IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

[2016] NZERA Wellington 135
5564708

	BETWEEN	JIM McDERMOTT Applicant
	AND	PRESTIGE LIMITED Respondent

Member of Authority:	Michele Ryan
Representatives:	Gerard Dewar, Counsel for Applicant Libby Brown, Counsel for Respondent
Investigation Meeting:	1-3 March 2016 at Napier
Submissions Received:	22 March and 11 May 2016, from Applicant 26 April 2016, from Respondent
Determination:	7 November 2016

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Jim McDermott was employed as a Quality Assessor ("QA") by Prestige Ltd (Prestige). He claims he was unjustifiably disadvantaged by Prestige's failure to provide a safe work place, and by its unlawful use of a private email sent by him to a lay advocate. Mr McDermott also says he was unjustifiably dismissed, either actually or constructively.

[2] Prestige denies Mr McDermott was dismissed. It says Mr McDermott resigned to avoid a disciplinary process. It further rejects Mr McDermott's claims of unjustifiable disadvantage. In any event it says the claim in respect to the safety of the workplace was not raised within 90 days.

The Authority's investigation

[3] This determination deals with Mr McDermott's claims. These were heard alongside those of a colleague, Brent Priest. Some events common to each of their claims exist and I considered it would be expedient to investigate their respective applications at the same time. Their claims were heard over three full days.

[4] I have not set out every exchange between the parties, nor all the evidence and submissions provided in the course of the investigation. As permitted I have expressed findings of fact and law necessary to dispose of Mr McDermott's claims.

[5] This determination has been issued outside the 3 month statutory period after the last information was received by the Authority. In accordance with s 174C(4) Employment Relations Act the Chief of the Authority decided that exceptional circumstances exist to allow a written determination of findings later than the latest date specified at s 174C(3).

Background information

[6] Based in Hastings, Prestige Ltd (Prestige) provides multi-trade maintenance services to Housing New Zealand properties across the central North Island. It leases additional offices and depots in New Plymouth, Gisborne and Palmerston North. Some years prior to 2014 Prestige had equipped the depots with accommodation facilities including beds, kitchen and bathroom.

[7] Mr McDermott began his employment in May 2014. Initially he and 5 other newly appointed QAs would stay in motel accommodation when working outside the Hawkes Bay region. In July 2014 the QAs were advised by their manager, Matthew Taylor, that in future they would stay at the regional depots if beds were available. The QAs were able to obtain alternative accommodation but those arrangements were not be funded by Prestige.

[8] On 22 August 2014 Mr Priest, also a QA, received a written warning for failing to follow an instruction to stay at the Palmerston North depot. That event appears to have triggered a discussion between the QAs, Mr Taylor and Service Compliance Manager, Aaron McIntosh, on 25 August 2014 about the accommodation in the depots. Prestige agreed that bedrooms would no longer be shared and if rooms were already occupied staff would be booked into motel accommodation. However

Mr McIntosh told the QAs that the requirement to stay at the depots [when rooms were available] was unlikely to change and if they were unhappy about that they *"know where the gate is".*

[9] In September 2014 Mr McDermott contacted the Palmerston North City Council about the regional depot. On 3 October 2014 the Council advised Prestige that the depot was situated in an industrial zone which did not allow for dwelling use, but that Prestige could seek resource consent if the building met a range of relevant standards.

[10] At the following Monday morning meeting the QAs were told that the Palmerston North depot would no longer be used for accommodation. Mr McIntosh questioned who amongst the QAs had contacted the Council without first raising concerns with Prestige. He advised *"things would not be pretty"* if he found out it was one of them.

Mr Priest

[11] Over the course of September and early October Mr Priest continued to experience difficulties in his employment and perceived he was being treated unfairly. Following Mr McDermott's recommendation Mr Priest obtained representation from Joe Richardson, an Industrial Relations consultant/lay advocate. On 13 November 2014 a personal grievance was raised on Mr Priest's behalf which made a number of allegations including as to the justifiability of the warning and conditions at the depots.

[12] Mr Priest was subsequently dismissed on 17 December 2014. Mr Richardson referred Mr Priest to the law firm 'Thomas Dewar Sziranyi Letts' (TDSL) and a second personal grievance was raised on his behalf on 23 December 2014.

Communications with, and discussions about, Mr Richardson

[13] On 28 October 2014 Mr McDermott was asked to stay at the Gisborne depot later in the week. By email he informed Mr Taylor he would pay for his own accommodation as he had concerns for his safety. He referred to a previous overnight stay where a local band practice had left him without sleep and impeded his ability to do the job as a consequence.

[14] Mr Taylor's email response expressed surprise that Mr McDermott had not voiced his concern over safety that morning when asked if there any issues for the coming week. Mr Taylor said he had no safety concerns and that the noise control issue had been resolved. By inference he agreed Mr McDermott could stay at a motel while in Gisborne and said he would "*endeavour to find a workable solution and ensure he was reimbursed for money spent on a motel*."

[15] That evening Mr McDermott forwarded Mr Taylor's email to his personal email address and forwarded that document to Mr Richardson and stated:

> *Hi Joe,*
> *Hard to answer this without giving too much away. It seems like he is trying to make this look like it has not been an issue, also I feel uncomfortable bringing this up in a meeting with other team members. If you have listened to my recorder you will know their approach is trying to make this look like it's something I have not raised. The bullying seems to have failed. Now its passive aggressive approach.*
> *Cheers,*
> *Jim*

[16] The referred to recording was not provided in evidence and it is unclear whether the recording was attached to the email sent to Mr Richardson.

[17] Two weeks later on 10 November 2014 Mr McDermott was informed he was scheduled to reside at the New Plymouth depot later in the week.

[18] In evidence Mr McDermott said he felt highly distressed at the prospect of staying at the depot. He candidly conceded that he fabricated a diversion with the hope that Prestige would reconsider his stay at the depot. To this end he approached Mr Taylor, and later the same day, Mr McIntosh. Both conversations followed a similar pattern. He reported he had received a phone-call from a man unknown to him called "Joe"; that he was uncertain of the caller's surname, but that Joe had questioned him about Prestige and Mr Priest. Mr Taylor and Mr McIntosh each queried whether the caller might be Mr Priest's advocate, Joe Richardson. Mr McDermott said he was uncomfortable with Joe's line of inquiry and had hung up. Mr McIntosh advised he would address the matter and asked Mr McDermott to let him know if Joe called again.

[19] Mr McIntosh contacted Mr Richardson who said he was entitled to speak to Mr McDermott as a person who could confirm Mr Priest's claims but advised Mr McDermott had declined to engage with him.

Events leading to the end of Mr McDermott's employment

[20] In late February 2015 TDSL forwarded a bundle of documents to the Mediation Service in preparation for mediation between Mr Priest and Prestige. Included in the bundle was the email Mr McDermott had sent to Mr Richardson on 28 October 2014.

[21] The mediation between Mr Priest and Prestige occurred on 3 March 2015. The following day TDSL advised Mr McDermott that Prestige was in possession of the email he had sent to Mr Richardson in late October 2014.

[22] On Friday 6 March 2015 Mr McDermott was invited to an investigation meeting scheduled for 10.30am on Tuesday 10 March 2015. The letter alleged Mr McDermott taped a conversation without authority from other participants and had supplied that information to Mr Richardson. It further alleged he had made statements knowing these to be false when he spoke to Mr McIntosh and Mr Taylor on 10 November 2014. The letter advised those actions could amount to a breach of good faith, loyalty, confidentiality, trust and confidence, and privacy. Mr McDermott was advised that if the allegations were substantiated then dismissal was a potential outcome.

[23] Later in the afternoon in a letter headed 'BRENT PRIEST - PRESTIGE LIMITED' TDSL told Prestige the documents furnished for mediation were privileged and required these to be returned. It asked for confirmation that no copies of that material would be kept, or distributed, or relied on for any other purpose. Mr McIntosh responded on 9 March 2015, stating (amongst other things) that the document in issue had not been created for the purpose of mediation and did not attract confidentiality.

[24] The parties dispute the nature and timing of events over 9-10 March 2015. I have predominantly relied on the written documentation generated over this time frame to determine the chronology.

[25] In the morning of 9 March 2015 Mr McDermott tendered his resignation stating he was doing so under duress and had lost trust and confidence in Prestige. I accept the evidence of Ms Bickers, Prestige's then HR Manager, that Mr McDermott was unwilling to discuss any aspect of his resignation and that he was agitated.

[26] Over the course of the day Prestige drafted two letters. The essence of these informed Mr McDermott that he was contractually required to give two weeks' notice and the meeting scheduled for the following day would go ahead unless an alternative time was agreed. It noted that trust and confidence had not previously been raised as an issue but would look into specific concerns if advised. Mr McDermott responded in writing saying his resignation was effective as at 5pm that day and he would not attend meetings for reasons of duress.

[27] At 4pm Mr McDermott returned Prestige's property and left.

[28] A third letter was delivered to Mr McDermott at his home at 9.15am (or thereabouts) on Tuesday, 10 March 2014 by Ms Bickers. The material parts of that letter state:

> *...we will not be running the proposed meeting at 10.30am. If you wish to have an open dialogue around your decision to leave we would welcome this.* ***If by 2pm today you still do not want to engage in discussions with me we will accept your resigned (sic) as at 5pm on 9 March 2015*.*** *This means that as an ex-employee there will be no investigation meeting.*
>
> ****the emphasis is mine***

[29] Mr McDermott returned to Prestige's offices at 10.30am on 10 March 2015 with a medical certificate stating he was unfit to work until 24 March and a letter which stated he was withdrawing his resignation and would be attending the scheduled investigation meeting.

[30] Mr McDermott met with Mr McIntosh briefly. He was told the meeting had been abandoned in light of his resignation. Despite Ms Bickers' written invitation to discuss the resignation, Mr McDermott's evidence (which I accept) is that Mr McIntosh strongly cautioned him against withdrawing the resignation.

[31] At 1.15pm Mr McDermott sent Mr McIntosh an email stating he wanted to reschedule the meeting and that his withdrawal of his resignation "*will still stand*". Prestige responded in writing the same day. Amongst other things it referred to Mr

McDermott's failure to discuss the resignation and to seek to reschedule the meeting and stated these were not actions in good faith. It advised:

> *Taking all of this into account we here by accept your resignation of yesterday dated 9 March 2015 and do not accept your subsequent withdrawal.*

[32] Mr McDermott's employment ended. Final wages and holiday entitlements were paid the next day.

The issues

[33] The issues that are to be determined by the Authority are:

(a) whether a personal grievance in respect of the depot accommodation was raised in time;

(b) whether Prestige's use of the email of 28 October 2014 was unlawful, in particular whether it was protected by privilege and/or was confidential;

(c) whether Mr McDermott resigned or was dismissed.

Was the personal grievance regarding the safety of the depots raised within 90 days?

[34] Employees are required to raise a personal grievance within 90 days of the event or action that s/he complains of happened, or when s/he became aware of action, whichever is the later.[1] Exceptions to the 90 day limitation may occur where an employer consents to the late raising of a personal grievance,[2] or the Authority may allow a personal grievance to be raised out of time if there are exceptional circumstances that occasioned the delay and it considers it just to do so.[3] Section 115 sets out a range of circumstances that are considered exceptional but these are not exhaustive.[4]

Did Mr McDermott raise a personal grievance during his employment?

[35] I have no doubt Mr McDermott was unhappy with the depot accommodation as demonstrated by his inquiry in September 2014 with the Palmerston North City

[1] Section 114(1)
[2] Section 114(3)
[3] Section 114(4)
[4] *Austin v Silver Fern Farms Ltd* [2014] NZEmpC 30

Council. He also expressed discomfort about safety at the Gisborne depot to Mr Taylor on 28 October 2014 but it appears from the evidence that the particular concern had already been addressed. On 10 November Mr McDermott told Ms Bickers of his dislike for the New Plymouth depot. I accept Ms Bickers' evidence that Mr McDermott declined to make a formal complaint when she asked if he wanted to take the matter further.

[36] Mr McDermott agrees he did not advise Prestige that he considered the depots were unsafe in a way that Prestige was aware there was a grievance that needed to be addressed and there is no evidence to the contrary. He says Mr McIntosh's aggressive approach to any discussion about the depots discouraged him from taking formal steps to pursue the matter.

When was his personal grievance in respect of the safety of the depots made?

[37] Mr McDermott's personal grievances of an unjustified disadvantage and unjustified dismissal were raised on 13 May 2015; 9 weeks' after his employment terminated. The grievances in respect of the dismissal and the use of the email were raised within 90 days but Prestige challenges the claim of an unjustified disadvantage in relation to the safety of the depots and says it was raised out of time.

[38] Counsel submits that Prestige's failure to provide a safe work place was an ongoing matter and is a matter deserving of an extension to the statutory timeframe. It is not entirely clear whether the submission is aimed towards proposing the timeframe to raise a personal grievance began from the last day of employment and therefore was raised within the 90 day limitation period, or as an exceptional circumstance.[5]

[39] Mr McDermott's final stay at a depot was on 13 November 2014. This must be the latest date on which the action alleged to amount to a personal grievance occurred. It follows that Mr McDermott was required to raise a grievance by 10 February 2015.

[40] I need to note that while investigating Mr Priest's claims[6] Prestige conceded that it had not obtained resource consent to use the depots that were located in industrial zones for accommodation purposes. In this regard I found Prestige's

[5] None of the statutory exceptional circumstances at s 115 were pursued
[6] *Priest v Prestige Ltd* [2016] NZERA Wellington 134

requirement for employees to reside at those depots cannot have been lawful or reasonable and I accepted Mr Priest's claim that he had been unjustifiably disadvantaged.

[41] Despite Prestige's failing in this regard Mr McDermott did not raise a personal grievance as to the safety or suitability of the depots until 6 months after his final stay in depot accommodation and therefore his claim of a personal grievance in this regard does not satisfy s 114(1) of the Act.

[42] Nor am I satisfied that the ongoing nature of Mr McDermott's concerns is an exceptional circumstance that occasioned the delay to raising his personal grievance. Personal grievance claims of an unjustified disadvantage where the action is said to be continuing are frequently raised within 90 days of the action occurring or coming to the notice of the employee.

[43] I have considered whether Mr McIntosh's statements to the QAs in late August and early October as to suitability of the depots were sufficiently threatening to give rise to an exceptional circumstance. I find those remarks were inappropriate and heavy handed. Mr McIntosh's comments, in part, explain Mr McDermott's subsequent covert behaviour but I am not satisfied these caused the delay in advancing his grievance. Mr McDermott was in receipt of advice from Mr Richardson from 28 October 2014 at the latest. Given his dissatisfaction with the conditions at the depots it remains unclear why he did not instruct Mr Richardson to raise a personal grievance on his behalf sooner.

[44] I have found the first limb of s114(4) has not been established and therefore I am unable to consider the second limb of the statutory requirement as to whether it is just to do so. The application to raise a grievance outside the 90-day limit is declined.

Was Mr McDermott unjustifiably disadvantaged by Prestige using the email to initiate an employment investigation?

[45] On behalf of Mr McDermott it is submitted that when coming into possession of the email sent to Mr Richardson, Prestige's actions were unlawful and an action that unjustifiably disadvantaged him.

Is Mr McDermott able to claim privilege in respect to the email?

[46] The concept of privilege – which allows communications to be protected from disclosure to others – may arise in separate ways. One category is known as 'legal professional privilege'. At its essence privilege attaches to communications between a person and his or her legal adviser which are intended to be confidential and made for the purpose of obtaining or giving legal advice.[7]. Another category is 'litigation privilege', where communications between a person and a legal advisor and/or a third party for the purposes of pending or contemplated litigation is also protected.[8] A 'legal adviser' is defined at s. 51(1) of the Evidence Act as a 'lawyer, registered patent attorney or overseas practitioner', and a 'lawyer' means "a person who holds a current practicing certificate as a barrister or as a barrister and solicitor".[9]

[47] It is accepted that neither professional legal privilege nor litigation privilege has application to the email of 28 October 2014 between Mr McDermott to Mr Richardson because Mr Richardson is not a lawyer.

[48] Mr McDermott looks towards cl. 3 Schedule 2 of the Employment Relations Act, which provides a limited extension to the application of privilege within the employment jurisdiction to representatives who are not lawyers. Clause 3 states:

> **3 Privileged communications**
>
> (1) Where any party to any matter before the Authority is represented by a person other than a barrister or solicitor, any communications between that party and that person in relation to those proceedings are as privileged as they would have been if that person had been a barrister or solicitor.
>
> (2) In subclause (1) **party** in relation to any matter before the Authority includes any person who –
>
> (a) Appears or is represented before the Authority or
>
> (b) Under clause 2(2) is ordered to appear or be represented before the Authority

[49] Counsel for Prestige refers to *Dormer v Hanger Company Ltd*[10] where Colgan J (as he was then) examined the equivalent clause as it relates to the Court. He held

[7] Section 54 Evidence Act 2006
[8] Section 56 Evidence Act 2006
[9] Section 6 Lawyers and Conveyancers Act 2006
[10] [2003] 2 ERNZ 89

Parliament did not intend to extend privilege to cover broad advice given by a lay advocate, rather the extension of the privilege relates only to litigation privilege.

[50] Submissions on behalf of Mr McDermott submit that whether Mr McDermott's email was written on his behalf or to support Mr Priest, Mr Richardson was providing advice to both individuals on a matter now before the Authority.

[51] The difficulty with those submissions is that, if Mr McDermott was emailing Mr Richardson as a witness for Mr Priest the email is not privileged. Alternatively, there is no evidence that Mr McDermott was contemplating litigation at the time Prestige initiated its disciplinary investigation. Given also that Mr McDermott did not raise a personal grievance in respect of the safety of the depots within the statutory timeframe which allows the Authority jurisdiction to determine that claim, I consider there are no proceedings on the issue. These findings however are largely superfluous to my determination on the issue.

[52] It is important to note that the right to the protection under cl 3 Sch.2 is towards communications between a party and another individual who is not a barrister or solicitor but who is engaged in representing the party in proceedings before the Authority. At issue in this matter is not whether the email can be put before the Authority but whether Prestige was able to use it to initiate an investigation that had potential for a disciplinary outcome. On a plain reading of cl. 3 Sch. 2 I am not persuaded that the protection of privilege is available to a party and his or her lay representative in a forum outside the confines of proceedings before the Authority (or the Court). For this reason I do not consider the protection applies in this instance.

Was the email confidential?

[53] There is no suggestion that the email was created or made for the purposes of Mr Priest's mediation. The email cannot therefore be protected by mediation confidentiality under s 148 of the Act as a consequence of that event.

[54] In *Hunt v A*[11] the Court of Appeal summarized the components to a finding of a misuse of confidential information as follows; the information must be confidential; the information must have been communicated in circumstances importing an obligation of confidence, and; there must be an unauthorised use of the information. In determining whether there has been a misuse of confidential information by a third

[11] *Hunt v A* [2007] NZCA 332

party not involved in the initial interchange of the communication, the Court held at [93]:

> *…the factors to be considered…will include; the nature of the information; the state of the knowledge of the acquirer of the confidential information; the extent of the breach; what kind of detriment has or may result to other parties; the degree of culpability of the third party acquirer and discloser.*

[55] I do not consider Prestige's use of the email was a breach of a confidence.

[56] The email refers to the email from Mr Taylor and implies there was some additional discussion between them. Prestige was directly involved in the matters referred to in the email. The information contained in the email cannot therefore be regarded as essentially confidential. It is the existence of the email per se that Mr McDermott wishes to claim is confidential but that does not render the information confidential.

[57] There is an argument that it must have been obvious to Prestige that the purpose of communication was to obtain confidential advice related to Mr McDermott's employment. That conclusion is a reasonable one to draw at this juncture but I must consider what was in the mind of Prestige when it received the email. At that time and viewed against a background where Mr McDermott had raised with management his unease at being approached by a man called "Joe" at a time after he had sent the email, I do not find the purpose of communication was as apparent as is purported now. I accept Prestige's evidence that the email signified to it that Mr McDermott was likely providing information in support of Mr Priest to Mr Richardson.

[58] There is evidence that during mediation and its aftermath Prestige was told by the TDSL solicitor acting for Mr Priest that the email was confidential. Nothing in any of the assertions made by TDSL advised Prestige that Mr McDermott was represented by it or whether or how TDSL had received the information in confidence.

[59] Even if I am wrong in my assessment above, Prestige's use of the email cannot be objectively regarded as a significant breach. The email revealed the possibility of a breach of good faith by Mr McDermott. Prestige was within its rights to make inquiry

about the matter. I do not consider its action to initiate an investigation on those matters was unjustifiable. Mr McDermott's claim is not upheld.

Did Mr McDermott resign or was he unjustifiably dismissed?

[60] In *Boobyer v Good Health Wanganui Ltd*[12] Chief Judge Goddard set out various situations where *"[a]n apparent resignation can also amount, notwithstanding the words used, to a dismissal".* He observed that where an employee gives an unambiguous resignation but later seeks to resile from it, the resignation cannot be withdrawn without the employer's consent. He referred also to circumstances where an employee resigns in the "*heat of the moment*". In those instances a fair and reasonable employer is obliged to allow the employee a cooling off period, and then inquire whether s/he wishes to continue with the resignation.

[61] There is no real dispute that Mr McDermott was upset when he advised Prestige of his resignation. I cannot ignore, however, his testimony that during the weekend he had decided to resign. I am not persuaded that Mr McDermott's decision to resign was made in the heat of the moment in the sense that he was unable to consider the consequences.

[62] Counsel for Prestige submits that Mr McDermott resigned on 9 March 2014 because he wished to avoid the disciplinary meeting scheduled for the following day. She says Prestige was entitled to rely on Mr McDermott's unambiguous notice of resignation.

[63] I agree Mr McDermott's resignation on 9 March 2014 was explicit. However, by its pledge to postpone acceptance of his resignation until 2pm on 10 March, I find Prestige, in effect, agreed it would not rely on the resignation until that period of time passed.

[64] An employer's acceptance or rejection of an employee's resignation has no bearing on an employee's unilateral decision to resign but, having advised it would defer acceptance of the resignation, Mr McDermott was entitled to rely on Prestige's representation. I do not accept Prestige was able, in good faith, to disregard its own assurance and revert to reliance on Mr McDermott's resignation as cause for his termination of employment.

[12] EMC Wellington WEC4/94, 24 February 1994

[65] It follows that I do not accept that McDermott resigned to avoid a disciplinary process. The evidence is that he did exactly the opposite: he withdrew his resignation and made himself available to attend the investigation meeting. It was at Prestige's behest that the investigation meeting was abandoned. The decision to terminate Mr McDermott's employment was an actual dismissal at Prestige's instigation. This was not the action of a fair and reasonable employer in all the circumstances. Mr McDermott was dismissed by Prestige and his dismissal was unjustified.

Remedies

Wages

[66] Mr McDermott seeks 3 months' wages. Section 128(2) of the Act provides that the Authority must order the payment of wages equal to the sum actually lost or 3 months ordinary time remuneration, although any award is subject to a requirement that the employee attempt to mitigate their loss. Mr McDermott provided a comprehensive list of businesses he approached for work and I am satisfied that he has actively sought to mitigate his loss.[13] He produced evidence of earning $1,341.36 (gross) from part-time casual work in the 3 month period following his dismissal. Subject to an assessment as to contribution, Mr McDermott is entitled to be reimbursed $11,158.64 (gross) for lost remuneration.

Contribution

[67] I am required to assess what, if any, contribution Mr McDermott made to the situation that led to his dismissal.

[68] Prestige submits remedies should be reduced by 90% given Mr McDermott's conduct in connection with Mr Richardson and that it could have a counterclaim for breach of good faith. No counterclaim was made and I am unwilling to order a corresponding award as a consequence. Nor am I persuaded there is a sufficient degree of connection between the allegations made against Mr McDermott and the circumstances of his dismissal.

[69] I do not consider it inevitable that Mr McDermott would have been dismissed if Prestige had concluded its investigation. Mr McDermott was entitled to seek employment advice from Mr Richardson and was not obliged to inform Prestige of the

[13] On the information provided to the Authority Mr McDermott's annual salary was $50,000 per annum as recorded in his Employment Agreement

matter. Without progressing its inquiry to hear or consider his explanation as to the email and his conversations with Mr McIntosh and Mr Taylor on 10 November 2014 any potential decision flowing from those matters can only be speculative.

[70] I do not accept Mr McDermott contributed to the situation that led to his dismissal in a blameworthy and causative way that should be met with a decrease in remedies.

Compensation

[71] I do not accept Mr McDermott can have been so distressed by Prestige's actions where by his own evidence he had increasingly lost trust and confidence in Prestige and had been looking for another job for several months prior to his dismissal and, only the day before that event, he had actively sought to resign from Prestige. I consider an award of $3,000 is appropriate.

Costs

[72] Costs are reserved.

Summary of Orders

[73] Prestige Limited is ordered to pay Mr McDermott the following:

(a) $11,158.64 minus PAYE as reimbursement of lost wages pursuant s 123(1)(b); and

(b) $3,000 as compensation pursuant to s 123(1)(c)(i).

Michele Ryan
Member of the Employment Relations Authority