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Lloyd v Alexander Construction Central Limited (Wellington) [2018] NZERA 2007; [2018] NZERA Wellington 7 (30 January 2018)

New Zealand Employment Relations Authority

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Lloyd v Alexander Construction Central Limited (Wellington) [2018] NZERA 2007 (30 January 2018); [2018] NZERA Wellington 7

Last Updated: 13 February 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2018] NZERA Wellington 7
3011376

BETWEEN ANDREW LLOYD Applicant

AND ALEXANDER CONSTRUCTION CENTRAL LIMITED

Respondent

Member of Authority: Trish MacKinnon

Representatives: Jenny Murphy, Advocate for Applicant

Libby Brown, Counsel for Respondent

Investigation Meeting: 18 & 19 October 2017

Submissions received: 19 October 2017 from Applicant and from Respondent

Determination: 30 January 2018

Employment Relationship Problem

1. Andrew Lloyd claims he was unjustifiably disadvantaged and unjustifiably dismissed by Alexander Construction Central Limited (ACCL) by whom he had been employed as Project Manager.
2. ACCL denies Mr Lloyd's allegations. It counterclaims that he breached his obligation of good faith and seeks the imposition of a penalty on him.

Relevant background

3. ACCL is a construction company operating in the commercial buildings sector.
4. Mr Lloyd, who is a qualified builder, joined ACCL in July 2015. The terms of his employment were set out in the individual employment agreement he signed on 19 July 2015. Mr Lloyd carried out his work from the ACCL offices initially and later from an onsite office at the Palmerston North hospital. In January 2017 he was working on a project at Massey University.
5. On 26 January 2017 Mr Lloyd received an email and enclosed letter from Murray Sneddon, Central Region Manager for ACCL. Mr Sneddon is a director and shareholder of the company. The email referred to "a couple of serious matters that have happened" and the letter expanded upon those matters.
6. The first matter concerned a statement made by a departing contractor on the Massey University project. He had allegedly approached Mr Lloyd and asked whether ACCL would be interested in pricing a project in Masterton that he had been involved in designing. He had alleged that Mr Lloyd's response was to ask him to keep the matter confidential as he and another employee of ACCL were about to go into business together and would be interested in pricing.

7. Mr Sneddon's letter described this as being a significant breach of the implied

duty of fidelity that could conclude in instant dismissal without notice.

The letter noted "it was also stated you had a forward workload of 3 houses which you had also approached another one of our contractors on regarding their employment/involvement on."

8. The second matter raised by Mr Sneddon was "...the matter of missing reinforcing steel (that was stored in the boiler room) ..." at the Palmerston North Hospital project. Mr Sneddon noted this could be serious misconduct that could conclude in instant dismissal without notice. He requested a meeting that day at

4.00 p.m. with Mr Lloyd "to address the above issues and provide you the

opportunity to explain or deny the allegation".

9. Mr Lloyd advised Mr Sneddon shortly after 12.00 p.m. that a meeting that afternoon was not possible as he was unable to arrange a support person in the short time available. He said he would come back to Mr Sneddon by close of business that day with a preferred time.

10. Mr Sneddon responded by email just after 2 p.m. agreeing to the meeting being rescheduled and noting the company's view that "it may be best for both parties to put you on paid leave until the meeting occurs." He said this would give Mr Lloyd additional time to seek advice and prepare for the meeting. He also invited Mr Lloyd to "... come back to me before COB if you have any comments on this proposal."

11. Mr Sneddon's response further directed Mr Lloyd "as a precautionary measure... not to access or copy any of our files or documents either in the office or remotely and not to contact any of our clients." He stated it was likely that as part of the company's investigation it would need to engage forensic computer analysts to review the company's systems. For that purpose he asked Mr Lloyd to drop his laptop into the office that afternoon.

12. Mr Lloyd engaged an employment advocate, Jenny Murphy, that afternoon. Ms Murphy telephoned Mr Sneddon around 5.00 p.m. the same day. Two hours later she emailed him a draft Record of Settlement agreement that she proposed to resolve the employment relationship problem between Mr Lloyd and his employer. Mr Sneddon undertook to discuss this with fellow directors. Normally, such matters would be confidential to the parties but in this instance both parties waived privilege.

13. Following some correspondence between the parties, ACCL notified Mr Lloyd's advocate by letter dated 2 February 2017, of numerous further allegations. These were set out in a 9 page letter with an accompanying 70 pages of supporting documentation. The matters expanded on the original two issues that had been raised by Mr Sneddon and comprised 36 allegations set out under 6 headings.

14. These were:

a. Missing money: five allegations relating to monies received from the sale of demolition materials between 7 October 2016 and 9 January 2017.

b. Reinforcing steel Issue: eight allegations relating to a stock of reinforcing steel stored on the hospital site over which Mr Sneddon said he had conflicting information from Mr Lloyd and other persons.

c. 90 x 45 framing : seven allegations relating to timber framing alleged by a former employee to have been taken from the work site in or around May

2016 by Mr Lloyd.

d. Misuse of company time: six allegations based on information from the same former employee that he had been asked to perform personal work in worktime for Mr Lloyd and that on more than one occasion Mr Lloyd had taken him, and other workers, to the hospital canteen, instructing him to record it as work time on his timesheet and signing off those timesheets.

e. Falsifying timesheets: five allegations concerning Mr Lloyd's actual working times, based on checking of Mr Lloyd's, the former employee's and one other employee's timesheets and the allegations of the former employee.

f. Setting up a new business: five allegations made by the departing contractor referred to above.

15. Common themes of the allegations were dishonesty; misappropriation of company property or time for personal gain or benefit; acting in a manner that was contrary to the best interests of the company; failure to exercise the good judgement expected of a senior manager; and actions that breached trust and confidence. Other allegations were that Mr Lloyd had acted in a manner that undermined the company's legitimate business and that had the potential to bring the company into disrepute.

16. ACCL's letter outlining the allegations invited Mr Lloyd to attend a meeting with his employer to discuss the matters at 11.00 a.m. on Wednesday 8 February 2017.

17. Ms Murphy advised ACCL on 3 February that the scheduled meeting date gave insufficient time for preparation as she had not yet had the opportunity to meet with Mr Lloyd and Monday 6 February was a public holiday. These factors,

together with the large amount of documentation and the fresh allegations, led her to propose Friday 10 February as a preferred alternative. Ms Murphy requested that Mr Lloyd be able to access his emails in order to respond fully to the allegations raised against him.

18. ACCL denied that request in a letter from Mr Sneddon dated 7 February, but offered a two-hour delay in the meeting it had scheduled for 8 February to enable Ms Murphy to meet with her client. Mr Sneddon said if that was not suitable then the meeting could be rescheduled but the delay would be considered due to Ms Murphy's unavailability and the suspension would move to being unpaid from Wednesday 8 February.

19. Mr Sneddon's letter also said that "...as this is our investigation and given the allegation that Andrew is in the process of setting up on his own in competition, then if there are particular emails Andrew feels he wants us to consider he can direct us to them. We can then locate and review them."

20. Mr Lloyd raised a personal grievance by letter from his advocate on 7 February

2017 referring to ACCL's failure to consult him before suspending him; its failure to allow him access to his email account, which affected his ability to respond to all his employer's allegations; its threat to change his paid suspension to unpaid; and its predetermination of the outcome.

21. He alleged ACCL had undertaken an investigation, following its notification to him of the first two allegations, with the sole purpose of trying to find any suspected wrongdoing, and had predetermined the outcome with a closed mind rather than treating him fairly and objectively. The letter from Ms Murphy also alleged ACCL had embarked on a campaign to coerce her client to resign as a result of its suspicion he intended to set up his own business.

22. The letter advised that Mr Lloyd would not be attending the meeting scheduled for Wednesday 8 February as he would be unprepared: he had written some notes in response to the allegations contained in his employer's letter of 2 February but was unable to complete them without access to his emails.

23. On Thursday 9 February Ms Murphy provided Mr Lloyd's responses to the allegations against him, and provided some supporting documentation. It is not necessary to replicate those responses here: suffice to say Mr Lloyd's version of events differed in many respects from that conveyed in Mr Sneddon's letter of 2

February. He provided explanations, denials and alternative perspectives in relation to all six of the matters.

24. He also cast doubt on the statement sworn by a former employee before a Justice of the Peace and said that person had

abandoned his employment because he was tired of the work and unhappy about working for Mr Sneddon, who was his stepfather. He doubted whether the statement had been written by the employee and suggested he had signed it to please Mr Sneddon.

25. In the course of his response to the allegation that he was setting up a new business, Mr Lloyd disputed the contractor's account of their discussion over the potential Masterton work stating the contractor had raised his involvement in the job as an explanation for his late arrival at work one day. He had not referred to ACCL's potential in the project. There had been some discussion of Mr Lloyd and another person undertaking the work as a weekend job. However, Mr Lloyd advised he was not interested when he realized the size of the project. He said the contractor told him the following day the work was being undertaken by a builder in Masterton.

26. Ms Murphy noted in her letter of response that Mr Lloyd's employment agreement contained no restraint clauses, stating her view that he was free to undertake work in his own time as secondary employment, or operate his own business if it was not in competition with ACCL. She said he had not breached any duty of fidelity as he had not undertaken any work in direct competition with his employer. She further noted that, if Mr Lloyd had become dissatisfied with his role and was seeking work elsewhere or planning for his future, he was under no obligation to advise his employer that he was doing so.

27. ACCL responded the following morning (10 February) with a three page letter enclosing a further 46 pages of documentation, including emails, timesheets, and an estimate pricing report. The email noted that Mr Lloyd had until 2.00 p.m. that

day to advise whether he wanted the opportunity of a meeting with his employer on Monday 13 February at 11.00 a.m.

28. That was followed by an email from ACCL on Monday 13 February at 7.23 a.m. advising that, as it had not received a response to its email on the previous Friday, it would be making a final decision that morning.

29. Ms Murphy sent an email, with an attached letter, to ACCL at 10.09 a.m. that morning advising that the timeframe was inadequate. The letter responded to the matters raised in ACCL's 10 February letter.

30. Ms Murphy's letter crossed with a letter from Mr Sneddon, emailed at 10.22 a.m., enclosing a letter of dismissal of Mr Lloyd for serious misconduct. It was clear from the content of the letter that Mr Sneddon had not seen Ms Murphy's letter before the decision was taken to dismiss Mr Lloyd.

31. ACCL's letter of dismissal conveyed adverse findings made in respect of each of the six headings of allegations made against Mr Lloyd. Mr Sneddon noted that he and Mr Martine Lyon who were the decision makers, had decided the matters constituted serious misconduct and that termination of Mr Lloyd's employment was the appropriate outcome in the circumstances. Mr Lyon is a director and shareholder of ACCL and its Operations Manager.

32. Mr Lloyd notified his personal grievance "for further claims of unjustified disadvantage and unjustified dismissal" by letter from Ms Murphy dated 21

February 2017.

33. The parties attended mediation but were unable to resolve the matter.

The Authority's investigation

34. Evidence was given by Mr Lloyd and his partner at the time the relevant events occurred. Three directors of ACCL gave evidence for the respondent.

35. As permitted by [s. 174](#) of the [Employment Relations Act 2000](#) (the Act), I have not set out in this determination all the evidence and submissions received. Rather, the determination states relevant findings on facts and law; expresses conclusions on issues requiring determination to dispose of the matter; and specifies orders made.

36. This determination has been issued outside the statutory period of three months after receiving the last communication from one of the parties. When I advised the Chief of the Authority this would occur he decided, as he is permitted by [s174C\(4\)](#) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in [s174\(3\)](#) of the Act.

Issues

37. The matters for determination are :

- i. whether Mr Lloyd was unjustifiably disadvantaged in his employment by actions of his employer;
- ii. whether Mr Lloyd was unjustifiably dismissed;
- iii. whether Mr Lloyd breached his obligation of good faith to his employer.

38. Issues of remedies, contribution and penalty may also arise depending on findings made.

Was Mr Lloyd unjustifiably disadvantaged?

39. For a suspension to be justifiable there must normally be an express provision in the employment agreement sanctioning suspension or the employee must agree to it at the time. Mr Lloyd's individual employment agreement contained no provision for suspension.

40. Mr Lloyd's claim is that the process for suspending him was unfair, without cause, and constituted a disadvantage to him in his employment. He claims the suspension was predetermined and there was no opportunity for consultation.

41. I find, from the correspondence I have referred to earlier, that Mr Lloyd was given the opportunity to provide comment on the proposal that he remain on paid leave

until the parties could reschedule a meeting to discuss the matters of concern ACCL had raised. He was asked to provide any comments by close of business on 26 January 2017.

42. In evidence to the Authority, Mr Lloyd said he had received an email from Mr Sneddon at around 2.00 p.m. on 26 January informing him of his suspension. Mr Lloyd's responses to questions about the email's invitation to him to provide comments on the proposal made it clear Mr Lloyd had misread the email, as he said he thought he was being asked to comment on a

rescheduled meeting not on the proposed suspension.

43. I find there was an attempt at consultation although it entailed only a relatively short timeframe for Mr Lloyd to comment. This comprised some three to four hours on the afternoon of 26 January.

44. It appears Mr Lloyd did not provide comments on the proposal, either in person or through his representative, until after the timeframe for comments had expired and the suspension was in place. Before then Mr Lloyd's efforts, through Ms Murphy, were aimed at obtaining his employer's agreement to terms of exit.

45. The main thrust of Ms Murphy's email of 27 January was the Record of Settlement she had sent Mr Sneddon the previous evening and to amendments proposed to it by ACCL's lawyer, Ms Brown. In the final paragraphs of the email Ms Murphy alleged ACCL had unlawfully suspended Mr Lloyd, referring to the lack of a contractual term or any consultation.

46. It was reasonable that Mr Lloyd was not required to attend the workplace while discussions over terms of a potential exit agreement were proceeding between his employer and his advocate. However, there was no evidence presented to suggest the matter of suspension/paid leave was considered again by ACCL when the exit discussions were unsuccessful. To the contrary, Mr Sneddon stated in oral evidence he could recall no further discussion among the directors over the matter.

47. There appeared to be no good reason for Mr Lloyd to be suspended from his employment after 27 January 2017 given the nature of the two matters of concern at that time. The first matter had arisen from comments made by a departing

contractor. That contractor was no longer at the workplace so there could be no concerns over potential unpleasantness between co-workers if Mr Lloyd had remained at work while ACCL investigated that matter. Nor would ACCL have been hampered from investigating the contractor's comments by Mr Lloyd's presence.

48. The second matter concerned some reinforcing steel that the employer believed had gone missing from a worksite several months earlier. The matter had been discussed in the workplace but not raised with Mr Lloyd previously in a disciplinary context. It was unnecessary, given the passage of time, for ACCL to suspend him while it carried out an investigation into the whereabouts of the steel.

49. In the circumstances, I find the suspension of Mr Lloyd beyond the period of discussion over an agreed exit package to have been unlawful, constituting a disadvantage to him in his employment. He suffered no financial disadvantage during the period as his salary continued to be paid. However, had he been permitted access to the workplace, he would have had access to documentation and emails that may have better enabled him to respond adequately and comprehensively to the further allegations made against him by his employer.

Was Mr Lloyd unjustifiably dismissed?

50. Whether or not an action is justifiable is determined on an objective basis by applying the test in [s.103A](#) of the Act. The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the action occurred.

51. In applying the test a number of specified factors must be considered which come under the broad umbrella of natural justice. Applied to the current matter, they relate to the sufficiency of ACCL's investigation before it dismissed Mr Lloyd; whether it raised concerns with him and gave him a reasonable opportunity to respond to those concerns; and whether it genuinely considered his explanations before dismissing him.

52. Additionally, other factors the Authority considers appropriate may be taken into account. However, a dismissal is not to be found unjustifiable solely because of

defects in the employer's process if those defects were minor and did not result in the employee being treated unfairly.¹

53. The first concerns ACCL raised with Mr Lloyd by letter dated 26 January 2017 were the allegation he had breached the implied duty of fidelity and the allegation about missing reinforcing steel. The source of the first allegation was information from a contractor who had written three angry emails to the Operations Manager on 24 January 2017. Mr Lyon contacted the contractor to discuss their content.

54. None of the emails related to the matter that led to the allegation of a breach of the implied duty of fidelity. That emerged from Mr Lyon's discussion with the contractor who had notified his resignation. Mr Lyon took no notes of that discussion. He said he had been shocked to hear that Mr Lloyd had not referred potential work to his employer and that he was soliciting ACCL staff to work with him.

55. Mr Lyon informed Mr Sneddon who, by his own account, spoke very briefly with the contractor then asked him to put details in writing. The contractor provided ACCL with a short written statement he had signed before a Justice of the Peace on 31 January 2017. This referred to the job the contractor said he had approached Mr Lloyd about, and to Mr Lloyd's alleged request that the contractor not tell anyone else about the work.

56. The contractor's statement also referred to a conversation the contractor had the following week with another ACCL employee who "confessed" to him that he and Mr Lloyd were in the process of setting up their own business. The contractor's statement made no mention of Mr Lloyd soliciting employees from ACCL.

57. Mr Lyon acknowledged he had made no effort to follow up on the potential work ACCL had missed out on. He said he accepted the accuracy of the contractor's account of the discussion and he referred to Mr Lloyd's reaction to the contractor's approach as dishonest. Under cross examination he queried why the contractor would have fabricated his account of the discussion. Mr Sneddon under

questioning expressed a similar view. He said that at the time of talking with the

¹ [S. 103A\(3\)\(5\)](#).

contractor he thought him to be credible with no reason to say such things if they were not true.

58. It was clear that both directors, who were the investigators and decision makers in the matter, had formed an adverse view of Mr Lloyd from the time of hearing from the contractor. Mr Sneddon's evidence in particular made it clear he was extremely concerned over Mr Lloyd's apparent plans to leave ACCL and set up his own business.

59. The second matter raised in the letter of 26 January 2017 concerned "the missing reinforcing steel (that was stored in the boiler room) at the Hospital Generator contract". It was clear from the evidence that Mr Sneddon had questioned the steel's whereabouts some months earlier in the second half of 2016. Mr Lyon professed not to know why the matter had been raised with Mr Lloyd so long after the event, describing it as a "side issue" in which he had no involvement.

60. Mr Sneddon was asked why, given that in January 2017 he deemed the matter to be of such seriousness that it could

potentially result in dismissal without notice, he had not raised it with Mr Lloyd as a disciplinary matter when he first had concerns several months earlier. Mr Sneddon replied that he did not wish to rock the boat at the time. His answer suggested the value he placed on Mr Lloyd as an employee then outweighed any concerns and suspicions he had over the missing reinforcing steel.

61. Between 26 January and 2 February 2017, ACCL carried out further investigation into Mr Lloyd's actions. It obtained statements from six employees, most current but at least one former employee. The latter was, as I have earlier noted, Mr Sneddon's stepson. ACCL says the other 4 other issues leading to 29 new allegations came to its attention after it had started investigating the first two matters.

62. I am not persuaded that is an accurate representation of what happened. The range of issues canvassed in ACCL's letter of 2 February, comprising 9 pages of

allegations and approximately 70 pages of attached documentation, go far beyond an investigation into the two matters initially raised with Mr Lloyd.

63. It is difficult to avoid the conclusion that Mr Sneddon and Mr Lyon sought material that implicated Mr Lloyd in activity that could justify his dismissal. While they denied this, both gave evidence of being influenced by Mr Lloyd's advocate's proposal on 26 January 2017 of an exit arrangement for Mr Lloyd. Mr Sneddon and Mr Lyon both said that they found this very suspicious.

64. From their evidence I conclude neither director approached the investigation with an open mind. Both took the position that the contractor who made the allegations verbally on 25 January, and in writing on 31 January, had no reason not to tell the truth. Both accepted what he had said at face value. That compromised their ability to hear Mr Lloyd's explanations with open minds.

65. Mr Sneddon's evidence in particular made it clear that the matter he was most concerned about was Mr Lloyd's apparent intention to set up his own business although Mr Lloyd's individual employment agreement contained no provisions preventing this. It had no restraint of trade, non-solicitation, or non-competition provisions.

66. Interviews were conducted by Mr Lyon and Mr Sneddon. They were not both present at all interviews, notably that of Mr Sneddon's stepson whom he interviewed on his own. Carl McKnight, another of ACCL's director/shareholders, attended some interviews and took notes of them. It emerged from their evidence that they had accepted the evidence and written statements provided by the persons they interviewed as part of the investigation without questioning or testing their statements. When Mr Lyon was asked why those persons were believed but not Mr Lloyd, he responded that there were too many allegations and queried why Mr Lloyd would want to leave a company that wanted to invest in him.

67. Mr Sneddon acknowledged he had been the only person to talk to his stepson and had not questioned him about dates on which events took place or asked for details. His evidence revealed he had made assumptions based on his stepson's statements, one of which was regarding the use to which the framing timber had

been put, despite having no evidence for such assumptions. As a number of the new allegations put to Mr Lloyd on 2 February arose from his stepson's statement I find it problematic that Mr Sneddon did not ensure he was interviewed by someone unrelated to him.

68. ACCL's investigation and disciplinary process took two and a half weeks from the date of the initial notification of concerns to Mr Lloyd to the notification of its decision to dismiss him. There was no meeting between the parties in that time and Mr Lloyd's responses to the allegations were made in writing through his representative.

69. While two and a half weeks may be a reasonable time to conduct and conclude some investigations and disciplinary procedures, I find it was insufficient in this instance. The number and breadth of the new allegations against Mr Lloyd, and the amount of documentation provided to him on 2 February, required time for considered responses. I am not satisfied sufficient time was made available to him.

70. It was unreasonable for ACCL to impose deadlines for responses and meetings that did not allow Mr Lloyd sufficient time for research and preparation, particularly in the absence of access to his work emails. The employer's refusal of Ms Murphy's request for an additional two days to prepare for the meeting proposed by ACCL for 8 February was an unreasonable response to a modest request. The intervention of a public holiday weekend limited Mr Lloyd's ability to meet his representative and resulted in a very short timeframe for responding to the 29 new allegations against him. Mr Sneddon acknowledged under cross examination that the rejection of the request had possibly been unreasonable.

71. Unfortunately that was not an isolated instance of ACCL imposing an unreasonable timeframe as another occurred on Friday 10 February. Mr Sneddon emailed Ms Murphy that morning asking for her response by 2 p.m. that day as to whether Mr Lloyd wished to have a face to face meeting with his employer on Monday 13 February to add anything further to the written responses he had made to the allegations.

72. Mr Sneddon's comprised a 3 page letter and 46 pages of attached documents. It was not clear whether ACCL required Mr Lloyd to comment on or explain the documents. As it eventuated, Mr Sneddon and Mr Lyon made the decision to dismiss Mr Lloyd before they received Ms Murphy's response.

73. For these reasons I find ACCL's investigation and disciplinary process to have been seriously flawed. The decision to dismiss Mr Lloyd was not one a fair and reasonable employer could have made in all the circumstances at the time.

Did Mr Lloyd breach the duty of good faith?

74. Section 4 of the Act requires both parties to an employment relationship to deal with each other in good faith and not, either directly or indirectly, do anything to mislead or deceive each other or anything likely to do so. It also requires those parties to be active and constructive in establishing and maintaining a productive employment relationship in which, amongst other things, they are responsive and communicative.

75. ACCL maintains Mr Lloyd was not constructive or communicative with his employer over his intention to establish his own business in competition with his employer. It says he was intentionally deceptive about his plans.

76. I have found ACCL's investigation and disciplinary process to have been flawed.

That being so I find it could not rely on conclusions it came to and assumptions it made regarding Mr Lloyd's actions and intentions. I dismiss this claim.

Remedies and contribution

77. Mr Lloyd is entitled to remedies for his personal grievances. I find an award of

\$3,000 appropriate compensation for his suspension and find he did not contribute to the situation that led to that personal grievance.

78. With regard to his unjustifiable dismissal I find a compensatory award of \$10,000 to be appropriate, subject to any findings of contribution. In setting that amount I have taken into account evidence of the effect of his dismissal on Mr Lloyd and on his relationship with his partner.

79. He also seeks reimbursement of lost wages in the sum of \$7,753.85, being remuneration from the date of dismissal until he began earning again. That is a reasonable sum representing a little over one month's salary and I award that amount, subject to any findings of contribution.

80. While the dismissal was unjustifiable due to deficiencies in the employer's investigation and the process it followed I find there to have been a level of contribution by Mr Lloyd to the situation that led to his personal grievance for unjustifiable dismissal. There was sufficient evidence for ACCL to have concerns over his actions in preparation for establishing his own business while still in employment.

81. If ACCL had conducted a fair investigation into that matter it may have had cause to take disciplinary action against Mr Lloyd. In the event it acted prematurely and without giving Mr Lloyd adequate opportunity to respond to that evidence. I assess the level of contribution at 10 percent and remedies, other than for suspension, will be adjusted accordingly.

Determination

82. Andrew Lloyd's personal grievances for unjustifiable action disadvantaging him in his employment and unjustifiable dismissal are upheld. He did not contribute to the first personal grievance but did contribute to the second.

83. Alexander Construction Central Limited is ordered to pay Mr Lloyd:

- a. \$3,000 under s. 123(1)(c)(i) in respect of his personal grievance for unjustifiable action disadvantaging him in his employment;
- b. \$9,000 under s. 123(1)(c)(i) in respect of his personal grievance for unjustifiable dismissal; and
- c. \$6,978.47 gross under s. 123(1)(b) in respect of wages lost as a result of his personal grievance for unjustifiable dismissal.

Costs

84. The issue of costs is reserved.

Trish MacKinnon

Member of the Employment Relations Authority