IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2024] NZERA 695
3289779

	BETWEEN	ALYSE LOGIE Applicant
	AND	FLYING KIWI EDUCATION LIMITED Respondent

Member of Authority:	Jeremy Lynch
Representatives:	Robert Morgan, advocate for the Applicant Mathew McGoldrick, counsel for the Respondent
Investigation Meeting:	15 and 22 August 2024 in Auckland and by AVL
Submissions and other Material Received:	Up to and including 22 August 2024
Determination:	21 November 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Flying Kiwi Education Limited (Flying Kiwi) operates the Flying Kiwi preschool centre in Auckland.

[2] Alyse Logie was employed by Flying Kiwi in February 2023 under a written employment agreement, which records the nature of the employment as casual.

[3] Despite this, Ms Logie says she worked regular hours during her employment, and her employment was permanent rather than casual.

[4] Ms Logie says she was unjustifiably dismissed by Flying Kiwi in July 2023. She seeks remedies to compensate her lost income and injury to feelings suffered as a consequence of her dismissal, together with a contribution to her costs.

[5] Flying Kiwi denies that Ms Logie was unjustifiably dismissed. It says no dismissal occurred. Rather, she was simply offered fewer hours, in accordance with the casual employment agreement. It opposes the remedies sought.

The Authority's investigation

[6] For the Authority's investigation, a written witness statement was lodged by Ms Logie. Ms Logie also lodged a reply witness statement.

[7] For Flying Kiwi, written witness statements were lodged by Michelle Wu who (together with her husband), owns Flying Kiwi, and its centre manager, Taokia Gill.

[8] Under oath or affirmation, all witnesses answered questions from the Authority, and from the parties' representatives. At the parties' request, a further investigation meeting was held on 22 August 2024 by audio visual link, for the representatives to make closing submissions.

[9] As permitted by s 174 of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made. It has not recorded all the evidence and submissions received.

The issues

[10] The issues requiring investigation and determination are:

(a) whether Ms Logie was unjustifiably dismissed from her employment by Flying Kiwi?

(b) If so, is Ms Logie entitled to a consideration of remedies sought including:

(i) reimbursement of lost wages under s 123(1)(b) of the Act;

(ii) compensation for hurt and humiliation under s 123(1)(c)(i) of the Act?

(c) If any remedies are awarded, should they be reduced under s 124 of the Act for blameworthy conduct by Ms Logie which contributed to the situation giving rise to her grievance?

(d) Should either party contribute to the costs of representation of the other party?

Background

[11] Ms Logie says she attended an interview at Flying Kiwi's premises in early February 2023. The interview was conducted by Ms Gill, the centre manager. Ms Logie says that at this interview she advised Ms Gill that she was available to work Monday to Thursday, as that suited her own childcare needs.

[12] On 16 February 2023 the parties entered into an employment agreement which provides at cl 2:

> 2.1 This agreement is for casual employment only. Employment is on an "as required", assignment by assignment, basis and there is no guarantee of further and/or continuing employment.
>
> …
>
> 2.5 We do not guarantee you continuous or regular employment. This agreement or any extension does not imply that you will have continuous or regular employment.
>
> 2.6 You have the right to accept or refuse any assignments offered by us.

[13] Ms Gill's evidence was that she is responsible for staff rosters at the centre. She says, "I enter staff rosters a week in advance and email it to all employees".

[14] Ms Logie says after she signed the employment agreement, she was placed on Flying Kiwi's roster, commencing work the following week. Ms Logie says that from when her employment commenced on 20 February 2023, until the end of May 2023 she worked from 9.30 am to 2.30 pm Monday to Thursday,[1] which were the hours agreed with Ms Gill during her interview.

[15] Ms Logie says that at end of May 2023 Flying Kiwi asked her to increase her hours. Ms Gill sent her a text message on the evening of 28 May saying "… I am just working on the roster. Can you do closing either on the Monday, Tue or Wed. The hours 9.30am – 5.30pm … Can you also work on Fridays?"

[16] Ms Logie replied to Ms Gill's message saying "… I can definitely do closing, Tuesday would work best. And yes, I'm available to work Fridays."

[17] Ms Logie says that commencing 29 May 2023 her hours were increased. She says she worked 9.30 am to 5.30 pm on Tuesdays (an additional two hours), and began working an additional shift, being 9.30 am to 2.30 pm on Fridays. Ms Gill says these

[1] Other than her first week of work, when she worked 9.00 am to 2.00 pm, Monday to Thursday.

hours did not change until 28 July 2023, when Ms Logie says that she was dismissed.

How did the employment relationship end?

[18] Ms Logie says that because her hours had been regular, and she now worked each day the centre was open, that:

> I knew that I was not, and had not been working on a casual basis. I had never been called up and asked if I was available. Each week the roster and hours remained unchanged.

[19] On this basis, Ms Logie says that on 11 July she requested of Ms Gill to:

> … have a sit down to discuss my contract since I was coming up to 6 months employment. This was to reflect both my new hours and that I had been working on a permanent part-time basis not a casual basis.

[20] Ms Logie says she met with Ms Gill that day, who advised her that she would need to discuss her request with Ms Wu, who was overseas until 28 July 2023.

[21] Ms Gill discussed the matter with Ms Wu on 28 July 2023, and says she then:

> … asked Alyse to come to my office for a chat... I just wanted to give her a heads up of potential upcoming change. I recall telling Alyse that the centre's needs were changing and that there was a possibility that the hours she may be offered might be adjusted.
> …
> Although I wasn't sure of the exact changes, I estimated her hours offered might be reduced to around 10 hours a week … I remember saying to Alyse that nothing was finalised however …

[22] Ms Logie says that at this meeting Ms Gill gave her an "ultimatum"; she could either accept the offer of ten hours per week, or there was no more work for her.

[23] On the afternoon of 28 July 2023 Ms Logie sent Ms Gill an email saying:

> This is a follow up of our conversation this afternoon … that effective immediately I am to either not return to work or reduce my hours significantly …
> Under the employment law a casual employee must not be given rostered hours or have a regular pattern of work etc. Therefore, I will be considering my employment as a permanent part time … .
>
> It is also against the law to reduce an employee's hours unless it is agreed upon.

[24] On the evening of 28 July 2023 Ms Gill responded to Ms Logie (not disputing the ultimatum):

> I am also aware of the casual employment law I broke that by giving you regular hours because I wanted to help you out.
>
> I will talk with Michelle [Wu] about this issue and hope for a better outcome.

[25] On 30 July 2023 Ms Logie emailed Ms Gill advising:

> … [Ms Wu] should know the employment law well enough to know that from the moment I started, my hours were consistent and I shouldn't have remained a casual employee.
>
> …she declined my request to be officially recognised as a permanent employee and instead unlawfully gave me an ultimatum to have my hours significantly dropped down or my contract will be terminated effective immediately.
>
> …
>
> I will come in tomorrow to say my goodbyes …

[26] On 31 July 2023 Ms Gill responded by email to Ms Logie saying:

> I have just read your email. I think there's some misunderstanding here. You're not dismissed from your job. The conversation was about a proposal to work on the days that Georgina do not work which is two days a week. Also I just wanted to clarify that I didn't mentioned the word instant dismissal during our meeting to which I was surprised to see when reading your email.
>
> I hope we can discuss this matter when you come in today.

[27] Ms Logie says that she was told not to come to the centre on 31 July 2023,[2] and instead she went into the centre on 1 August 2023 to say goodbye to her colleagues, and to collect her personal belongings. She says that Flying Kiwi had taken her name off the staff roster by that point. Flying Kiwi does not dispute this.

[28] While she was at the centre, Ms Gill asked her if she could work for the rest of the day because the centre was short staffed. Ms Logie agreed, and worked 10.30 am to 5.30 pm on 1 August 2023.

[29] Similarly, the parties agree that Ms Logie was offered a day's work on 4 August 2023. She worked this shift and was paid for her time.

[30] On 26 September 2023 Ms Gill sent Ms Logie a text message with a further offer of work. However, Ms Logie did not respond to this text message, and did not perform any further work for Flying Kiwi after 4 August 2023.

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[2] This was not accepted by Flying Kiwi, however for the purposes of determining Ms Logie's personal grievance, nothing turns on this date.

Was Ms Logie a casual or permanent employee?

[31] Flying Kiwi says that Ms Logie was employed on a casual basis. With genuinely casual employment, there is no obligation to provide ongoing work. Not offering any further casual work to Ms Logie would have been a legitimate action for Flying Kiwi, had the parties' employment relationship been genuinely casual.

[32] Ms Logie says that she worked regular, set hours, and was employed on a permanent, ongoing basis. Casual employment is not defined in the Act. The Authority must therefore determine the real nature of the relationship, by considering the factual evidence.[3]

[33] Despite the employment agreement expressly ruling out "continuous or regular employment", Ms Logie produced (albeit not until the morning of the investigation meeting) a page from her job description (referred to at cl 1.1 of the employment agreement). The document has been signed by both parties, and Flying Kiwi did not dispute its veracity. The document records that Ms Logie's "standard conditions of appointment" include 20 hours of work per week. This is consistent with Ms Logie's evidence that when she was interviewed for the role, she advised Ms Gill that she was available to work four days a week, 9.30 am to 2.30 pm.

[34] In addition to this, there is no dispute that Ms Logie's hours were increased at Flying Kiwi's request, in May 2023.

[35] Although Flying Kiwi says that "from time to time in the period between 20 February 2023 and 4 August 2023, Ms Logie was offered and accepted work on a casual basis …", Ms Logie's hours of work conform to an easily identifiable pattern.

[36] Flying Kiwi did not produce a copy of Ms Logie's wages and time record. However, Ms Logie was able to recreate her own record of the hours she worked during her employment. This record was not disputed by Flying Kiwi.

[37] In response to her personal grievance, on 16 October 2023 Flying Kiwi claimed that Ms Logie:

> … does not adhere to a fixed schedule with regular hours; instead, Ms Logie works variable hours each week. There are almost no two weeks where Ms Logie has worked the same hours…

[3] Employment Relations Act 2000, s 6(2).

[38] However, such a position is not supported by a review of Ms Logie's hours. Ms Logie's record of hours shows that she worked regular hours. There were six occasions when she was off work on sick leave (and provided a medical certificate on one such occasion), as well as a brief period of planned leave at Easter 2023. From March 2023 Ms Logie worked 9.30 am to 2.30 pm, Monday to Thursday. From 29 May 2023 Ms Logie's hours increased. She worked 9.30 am to 2.30 pm Monday to Friday, with the exception of Tuesdays, when she worked the 'closing shift', finishing work at 5.30 pm (usual hours).

[39] Although Flying Kiwi does not dispute that these were Ms Logie's usual hours, Ms Gill says:

> … While it may have seemed to Alyse that she worked fixed days that was simply a function of the other staff member's availabilities, the centre's needs and Alyse's ability to do the shifts.

[40] Ms Gill says that before putting Ms Logie on the roster, she would either have a verbal discussion with her, or she would send her a text asking if she was available for the days the centre needed relieving work. However, Flying Kiwi was only able to provide evidence of one such instance, and that was the text message sent on 28 May 2023 asking Ms Logie if she would agree to increase her hours. Ms Gill was unable to provide any specific details as to when verbal discussions around Ms Logie's availability may have occurred.

[41] Ms Logie says no such discussions occurred. Instead, Ms Gill created a roster of set days and hours according to Ms Logie's advised availability, and no further discussion was had in relation to her availability until 28 May 2023, when Ms Gill asked if she could work additional hours.

[42] During the investigation meeting, Ms Gill accepted that from the point at which Ms Logie had agreed to increased hours in May 2023, she amended the weekly roster accordingly, and no further discussion was required. Ms Gill accepted that from that point on, Flying Kiwi expected Ms Logie to work her usual hours. Ms Gill conceded that she did not check with Ms Logie each week whether she was available, because "I knew these were Alyse's hours". This was an appropriate concession to make.

[43] The Employment Court in *Jenkinson v Oceana Gold (NZ) Limited* considered the factors relevant to determining whether the real nature of employment is casual or

permanent.[4] At [47], the Court held that the following factors are relevant to determining the real nature of the relationship:

(a) the number of hours worked each week;

(b) whether the work is allocated in advance by roster;

(c) whether there is a regular pattern of work;

(d) whether there is a mutual expectation of continuity of employment;

(e) whether the employer requires notice before an employee is absent or on leave;

(f) whether the employee works to consistent starting and finishing times.

[44] Applying the factors from *Jenkinson* above, Ms Logie worked 20 hours a week, increasing to 28 hours a week from May 2023.

[45] Although Ms Logie's hours were recorded in a roster, there was no evidence of the roster changing from week to week. The only evidence of Flying Kiwi consulting with Ms Logie about the roster was when it wanted her to increase her hours in May 2023. Ms Gill confirmed that from the point at which Ms Logie started working the closing shift on Tuesdays, and working Fridays, she had no need to ask Ms Logie about her availability because these became part of her usual hours.

[46] Flying Kiwi did not dispute that other than when Ms Logie was on sick leave, or was on an agreed period of unpaid leave at Easter, she worked to a regular pattern. She worked for a set number of hours per week, over consistent days of the week.

[47] Ms Gill's evidence was that there was never any discussion with Ms Logie about whether she would be returning to work again after periods of leave. Rather, Ms Gill said that Flying Kiwi simply expected Ms Logie to return, without any discussion, to work her usual hours.

[48] Ms Logie's evidence during the investigation meeting was that she was a permanent employee from her first day of employment. However, this conflicts with the position set out in her witness statement where she says, "I also thought that if I am okay as a casual, then there would be the opportunity to become a permanent

[4] *Jenkinson v Oceana Gold (NZ) Limited* [2009] ERNZ 255.

employee". This apparent inconsistency is not surprising, given that Flying Kiwi did not treat Ms Logie like a genuinely casual employee.

[49] Flying Kiwi submits that at the commencement of the employment relationship, the parties had a mutual intention of casual employment. This may well have been the case at the commencement, but it is clear that during the course of Ms Logie's employment, the relationship became permanent.

[50] When Ms Gill wrote to Ms Logie on 31 July 2023, responding to her claim that she had been dismissed, Ms Gill advised "I think there's some misunderstanding here … The conversation was about a proposal to work on the days that Georgina do not work …". During the investigation meeting, Ms Gill's said that 'proposal' was the wrong word for her to use. However, it is clear that the purpose of the meeting on 31 July was for Flying Kiwi to get Ms Logie's agreement to reduce her hours. This is consistent with a mutual expectation of continuity of employment. If Ms Logie was genuinely casual, there would be no need for Flying Kiwi to seek her agreement to reduced hours.

[51] In terms of requiring notice before Ms Gill took leave, Flying Kiwi accepts that (other than sick leave) this only occurred once. In April 2023 Ms Logie had no entitlement to annual leave. Ms Gill says:

> … Alyse wanted to spend time with her young children during the school holidays. I asked Alyse to fill out our standard leave form to document the days she would be unavailable, not necessarily because she was on "annual leave". Instead, this was simply to keep a record in order for us to know what staff members were available to work … .

[52] It is clear that Flying Kiwi required advanced notice of the days which Ms Logie wanted to take as unpaid leave. Similarly, Ms Gill said "…When Alyse was sick, I asked her to provide a medical certificate. Again, I did that because it is good practice to have a record."

[53] As set out above, it is clear that Ms Logie worked set days, and worked to consistent starting and finishing times on those set days.

[54] Having analysed the employment relationship between Ms Logie and Flying Kiwi, there are several indicators that the relationship was more consistent with permanent employment than with a casual arrangement. Although it may not have commenced as permanent employment, it had certainly become permanent by the end

of May 2023. A finding is made that Ms Logie was permanently employed by Flying Kiwi. As her employer, Flying Kiwi had an obligation to provide ongoing work to Ms Logie.

Was Ms Logie dismissed by Flying Kiwi?

[55] A dismissal is the termination of the employment relationship at the employer's initiative.[5]

[56] A dismissal does not require an employer to tell an employee that they are dismissed, or to write to an employee terminating their employment in order for there to have been a dismissal. A dismissal in law will occur where there has been a 'sending away' of an employee by an employer. In sending away the employee, the employment relationship is brought to an end at the employer's initiative, rather than through any voluntary action of the employee.

[57] Flying Kiwi accepts that it met with Ms Logie on 28 July 2023, and that at this meeting Ms Logie was advised that she:

> … was employed on a casual basis and that Flying Kiwi was in a position where it was fully staffed by qualified teachers … Flying Kiwi informed Ms Logie that they would need fewer casual relief teachers in the foreseeable future. However, it advised her that where applicable she could undertake work on a casual basis for another teacher's absence.

[58] Consistent with this, when Ms Logie wrote to Flying Kiwi on 28 July 2023 referring to the 'ultimatum' that she either agree to significantly reduced hours, effective immediately, or not return to work at all, Flying Kiwi's response on 28 July 2023 does not dispute that Ms Logie had been given such an ultimatum. Rather, Ms Gill's email accepts that Flying Kiwi is "… Aware of the casual employment law I broke that by giving you regular hours because I wanted to help you out".

[59] Ms Logie produced an audio recording of her 31 July 2023 meeting with Ms Wu. Evidence of this nature has the potential to be significant. It is unfortunate that this recording was only provided for the first time during the investigation meeting. Flying Kiwi submits that the recording confirms Ms Wu's genuinely held view that

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[5] *Wellington, Taranaki and Marlborough Clerical IUOW v Greenwich (T/A Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC) at 103.

Ms Logie was a casual employee. However, the genuineness of the views of one of the parties is not the test.

[60] Ms Wu says that during this meeting Ms Logie "… kept asking me if she had been dismissed. I kept telling her she wasn't dismissed. I remember that I said to her that she was a casual reliever".

[61] Ms Logie's employment agreement records her position as being an assistant teacher. She was not employed as a casual reliever. For Ms Wu to tell Ms Logie during their meeting that she was a casual reliever is consistent with Flying Kiwi repudiating the parties' permanent employment relationship.

[62] Flying Kiwi submits that the fact that Ms Logie worked additional hours on 1 and 4 August 2023 supports its claim that no dismissal occurred at the 28 July 2023 meeting.

[63] I do not accept that submission.

[64] When Ms Logie attended the centre on 1 August 2023 to collect her personal belongings, she was asked if she was available to work for the rest of the day as the centre needed cover, and she agreed. She did not start work at her usual time of 9.30 am. This is consistent with casual employment, as is Ms Logie agreeing to work a further shift on 4 August 2023.

[65] The work performed by Ms Logie on 1 and 4 August 2023 was done on a casual basis, after she had been dismissed from her permanent position.

[66] Following the meeting of 28 July 2023, Flying Kiwi did not provide Ms Logie with her usual hours. At best Flying Kiwi offered her the possibility of some casual work, but this was significantly different from Ms Logie's usual hours.

[67] In *New Zealand Institute of Fashion Technology v Aitken*,[6] the Court found that there was no persuasive evidence of the employer endeavouring to unilaterally the content of the employee's position, and consequently for this reason (inter alia), held that no dismissal had occurred.

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[6] *New Zealand Institute of Fashion Technology v Aitken* [2004] ERNZ 340 at [68].

[68] Ms Logie's situation is quite different. Following the 28 July 2023 meeting, Flying Kiwi took Ms Logie off the roster, and she was not provided with her usual hours. This was a significant unilateral change to the employment relationship.

[69] In determining whether a dismissal has occurred in this situation, Flying Kiwi submits that the question to ask is, whether it was reasonable for somebody in Ms Logie's position to have considered that her employment had been terminated? Flying Kiwi submits that a reasonable person in Ms Logie's position could not consider that her employment had in fact been terminated. However, Ms Logie had been working 28 hours per week, Monday to Friday. In the circumstances, including the meetings held on 28 and 31 July, the contents of the emails exchanged, and the change to the roster, it was not unreasonable for Ms Logie to have considered that she had been dismissed. The totality of the communications amounts to a clear sending away on the part of Flying Kiwi.

[70] The Authority determines that Ms Logie's permanent employment was terminated by Flying Kiwi on 28 July 2023. In respect of the permanent employment relationship, Flying Kiwi's actions are a clear sending away of Ms Logie. This amounts to a dismissal.

Was Ms Logie's dismissal justified?

[71] Whether a dismissal is justifiable is determined by the Authority inquiring into the employer's actions, both as to whether there were reasonable grounds for the dismissal and whether the process taken to reach that decision was fair (including whether minimum standards of procedural fairness as set out at s 103A(3) of the Act were met). The Authority is required to objectively assess whether those actions were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.[7] The Authority must also assess whether Flying Kiwi's actions were those of a fair and reasonable employer acting in compliance with the good faith obligations set out in s 4 of the Act.

[72] Flying Kiwi terminated Ms Logie's permanent employment in July 2023 when it advised her that she could no longer work her usual hours, because it was "fully staffed by qualified teachers", and removed her from the roster. Flying Kiwi failed to comply with any of the minimum procedural fairness tests under the Act. The manner

[7] Above, n 3, at s 103A.

of Ms Logie's dismissal was abrupt, and there was no opportunity for her to obtain representation, or have any meaningful input into the process prior to the decision to terminate her.

[73] Although it appears Flying Kiwi may have had a genuine business reason for terminating Ms Logie's permanent employment, the Authority observes that the process Flying Kiwi adopted in attempting to effect such significant changes to Ms Logie's hours of work, was wholly inadequate.

[74] Procedural defects do not render a dismissal unjustifiable if they are minor, and do not result in the employee being treated unfairly.[8] In this case the flaws in the procedure adopted by Flying Kiwi were more than minor, and did result in Ms Logie being treated unfairly.

[75] Flying Kiwi's actions, and how it acted, are not consistent with what a fair and reasonable employer could have done in all the circumstances at the time of Ms Logie's dismissal. Flying Kiwi's failure to meet any of the minimum procedural fairness tests in s 103A(3) or comply with the obligations under s 4 of the Act renders Ms Logie's dismissal unjustifiable.

What remedies (if any) should Ms Logie receive?

[76] Ms Logie has established a personal grievance for unjustified dismissal. She is therefore entitled to a consideration of the remedies sought.

Lost wages

[77] Ms Logie is entitled to be reimbursed for the remuneration she would otherwise have received but for her unjustified dismissal.

[78] Ms Logie's evidence was that following her dismissal, she obtained the Sole Parent Support benefit. Ms Logie says that at some point in 2024 she was able to secure a new position at another childcare centre in West Auckland.

[79] Ms Logie submits that the Authority should award her unpaid notice of four weeks. This is on the basis that although there is no agreed notice period under the employment agreement, most permanent employment agreements provide for four weeks' notice, and therefore the Authority should imply in such a term. I do not accept

[8] Above n 3, at s 103A(5).

this submission. The parties did not bargain for a notice period, and no notice period is to be read in.

[80] Flying Kiwi submits that there is no evidence of Ms Logie attempting to mitigate her loss, and as such has not proved that she has suffered any loss.

[81] However, under s 128 of the Act, if the Authority determines that Ms Logie has a personal grievance, and that Ms Logie has lost remuneration as a result of her personal grievance, then the Authority must order Flying Kiwi to pay the lesser of a sum equal to the lost remuneration or to three months ordinary time remuneration.[9]

[82] Ms Logie was not able to obtain new employment in the three months following her dismissal. She received the Sole Parent Support benefit. There are obvious difficulties in trying to find employment, as the sole parent to three young children. In the circumstances of this matter, an award of three months' lost wages under s 123(1)(b) of the Act is appropriate, and is required under s 128.

[83] At the time of her dismissal, Ms Logie worked 28 hours per week, for a wage of $24.00 per hour. Three months from the date of Ms Logie's dismissal (which occurred on 28 July 2023, and was the last day on which Ms Logie worked her usual hours) is 13 full weeks. Within 28 days of the date of this determination, Flying Kiwi is to reimburse to Ms Logie the sum of $8736.00 (gross), being a sum equal to 13 weeks' pay. From this sum, a deduction is to be made in respect of the wages Ms Logie earned for the casual work she performed for Flying Kiwi on 1 and 4 August 2023.

[84] Flying Kiwi is to pay holiday pay on this sum.

[85] In addition, Flying Kiwi is to ensure that appropriate KiwiSaver obligations are met.

Compensation for humiliation, loss of dignity and injury to feelings

[86] Ms Logie's evidence is that she felt deflated after the dismissal and withdrew from social media, as well as reduced in-person contact with her friends. As a result of her dismissal, Ms Logie says she experienced self-doubt and questioned her self-worth.

[87] In *Wikaira v Chief Executive of the Department of Corrections*, the Employment Court confirmed that it was desirable that awards of compensation pursuant to

[9]Above n 3, at s 128(1) and (2).

s 123(1)(c)(i) of the Act "… should be, although not over-generous, nevertheless fair, realistic and not miserly".[10]

[88] Ms Logie's evidence establishes that she has experienced harm under each of the heads in s 123(1)(c)(i) of the Act. Weighing the particular circumstances of this case, and the range of awards in similar cases, $12,500.00 is an appropriate sum to order Flying Kiwi to pay to Ms Logie as compensation for humiliation, loss of dignity and injury to her feelings.

Contribution

[89] Where the Authority determines an employee has a personal grievance, it is required under s 124 of the Act to consider the extent to which the employee's actions contributed towards the situation that gave rise to the personal grievance, and if the actions so require, reduce the remedies that would otherwise have been awarded.

[90] No deduction from remedies awarded is to be made under s 124 of the Act. The unjustifiability of Ms Logie's dismissal has been established in Flying Kiwi's failure to follow statutory requirements. These obligations were not Ms Logie's, and there is to be no deduction from the monetary remedies for reasons of contribution.

Summary of orders

[91] Within 28 days of the date of this determination, Flying Kiwi Education Limited must pay to Alyse Logie the following amounts:

(a) compensation in the sum of $12,500.00 (without deduction) under s 123(1)(c)(i) of the Act; and

(b) lost wages in the sum of $8736.00 (gross) under s 123(1)(b) of the Act (less wages earned for the casual work Ms Logie performed for Flying Kiwi on 1 and 4 August 2023), plus holiday pay on this sum, and ensuring appropriate KiwiSaver obligations are met.

Costs

[92] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

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[10] *Wikaira v Chief Executive of the Department of Corrections* [2016] NZEmpC 175 at [237].

[93] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Logie may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, Flying Kiwi 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.

[94] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual notional "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.[11]

Jeremy Lynch
Member of the Employment Relations Authority

[11] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1