IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2020] NZERA 521
3080936

	BETWEEN	STUART MEHRTENS Applicant
	A N D	MEYDELL HOLDINGS 2018 LIMITED Respondent
Member of Authority:	David G Beck	
Representatives:	Pieter van Zyl advocate, for the Applicant Rachel Brazil, counsel for the Respondent	
Investigation Meeting:	2 November 2020 in Dunedin	
Submissions Received:	2 November from the Applicant 2 November from the Respondent	
Date of Determination:	18 December 2020	

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Stuart Mehrtens worked at the respondent's Millers Flat Holiday Park in Central Otago until his employment ended on 31 July 2019 when Meydell Holdings 2018 Limited's directors indicated that they were selling the holiday park and until sold, they would be stepping in to manage it.

[2] Mr Mehrtens raised a personal grievance by letter dated 30 August 2019 addressed to David Meyer, a co-director of Meydell Holdings 2018 Limited (the other director being his partner Christine Cordell). The grievance letter alleged that Mr Mehrtens had been unjustifiably dismissed and unjustifiably disadvantaged. The letter also set out alleged

procedural deficiencies and substantive reasons to support the unjustified dismissal claim. No response was provided to the personal grievance letter and a Privacy Act request for personal information remained unaddressed.

[3] The matter was filed in the Authority on 11 November 2019 wrongly identifying the respondent as "Meydell Holdings Ltd T/A Millers Flat Holiday Park". Mr Mehrtens' advocate identified claims that Mr Mehrtens had been:

(a) Unjustifiably dismissed.

(b) Unjustifiably disadvantaged.

[4] Remedies sought were lost wages, compensation for hurt and humiliation and a contribution to costs.

[5] For Meydell Holdings 2018 Limited, counsel filed a statement in reply on 3 December 2019 contesting the validity of Mr Mehrtens' claims and raising various counter claims. These included two unpaid utility accounts and an allegation that money was owed for repairs to a septic tank.

[6] The parties attended an unsuccessful mediation on 20 February 2020.

The Authority investigation

[7] During the investigation meeting I heard evidence from Stuart Mehrtens, Melissa Mehrtens, David Meyer and Christine Cordell who all provided written briefs. I record that all parties gave open answers provided useful background information and assisted in my investigation.

[8] Pursuant to s 174E Employment Relations Act 2000 ("the Act") I make findings of fact and law and outline conclusions on matters to resolve the disputed issues and make orders but I do not record all evidence and submissions received but I have carefully considered such.

Preliminary issues – identity of respondent and disadvantage claim

[9] Mr Mehrtens' advocate was advised by the Authority on 11 November 2019 that he had cited the incorrect respondent in his application to the Authority (Meydell Holdings

Limited) but he took no steps to rectify this. At the investigation meeting the respondent's counsel highlighted the oversight.

[10] I find nothing turns on this mistake and note that the directors Mr Mehrtens had direct dealings with (David Meyer and Christine Cordell) are directors and shareholders of both companies, their counsel responded in the name of 'Meydell Holdings 2018 Limited' and that the companies register notes the business as being a holiday park. Both directors attended the investigation meeting and responded to Mr Mehrtens' claims.

[11] For the purpose of this determination I deem Meydell Holdings 2018 Limited to be the respondent party as that was the company identified on Mr Mehrtens employment agreement. For convenience I refer to the respondent hereafter as "Meydell Holdings".

[12] In addition, Mr Mehrtens' advocate signalled that he was not pursuing the disadvantage claim and was concentrating on an unjustified dismissal claim.

Issues

[13] The issues to be decided are:

a) Was Mr Mehrtens unjustifiably dismissed or was the employment relationship ended by reason of a genuine redundancy absent of any ulterior motive?

b) Did Meydell Holdings breach good faith obligations in enacting the decision to make Mr Mehrtens redundant?

c) Does Mr Mehrtens owe money for an outstanding unpaid account and should he pay such to Meydell Holdings?

d) If an unjustified dismissal is found what remedies should be awarded.

e) If remedies are appropriate the issue of any contributory conduct is to be assessed.

f) An assessment of the level of costs to be awarded to the successful party.

What caused the employment relationship problem?

[14] Mr Merhtens commenced employment with Meydell Holdings at Millers Flat Holiday Park on 16 December 2018 on a part-time 'casual' employment agreement as an assistant manager. Meydell Holdings had just recently acquired the holiday park and needed someone to run it after the previous managing couple had been unable to continue due to one of them being too ill.

[15] Initially the holiday park was managed by Mr Mehrtens' Mother in Law Maxine, who had applied to run the park with Mr Mehrtens assisting her. At the time Maxine and Mr Mehrtens and his partner Melissa Mehrtens were running a West Coast holiday accommodation facility that was changing ownership and the new owners wished to operate it.

[16] The initial 'set up' from early December 2018 was Maxine, Stuart and Melissa Mehrtens and their three young children moved into accommodation at Millers Flat. Melissa was on maternity leave at the time having just given birth.

[17] In applying for the job, Maxine emphasised that Melissa also had directly relevant experience in the accommodation industry. However, Maxine struggled with the work and Mr Mehrtens was appointed manager on 31 January 2019 and Maxine left the facility.

[18] The changes were recorded in an employment agreement signed by Mr Mehrtens and Mr Meyer and dated 31 January 2019 with the employer designated as "Meydell Holdings 2018 Limited". Mr Mehrtens' position was described as "Manager of Millers Flat Holiday Park".

[19] The agreement described working days as "Monday to Sunday both days inclusive" and hours were defined as 9am to 8 pm "office hours" and that "The employee will need to be on call 24/7 and must keep accurate records of time and days worked". A further clause emphasised that "the actual hours of work for this position will be determined by the demands of this position and may request [sic] additional work where the need arises".

[20] Mr Mehrtens' remuneration was stated as $50,000 per annum described as 'all inclusive' for work performed and "annualised" to cover both "busy and quiet season in equal payments". In addition accommodation in the park was provided and referenced in the

employment agreement with a rent of $100 per week and a stipulation that should "the employment relationship end for any reason, the employee will have 14 days in which to vacate the premises.

[21] Mr Mehrtens suggested there was also an informal agreement that Melissa would be brought onto an employment agreement when her maternity leave ended in April 2019 to recognise that she was assisting with administration work on an ongoing basis. Mr Meyer disputed this in giving evidence and suggested that an additional $5,000 per annum had been incorporated into Mr Mehrtens' salary to account for Melissa's contribution (an arrangement Mr Mehrtens confirmed he had concurred with). The park website was changed to list Stuart and Melissa as contacts for prospective guests. Mr Meyer acknowledged that he knew Melissa had made this change. In his view this allowed the park to have a "family appeal" but he asserted that "this did not mean Mel was an employee".

[22] All parties acknowledged that the employment appeared to progress smoothly with the Mehrtens having regular contact with Mr Meyers and Ms Cordell (who reside in Dunedin and run an auto glass business there) and they struck up a close working relationship.

[23] However, at the end of April 2019, coinciding with the end of Melissa's parental leave, tension emerged over a request from the Mehrtens that Melissa be placed on an employment agreement. This request coincided with Mr Mehrtens being pressured by IRD to address child support payments for children from a previous relationship – a fact he openly disclosed. Mr Mehrtens called Mr Meyers and put three options:

> 1) Change the employment relationship to Melissa being the only one of them employed.
>
> 2) Employ them as a couple and 'split' earnings.
>
> 3) If neither of above was agreed they would "have to start looking for alternative employment".

Restructuring proposal

[24] In response to the above, a letter dated 31 May 2019 signed by David Meyer and Christine Cordell and addressed to "Mel and Stu" was hand delivered on 1 June. Headed "Re

Restructuring Proposal", it disclosed that David was having health issues and they were seriously considering putting the holiday park up for sale but that:

> Selling is still an option but we are now thinking that we may look at taking over the business earlier than planned.
>
> Your recent phone call gave us the push we needed to look seriously at our retirement plans. In the phone call, you gave Chrissy and I three options, two of which involved defrauding IRD. This is not something we would entertain. The third option was that you'd have to leave if we rejected your other options as you cannot afford to stay.

[25] The letter then proceeded to say:

> I think that it may be best to bring forward our retirement plans and are therefore proposing to disestablish the current arrangement with you and move back ourselves to run the Holiday Park

[26] Further, the letter indicated that feedback on the proposal was sought including any alternatives by Friday 7 June and that if the proposal went ahead they would "give you four weeks' notice in accordance with your employment agreement" and, that they acknowledged "you live on site and have children so you will need time to consider relocation options.

[27] Mr Mehrtens recalled that the above letter was accompanied by a discussion of all four parties and that they were unable to persuade their employers that they had no intention to defraud the IRD.

[28] In giving evidence, Mr Meyer acknowledged that he did not contact IRD or seek accounting advice on the options put by the Mehrtens and he acknowledged in hindsight, that their turning down the options 'out of hand' was driven by a sense of misplaced moral outrage. He also disclosed that he sought legal advice and was told that minimum wage and other issues may arise. Unfortunately, this unsubstantiated accusation of potential IRD 'fraud' soured the relationship.

The response

[29] A response to the restructuring proposal was provided by "Mel and Stu" in a letter of 7 June prepared by Melissa. It traversed a view that they were effectively running the park as a couple and Melissa felt she was working part-time but she also acknowledged there were only funds available to pay one person. The response, after describing the negative impact on their family situation, concluded by asking that the park not be put up for sale but reiterated that if

they were to stay it would "require a joint contract with a re-written job description" that she was willing to prepare.

[30] In the interim, Mr Meyer and Ms Cordell described significant background uncertainty on whether Mr Meyer had a life threatening illness, and being in a state of turmoil and attendant uncertainty.

A decision?

[31] On 14 June David Meyer and Christine Cordell signed off a letter to "Mel and Stu" concluding from David that "after my recent health concerns we have decided that the best option for us is to put the business on the market".

[32] The letter went on to say that the contractual notice period would not be enforced until a possession date for new owners became apparent and "There is a possibility that the purchaser may want to retain your services. We will let you know if this is a possibility".

[33] Mr Meyer arranged for the park to be advertised for sale with a real estate agency on 17 June.

[34] Mr Mehrtens described being very unsettled about his family's future at this point and that Melissa withdrew and left him to take up all of the park's responsibilities. He said he found this stressful on their family and relationship. He recalled that little contact with Mr Meyer and Ms Cordell occurred until they arrived on 3 July.

A variance of the notice period and proposal?

[35] A third letter of 3 July addressed to "Stu and Mel" was hand delivered by Mr Myers and only a brief conversation took place. The letter opened:

> As discussed, now that the consultation phase has completed, a decision has been made. Our decision is to sell the business with us stepping back into running the place until it is sold.
>
> This means that we are giving you four weeks' notice in accordance with your employment agreement.

[36] The letter concluded by stating the employment would end on 31 July and "we will need the property vacated by then as well".

[37] By this point in time, not surprisingly, the Mehrtens' were exploring other job options and a cordial message exchange between Melissa and Christine Cordell of 4 July requesting a written reference (that was not provided) evidences that they kept their employer apprised of the situation, indicating a potential move to Collingwood to manage an accommodation facility which did not eventuate. I was also provided with several text exchanges between Melissa and Christine that evidences a functioning employment relationship and confirmed that Melissa was undertaking significant administration tasks.

Further meeting

[38] Around 19 July on Mr Meyer's request, the parties met to discuss concerns that Mr Mehrtens appeared to be de-motivated and was not maintaining the park to a high enough standard. Mr Meyers indicated that he had become aware of some lack of tidiness issues from the real estate agent he engaged and some of his own observations, but conceded that none of these concerns were raised with Mr Mehrtens until this meeting.

[39] Both parties acknowledged that the meeting got heated but ended reasonably amicably. Mr Mehrtens says he accepted that he was by this point in time losing motivation. He said overall that he "felt let down and lied to" about his being encouraged by Mr Meyers to manage the park and although he had been told that Mr Meyer and Ms Cordell intended to retire and run park themselves, he gained the impression that was some years away.

The aftermath

[40] The Mehrtens' family vacated the park on 31 July 2019.

[41] However, despite saying that they intended to run the business themselves a notice was placed on Trade Me Jobs on 4 August 2019 seeking a "couple" to run the park.

[42] Mr Meyer indicated that he used a local friend to manage the park until they engaged a couple to run the park who had responded to the advert. Mr Meyer said the couple in question are currently running and living at the park but only one employment agreement was entered into and he disclosed one partner "contracts" to the other partner to provide administration services.

[43] Mr Meyers openly acknowledged that he felt he should have "legally" asked the Mehrtens to return but he indicated that by this stage he (Stu) had applied for a job in Collingwood and he was angry with the state of park. I observe that the former premise was simply incorrect as by 4 July Mr Meyer would have been aware that the Collingwood option was unavailable to the Mehrtens.

[44] The Mehrtens did not apply for the advertised position and chose to pursue a personal grievance. Mr Mehrtens says that he reluctantly decided to return to his previous truck driving occupation and after leaving Meydell Holdings he secured a job at a haulage firm in Balclutha and moved the family to nearby Kaitangata. Mr Mehrtens claim sought two weeks lost wages, being the time it took for him to obtain alternative employment.

[45] In addition, Mr Meyers was approached by a prospective landlord of the Mehrtens and he made negative comments about them as tenants, citing the unsatisfactory condition they left the house in when they had vacated it.

[46] Mr Mehrtens claimed that he had been "defamed" and his tenancy was put at risk. However, no claim was advanced that the tenancy was lost and as a result I find that Mr Meyer reasonably had cause to comment on a tenancy issue although he accepted that this disclosure was motivated by anger and by implication this was an act of 'ill will'.

Meydell Holdings perspective

[47] Overall, the evidence provided by Mr Meyer and Ms Cordell, that I reiterate was refreshingly open and credible in part, was that from early May 2019 Mr Meyer's health concerns dominated their decision making. Whilst this explains the 'mixed messages' they communicated over whether they would simply sell up or move to Millers Flat and take over the running of the park, they did seek legal advice on conducting the restructuring and initially engaged in open and frank consultation.

Discussion/observations

[48] The completion of the restructuring was as communicated to the Mehrtens by the letter of 14 June 2019, which indicated a decision to sell the business and quite legitimately allow continued employment until it was sold with the prospect of the new owner wishing to retain the Mehrtens' services.

[49] Although not specifically referencing it or explicitly explaining to Mr Mehrtens, this communicated decision brought into play clause 13 of Mr Mehrtens' employment agreement ("Ending of Employment By Transfer Or Redundancy"), a protective provision to reflect statutory protections contained in Part 6A, Subpart 3 – Other Employees of the Act. [1]

[50] Under cl 13.4 of the employment agreement this required that once identified, Meydell Holdings would "endeavour to negotiate with the new Employer for the continued employment of the Employee" and that the position occupied would not become redundant until it was determined a transfer was not feasible.

[51] In reality, I find Meydell Holdings followed the 'spirit rather than the letter' of the agreement and statutory provision by indicating to the Mehrtens that they could remain employed until the business was sold, but Meydell Holdings did not acknowledge an obligation to try and negotiate ongoing employment with the new owner.

[52] I observe that Mr Meyer and Ms Cordell would be aware of the industry context that it was not unknown for 'absentee' new owners to seek to allow continuity of employment as they had contemplated this arrangement with the people they purchased Millers Flat Park from.

[53] The final letter of 3 July not only unilaterally changed a concluded proposal and arguably breached a contractual provision but also appeared to mislead the Mehrtens into thinking the reason for the restructuring decision had reverted back to Mr Meyer and Ms Cordell's original abandoned proposal.

[54] What then occurred, objectively destroyed the Mehrtens trust and confidence in their now former employer. Mr Meyer and Ms Cordell arranged for a friend to look after the park then withdrew the park from sale and decided to employ another 'couple' just four days after the Mehrtens left Meydell Holdings employ.

[55] David Meyer said it was after the initial decision that the Mehrtens remain until a new buyer was found that "things started to unravel", and he noticed issues with an overfilled skip, the ablution block/showers being not cleaned properly and them having no luck with potential

[1] Sections 69OH – 69OK Employment Relations Act 2000 provides that all employment agreements must contain an outline of minimum "process" requirements if an employer is "restructuring", this is defined to include under s 69OI (1) "selling or transferring the employer's business or part of it to another person".

buyers at a time when his health was still in an ongoing and uncertain diagnostic phase. Mr Meyer also cited issues discovered post the employment including an unpaid bill and repairs to the septic tank that he blamed on the Mehrtens neglect of such.

[56] Overall Mr Meyer said not contacting the Mehrtens when he decided to seek a couple to run the park was because they "left on bad terms". When pressed at the investigation meeting, Mr Meyer could not recall exactly when he made the decision to engage a couple to run the park. He conceded however, that no performance issues arose with Mr Mehrtens until near the end of the relationship, that he was otherwise happy with his work and acknowledged that he was clearly enjoying it.

[57] Ms Cordell gave convincing evidence of the impact of Mr Meyer's health situation on their decision-making changes with her initially pushing for a sale as she was unsurprisingly worried that if Mr Meyer was incapacitated she would be left with the liability or running the place. When pressed to explain why, at the end of the relationship, they switched from communicating they would run the business themselves whilst it was up for sale to not selling and engaging a couple without informing the Mehrtens, she said she could not recall why or when they made this decision.

[58] Ms Cordell recalled a good relationship with the Mehrtens until two weeks before they left and that it was only when the real estate agent fed back to them that the park could be tidier, and they became aware of other issues after the employment relationship ended, that their perspective changed.

Unjustified dismissal or a genuine redundancy?

[59] Mr van Zyl claimed that the employment was brought to an end by reason of a flawed redundancy process and claimed that an ulterior motive was evident in the ending of the relationship and that this constituted an unjustified dismissal.

[60] By contrast, Meydell Holdings counsel suggested that there was a period of 'good faith' consultation, the Mehrtens' submission was considered and rejected and that Mr Mehrtens was redundant when the decision to sell was communicated on 14 June 2019, and that the employer had been willing to be flexible and not hold Mr Mehrtens to a fixed notice

period. Ms Brazil claimed that at this point Mr Mehrtens "accepted" that his employment had come to an end and acted accordingly in seeking alternative roles.

[61] Whilst accepting the second notice of 3 July was on "different terms" Ms Brazil questioned whether this disadvantaged Mr Mehrtens. However, Ms Brazil conceded that the decision to withdraw the business from sale should have led to a request that Mr Mehrtens return but observed that the relationship had irreparably broken down by this point.

The legal framework

[62] Mr Mehrtens' employment agreement contains no specific provision defining a redundancy situation other than the employee protection provision (clause 13.6) making a reference to

> If the Employee's position is to be made redundant, the Employer shall consider if it is has a suitable other position or shift available to the Employee"
>
> (emphasis added).

[63] Given that there is no statutory definition of redundancy it has long been established in common law that a redundancy arises where a specific position is superfluous to the needs of an employer's business to establish an abstract construct that it is the position and not the person that is redundant. [2]

Justification

[64] However, the above is only an overarching definition that does not necessarily address the spectrum of how a redundancy arises and in what context.

[65] In order to justify termination of employment including in a redundancy situation, Meydell Holdings must meet statutory requirements set out in s 103A of the Act commonly referred to as the 'justification test'. This test requires the Authority to undertake an objective assessment of whether the employer's actions, and how it acted, were what a fair and reasonable employer could do in all the circumstances at the time of the ending of the employment relationship.

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[2] *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1990] 2 NZILR 1079 (CA) affirmed as still applicable law in *Grace Team Accounting v Brake* [2015] 2 NZLR 494.

[66] In applying this test, the Authority must consider a number of factors including: the resources available to the employer and here in context whether the respondent gave the applicant an opportunity to comment on the proposal to end the employment relationship and whether that comment was genuinely considered by the respondent.

Good faith

[67] To ensure a redundancy is enacted in a procedurally fair manner, good faith obligations also apply as set out in s 4 of the Act - these include a positive disclosure obligation of an affected employee being provided with access to information supporting the reason for the redundancy and the detail of how it is proposed it will be implemented.

[68] Further and crucially, an employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised. The Court of Appeal in *Grace Team Accounting v Brake* [3] has ruled that an employer claiming to be in a redundancy situation is only entitled to justifiably end an employment relationship for valid and demonstrable commercial reasons and when looking at applying the s 103A tests has said:

> If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s.4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s.103A test.

[69] In essence, the above requires the Authority to determine first if the redundancy was genuine (an assessment that has to exclude any ulterior motive) and then whether it was enacted in a procedurally fair manner.

Genuineness of the redundancy

[70] I find that the redundancy was subjectively not genuine as Mr Mehrtens' position continued to exist beyond 31 July 2019. Even if I accepted that Meydell Holdings needed a 'couple' to run the park the Mehrtens ran the park as a couple and had signalled a willingness to continue doing so.

[3] At [85].

[71] Whilst I accept that the Mehrtens response to the initial proposal was to signal that they would resign if not jointly engaged they did not do so. Their proposal did not request additional remuneration and was objectively reasonable given that Melissa Mehrtens was technically an 'employee' and not a volunteer.

[72] Given the above finding, I need not consider 'in depth' whether the termination involved an ulterior motive but observe generally that the souring of the relationship could reasonably lead to such an alternative conclusion. I would have had to balance that summation out with my view that Mr Meyer and Ms Cordell displayed little malice toward the Mehrtens during the investigation meeting and their decision-making was clouded by the stress they were under.

Procedural fairness and good faith factors

[73] In analysing whether the redundancy was effected in a statutory good faith manner and in accordance with Mr Mehrtens' employment agreement, I have to take into account that Meydell Holdings engaged professional advice to assist and guide their process.

[74] I find that Meydell Holdings did engage in sufficient consultation but arguably a reasonable employer in the circumstances would not have rejected the proposal to engage the Mehrtens jointly as it displayed a willingness to work as a team that met Meydell Holdings ultimate needs.

[75] Further and crucially, the failure to consult once the final decision not to sell had been made is a significant procedural omission. The Mehrtens are entitled to feel misled that the reason communicated to end the employment relationship was not genuine and that it brought the employment to a premature end.

[76] These procedural defects were not minor and the respondent thus failed to meet the considerations set out in s 103A and s 4(1A) of the Act.

Finding

[77] The absence of genuineness in the redundancy decision and the procedural defects and breaches of good faith and breach of contract that I have identified above and, the implication that there was an ulterior motive behind the way this redundancy was finally effected, ended

Mr Mehrtens employment relationship in a manner that did not fall within the parameters of what a notional, fair and reasonable employer could have done in all the circumstances at the time. I find that Mr Mehrtens was unjustifiably dismissed.

Meydell Holdings counter claims

[78] Meydell Holdings suggested in their statement in reply to the Authority that upon leaving the holiday park Mr Mehrtens failed to pay power accounts submitted to them for gas ($215.23) and electricity ($514.07) and that they had cause to have the septic tank repaired ($402.50) as it was blocked, which they claim was as a result of the Mehrtens flushing inappropriate material (baby wipes) down their toilet. Accounts for all such were provided up to 31 July 2019.

[79] In response the Mehrtens asserted that the gas account included a month's usage after they left and when they arrived the gas bottles were empty and they paid for what they used. As for the electricity account it was suggested that it was not all for domestic use and Meydell Holdings had the ability to seek tax relief on this (the account was in the company name).

[80] Regarding the septic tank Mr Mehrtens claimed that they only used baby wipes that were suitable for a septic tank and noted that the tank was due an annual service and that the invoice presented in evidence does not identify clearing a blockage.

[81] Mr Meyer and Ms Cordell did not provide any further evidence addressing the Mehrtens contentions above.

[82] I find that in the absence of a further explanation it is more than likely that the electricity and gas account are the Mehrtens responsibility as tenants and they did not highlight that they had previously raised issues of apportioning the accounts. Mr Mehrtens also acknowledged that the power bills were outstanding.

[83] The septic tank account was too unclear as to the purpose of it being emptied and I have to take at 'face value' that the baby wipes used were advertised as suitable and thus no intentional act was involved or inadvertence. I also note that Meydell Holdings would be able to claim the expense of repairs on a rental property as a tax rebate.

[84] I however find that Mr Mehrtens should pay both the electricity and gas bills in the combined amount of $729.30, but not the septic tank repair costs.

Remedies

Lost wages

[85] Section 123(1)(b) of the Act provides for the reimbursement of the whole or any part of wages lost by Mr Mehrtens should I find that he has established a personal grievance, and s 128(2) mandates that this sum be the lesser of a sum equal to his lost remuneration or three months' ordinary time remuneration.

[86] I have found that the redundancy was not genuine and if Meydell Holdings had continued with their abandoned proposal to sell the business the employment agreement provides for one month notice or payment in lieu at the point Mr Mehrtens was actually made redundant (it provided for no redundancy compensation beyond that).

[87] I find that it is equitable to award Mr Mehrtens a total of four weeks lost earnings.

Section 123(1)(c)(i) Compensation

[88] Mr Mehrtens gave evidence of the significant impact of his dismissal and the uncertainty it created at a difficult time to find immediate alternative employment. Whilst he found an alternative position in a reasonably short period of time, it was not in his chosen field of endeavour and he had to relocate including moving one of his children to another school that he says has caused her anxiety and disruption to learning. All witnesses acknowledged that Mr Mehrtens was thriving and thoroughly enjoying working outdoors and running the holiday park.

[89] He explained that the upheaval of the redundancy had a significant impact upon his mental well-being and relationships with his wife and family as they struggled to meet additional relocation costs. He is now separated from Michelle Mehrtens and attributes the loss of his position and home at the park as contributing to the breakdown of his relationship.

[90] Mr Mehrtens says he became depressed and on an ongoing basis he has struggled to adjust to his new environment. Whilst his oral evidence was brief, I perceived Mr Mehrtens a

man who struggles to express his emotions and that should not detract from what must have been a stressful and humiliating experience for him.

[91] I am convinced that Mr Mehrtens suffered humiliation, loss of dignity and injury to feelings for a lengthy period.

[92] Taking into account the circumstances and awards made by the Authority in similar cases, I consider Mr Mehrtens' evidence warrants a reasonably significant compensatory amount. I fix that sum at $28,000 under s 123 (1)(c)(i) of the Act.

Contribution

[93] Section 124 of the Act states that I must consider the extent to which, if at all, Ms Mehrtens' actions contributed to the situation that gave rise to his personal grievance and then assess whether any calculated remedy should be reduced. To assess whether the remedy should be reduced I have considered the relevant factors recently summarised by the Employment Court in *Maddigan v Director General of Conservation.* [4]

[94] In these circumstances, I can find Mr Mehrtens' response to the redundancy decision was technically in breach of his obligation of fidelity by him reducing his performance during the notice period, neglecting some duties and not leaving the park or his rental property in an ideal condition.

[95] I balance the above against the fact that Michelle Mehrtens added to his work load by withdrawing her voluntary contribution and no evidence was led to convince me that Mr Mehrtens engaged in any deliberate acts of sabotage. It was evident that the decision to end his employment and his housing tenancy impacted heavily on his well-being. The decision caused a great deal of stress to his family relationships as they tried to sort out their future accommodation and employment needs that inevitably led to a disruptive relocation.

[96] In the circumstances, I find a reduction in Mr Mehrtens' remedy of 10% is an equitable approach but only apply that to the s 123(1)(c)(i) compensation.

[4] *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

Outcome

[97] Overall I have found that:

a. **Stuart Mehrtens was unjustifiably dismissed from his employment with Meydell Holdings 2018 Limited.**

b. **Meydell Holding 2018 Limited must pay Stuart Mehrtens the sums below:**

   i. **$4,167 gross lost wages;**

   ii. **$25,200 pursuant to s 123(1)(c)(i) of the Act without deductions.**

c. **Stuart Mehrtens is to pay Meydell Holdings 2018 Limited an amount of $729.30 to cover unpaid utility accounts.**

Costs

[98] Costs are at the Authority's discretion but here Mr Mehrtens established his claim that he was unjustifiably dismissed and he has obtained compensatory remedies in an investigation meeting that took just under a day.

[99] The parties are encouraged to make an agreement on costs that needs to take into account that the Authority, whilst having discretion to assess costs, must be persuaded that circumstances exist to depart from the normal application of scale costs.

[100] If no agreement is achieved, Mr Mehrtens has fourteen days following the date of this determination to make a written submission on costs and Meydell Holdings 2018 Limited has a further fourteen days to provide a response. I will then determine what costs are appropriate.

David Beck
Member of the Employment Relations Authority