

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 70
5554643

BETWEEN DARREN OLIVER
 Applicant

A N D STAR MOVING LIMITED
 First Respondent

A N D SCOTT HAULAGE 2010
 LIMITED
 Second Respondent

Member of Authority: David Appleton

Representatives: Kevin Murray and Shayne Boyce, Advocates for
 Applicant
 Luke Acland, Counsel for Respondents

Investigation Meeting: 31 March and 22 April 2016 at Nelson

Submissions Received: 11 & 20 May 2016 for Applicant
 17 May 2016 for Respondent

Date of Determination: 26 May 2016

DETERMINATION OF THE AUTHORITY

- A. Mr Oliver’s employer at the resignation of his employment in 2014 was Scott Haulage 2010 Limited.**
- B. Mr Oliver was unjustifiably constructively dismissed, and was subjected to an unjustified disadvantage in his employment.**
- C. Mr Oliver is entitled to the remedies set out in this determination, but further information is needed before the Authority can assess whether further remedies are due.**
- D. Costs are reserved.**

Employment relationship problem

[1] Mr Oliver claims that he was unjustifiably constructively dismissed from the employment of the respondent on or around 28 December 2014 and that he suffered unjustified disadvantage in his employment in the period leading to his resignation. He also claims that there has been a breach of s.4 of the Wages Protection Act 1983 by way of unlawful deductions from his pay.

[2] The respondent denies that Mr Oliver was unjustifiably constructively dismissed and denies that it caused unjustified disadvantage in Mr Oliver's employment. Furthermore, it asserts that deductions made from Mr Oliver's salary were justified and carried out in accordance with the terms of his employment agreement.

The identity of the correct respondent

[3] There is disagreement between the parties as to the correct identity of the respondent as at the date of Mr Oliver's resignation. It is Mr Oliver's contention that he was employed by Star Moving Limited (Star Moving) whilst the director and shareholder of both respondents, Stuart Biggs, asserts that Mr Oliver was employed by Scott Haulage 2010 Limited (Scott Haulage) at the time of his resignation.

[4] Whilst it is uncontested that Mr Oliver was initially employed by Star Moving when he commenced employment in December 2007, Mr Oliver left the employment of Star Moving in October 2011 and returned in February 2012. He states that he was not given another employment agreement and that all the indications are that he was re-employed by Star Moving. However, Mr Biggs produced with his brief of evidence an individual employment agreement which, on its face, shows that Mr Oliver was employed by Scott Haulage, Mr Oliver having apparently signed the agreement on 3 February 2012. This agreement states that it came into force on Monday, 6 February 2012.

[5] Mr Oliver, however, asserts that he had never signed the agreement, that the signature on it which purports to be his is a forgery and that he was employed by Star Moving.

[6] I deal with this matter below.

Brief account of events leading to Mr Oliver's resignation

[7] Star Moving operates a removal business, and has branches in Nelson, Christchurch and Auckland. It appears that Scott Haulage is used as an entity to employ casual, storage and administrative staff.

[8] Mr Oliver was employed as the branch operations manager at the Nelson depot, initially employed under the terms of an individual employment agreement with Star Moving, and then re-employed, after a break of around four months, in February 2012.

[9] It is Mr Oliver's evidence that, when he returned after his break, he was put on the same pay rate as he had been paid before. He says that, as he was required to work in Nelson, but was travelling from his home in Golden Bay (a distance of around 100kms each way), Mr Biggs and he agreed prior to his return in February 2012 that he would be paid an untaxed payment which was referred to as an *overnight allowance*. He says that the amount was to be \$200 a week and was to compensate Mr Oliver for the cost of travel between Golden Bay and Nelson and for the cost of board whilst he stayed in Nelson during the working week.

[10] Mr Oliver says he initially started working in 2012 on a week-on/week-off basis, but this soon proved not to be effective for the business and so Mr Oliver started to work every week, Monday to Thursday. Pay records produced by the respondent seem to show that Mr Oliver actually worked every week from the very start of his reemployment, but I do not believe that anything turns on this.

[11] These pay records also show that the first overnight allowance was paid to Mr Oliver on 22 February 2012. This was in the sum of \$100. On 29 February 2012, he was paid an overnight allowance of \$60 and on 7 and 14 March 2012 he was paid overnight allowances of \$100 each. On 21 March 2012, the overnight allowance increased to \$200. The amounts then seemed to vary between \$200 and \$300, and other amounts, during the ensuing months.

[12] Mr Oliver's evidence about this is that he cannot account for the fluctuations, but that he sometimes would have worked an extra day, in which case he would have put in a claim for an extra amount of overnight allowance. He believed that the amounts would have ironed themselves out. Evidence was also heard from Jaco du Plessis, the former office manager of the Nelson branch, who handled payroll matters.

He said that there were different levels of overnight allowance for different staff, and that he made mistakes occasionally. He believes that this was why the payments fluctuated from week to week.

[13] Mr Oliver says that other staff members also received overnight allowances. Apart from drivers, who genuinely had to stay overnight away from home on occasions, he says that the other office and operations managers received the payments, including Mr du Plessis. These managers did not stay away from home, but the allowances were given to avoid giving pay rises.

[14] It is Mr Biggs' evidence that he never agreed to Mr Oliver having overnight payments. With his brief of evidence he produced a copy of a handwritten note which he says that he left for Mr du Plessis when Mr Oliver was about to come in on 3 February 2012 to sign the employment agreement. This note stated the following:

*Jaco
Darren will be in Friday to sign his Employ. agreement.
NB \$25.00 per hour.
He has asked about o/n's and I have made it very clear we will NOT
BE PAYING!!!*

[15] The agreement between Mr Oliver and Scott Haulage that Mr Biggs relies upon contained the following material clauses:

Starting rate
\$25.00/HOUR Ordinary time
Pay rate after trial period (subject to a performance review)
\$FLAT RATE Ordinary time \$---- Over time
Overnight allowance \$NO With motel receipt \$____ Without
Salary \$ NO per annum

1.4 This agreement supersedes any other employment agreement/
contract, written, oral or implied and any such agreement/
contract is cancelled as at the date of this agreement.

...

3 Remuneration

3.1 The employee's remuneration is as set out in this Agreement. The employer may make deductions from the employee's wages at a reasonable rate for any overpayment of wages, default, leave in excess of paid entitlements, debts owing to the employer on termination or as otherwise provided for in this agreement.

...

20. Variation

20.1 The parties to this agreement may vary its terms and conditions by agreement. Such variations must be in writing and signed by both parties.

...

Schedule C**Disciplinary Process**

In cases of serious misconduct, some examples of which are set out in the rules, the employer shall have the right to dismiss the employee without notice.

In cases that may constitute misconduct rather than serious misconduct, some examples of which are set out in the rules, the employee shall be dealt with in accordance with the warning system set out in the rules.

Grounds for but not limited to instant dismissal

- *Any act which is deemed serious misconduct.*
- *Verbal and/or physical abuse to the company's employees and or its customers during working hours or on duty.*
- *Refusal to do a task or to complete it to a professional and acceptable standard.*
- *Refusal or failure of a random drug test.*
- *Wilful or unacceptable damage to any company vehicle or property.*
- *Theft.*
- *Failure to act correctly or continuing to drive a damaged vehicle which results in further damage.*
- *Deliberately lying to management and/or customers.*
- *Knowingly leaving loading behind without permission and/or notifying operations.*
- *Smoking a designated non-smoking area [sic] or company stores and vehicles.*
- *Allowing a vehicle in your care to be driven, damaged or neglected by others not employed by the company.*

•

I the undersigned confirm that I have read and understood the terms and conditions in this agreement and I agree to be bound by them.

Signed: [Mr Oliver's disputed signature]

[16] Mr Biggs also denied that other managers were authorised to receive overnight allowances. He said that only one manager was, the general manager of the Christchurch branch, as he travelled a lot. Mr du Plessis was receiving an overnight allowance, but Mr Biggs says that he had not authorised that payment.

[17] Mr Oliver's written brief of evidence contained allegations about Mr Biggs' attitude towards him and other staff which he says he found intimidating. However, Mr Murray confirmed at the start of the Authority's investigation meeting that Mr Oliver was not seeking to argue that these alleged actions amounted to an unjustified disadvantage.

[18] However, one issue that Mr Oliver asserts was an unjustified disadvantage in his employment relates to a complaint that Mr Biggs unilaterally demoted Mr Oliver,

and removed his authority when he instructed Mr Oliver by email to hand his purchase order book to Mr du Plessis, and that any future purchasing would have to be made through him. This email was shown to the Authority and stated as follows:

From: *Stuart Biggs/Star Moving*
Sent: *Tuesday, 9 December 2014 12:56a.m.*
To: *nelson@starmoving.co.nz*
Cc: *Jaco du Plessis*
Subject: *P/O 0974*

Darren

This is an unauthorised purchase that was not in your jurisdiction nor did you get authority from me. Ian Walker was clearly told by me I was the only person to authorise anything to do with this truck. He used you to get around charge's [sic] that had already been paid and my authority, knowing full well I would not approve them.

Consequently I lost a case I would have won hands down without this order being issued.

Please hand your purchase order book to Jaco and obtain any future purchasing through him.

Jaco

You are only authorised to issue orders for general servicing and essential packing gear. Everything else must have my authority before an order is issued.

Regards

Stuart Biggs

[19] Mr Oliver replied to the email stating that the books had been handed over and Mr Biggs responded with the words *thanks and sorry if I have wrongly accused you*. Mr Oliver says that Mr Biggs did not restore his authority prior to his resignation.

[20] It was Mr Biggs' evidence that he effected a change in the way that purchases were handled in all three of his branches, introducing a two-step process. In other words, purchases had to be authorised by him in the Auckland office, by the general manager in the Christchurch office and by Mr du Plessis in the Nelson office.

[21] Mr Oliver says that his payslips for the period ending 3 December and 10 December 2014 did not have his overnight allowances included in his pay. He says that, when he first noticed, he asked Mr du Plessis why this was, and he was told by Mr du Plessis that *wages were a bit high that week* and that he would fix it the following week. Mr Oliver says that he spoke to Mr du Plessis the second week as well when he noticed that he had again not been paid his overnight allowance and Mr du Plessis said that he had forgotten to deal with it and would look into it.

[22] It is the evidence of Mr Oliver that he then sent an email to Mr Biggs on 15 December 2014 asking why he had not been paid his overnight amounts for, by then, three weeks. The Authority saw copies of an email chain passing between Mr Oliver, Mr Biggs and Mr du Plessis on 16 December 2014. Mr Biggs had asked Mr Oliver to deal with something, and his reply was:

Yep if I get paid right this week for some reason Jaco has stopped paying me my over nights that you authorised about 3 years ago when he got his.

[23] Mr Biggs then sent an email to Mr du Plessis as follows:

*Jaco
What overnight is Darren talking about?
There is no way I agreed to overnights being paid to him???
Please send me all overnight or expenses paid to anyone apart from the drivers that actually stay away.
Regards
Stuart Biggs*

[24] Mr Biggs also sent an email to Mr du Plessis on 17 December 2014 in the following terms:

*Jaco
If Darren Oliver has been paid overnights it was not agreed by me.
The only arrangement I have agreed to is \$25.00 per hour as permanent casual 4 days per week.
What his pay package was before he left has no bearing on what he was paid when he came back a year later.
If he in fact has been paid overnights you need to stop it immediately and write to him saying this has been a clerical error and arrangements need to be made to have that money repaid.*

[25] On 17 December 2014, Mr du Plessis handed Mr Oliver a letter from Mr Biggs in the following terms:

*Dear Darren
Re: Overpayment Error
I am writing to advise that we have found an error with your pay. You have incorrectly been paid an overnight allowance from 22/02/2012 to 26/11/2014, totalling \$23660.00.
Your remuneration package does not include an overnight allowance and approval was not sought to make a change to your remuneration. I apologise for this error and any inconvenience it causes.
As detailed in clause 3.1 of your individual employment agreement we now need to arrange deductions from your pay for the repayment of this overpayment. The first deduction would be made in the pay, period ending 12/12/2014, which you receive in your*

*bank account on 18/12/2014. We propose deductions of \$200.00 per pay period until the full amount is repaid.
Please discuss this with me if you have any questions or concerns.*

[26] The payslip for 18 December 2014 showed a deduction of \$200.

[27] Mr Oliver sent an email to Mr Biggs on the same day in the following terms:

Stuart

I have read your letter this morning handed to me by Jaco and I find it appalling you have reneged on the verbal arrangement made between you and I nearly 3 years ago.

I am sick and tired of you forgetting what you have said.

At this time of the year this is stress I can do with out especially after the busy days we have been having.

I have a doctor's appointment for Monday and will be in touch after that.

[28] Mr Biggs does not appear to have replied to this email. Mr Biggs said in his oral evidence to the Authority that it was his *stupidity* that stopped him from checking what Mr Oliver and Mr du Plessis were being paid, and that all he checked were the time cards which did not show the allowances. He said that the two companies employed around 30 staff and that the aggregate wage bill was around \$1.2m a year. He also said that his accountant oversaw all IRD issues.

[29] When I asked Mr Biggs why Mr Oliver's payments of the overnight allowances stopped two pay periods prior to Mr Biggs apparently becoming aware of the payments, he surmised that Mr du Plessis had been up to no good, and was trying to cover his tracks somehow. Mr Biggs could not explain why Mr du Plessis would choose to stop Mr Oliver's payments of the allowance, when that step would most likely cause the issue to be exposed by Mr Oliver complaining.

[30] It is Mr Oliver's evidence that he saw his GP on Monday, 22 December 2014 and obtained a medical certificate which stated that he had been unwell, and was unable to work for three days from 22 to 24 December 2014. The certificate did not identify what was wrong with Mr Oliver.

[31] Mr Oliver then received a letter from Mr Biggs dated 22 December 2014 advising him that he needed to attend a disciplinary investigation meeting on Monday 5 January 2015. The letter stated that he would have an employment consultant with him and that he encouraged Mr Oliver to bring a representative/support person to the meeting as well. The allegations set out in the letter were stated to be as follows:

1. *That you notified colleagues last week that you will be sick this week and next week and will not be working.*
2. *We have today received a medical certificate, dated today, for your absence up to and including 24th December 2014.*
3. *That there has been no prior discussion with myself about any illness or sickness that could prevent you from working this week or next and you appear to have been in good health.*
4. *That you have sent communications by text to other Star Moving employees with derogatory comments about myself and accusing me of illegal practice and encouraging them to challenge me on these practices.*

[32] The letter continued in the following terms:

In considering these allegations and any possible outcome I will be taking into account the following:

1. *The senior position you hold and the expectations I have of your behavior in the role you are employed to do.*
2. *The inflammatory comments contained in the text messages that have the potential to bring the company into disrepute.*
3. *If the allegations are substantiated I am likely to have lost trust and confidence in the employment relationship.*

You need to be aware that the allegations could constitute serious misconduct, and therefore a potential outcome of this investigation could be dismissal.

I will not be in a position to decide on the outcome until I have had time to hear, consider fully and investigate your explanations, but it is important that you know from the outset that dismissal is a potential outcome so that you can prepare for the meeting accordingly.

[33] Mr Oliver says that he believed that the reference to telling staff he would be off sick for the next two weeks was a reference to him sending a text to a colleague on Thursday 18 December 2014, which referred to him putting in his next two weeks' time cards in her tray, and that he would get a doctor's certificate the following Monday. He says that, as this was 18 December, he had to put in two weeks' time cards or else he would not get paid for the holiday period. This was the practice of the company.

[34] The Authority saw Mr Oliver's time cards for the weeks ending 21 December 2014, 28 December 2014, and 4 January 2015. These showed that he had marked down three sick days, for 18, 22 and 23 December. He had also marked down four days of annual leave, and also the Christmas Day, Boxing Day, New Year's Day and New Year statutory holidays. Mr Oliver said that the office would have been closed down for this period anyway, and that he would not have been required to have attended work during this period, even though some drivers may have been.

[35] Mr Oliver says that he was paid two days' sick leave and one day of annual leave in the pay period ending 21 December 2014 despite being on sick leave for three days.

[36] Mr Oliver's evidence was that he tried to relax over the Christmas period but it was obvious to him that Mr Biggs was not going to change, and had created the disciplinary situation to punish him more. He said that, even though he had enjoyed his job and had no intention of resigning, because of the way Mr Biggs was acting and the significant loss of income he had created, he felt that he had no alternative than to resign, which he did by text message on 28 December 2014, and confirmed in writing on 30 December 2014.

[37] As Mr Oliver is claiming constructive dismissal it is necessary to consider the terms of the letter in full¹:

Dear Stuart

I stated in my text message to you on Sunday 28 December 2014 that I would provide you with a formal confirmation of resignation by email.

The reasons I am resigning are that I am very concerned about your unilateral changes to my employment status with you. Not only that you have demoted me, reduced my pay, created a debt against me for which I do not agree with or ever have consented to and then you began to claim back that debt without any consultation or discussion.

I have tried to talk through these issues with you but your constant refusal to address these issues properly has caused me significant distress and now that your financial penalties are impacting on my family you have forced me into a course of action to tender my resignation in accordance with the terms of my employment agreement.

I cannot take any more belittling and have you run me down in front of other employees to whom I am their manager. You have eroded my standing and authority and have severely impacted my ability to perform my duties as required by my employment agreement.

As my employment agreement states that I must give one week's notice I formally give the required notice and that my last day of employment will be Sunday 4th January 2015.

[38] Mr Biggs sent a letter to Mr Oliver on 1 January 2015 which stated that the disciplinary investigation process had not been initiated to coerce him to resign and that he had been obliged to raise the allegations with him formally to allow him the

¹ The text message of 28 December was not available to the Authority.

opportunity to seek advice and representation. Mr Biggs denied the allegations set out in Mr Oliver's letter and then asked Mr Oliver to reconsider his resignation. Mr Biggs did not offer to discuss the cessation of the overnight allowances and the deductions for his wages, but said simply that *there is a debt incurred through overpayment of an unauthorised allowance to you*. Mr Biggs gave Mr Oliver until 3pm on 2 January 2015 to communicate his decision. Mr Oliver declined to change his mind.

The issues

[39] The Authority must determine the following issues:

- (a) The identity of Mr Oliver's employer;
- (b) Whether Mr Oliver was unjustifiably constructively dismissed;
- (c) Whether Mr Oliver suffered unjustified disadvantage in his employment;
- (d) Whether the respondent acted in breach of the Wages Protection Act 1983 in making deductions from Mr Oliver's pay in relation to the overnight allowance.

The identity of Mr Oliver's employer

[40] Mr Oliver states that the agreement purportedly between him and Scott Haulage is a forgery. He bases this assertion on several factors. First, he had never seen the agreement before it was produced in evidence. Second, he had never been given an agreement when he recommenced work in February 2012. Third, he had never signed an agreement with Scott Haulage.

[41] Fourth, he says he would have completed his address and other personal details, whereas Mr Biggs had done so. Fifth, he says that the agreement is more suitable for a driver than an office manager. Last, there is a note on the front of the agreement addressed to Mr du Plessis, saying that Mr Oliver would be coming in on Friday to sign. In addition, it was dated Friday 3 February 2012. Mr Oliver says that he was living 100 kilometres away in Golden Bay, and he would not have come into Nelson prior to commencing work just to sign an agreement.

[42] The employment agreement in question was only produced when Mr Biggs' brief of evidence was served and lodged. Mr Biggs' evidence is that the agreement was found by staff in an extensive search in archives, along with Mr du Plessis' file, away from where all other staff files were kept. Mr Murray submits that no weight should be given to this evidence as the staff member in question did not attend to give evidence in person. I accept that particular submission.

[43] However, as has recently been reiterated by His Honour Chief Judge Colgan in *Roy v Trustees of Tamaki College*², an allegation of forgery is a serious allegation and would have to be proven to a high standard. This is especially where, as here, the allegation is that a document has been forged, and evidence made up in order to mislead the Authority.

[44] Whilst some of Mr Oliver's assertions are plausible to a degree, they are mostly based on negative evidence or speculation. He did not, for example, produce irrefutable evidence that he was elsewhere and not in Nelson on 3 February 2012. Had he done so, that would have been more convincing.

[45] The one assertion which potentially has legs is that the Scott Haulage agreement is clearly relevant to a driver and does not specify *Office Manager* or *Operations Manager* as the original Star Moving agreement did. However, Mr Biggs said that, at that point in the companies' history, all staff got drivers' agreements. This is not implausible, as, presumably, the majority of staff employed by Star Moving would have been drivers, and their agreements would have been the most complex. It would have been convenient to use the same template for both Star Moving and Scott Haulage employees.

[46] It is often the case that witnesses completely forget signing documents, especially when they do so without paying particular attention to them, as they see them as a formality. Mr Oliver dealt with Scott Haulage contracts both before and after his reemployment, issuing them to casual staff. He was, therefore, familiar with them. It is perfectly possible that he simply forgot signing the agreement. It is also possible that he was in Nelson that Friday for some reason he has now forgotten.

[47] When I balance the likelihood that Mr Biggs would deliberately forge a document, and lie on oath in order to mislead the Authority in the exercise of its

² [2016] NZEmpC 20, at [36]

statutory functions, against the likelihood that Mr Oliver has forgotten signing an agreement four years earlier, in the absence of any strong evidence to the contrary, I prefer the second possibility.

[48] I therefore conclude, on a balance of probabilities, that Mr Oliver did sign the Scott Haulage agreement and that he was therefore employed by that entity when he resigned in 2014.

Was Mr Oliver unjustifiably constructively dismissed?

[49] The legal principles relating to the law on constructive dismissal were articulated by the Court of Appeal in *Auckland Shop Employees Union v. Woolworths (NZ) Ltd*³, which set out three non-exhaustive categories of constructive dismissal:

- (1) Where the employee is given a choice of resignation or dismissal;
- (2) Where the employer has followed a course of conduct with a deliberate and common purpose of coercing an employee to resign;
- (3) Where a breach of duty by the employer leads a worker to resign.

[50] It is my view that Mr Oliver is relying upon the third of the three non-exhaustive categories of constructive dismissal referred to above, as the first two do not sit with my assessment of the facts.

[51] With respect to the third category, the Court of Appeal elaborated on that category in the case of *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc*⁴. The Court of Appeal stated at [172]:

In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

³ [1985] 2 NZLR 372 (CA) at 374-375

⁴ [1994] 2 NZLR 415 (CA)

[52] There are a number of duties of an employer that are potentially relevant in this field. One common duty, as affirmed by the Court of Appeal in *Auckland Electric Power Board*, is that *employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage a relationship of confidence and trust between employer and employee.*

[53] The Authority must also take into account the duty of good faith in s.4 of the Act, and the principles of s.103A of the Act. These are as follows.

4 Parties to employment relationship to deal with each other in good faith

(1) The parties to an employment relationship specified in subsection (2)—

(a) must deal with each other in good faith; and

(b) without limiting paragraph (a), must not, whether directly or indirectly, do anything—

(i) to mislead or deceive each other; or

(ii) that is likely to mislead or deceive each other.

(1A) The duty of good faith in subsection (1)—

(a) is wider in scope than the implied mutual obligations of trust and confidence; and

(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative;

Section 103A Test of justification

(1) For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).

(2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

(3) In applying the test in subsection (2), the Authority or the court must consider—

(a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and

(b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and

(c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and

(d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

(4) *In addition to the factors described in subsection (3), the Authority or the court may consider any other factors it thinks appropriate.*

(5) *The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were—*

(a) minor; and

(b) did not result in the employee being treated unfairly.

[54] Mr Oliver said in evidence that he resigned because he knew it would be very uncomfortable for him going back to work with Mr Biggs after he had decided to reduce his earnings. What I understand him to be saying is that he had lost trust in Mr Biggs after he had stopped his overnight allowance payment and started deducting \$200 a week from his pay.

[55] In preparing for the Authority's investigation meeting Mr Biggs had found a draft resignation letter from Mr Oliver drafted over a period of time from September to December 2014. This referred to the removal of his purchasing authority, the incorrect payment of holiday pay, the lack of a pay increase over eight years and Mr Biggs threatening to dismiss staff, amongst other things. Mr Oliver said he was unhappy in September 2014 and had sought employment advice, but had decided to stay with the company for the time being.

[56] In order to show he was constructively dismissed, Mr Oliver needs to show that he resigned in response to a repudiatory breach of his employment agreement. Despite the submissions of Mr Acland, I am satisfied that, whilst Mr Oliver clearly had an intention to resign in the recent past, that does not mean that when he did put that intention into effect, he did not do so in response to a recent repudiatory breach. Mr Oliver used the term *last straw* in his evidence to describe the effect of the cessation of the overnight allowance.

[57] The key issue, therefore, is to examine whether the respondent was entitled to cease paying Mr Oliver's overnight allowance. To be able to argue that it was, given that the payments had been made for nearly three years, the respondent must first satisfy the Authority that, on a balance of probabilities, no agreement had ever been made with Mr Oliver that he was to receive such an allowance.

[58] There is strong evidence in my view that such an agreement was made. This finding is based on the following:

- a. It is unlikely that Mr Oliver would have agreed to have come back to work in Nelson, on the same pay as he had been paid before, after he had shifted to Golden Bay, when he knew that he would have to stay in Nelson during the working week and pay \$80 to \$100 a week in fuel costs. Mr Oliver says that he lodged with his daughter in Nelson and paid her \$120 a week in board. This evidence of the cost to Mr Oliver of working in Nelson was not contested by the respondents.
- b. Mr Biggs is the sole director of both Star Moving and Scott Haulage. As such, he has (and had at the material time) a duty to act in the best interests of the companies. In the light of this duty I find it hard to believe that, notwithstanding his explanations, he did not have knowledge of what the operations manager and the pay roll manager of one of the branches were being paid (especially for a period of two years and ten months in Mr Oliver's case, and probably longer in Mr du Plessis' case).
- c. In addition, individuals other than Mr du Plessis handled payroll issues, including the company accountant, and another staff member, so it is unlikely that unauthorised payments would have gone unnoticed for nearly three years.
- d. It also seems very unlikely that Mr du Plessis would have instituted the payment of an overnight allowance to Mr Oliver after having purportedly been instructed in clear terms not to (according to Mr Biggs' evidence). If he did so to cover up his allegedly own wrongful payment to himself of the allowance (as Mr Biggs asserts) paying another person the same payment increases the likelihood of discovery. Also, it was not likely that Mr Oliver would ever discover the allegedly wrongful payments by Mr du Plessis to himself, so it is not as if he was doing so to keep him on side.
- e. Furthermore, Mr Biggs did not seem to be suggesting that Mr Oliver was complicit in the alleged deception alongside Mr du Plessis, as he said in his oral evidence that Mr Oliver was impacted by Mr du Plessis's alleged wrongdoing.

- f. Additionally, the Authority was shown no evidence that Mr du Plessis had been paying the overnight allowance to himself unlawfully.
- g. It is equally unlikely that Mr du Plessis would have stopped paying the overnight allowance to Mr Oliver of his own volition two weeks before Mr Biggs purportedly first discovered the payment to Mr Oliver of the allowance, as to do so would have exposed the whole issue of the allegedly wrongful payments.
- h. Furthermore, in the draft resignation letter that was written over a period of weeks by Mr Oliver, he mentions the overnight allowance to compensate for not getting wage increases.

[59] Mr Acland submits that the fact that Mr Oliver was not paid an overnight allowance in his first wages shows that no agreement was made to do so. However, the amount of overnight allowance fluctuated in the first few weeks of employment, and I do not believe that anything certain can be inferred from the non-payment of the allowance in the first week.

[60] I also do not accept Mr Acland's submission that an email sent by Mr Oliver to Mr Biggs on 8 October 2014, asking for a pay rise, shows that Mr Oliver is wrong when he says that Mr Biggs agreed to give him \$200 a week instead of a pay rise. What I understand Mr Oliver to be saying is that Mr Biggs's rationale for agreeing to pay the \$200 a week non-taxable allowance was to avoid a pay increase, whereas Mr Oliver needed the payment to make it worth his while to travel and board in Nelson each week. The \$200 a week allowance just covered his weekly out of pocket expenses, and so it was not unreasonable that he should ask for a pay rise as well.

[61] Taking all these factors into account, I am strongly drawn to the conclusion that Mr Biggs did agree to Mr Oliver receiving the non-taxable overnight allowance in the sum of \$200 a week. I can only speculate how there came to be produced to the Authority a note to Mr Du Plessis from Mr Biggs which states that Mr Oliver was not to be paid an overnight allowance.

[62] What is interesting is that Mr Biggs apparently wrote two notes to Mr Du Plessis about Mr Oliver coming in to sign his employment agreement on Friday 3 February 2012. The one on the front of the employment agreement and the one on a memo pad with a 2012 calendar printed on it. It seems unusual that he would do this.

When I asked Mr Biggs why he had done so, he said it was *a good question*. He did not have any convincing answer in my view.

[63] I note that the employment agreement between Mr Oliver and Scott Haulage has the word *no* against the *overnight allowance* section on the front page. I also note that variations must be made in writing. Therefore, on the face of it, the agreement precludes Mr Oliver from receiving the overnight allowance. However, I prefer to interpret the factual matrix surrounding the issue as including the probability that the word *no* was added in error, and that Mr Biggs forgot that he had agreed to Mr Oliver receiving the allowance. The alternative is that Mr Biggs added the word *no* later, in order to mislead the Authority. That is a less palatable interpretation and, as I have already determined, there is insufficient cogent evidence to support such a finding.

[64] Having concluded that Mr Oliver was entitled to be paid the overnight allowance because of an express agreement, it cannot possibly be the case that it therefore amounted to an error or an overpayment. Therefore, the company stopping the payment unilaterally, and then deducting \$200 a week pursuant to the deductions clause cited above, amounted to a breach of the contract between Mr Oliver and his employer.

[65] Furthermore, I am satisfied that this breach of contract on its own was sufficiently serious to amount to a repudiation of the contract. In my view, any fair and reasonable employer would have foreseen that stopping an employee's \$200 a week payment, which he had received for nearly three years, and further, deducting \$200 a week in a purported recovery, without any prior consultation, would be likely to result in the employee resigning.

Was there an affirmation of the breach?

[66] I now turn to Mr Acland's submission that Mr Oliver affirmed the breach. Mr Oliver first became aware of his overnight allowance payments stopping in early December 2014. He spoke to Mr du Plessis about this twice, two weeks running, and was effectively fobbed off. He then mentioned the overnight payment allowance stopping to Mr Biggs in an email on 16 December 2014. On 17 December, he received a letter telling him he would have the payments stopped and *overpayments* clawed back. He immediately wrote to Mr Biggs objecting. He then went to see his doctor in Nelson at the next opportunity, and was signed off sick for three days. The

Christmas, New Year holiday period then started. He then resigned by text on 28 December 2014 before he returned to work.

[67] There is no obligation to resign immediately in the face of a repudiatory breach of contract. This is confirmed by the Employment Court in *Premier Events Group Limited and others v Malcolm James Beattie and others*⁵ which cited with approval a passage from the UK Employment Appeal Tribunal judgement in *WE Cox Turner (International) Ltd v Crook*⁶ (which was relied on by the UK Court of Appeal in *Cantor Fitzgerald International v Callaghan*⁷).

[68] The passage in question is as follows:

Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation. Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence with the contract, such acts will normally show affirmation of the contract. However, if the innocent party further performs the contract to a limited extent but at the same time makes it clear that he is reserving his right to accept the repudiation ... such further performance does not prejudice his right subsequently to accept the repudiation.

[69] The Employment Court in *Premier Events Group Limited* then stated, citing the Court of Appeal in *Cantor Fitzgerald*⁸:

.....“the ultimate question is one, not of law, but of fact” including in circumstances from which the Court is invited to draw inferences about whether the contracts of employment were affirmed.

[70] I do not accept that Mr Oliver did acts only consistent with the continued existence of his contractual obligations. Instead, by writing his letter of protest, and then taking sick leave, he performed the contract to a limited extent but at the same time made it clear that he is reserving his right to accept the repudiation. Furthermore, Mr Oliver had no job to go to. It takes a lot of courage to walk out of a paying job, when one has household bills to pay. Mr Oliver was entitled to a reasonable period of reflection prior to resigning.

⁵ [2014] NZEmpC 231

⁶ [1981] ICR 823 (EAT)

⁷ [1999] All ER 41, [1999] ICR 639

⁸ At [653]

[71] Having found that Mr Oliver was constructively dismissed, I must go on to find that the dismissal was unjustified, as no fair and reasonable employer could have taken the actions that this employer did, and which led directly to Mr Oliver's resignation.

Was Mr Oliver subjected to an unjustified disadvantage in his employment?

Taking away his purchasing powers

[72] Mr Biggs did not produce any evidence to support his contention that he implemented changes to the purchasing regime across the board. However, even if he did, it was still not an equal change across the board. By this I mean that the changes resulted in the person in the Christchurch office, who had previously had purchasing powers, having to defer upwards to the general manager for purchases, and the person in the Auckland office having to defer upwards to Mr Biggs for purchases. However, Mr Oliver had to defer to his co-worker who was, at best, his equal in status.

[73] In addition, no discussion with Mr Oliver took place prior to Mr Biggs implementing the change.

[74] I accept Mr Oliver's contention that removing his purchasing power was a change which was a disadvantage in his employment as it affected his status in his own eyes and potentially in the eyes of his co-worker Mr du Plessis. Furthermore, as Mr Biggs did not consult with Mr Oliver prior to effecting the change, I am satisfied that the change was unjustified, as no fair and reasonable employer could have failed to have consulted prior to taking away part of Mr Oliver's duties and authority in all the circumstances.

Taking away the overnight allowance payments

[75] I have already concluded that the deduction from Mr Oliver's salary in respect of the overnight allowance is an unjustified disadvantage as he was always entitled to that allowance.

[76] However, even if that is not the position, Mr Biggs never discussed with Mr Oliver the stopping of the payments and the deducting of a further \$200. Whilst his letter invited discussion, that invitation should have preceded the decision to stop the payments and withhold further pay. No fair and reasonable employer could, in all the

circumstances, have simply implemented these changes to Mr Oliver's pay without first engaging in consultation⁹. Thus, Mr Oliver was unjustifiably disadvantaged by this unilateral decision.

The disciplinary letter

[77] I do not find that Mr Biggs sending the letter to Mr Oliver on 22 December 2014 inviting him to a disciplinary investigation meeting constituted an unjustified disadvantage in his employment. Employers are entitled to launch an investigation into their concerns, provided a fair and reasonable process is used. Nothing appears in the letter to indicate that the process to be followed was not fair and reasonable.

Was there a breach of s.4 of the Wages Protection Act 1983?

[78] Sections 4 and 5 of the Wages Protection Act 1983 provide as follows:

4 No deductions from wages except in accordance with Act

Subject to sections 5(1) and 6(2), an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

5 Deductions with worker's consent

(1) An employer may, for a lawful purpose, make deductions from wages payable to a worker—

(a) with the written consent of the worker (including consent in a general deductions clause in the worker's employment agreement); or

(b) on the written request of the worker.

(1A) An employer must not make a specific deduction in accordance with a general deductions clause in a worker's employment agreement without first consulting the worker.

(2) A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker's wages, by giving the employer written notice to that effect; and in that case, that employer shall—

(a) within 2 weeks of receiving that notice, if practicable;

and

*(b) as soon as is practicable, in every other case,—
cease making or vary, as the case requires, the deductions concerned.*

[79] Clause 3.1 of the employment agreement between Mr Oliver and Scott Haulage is a general deductions clause and so Scott Haulage was in breach of s.5(1A) of the Wages Protections Act by making deductions prior to consultation. In any

⁹ As is required by s.5(1A) of the Wages Protection Act 1983. I am satisfied that clause 3.1 of the employment agreement between Mr Oliver and Scott Haulage is a general deductions clause.

event, the payments of the allowances were lawfully owed to Mr Oliver, and so the deductions were in breach of s.4 of the Wages Protections Act.

Conclusion

[80] Mr Oliver suffered unjustified disadvantage in his employment and was also unjustifiably constructively dismissed. It is therefore necessary to determine what remedies are due to him.

Remedies

[81] Section 123 of the Act provides materially as follows:

123 Remedies

(1) Where the Authority or the court determines that an employee has a personal grievance, it may, in settling the grievance, provide for any 1 or more of the following remedies:

(a) reinstatement of the employee in the employee's former position or the placement of the employee in a position no less advantageous to the employee:

(b) the reimbursement to the employee of a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance:

(c) the payment to the employee of compensation by the employee's employer, including compensation for—

(i) humiliation, loss of dignity, and injury to the feelings of the employee; and

(ii) loss of any benefit, whether or not of a monetary kind, which the employee might reasonably have been expected to obtain if the personal grievance had not arisen:

[82] Section 128 provides:

128 Reimbursement

(1) This section applies where the Authority or the court determines, in respect of any employee,—

(a) that the employee has a personal grievance; and

(b) that the employee has lost remuneration as a result of the personal grievance.

(2) If this section applies then, subject to subsection (3) and section 124, the Authority must, whether or not it provides for any of the other remedies provided for in section 123, order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration.

(3) Despite subsection (2), the Authority may, in its discretion, order an employer to pay to an employee by way of compensation for remuneration lost by that employee as a result of the personal grievance, a sum greater than that to which an order under that subsection may relate.

Lost wages

[83] Mr Oliver claims lost wages arising out of the personal grievance in the gross sum of \$16,900. It is not explained, however, how this sum was arrived at. I agree with Mr Acland that loss of wages which Mr Oliver would have earned, but for his dismissal, cannot include overnight allowance payments, as they were intended to reimburse Mr Oliver for the cost of attending work in Nelson. As he did not incur those costs after his dismissal, overnight allowance payments cannot be included in the calculation of loss.

[84] Over the 12 months prior to his last day of employment Scott Haulage's records indicate that Mr Oliver earned a total of \$46,177.50 before tax, excluding holiday pay and overnight allowances, but including sick pay. Mr Oliver seems to have been out of work until May 2015, which equates to four months. I accept that finding work in Nelson would not have been particularly easy, and I believe that it is appropriate for the Authority to exercise its discretion and to award four months' loss of wages. This would equate to the gross sum of \$15,392.50.

Overnight allowance

[85] Mr Oliver says he is due \$2,600 in respect of overnight allowances not paid, and deducted unlawfully from his pay. However, the correct sum would appear to be \$1,600, as Mr Oliver was not paid the overnight allowance for four weeks for the period 2 December 2014 to 21 December 2014. That amounts to a loss of \$800. He was then on sick leave for three days, and then on holiday, and so would not have incurred the cost of staying in Nelson. In addition, he had a further \$800 unlawfully deducted from his wages. This makes \$1,600 in total.

Holiday pay

[86] I agree with Mr Acland that the overnight allowance should be excluded from the calculation of holiday pay due to Mr Oliver, pursuant to s.14(a)(ii) of the Holidays Act 2003. Accordingly, Mr Oliver is due the sum of \$1,231.40 in respect of holiday pay due on the lost wages.

[87] Mr Murray submits (or appears to – I am not clear on his meaning) that Mr Oliver is also owed annual leave payments accrued during his employment of a total of \$14,832.50. However, I cannot understand the basis upon which Mr Murray makes this assertion. It is clear that Mr Oliver was being paid what is called *Casual Holiday Pay* each week in varying amounts. This was in apparent breach of s.28 of the

Holidays Act as Mr Oliver's employment did not fulfil the conditions of payment of holiday pay with his pay.

[88] However, Mr Murray's calculations are opaque, and whilst I do not dismiss this aspect of Mr Oliver's claim, I require further information before I can determine what may be owed. I deal with this requirement below.

[89] In addition, Mr Oliver claims a day's annual leave in respect of sick leave taken in the period ending 21 December 2014. However, it is not clear that Mr Oliver was entitled to any more sick pay. Again, further information is required before I can deal with this aspect of the claim. The same applies to the \$525 allegedly owing in respect of *statutory entitlements of 2.50 days*. I am not clear which statutory entitlements are referred to.

[90] Mr Oliver says that he never received a cheque in the sum of \$619.88 which was due in respect of holiday pay owing, after deduction of tax. Mr Oliver cannot prove a negative (that he did not receive the cheque) but Scott Haulage could prove that the cheque was banked. It has not done so. I therefore order that the net sum of \$619.88 be paid to Mr Oliver. This sum needs to be taken into account in the further information that Mr Murray is to provide in respect of the further holiday pay that he submits is due.

Compensation for humiliation, loss of dignity and injury to feelings

[91] Mr Oliver claims compensation of \$30,000 under s.123(1)(c)(i) of the Act. Mr Oliver's evidence was that, in the month prior to his resignation, he could not sleep, was getting headaches, could not concentrate and was *down in the dumps*. A copy of his GP's consultation notes were produced which generally supported this, referring to stress caused by *money issues at work with wages being taken away*. The financial difficulties that followed his resignation also caused tension between Mr Oliver and his wife he said.

[92] Mrs Oliver's evidence was that Mr Oliver was so stressed when Christmas 2014 was approaching that she could not talk to him properly. She also said he *fell apart* and that him having to go to WINZ for money was degrading and embarrassing for him.

[93] I accept that Mr Oliver was caused humiliation, loss of dignity and injury to his feelings arising out of the taking away from him of his purchasing powers and, more particularly, his overnight allowances. I am convinced by the evidence from Mr and Mrs Oliver that he must have found Mr Biggs' *volte face* on the issue of his overnight allowance bewildering, extremely frustrating and, ultimately, a betrayal.

[94] However, the sum of \$30,000 stands near the top of the range from which awards under s.123(1)(c)(i) of the Act are commonly made. I must be cautious of drawing a conclusion that the effects suffered by Mr Oliver were so severe as to justify an award close to this level. I take into account, for example, the evidence of Mrs Oliver that they had problems with their small fishing business in March 2015, which compounded Mr Oliver's stress (but which has nothing to do with Scott Haulage), that Mr Oliver had pre-existing conditions that may have prompted visits to the GP and that he clearly also found the Authority's proceedings stressful.

[95] Overall, I believe that a level of compensation which reflects an effect in the upper end of the moderate range (as opposed to a mild or severe range) would be appropriate and that a total sum of \$20,000 is reasonable.

[96] Where the Authority determines that an employee has a personal grievance, the Authority must, in deciding both the nature and the extent of the remedies to be provided in respect of that personal grievance, consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance and, if those actions so require, reduce the remedies that would otherwise have been awarded accordingly (s.124 of the Act).

[97] I do not accept that Mr Oliver contributed in any blameworthy way to the disadvantage or the constructive dismissal personal grievances. I do not accept Mr Acland's submission that it was evident that Mr Oliver did not want to continue the employment from August 2014. Quite apart from the fact that such a submission appears not to be relevant to the issue of contribution, I accept Mr Oliver's evidence that he had considered resigning but decided against it prior to the removal of his overnight allowances.

Penalties

[98] Mr Oliver seeks that penalties be imposed upon the respondent for breach of good faith, failing to produce time and wage records and for failing to provide an employment agreement to Mr Oliver.

[99] Section 4A of the Act provides as follows:

4A Penalty for certain breaches of duty of good faith

A party to an employment relationship who fails to comply with the duty of good faith in section 4(1) is liable to a penalty under this Act if—

(a) the failure was deliberate, serious, and sustained; or

(b) the failure was intended to undermine—

(i) bargaining for an individual employment agreement or a collective agreement; or

(ii) an individual employment agreement or a collective agreement;

or

(iii) an employment relationship; or

(c) the failure was a breach of section 59B or section 59C.

[100] It is clearly arguable that Scott Haulage acted in bad faith in stopping Mr Oliver's previously agreed overnight allowances, and making deductions from his wages to purportedly recover overpayments of them, both without any consultation. The best light that can be shed on Scott Haulage's actions is that Mr Biggs forgot an agreement he had made with Mr Oliver nearly three years previously.

[101] Even if that were the case, an employer acting in good faith would have asked Mr Oliver about the payments, and sought to work out how they could have been made for so long. His failure to do so, together with the stopping of payments and the clawing back of what he called overpayments, was a serious breach of good faith in my view. It was also deliberate, as Scott Haulage clearly deliberately made the deductions knowing it had not consulted. Finally, it was sustained, as the non-payment continued for four weeks, until Mr Oliver resigned.

[102] I therefore find that a penalty is liable to be imposed. I believe that a penalty in the sum of \$5,000 is appropriate. It is to be paid to Mr Oliver as he was a victim directly of this breach of good faith.

[103] I do not find that a penalty for failing to give an employment agreement is warranted, as I have found that an employment agreement was likely to have been given. I also do not agree that a penalty should be imposed for failing to provide wage

and time records as records¹⁰ were provided, albeit late in the day, and no harm appears to have been caused by the later disclosure of such records.

Interest

[104] Mr Oliver seeks interest on the payment of the *owed amounts*. Clause 11 of Schedule 2 of the Act provides as follows:

11 Power to award interest

(1) In any matter involving the recovery of any money, the Authority may, if it thinks fit, order the inclusion, in the sum for which judgment is given, of interest, at the rate prescribed under section 87(3) of the Judicature Act 1908, on the whole or part of the money for the whole or part of the period between the date when the cause of action arose and the date of payment in accordance with the determination of the Authority.

(2) Without limiting the Authority's discretion under subclause (1), in deciding whether to order the inclusion of interest, the Authority must consider whether there has been long-standing and repeated non-compliance with a demand notice.

(3) Subclause (1) does not authorise the giving of interest upon interest.

[105] Section 87(3) of the Judicature Act 1908 provides that the term *the prescribed rate* means the rate of 7.5% per annum, *or such other rate as may from time to time be prescribed for the purposes of this section by the Governor-General by Order-in-Council*. Clause 4 of the Judicature (Prescribed Rate of Interest) Order 2011 prescribes for the purposes of s.87 of the Judicature Act 1908 the rate of 5% per annum.

[106] The wording *recovery of any money* is drafted widely enough to permit interest to be awarded in any matter where money is awarded as a remedy. Therefore, there is no barrier to the Authority awarding interest on the lost wages, holiday pay and the unpaid overnight allowances, together with the sum of \$619.88.

Orders

[107] I order that the respondent pay the following sums to Mr Oliver:

- a. Lost wages in the gross sum of \$15,392.50;
- b. Holiday pay on the lost wages in the gross sum of \$1,231.40;
- c. Overnight allowance payments in the gross sum of \$1,600;

¹⁰ Arguably not time records.

- d. Unpaid holiday pay in the net sum of \$619.88;
- e. Compensation under s.123(1)(c)(i) of the Act in the sum of \$20,000;
- f. A penalty in the sum of \$5,000; and
- g. Interest on the sums at sub paragraphs (c) and (d) calculated at the rate of 5% per annum from 4 January 2015 until payment to Mr Oliver of such sums in full; and
- h. Interest on the sums at sub paragraphs (a), (b) and (e) calculated at the rate of 5% per annum from the date of this determination until payment to Mr Oliver of such sums in full.

Further steps

[108] I direct Mr Oliver, through his representatives, to serve and lodge a comprehensive breakdown of his calculations and relevant evidence supporting the sums claimed by him as referred to in paragraphs 87 to 89 of this determination. He is to do so within 14 day of the date of this determination. Scott Haulage may respond within a further 14 days. Unless the parties can agree what, if anything, remains to be paid to Mr Oliver, I shall then determine the matter on the papers if I am able to do so.

Costs

[109] Costs are reserved until the stages indicated at paragraph 108 have been carried out.

David Appleton
Member of the Employment Relations Authority