working for the system and also internal environment is important If you want you can talk to AJ" then: "Also that day you said uou [sic] will resign so we employed full staff so now cant go back – I have already

signed contracts”. Mr Vaishnav then reiterated he would help them in securing another farm and that he intended to talk to Mr King as their employee and would not deal with Ms Eseo.

[49] Later at around noon on 15 February, Ms Eseo texted again, indicating Mr King and Mr Del Mundo “got a fight right now” to which Mr Vaishnav responded: “Their internal problems if issues happen will have to terminate straight away and give Dave [Mr Del Mundo] a warning”. Mr Vaishnav then would not elaborate on why Mr Del Mundo would be warned and Mr King dismissed.

[50] I had no evidence that Mr Vaishnav followed up the above text exchanges to clarify the situation with Mr King but as Kaamadhenu’s counsel submitted this placed them in an invidious position as they had already employed Mr King’s replacement.

[51] Mr King meanwhile took sick leave between 7 – 10 March supported by a medical certificate and he texted Mr Pasha on 10 March to explain he had been working for some of this time while on sick leave. Mr Pasha responded in part:

Yeah but in saying that too many sick leave we can’t afford but you have given medical certificate I have to respect that I don’t know the reason for your sickness physically or mentally but we need someone to work with us who is mentally and physically fit so we will make some management decisions by Monday and get back to you as of now you can stick to your plans thanks.

#### *The dismissal*

[52] Mr King returned to work on 13 March and received the following email dismissing him ‘on notice’:

We would like to inform you that we have been coping with your health issues since a considerable period.

We have given sick leaves as per the regulations but the business demands that we need people who are fit to work mentally and Physically to make any profit for the business as we are concerned about Health and Safety for our staff it is good for both parties, thus we have decided to end your contract on 15 April 2023, this will give time for you to manage your health better before you start your new Job.

This is a 4-week termination notice which is required to be given as per regulations.

We wish you good luck for your future endeavours.

[53] Kaamadhenu's counsel suggested the wording of the above "is perhaps unfortunate because the intention of the Respondent at all material times was simply to formalise acceptance of the Applicant's resignation".<sup>2</sup> Counsel further in submissions, suggested Kaamadhenu, in good faith, "reasonably believed that the Applicant had resigned based on the strength of the verbal resignation which was confirmed by the message from his wife on 15 February".

[54] It was then suggested that there had been an agreement that Mr King would work till the cows were dried off and Mr Pasha had confirmed this in a text to Mr King of 29 March as being 15 April. While I observe this confirmation was after the dismissal, I also was provided with partial text exchanges between Mr King and "doc" of 8 March that shows Mr King was advised: "Mostly the farms are getting sold so your last day will be dry off date Just informing".

[55] Mr King replied, "Ok doc Thank you" and then "When is our dry off". This exchange is suggestive of by 8 March, Mr King accepting he had resigned as he did not challenge this assumption in the text exchange.

[56] It was accepted Mr King at the time, was unaware of Ms Elio's text exchange with Mr Vaishnav. Although Ms Elio says she later disclosed this to Mr King, it was likely the disclosure was after his dismissal or in the period between 8 - 13 March.

[57] Regarding the 13 March dismissal email, counsel pointed to a concession made during the investigation meeting that Kaamadhenu should have alternatively just confirmed the last day of employment "rather than issuing a letter of termination which was not necessary given that the Applicant had already resigned".<sup>3</sup>

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<sup>2</sup> Statement in Reply attachment 4 August 2023 detailing respondent's account of the relevant facts.

<sup>3</sup> Submissions of counsel for the Respondent of 14 March 2024.

[58] By contrast, Mr King's advocate in submissions suggested that what was communicated on 7 February to Mr King prior to his verbal resignation, was that Mr King would not be allocated a farm in the next season. Although not alluded to in the application to the Authority, Mr King's advocate was effectively suggesting in the alternative, that Mr King had been constructively dismissed. Kaamadhenu's counsel addressed this claim in submissions.

[59] Mr King raised a personal grievance (PG) with Kaamadhenu on 27 March 2023, through his advocacy firm, based on an unjustified disadvantage claim (the final warning) and an unjustified dismissal claim (the 13 March email). While not addressing the detail of what happened on 7 February, the PG letter indicated Mr King had communicated in response to realising Kaamadhenu would not address his concerns, that "he would resign". The PG letter suggested that the resignation was not "unequivocal".

[60] I was not provided with a copy of Kaamadhenu's response to the PG letter other than their Statement in Reply to the Authority of 10 August 2023, in response to Mr King's application to the Authority of 6 July 2023. The parties also attended an unsuccessful mediation.

[61] After leaving Kaamadhenu and being paid all his entitlements up to 14 April 2023, Mr King says (and provided documentation to evidence this) that he commenced employment at another dairy farm after three weeks without wages, on 8 May 2023. Mr King worked there for five months until obtaining a further position on another dairy farm.

## **Assessment**

### *The final warning letter.*

[62] As outlined above and sensibly not contested by Kaamadhenu, I find the final warning was unjustified and given it naturally and evidentially impacted upon Mr King's sense of job security he has suffered a detriment. The way the warning was administered was not an action of a fair and reasonable employer in all the circumstances. Mr King was unjustifiably disadvantaged by the warning and is entitled to a consideration of a remedy for

this element of his personal grievance subject to his potential contribution to the situation (discussed below).

*Did Kaamadhenu breach the duties it owed to Mr King?*

[63] In the sense that Kaamadhenu had both a duty of good faith and obligation to provide a safe work environment, I find they breached these duty by not properly investigating the concerns Mr King raised about his work environment and how it was impacting upon Mr King's well-being. I find given the references to Mr King's health in text exchanges that Kaamadhenu were aware Mr King was struggling with stress. In addition, how Kaamadhenu approached both the warning letter and the setting up of the 7 February meeting breached obligations owed to Mr King and unnecessarily exacerbated Mr King's anxiety about his job security.

[64] The poor setting up of the 7 February meeting with some random attendees was sadly farcical if it was intended to reassure Mr King of his employer's ongoing confidence in him and a willingness to address his concerns. The meeting was not properly documented and I am unable to conclude exactly what options were put to Mr King. I acknowledge as did Mr King, that options were placed before him.

[65] The correct and reasonable approach would have been to properly and from an independent perspective, investigate and resolve the issues Mr King was experiencing with the Del Mundos. This approach would have also been fair to the Del Mundos by seeking their perspective of the deteriorating relationship.

[66] Rather than seek to just shift the problem by moving employees around farms and disrupting their lives including accommodation/schooling options, Kaamadhenu should have sought to review the dynamics of the operation they had imposed and ascertain if Mr King's concerns had validity or even whether Mr King was the source of his own issues.

[67] Instead, by the point of the dismissal it was apparent that the focus had inappropriately shifted to Mr King's well-being and performance issues.

[68] Overall, while at times impliedly well-meaning, Kaamadhenu's handling of Mr King's situation including communications with him, fell well short of what could be expected of a fair and reasonable employer. This is particularly so when they were aware of Mr King being unwell and distressed. Mr King was objectively a vulnerable employee.

[69] While I accept the circumstances of Mr King's resignation could have led Kaamadhenu to doubt his intentions, the communication thereafter was poor and lacked a proper level of formality.

[70] The subsequent decision to dismiss Mr King was unjustified and causative of additional distress. Quite simply put, Kaamadhenu's failure of communication and adherence to due process, led to the dilemma they found themselves in.

*Conclusion on personal grievances*

[71] Kaamadhenu's actions and omissions detailed above were unjustified and resulted in:

- (a) Mr King suffering a disadvantage in his working environment.
- (b) Mr King initially signalling his resignation when it was foreseeable this was a result of breaches of Kaamadhenu's owed obligations and then during the notice period Mr King was dismissed.

[72] I find the dismissal was in all of the circumstances, unjustified.

*Claim for penalty for non-provision of wage and time records.*

[73] While Kaamadhenu failed to explain at the investigation meeting, why they did not provide wage and time records when requested and their counsel did not address this matter in submissions, I decline to award a penalty. While not condoning the omission to provide records, I can see no relevance of the records to Mr King's claims and no disadvantage caused by the non-provision of such.

[74] Other than to bring to Kaamadhenu's attention that a breach of such a nature is beyond technical I see no reason to impose a penalty given my overall findings on the other personal grievances. I heard evidence that Kaamadhenu is taking steps to put in place compliant employment agreements by now utilising a Federated Farmers template and is getting ongoing legal advice on continued compliance and fair process issues.

[75] Given Kaamadhenu are a small and relatively inexperienced employer, this is entirely apt and is to be commended rather than punished. I can see no public interest in a penalty being imposed as I consider the non-compliance was inadvertent rather than intentional.

[76] However, to be clear in future when receiving such requests to disclose wage time and holidays records (which they said they were keeping), Kaamadhenu would be wise to promptly address such requests.

### **Remedies**

[77] As I have affirmed Mr King's personal grievance claims I turn to what remedies he is entitled to consideration of as set out in s 123 of the Act.

#### *Compensation for humiliation and loss of dignity, and injury to feelings*

[78] Having found the warning letter of 15 December was an unjustified action and then an unjustified dismissal followed, I do not intend to compensate Mr King separately. Rather, as the event have some continuity in the causation of the breaches identified, I intend to consolidate the award by examining the overall impact on Mr King.

[79] Mr King gave evidence of the impact of Kaamadhenu's approach to the initial final warning and then the ending of the employment relationship as being the undermining of his confidence and emotional well-being. The impact was prolonged and caused Mr King to suffer insecurity and worry that he unfortunately was unable to cope with and, evidence of Ms Eseo was that it spilled over to causing tension in his family relationships. This also impacted Mr King's emotional well-being and manifested itself in physical stress symptoms (supported

by a GP certificate). Ms Eseo described the impact of uncertainty on Mr King and erosion of his self-confidence and physical decline including weight loss and disturbed sleep patterns.

[80] I also took account of the provision of accommodation that was lost because of the employment ending as an additional distressing factor. I formed an impression that Mr King is a proud person who was and is succeeding in an industry he had little experience in and he wanted to provide for his family in a new country and unfamiliar rural environment so he tried to cope with pressures without help and that may have been to his further detriment. While evidence suggested other stress factors impacted Mr King, it was clear that the uncertain employment situation Kaamadhenu created, predominantly caused distress.

[81] I find that how Kaamadhenu approached the warning, the meeting of 7 February and the tone of correspondence robbed Mr King of dignity and agency and caused him to understandably suffer frustration and humiliation.

[82] Taking account of the evidence proffered and awards made by the Authority and the Employment Court in similar situations and surveying cases brought to my attention in submissions, I consider that Mr King's evidence, warrants above moderate compensation. I fix that amount as \$25,000 under s 123(1)(c)(i) of the Act. <sup>4</sup>

#### *Lost wages and other money*

[83] Given Mr King secured alternative employment within three weeks a modest award of lost wages is appropriate under s 123(1)(b) of the Act. I fix that at \$3,000 gross as claimed with an additional \$598.77 to cover the shortfall in earnings over a nine-week period after he left as Mr King had he not been dismissed during his notice period, had a reasonable expectation he would work at Kaamadhenu until 1 June 2019.

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<sup>4</sup> See summary of compensatory approaches in comparable cases in *Richora Group Ltd v Cheng* [2018] ERNZ 337 at [65] – [66].

## **Contribution**

[84] Section 124 of the Act states that I must assess the extent to what, if any, Mr King's actions contributed to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced. To assess whether the remedy should be reduced, I have considered the relevant factors summarised by the Employment Court in *Maddigan v Director General of Conservation*.<sup>5</sup>

[85] On balance, I consider no reduction in the portion of the remedy awarded is warranted in relation to the unjustified dismissal finding as Mr King did not contribute to the factors that gave rise to his unjustified dismissal personal grievance – the grievance arose from Kaamadhenu's ongoing breaches.

[86] I, however, must take account of Mr King's admitted contribution to how the disadvantage grievance arose. That was an acceptance that he had been consuming strong alcohol (whiskey) within around six hours of him commencing work and his partners belief that he left to go to work late and, dishevelled and likely smelling of alcohol. This presented objectively a risk of impairment while Mr King was operating machinery.

[87] While I heard contested evidence on how this impacted on Mr King it was in my view, sufficient to establish a level of contribution to the circumstances that gave rise to the first personal grievance. A fair and proper process may well have still resulted in Mr King receiving a warning of some degree.

[88] In the circumstances, exercising the Authority's discretion I reduce the compensation component awarded by 10%. The component compensation related to lost wages is to remain as is given this award flowed from the finding that Mr King was unjustifiably dismissed.

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<sup>5</sup> *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

## Orders

[89] I find that:

- (a) Jayson King was unjustifiably disadvantaged and unjustifiably dismissed by Kaamadhenu Agribusiness Limited.
- (b) In the circumstances, Kaamadhenu Limited must pay Jayson King:
  - (i) \$22,500.00 compensation without deductions pursuant to s 123(1)(c)(i) Employment Relations Act 2000; and
  - (ii) \$3,589.77 (gross) lost wages, pursuant to s 123(1)(b) Employment Relations Act 2000.

## The Costs

[90] Costs are reserved.

[91] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Jayson King may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Kaamadhenu Agribusiness Limited will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[92] The parties can expect the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>6</sup>

David G Beck

Member of the Employment Relations Authority

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<sup>6</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)