

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2021] NZERA 456  
3121894

BETWEEN                      MOHAMMED SHIRAZ LALL  
Applicant

AND                              JADE FINANCIAL SERVICES  
LIMITED  
Respondent

Member of Authority:        Geoff O’Sullivan

Representatives:            Mohammed Shiraz Lall Applicant in person  
Simon Oldham (Director) for the Respondent

Investigation Meeting:      27 July 2021 at Auckland

Submissions [and further    27 July 2021 and 4 August 2021 from the Applicant  
Information] Received:      27 July 2021 from the Respondent

Date of Determination:      15 October 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Mohammed Shiraz Lall was employed by Jade Financial Services Limited (JFS) at its Ellerslie Office. He had been employed there since 2014 on an annual salary of \$63,600.

[2]     On 11 June 2020, Mr Lall says his employment terminated on notice on the grounds of redundancy. He says that the redundancy was procedurally flawed, was not genuine and that as a result he had been placed in a position of significant hardship.

[3]     He claims compensation of \$50,000 for loss of dignity, humiliation and distress, lost wages, legal costs, and a written apology.

[4] JFS was forthright in explaining its position, saying it consulted with its employees including Mr Lall about the redundancy, considered feedback, then decided to proceed with its planned restructure. It said it had selected Mr Lall for redundancy because:

- (a) he was the last staff member employed in the Ellerslie office;
- (b) he had the smallest workload, meaning other staff could easily absorb his work;
- (c) it acknowledged that it had deducted four days salary from Mr Lall's final pay, because it had overpaid him sick leave and holidays.

### **The Authority's Investigation**

[5] At the investigation meeting, Mr Lall and Mr Oldham gave evidence. It was agreed that the issues which needed to be considered by the Authority were:

- (a) Was the process followed by JSL a fair process and did it meet the requirements of s 103A of the Employment Relations Act 2000 (the Act)?
- (b) Was the redundancy genuine?
- (c) Was JSL entitled to deduct what it considered overpaid sick leave and/or holiday pay from Mr Lall's final pay without his specific authority?
- (d) If the redundancy was neither substantively nor procedurally unfair, what remedies should flow to Mr Lall?

### **Background and Discussion**

[6] JFS had been in business since 2000 and was originally set up to provide debt recovery services. Mr Lall worked from a shared office in Ellerslie. By June 2020 there were three full time staff at the Ellerslie office, plus a part time staff member and a part time contractor. Mr Oldham's evidence was that there had been a decline in business over the last few years. I was told that a measure of the business's success, notices of proceedings, had dropped significantly. Six or seven years ago, the company had 80 to 100 new notices of proceedings being filed per month, however in recent times, the number had fallen to 12 per month. Live accounts had also significantly reduced over the last three years or so with annual profit falling from some \$248,000 in 2014 to some \$58,618 in the year ended 31 March 2020. It was against this background that JFS decided it needed to look at its structures.

[7] On 4 June 2020, JFS sent a document to staff titled “Workplace Change Process”. The document advised the staff that the company considered it necessary to reduce staffing levels to keep the business viable and to allow as many staff to be retained as possible. It set out the reasons why and put forward the proposal to reduce staff by one person. As a next step, it asked staff to consider the proposal and provide feedback.

[8] Mr Lall did provide feedback on 10 June 2020. His letter opened by agreeing with JFS’s approach saying it made sense based on the business model.

[9] Mr Lall’s feedback did contain some criticism inferring he would have liked to have known earlier that the business was not performing to expectation. He however did agree that the only rational approach was to reduce salaries.

[10] At this point in time, Mr Lall’s personal circumstances were complicated by his wife’s health and it was clear he was particularly vulnerable during this period.

[11] On the next day, 11 June, Mr Lall attended the meeting with other staff and was told in front of them that he had been the one selected for redundancy. His evidence was that this came as a great shock to him. He had not seen it coming and had believed that others would have been selected before he would have been.

[12] Subsequently, and following Mr Lall’s raising of personal grievances, JFS advised that they had considered his feedback but made a decision that Mr Lall was the one selected for redundancy because:

- (a) he was the last staff member employed to work at that office;
- (b) he had the smallest workload and the remaining staff could easily absorb his workload.

[13] As indicated earlier, both parties gave forthright evidence during the investigation meeting. Mr Oldham freely accepted that he had not raised any selection criteria with Mr Lall. He said there were two reasons Mr Lall was selected, namely the last on first off principle and the fact that Mr Lall’s workload was the smallest and others could easily absorb it. From Mr Lall’s perspective however, not only did his employment end before he was aware of why he was selected, he disputes the factual basis to the extent there were no discussions and he was given no chance for comment on any issue relating to his workload.

[14] Whether Mr Lall is right or wrong regarding this, does not affect the substantial breach of JFS's good employer obligations. JFS needed to be full and open with Mr Lall regarding any selection criteria and needed to provide him with a properly informed opportunity to participate in the process. Mr Lall simply could not properly do that when vital information was being withheld. He had no opportunity to raise with his employer that he was not last on in the sense that the company employed others later than him albeit at a different branch. He had no opportunity to comment on the employer's belief his workload was the smallest. This lost opportunity is critical because his employer was relying on it at least in part to select him for the redundancy.

[15] Mr Lall said in evidence he couldn't have and wouldn't have accepted a position in a different branch. During the investigation meeting he agreed with JFS that the need for redundancy was genuine and salaries needed to be reduced. Although he resiled somewhat from that position in unexpected correspondence he sent to the Authority a week later on 4 August 2021, to the extent his 4 August letter differs to what was said at the investigation meeting, I prefer to rely on the evidence Mr Lall has given on oath.

[16] It follows from the evidence I heard that the reasons for a redundancy were genuine. However the redundancy process was fundamentally flawed and was procedurally unfair. It is especially concerning that Mr Lall had no input and therefore no opportunity to dispute JFS's view that his workload was the smallest and could be easily absorbed. Not only was he unaware that this was part of the selection criteria, he was denied any opportunity to engage on the issue.

[17] Mr Lall gave harrowing evidence as to the effect the termination of his employment had on him. It came at a particularly vulnerable time and he gave evidence that he had to be prescribed antidepressants to help him cope with the anxiety and depression caused by his dismissal. He says the financial strain put pressure on his marriage and undermined his relationship with his eldest daughter. He had been making a concerted effort to find alternative employment but to date had been unsuccessful.

## **Conclusion**

[18] JFS's reasons for a redundancy may have been genuine, however the method by which Mr Lall was selected, was unfair. He needed to be told that there was a selection criteria in place, what it was, and why this meant he should be selected for redundancy. JFS's view that Mr Lall's workload was the smallest, was never put to him, and at the investigation meeting,

Mr Lall vehemently denied his workload was the smallest. However, because he was never made aware of the criteria, he had no ability to respond in a meaningful way to JFS's proposal. The result is Mr Lall has been unjustifiably dismissed.

[19] During the investigation meeting JFS properly accepted it was not open to it to deduct some four days' pay and set it off against sick leave and/or annual leave taken in advance without the express approval and permission of Mr Lall.

[20] Because of the flaws in the process, there can be no certainty that if Mr Lall had been given the selection criteria prior to any decision as to who was to be made redundant, and he therefore would have had the opportunity for input, that he would have been selected.

### **Orders**

[21] I order Jade Financial Services Limited to pay to Mr Lall the following:

- (i) \$18,000 pursuant to s 123(1)(c)(i) of the Act as compensation for the significant hurt and humiliation he has suffered as a result of his unjustified dismissal.
- (ii) Three months lost wages of \$15,900 (less PAYE).
- (iii) A sum equal to four days salary (less PAYE) wrongfully deducted from Mr Lall's final payment.

### **Costs**

[22] Neither party was represented at the investigation meeting so it seems to me that costs should not be an issue between them. However if either party wishes to file costs submissions they need to do so within 14 days from the date of this determination with the other party having a further 14 days within which to file any submissions in response.

**Geoff O'Sullivan**  
**Member of the Employment Relations Authority**