

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 89  
5521201

BETWEEN SOTHY (DAVID) LIM  
Applicant

AND MEADOW MUSHROOMS  
LIMITED  
Respondent

Member of Authority: Christine Hickey

Representatives: Gregory Bennett, Advocate for the Applicant  
Timothy Mackenzie, Counsel for the Respondent

Investigation Meeting: 16 April 2015, Christchurch

Submissions Received: At the investigation meeting  
Additional evidence supplied by applicant on 21 April  
2015

Determination: 3 July 2015

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**DETERMINATION OF THE AUTHORITY**

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- A. Sothy (David) Lim was unjustifiably dismissed and Meadow Mushrooms Limited breached its duty of good faith to Mr Lim.**
- B. Meadow Mushrooms Limited must pay Sothy (David) Lim:**
- (i) \$4,839.82 gross in lost wages, and**
  - (ii) \$3,000 in compensation for humiliation, loss of dignity and injury to his feelings.**

**Employment relationship problem**

[1] Sothy Lim, known as David, was employed by Meadow Mushrooms Limited (Meadow) as a harvester for about 20 years when his employment ended on 29 August 2014.

[2] Mr Lim claims that he was unjustifiably constructively dismissed, and that Meadow breached its duty to maintain his trust and confidence when it caused or allowed a security guard to search him, his room and his bag. He also claims that the visit to his residence by two of Meadow's managers and the subsequent search intruded on his privacy.

[3] By way of remedy Mr Lim seeks compensation of \$30,000 for humiliation, loss of dignity and injury to his feelings. He also claims lost wages and costs.

[4] Meadow denies that Mr Lim was unjustifiably dismissed and says that he resigned at the end of a disciplinary process during which he was found to have committed serious misconduct by way of theft of a colleague's cell phone from the workplace. Meadow says it conducted a fair and reasonable process, that it did not breach any of its duties to Mr Lim and that its decision, that Mr Lim would be dismissed for serious misconduct, was one open to a fair and reasonable employer.

### **Issues**

[5] The issues the Authority needs to determine are:

- (a) Whether Meadow breached any duty to Mr Lim when it told the security guard why it wanted to talk to Mr Lim and when the security guard questioned Mr Lim and searched his room and his possessions;
- (b) Whether in all the circumstances Meadow used a process and reached a decision that was open to a fair and reasonable employer. That includes assessing:
  - (i) Whether Meadow sufficiently investigated the allegation against Mr Lim;
  - (ii) whether Meadow otherwise treated Mr Lim fairly in the disciplinary process; and
- (c) If Meadow breached its duties to Mr Lim or unjustifiably dismissed him, what remedies are available to Mr Lim?
- (d) Costs.

**Relevant facts**

[6] On Friday, 22 August 2014, after 2pm, Mr Lim left work at the end of his shift in the afternoon. When Babs Ryde, a fellow employee in the same area, later went to get her bag she found her Samsung phone missing. It had been in a phone wallet with some credit and eftpos cards and her driver's licence earlier in her shift. They were all missing.

[7] Ms Ryde went to the office to report the theft. Sylvia MacLellan, the harvesting manager, and Tony Li, the harvesting co-ordinator were in the office. They allowed Ms Ryde to use the phone to ring her husband, Steve. He advised Ms Ryde and Mr Li that Ms Ryde's phone's Life360 find-my-phone software, which he looked at from his own linked phone, showed that Ms Ryde's phone was at 15 Sioux Avenue, Wigram.

[8] Based on the software he viewed Steve told Mr Li and Ms Ryde he believed the phone went missing between 2pm and 3pm when it first started to move away from Meadow's site. Mr Li took Mr Steve's number.

[9] Ms MacLellan and Mr Li decided to drive to 15 Sioux Avenue to see if they could find the phone. When they arrived they found the address to be Wigram Lodge. Wigram Lodge is an accommodation complex that provides furnished single rooms with shared common areas. Mr Li told Ms MacLellan that Mr Lim lived there.

[10] Ms MacLellan and Mr Li introduced themselves to the security guard that was in the lobby area and told him that a phone had gone missing from Meadow's site and asked if Mr Lim was home. The security guard went to check if Mr Lim was in his room. Ms MacLellan and Mr Li followed him but Mr Lim was not home.

[11] Mr Li rang Steve again. Steve told him the phone was now *headed to Riccarton*. Mr Li and Ms MacLellan left contact details with the security guard and returned to Meadow's office. Ms MacLellan checked all employees' addresses to see if any other employees lived at or near Wigram Lodge. No other employees did.

[12] Steve rang Mr Li again and advised him that the phone appeared to be moving from Riccarton back towards Wigram Lodge. Mr Li rang the security guard to let him know that the phone might be being brought back there. The security guard said that

he would talk to any resident who came back and that he would walk to the gate to meet anybody entering the site.

[13] Ms MacLellan and Mr Li headed back to Wigram Lodge. They were not present when Mr Lim apparently arrived home and the security guard did not notice Mr Lim arrive home. However, when Ms MacLellan and Mr Li arrived, they and the security guard saw Mr Lim coming from the direction of his room towards the lobby.

[14] In front of the security guard Ms MacLellan told Mr Lim they were looking for a missing phone that had been tracked to Wigram Lodge. Mr Lim asked whose phone was missing but Ms MacLellan and Mr Li declined to tell him.

[15] The security guard asked Mr Lim if he had been back to his room. Ms MacLellan says Mr Lim initially said *no* but then said he had been back to his room to pick up his credit card to pay for something he had on hold in Riccarton. Mr Lim denies that he would have said Riccarton as the goods that he had on hold were actually in a shop at the Bush Inn, or at Church Corner.<sup>1</sup>

[16] Mr Lim asked Ms MacLellan and Mr Li why they were there and why Jennifer, his team leader, and Babs had not come instead.

[17] After that, a decision was made by the security guard to search Mr Lim and his room. Ms MacLellan and Mr Li say that the decision was not initiated by them or undertaken at their direction. However, they followed Mr Lim and the security guard up to Mr Lim's room. The guard then proceeded to search Mr Lim's bag, his person and his room. Mr Li and Ms MacLellan stayed in the corridor with the door to Mr Lim's room partially open. Mr Li rang the number of the missing phone. No ringing sound was heard. No phone other than Mr Lim's own cellphone, which was in his room, was found. Mr Lim's phone was not the same kind as Ms Ryde's phone.

[18] Mr Lim was very distressed about the search and told Ms MacLellan and Mr Li that he did not think he would be able to come into work on Saturday or Sunday; days that he was rostered on. Ms MacLellan and Mr Li agreed that Mr Lim did not have to come to work. Later, Mr Li rang Mr Lim and told him he would not be required to come in on the Monday either.

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<sup>1</sup> Both are in the same area of Christchurch and the terms are used interchangeably.

*The allegation and the disciplinary process*

[19] On Tuesday, 26 August 2014, Ms MacLellan wrote a letter to Mr Lim inviting him *to a formal meeting to discuss an allegation of theft* to be held on Thursday, 28 August 2014. Her letter outlined the allegation that he had stolen Ms Ryde's phone from her bag at work. Ms MacLellan set out the facts as she saw them including her concerns that initially Mr Lim said he had not been back to his room and then admitted that he had, and that he had asked why Jennifer and Babs had not come, despite him not being told that Babs' phone was missing.

[20] Ms MacLellan's letter also informed Mr Lim that Ms Ryde and her family found the missing cellphone on the Saturday morning:

*... in the bushes outside Wigram Lodge.<sup>2</sup> Babs and her family discovered this after visiting again due to the GPS device still showing the phone at your address or very close by.*

...

*Based on the information above, we now have significant concerns around your involvement in the disappearance of the mobile phone, and this is therefore an allegation of workplace theft.*

*We invite you to attend a formal meeting to discuss this matter in full. ... We invite and encourage you to bring a support person or representative with you.*

*David you should be aware that if we do not accept your explanations in relation to this allegation, this may result in disciplinary action up to and including your dismissal from Meadow Mushrooms Limited.*

[21] The meeting was held on 28 August 2014 at 10am. Mr Lim, was not supported or represented by anyone. Ms MacLellan and Sue Squire, the human resources business partner at Meadow, attended. Ms Squire took the notes but did not take any part in the discussion. Mr Lim confirmed that he was happy for the meeting to proceed although he did not have a representative or support person.

[22] Mr Lim was asked to explain a number of things including how he could explain that the phone appeared to be going to the places he had gone after work. He said he had no way to explain that when he had never had the phone.

[23] He was asked why he had initially said that he had not been back to his room and why he changed his answer. He said because of the way that the question had

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<sup>2</sup> The phone was apparently found in the grounds of 11 Sioux Avenue, which is next door to Wigram Lodge.

been asked he had misunderstood and been confused. He said that if the security guard had asked have you *just now* been back to your room he would have replied yes, but because the guard said have you been back to your room *before*, he replied that he had not.

[24] Mr Lim was told that the phone belonged to Babs.

[25] He was asked why he asked why Jennifer and Babs had not come to Wigram Lodge. Mr Lim said he asked why Ms MacLellan and Mr Li were there instead of his team leader Jennifer, and Ms Ryde who he understood to be the relief team leader. He said he thought were more likely to be dealing with him and that *they go everywhere together*.

[26] Ms MacLellan said that she was surprised he could be confused about something like the management structure and denied that Jennifer and Babs went everywhere together. She also told Mr Lim that Babs was not necessarily the relief team leader although agreed that she did fill in for Jennifer from time to time.

[27] Mr Lim told Ms MacLellan that a (named) former truck driver for Meadow lived at Wigram Lodge as well as other people whose faces were familiar to Mr Lim from time they had spent working for Meadow.

[28] At the end of the meeting Ms MacLellan advised Mr Lim that due to the seriousness of the issue she needed time to consider everything and suggested that he came back the following morning. He said that he did not want to come back to another meeting and asked if he could just be advised of the outcome in writing. However, Ms MacLellan said that it was important that he come back to a meeting and it was agreed that they would meet again at 10 o'clock the following morning.

#### *The outcome of the disciplinary process*

[29] At the meeting at 10 o'clock on 29 August 2014, Ms MacLellan advised Mr Lim that Meadow considered that he had taken Ms Ryde's cellphone and that it had been with him while it was tracked as being on the move. She advised him that Meadow's trust and confidence had been broken *and the employment relationship was no longer tenable for us*. Ms MacLellan advised that her decision was that he would be dismissed. Mr Lim said that he did not believe that Meadow *had enough evidence to say that*.

[30] Mr Lim said that he had no motivation to keep working at Meadow because his integrity and honesty had been questioned. He said that he had been thinking that he might want to leave working there anyway. He told Ms MacLellan that he was surprised at the decision and it would be very difficult for him because he had worked there for around 20 years and would need to use Meadow for a reference. Ms MacLellan offered Mr Lim access to Meadow's EAP programme for three sessions.

[31] The meeting formally ended. However, there was a further discussion when Ms Squire, who attended the meeting to take notes, suggested to Mr Lim that Meadow would allow him to resign rather than be dismissed. Mr Lim said that he would prefer to resign and it was agreed that the employment relationship would end immediately with his resignation with no requirement to give notice.

**Did Meadow breach any duty to Mr Lim when:**

- **it told the security guard at his residence about the missing phone and asked if Mr Lim was home, and/or**
- **when the security guard questioned Mr Lim about whether he had already been to his room, and/or**
- **when the security guard searched Mr Lim, his room and his belongings?**

[32] Section 4 of the Employment Relations Act 2000 requires employers and employees to treat each other in good faith:

*The parties to an employment relationship specified in subsection (2)—*

*(a) must deal with each other in good faith; and*

*(b) without limiting paragraph (a), must not, whether directly or indirectly, do anything—*

*(i) to mislead or deceive each other; or*

*(ii) that is likely to mislead or deceive each other.*

*(1A) The duty of good faith in subsection (1)—*

*(a) is wider in scope than the implied mutual obligations of trust and confidence; and*

*(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and*

*(c) without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected—*

*(i) access to information, relevant to the continuation of the employees' employment, about the decision; and*

*(ii) an opportunity to comment on the information to their employer before the decision is made.*

[33] Although the precise words “breach of a duty of good faith” are not used in the Statement of Problem I am satisfied, contrary to Mr McKenzie’s submissions, that a breach of the duty of good faith has been pleaded in the following way:

*To determine whether the respondent was under an obligation not to undermine the trust and confidence of the applicant by conduct that led to his humiliation in being searched for a cell phone at his residence by a security guard.*

*To determine .... under an obligation not to undermine the trust and confidence of the applicant by conduct that led to his humiliation in having his apartment searched by the respondent’s management.*

[34] When Ms MacLellan and Mr Li went to Wigram Lodge they were entitled to ask to see Mr Lim. However, I consider that telling the security guard that they were trying to find a missing phone coupled with asking to see Mr Lim was a breach of the employer’s duty of good faith to maintain trust and confidence between them and Mr Lim. The inevitable conclusion to be drawn by the security guard, especially when followed by the telephone call telling him the phone appeared to be returning to Wigram Lodge, was that Mr Lim was suspected of having unlawfully taken the phone.

[35] Meadow was complicit in the security guard’s plan to watch out for anyone returning to Wigram Lodge, to walk to the gate to talk to any returning resident and to *talk* to them. Also Mr Lim was questioned by the security guard in Ms MacLellan and Mr Li’s presence. There was no need to involve the security guard in the discussion, which was about the employment relationship between Mr Lim and Meadow only.

[36] It follows that I also consider that Meadow was complicit in the search of Mr Lim, his bag and his room, although the search was not actually carried out *by the respondent’s management*. Ms MacLellan and Mr Li say that they were passive bystanders. I do not accept that because they followed the security guard up to Mr Lim’s room and watched the search through a partially open door. Mr Li also telephoned Ms Ryde’s number to assist in the search. Their complicity in the search was a breach of Meadow’s duty of good faith to Mr Lim not to do anything to destroy trust and confidence in one another.

[37] I do not consider that Mr Lim was harassed by Ms MacLellan or Mr Li when the search was carried out, as Mr Bennett claimed, and I have no jurisdiction to consider any breach of Mr Lim's privacy other than in my conclusion that the search of Mr Lim and his room was in breach of good faith.

[38] No penalty has been claimed for any breach of good faith. However, I need to consider the breaches of good faith as part of my determination on whether Mr Lim was unjustifiably dismissed.

**Was Mr Lim unjustifiably dismissed, constructively or otherwise?**

[39] Section 103A of the Employment Relations Act (the Act) sets out the requirements in determining whether a disadvantage or dismissal are justified:

*(1) For the purposes of section 102(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*

*(2) The test is whether the employer's action, and how the employer acted, where what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[40] The use of the word *could* usually means that there is more than one possible justifiable outcome and more than one possible justifiable process available to a fair and reasonable employer. However, in assessing that the Authority cannot decide whether dismissal was justified by substituting its own decision for that of the employer.

[41] In applying the justification test to the dismissal claim and, so far as it is relevant I need to consider s.103(A)(3) of the Act:

- Whether, having regard to the resources available to the Meadow it sufficiently investigated its allegations against Mr Lim before dismissing or taking action against him; and
- Whether the Meadow raised the concerns that it had with Mr Lim before dismissing or taking action against him; and
- Whether the Meadow gave Mr Lim a reasonable opportunity to respond to the Meadow's concerns before dismissing or taking action against him; and

- Whether the Meadow genuinely considered Mr Lim's explanation (if any) in relation to the allegations against him before dismissing or taking action against him; and
- Any other factors I think appropriate.

[42] In addition, I must not determine a disadvantage or dismissal to be unjustifiable solely because of defects in the process followed by the Meadow if the defects were minor and did not result in Mr Lim being treated unfairly.

[43] Another key aspect in considering whether an employer's action or decision was justifiable is the duty of good faith set out in s.4 of the Act, which I have already concluded was breached.

*Was the investigation carried out by Meadow sufficient?*

*What is the level of proof required to decide that Mr Lim had taken the phone?*

[44] In the recent Employment Court case of *Alatipi v Chief Executive of the Department of Corrections*<sup>3</sup> Judge Ford wrote:

*it is not the function of the Court to conduct its own fact-finding investigation and substitute its view of the facts for those of the employer but s 103A does require the Court to undertake an objective assessment of the fairness and reasonableness of the investigation and of the procedure adopted by the employer in reaching its decision to dismiss the employee. In terms of the factual investigation, the task of the Court is to make an objective assessment as to whether the employer had, using the terminology of the Court of Appeal in Airline Stewards and Hostesses case, "either clear evidence upon which any reasonable employer could safely rely or [had] carried out reasonable inquiries which left it on the balance of probabilities with grounds for believing that the employee was at fault in the manner alleged".<sup>4</sup> [emphasis added]*

[45] Therefore, in this case I need to enquire into whether Meadow had a sufficient factual basis from which to conclude that Mr Lim did steal Ms Ryde's phone. That issue is intimately bound up with the question of the level of required proof to decide Mr Lim had taken the phone

[46] The standard of proof required when an allegation against an employee is very serious, as this allegation was, has been stated as follows:

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<sup>3</sup> [2015] NZEmpC 7

<sup>4</sup> *Ibid.*, at paragraph [85]

*It is well settled that the standard of proof which the employer must attain is the civil standard of balance of probabilities rather than the criminal standard for beyond reasonable doubt; however, **where a serious charge is the basis of the justification for the dismissal, then the evidence in support of it must be as convincing as the charge is grave.***<sup>5</sup>

[47] The allegation that Mr Lim had dishonestly taken Ms Ryde's phone and cards was a very serious allegation. Indeed, Ms Ryde and her husband notified the police of the phone and cards having been taken.

[48] I consider Meadow carried out an inadequate investigation in haste and in effect moved straight to the disciplinary process of putting its concerns to Mr Lim and giving him an opportunity to explain.

[49] The area Ms Ryde's phone was kept in was open to all employees and contractors that may have been in Meadow's premises that afternoon.

[50] Meadow did not have to enquire into purely speculative possibilities not raised until after the dismissal, such as whether someone else set Mr Lim up, but did have an obligation to investigate possibilities raised by Mr Lim during the disciplinary process such as him telling Ms MacLellan in the first meeting that a former driver for Meadow, whom he named, also lived at Wigram Lodge. However, no more investigation in relation to that person was done nor did Ms MacLellan tell Mr Lim why she discarded that potential explanation for the phone's disappearance.

[51] In addition no-one from Meadow, including Ms MacLellan, saw any of the data on the phone tracking reported by Steve to Mr Li. In addition, no-one met with and interviewed Steve. Instead Ms MacLellan relied on an indirect report through Mr Li of what Steve said to him.

[52] I consider that in order to rely on the phone tracking information Meadow was required to check it out and verify its accuracy and usefulness to its enquiry and disciplinary process. Ms MacLellan at very least needed to speak to Steve and to investigate whether the phone went to Riccarton/Westfield Mall area and also to Church Corner/Bush Inn as Mr Lim said he had done. It may have or it may not have. Meadow simply did not know that information as it had not investigated thoroughly enough.

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<sup>5</sup> *New Zealand Shipwrights etc Union v Honda New Zealand Limited* [1989] 3 NZILR 82, 84-84 and the approach was upheld in the Court of Appeal in *Honda New Zealand Limited v New Zealand Shipwrights etc Union* [1991] 1 NZLR 392.

[53] Meadow is a relatively large business with its own human resources staff and was in a good position to conduct a thorough, or at least sufficient, investigation.

[54] Mr Lim's view that Babs and Jennifer went everywhere together may or may not have been true. Ms MacLellan discarded that without any investigation into it. Instead she took Mr Lim's comment as proof that he knew whose phone was missing and therefore was guilty. Ms MacLellan should have checked if they did often go around together, or she should have told Mr Lim how and why she knew she could ignore his explanation.

[55] There was no need for haste and there was time for an adequate investigation. The phone had been found and the cards reported missing and stopped. If Meadow was concerned about Mr Lim being at work during the investigation period it could have sought to agree with him that he voluntarily stay away as he already had for three days before the first meeting, or it could have explored suspending him.

[56] I consider that lack of an adequate investigation meant that Meadow could not be satisfied to the required relatively high degree of proof that it needed that the allegation was proved. The haste and the lack of investigation lead to a suspicion that Meadow considered that it had sufficient proof that Mr Lim took the phone even before it held its meeting to hear his explanation.

#### *Other procedural failings*

[57] I acknowledge that Mr Lim elected to proceed with the meeting on 28 August without a support person or representative. However, in effect, he had only had two days in which to arrange a support person or representative and I question whether that was a reasonable time for him to seek assistance. Despite Mr Lim's 20 years working for Meadow English is his second language and he is not fluent in it. He did not strike me as a confident and articulate person. In all the circumstances I do not consider that a fair and reasonable employer could reasonably have required Mr Lim to come to a disciplinary meeting and be truly prepared to answer such a serious allegation with only two days' notice, at the most. This leads me to question whether, in all the circumstances, Mr Lim really had a reasonable opportunity to respond to Meadow's concerns before it made its decision.

[58] Had the allegation been able to be proved to the high degree of probability required there is no question that *unauthorised possession of ... another staff member's*

*property* is serious misconduct both as generally viewed in employment law and under Mr Lim's individual employment agreement. Therefore, summary dismissal could have been a justified outcome.

### **Conclusion on unjustified dismissal**

[59] The defects in the process were more than minor and resulted in Mr Lim being treated unfairly. In addition, even before conducting any disciplinary process Meadow had seriously breached its duty of good faith to Mr Lim at Wigram Lodge.<sup>6</sup> Therefore, the way Meadow acted and the decision it made to dismiss were not the way a fair and reasonable employer could have acted in all the circumstances.

[60] Mr Lim avoided dismissal by being told that if he wished he could tender his resignation. However, he only did so after breaches of Meadow's duty of good faith and after being told Meadow considered he had taken Ms Ryde's phone, which was a conclusion it reached through a flawed process. He had also been told that he was summarily dismissed.

[61] I do not accept that Mr Lim was seriously considering resigning from Meadow at that exact time although I accept that he did bring that up as a possibility in the second meeting. Meadow allowing him to resign instead of being dismissed was suggested by Ms Squire as a face saving measure for Mr Lim. However, I am satisfied that the resignation was actually a constructive dismissal.

### **Remedies**

#### *Lost wages*

[62] Mr Lim claims lost wages for the period after he left Meadow's employment. He gave evidence that he was devastated by the allegation and the resulting loss of his job of 20 years. He says he was initially in no fit state to seek further employment and I accept that. Mr Lim gained some temporary work in October 2014, within two months of his dismissal. I consider that in all the circumstances he adequately mitigated his loss.

[63] Section 123(1)(b) of the Act allows me to provide for the reimbursement by Meadow of the whole or any part of wages Mr Lim lost as a result of his grievance. Section 128(2) of the Act provides that I must order Meadow to pay Mr Lim the lesser

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<sup>6</sup> Admittedly in an attempt to assist another employee.

of a sum equal to his lost remuneration or to 3 months' ordinary time remuneration. Since Mr Lim obtained temporary work in the three months after his dismissal I need to award him his actual lost remuneration for the thirteen weeks after his dismissal.

[64] In addition, s.128(3) gives the Authority discretion to order an employer to pay an employee a sum of lost remuneration greater than is compulsory under s.128(2); that is, for more than thirteen weeks.

[65] Mr Lim earned an average of \$676.14 gross over the last 22 weeks of his employment with Meadow. For the thirteen weeks after his dismissal, until 28 November 2014, he would have earned \$8,789.82 gross. I need to subtract what he actually earned<sup>7</sup> up to 28 November 2014 which, according to his IRD Summary of Earnings, was \$3,950.00. Accordingly Meadow must pay Mr Lim \$4,839.82 gross in lost wages.

[66] Despite Mr Lim's inability to gain full time employment up to the date of the investigation meeting I do not consider this a suitable case to award lost remuneration beyond the first three months because I accept that Mr Lim was considering leaving Meadow at some stage and may well have done so three months after the dismissal, had the dismissal not taken place. I also consider that even had Ms MacLellan and Mr Li merely confidentially visited Mr Lim at Wigram Lodge and asked him if he knew anything about the missing phone he would have been very embarrassed and would have taken that as a question about his honesty and integrity. In all the circumstances I am not at all sure that Mr Lim would have worked for Meadow for more than three months.

### *Compensation*

[67] Mr Lim's limited oral evidence about his hurt, humiliation and loss of dignity justifies a modest award of \$3,000 compensation.

### *Contribution*

[68] Having determined Mr Lim has a personal grievance s.124 of the Act requires me to consider whether he contributed to the situation which gave rise to his dismissal and if so reduce remedies accordingly.

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<sup>7</sup> Which does not include the Work & Income benefit he remained on at the date of the investigation meeting.

[69] Possibly due to Meadow's insufficient investigation there is no evidence that Mr Lim engaged in any blameworthy conduct, so remedies are not reduced on the grounds of contribution.

### **Costs**

[70] Costs are reserved. The parties are invited to agree on costs. If they are unable to do so any party seeking costs shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The other party shall have 14 days from the date of receipt of the memorandum in which to file and serve a memorandum in reply.

[71] In order to assist the parties to resolve costs by agreement I can indicate that the Authority is likely to adopt its notional daily tariff<sup>8</sup> based approach to costs. The parties are therefore invited to identify any factors which they say should result in an adjustment to the notional daily tariff.

Christine Hickey  
Member of the Employment Relations Authority

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<sup>8</sup> \$3,500 per investigation meeting day.