

ATTENTION IS DRAWN TO
THE ORDER PROHIBITING
PUBLICATION OF CERTAIN
INFORMATION REFERRED
TO IN THIS DETERMINATION

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 319
3289219

BETWEEN

MARKUS PAETZ
Applicant

AND

SOLLY'S FREIGHT (1978)
LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Laurie Knight, counsel for the Applicant
Deborah Hendry, counsel for the Respondent

Investigation Meeting: 10 and 11 October 2024 in Nelson

Submissions and further
information received: Up to 26 February 2025 from the Applicant
Up to 6 March 2025 from the Respondent

Date of Determination: 6 June 2025

DETERMINATION OF THE AUTHORITY

Non-publication order

[1] In the course of investigating this employment relationship problem I heard evidence relating to Markus Paetz's medical history. This information is personal and private to Mr Paetz and any disclosure of that information to third parties is likely to cause him undue hardship. In

the circumstances I am satisfied that it is appropriate to depart from the principles of open justice and make non-publication orders in respect of Mr Paetz's medical information.

[2] Pursuant to Clause 10 of schedule 2 of the Employment Relations Act 2000 (the Act) I grant non-publication orders prohibiting the publication of any of the medical information provided by Mr Paetz for the investigation of this employment relationship problem.

Employment relationship problem

[3] Mr Paetz was employed by Solly's Freight (1978) Limited, initially as a Truck Driver and then as a Material Engineer and Driver – in this second role Mr Paetz was responsible for concrete production and delivery.

[4] Mr Paetz had various complaints about how Solly's treated him during his employment. These are, that Solly's:

- (a) Required him to work overtime in breach of his employment agreement with Solly's (the IEA).
- (b) Required him to drive excess hours without a break in breach of heavy vehicle driver regulations.
- (c) Gave him responsibilities outside of the position description in the IEA.
- (d) Threatened to hold him personally liable for issues with a concrete delivery.
- (e) Failed to provide a safe work environment.
- (f) Failed to carry out remuneration reviews for him in breach of the IEA.

[5] Solly's denies that it acted as alleged.

[6] As a result of how Mr Paetz says he was treated by Solly's he resigned.

[7] Mr Paetz then raised personal grievances for unjustified action causing disadvantage and unjustifiable dismissal.

[8] Mr Paetz also says he is owed \$2,207.70 that was unlawfully deducted from his final pay. Solly's says this was deducted pursuant to a bonding agreement and the amount represents training costs that are rightly recovered by it under the agreement.

[9] Mr Paetz's personal grievances and the unlawful deduction from wages formed the basis of the employment relationship problem that he lodged with the Authority.

[10] Solly's responded to the employment relationship problem by denying any liability. It also asserted that the unjustified disadvantage grievances were not raised within the requisite 90-day period.¹

The Authority's investigation

[11] I investigated this employment relationship problem by receiving written evidence and documents, holding an investigation meeting on 10 and 11 October 2024 and assessing the oral and written submissions of the parties' representatives.

[12] In my investigation meeting, under oath or affirmation, witnesses confirmed their written statements and gave oral evidence in answer to questions from myself and the parties' representatives. The representatives then provided oral and written submissions.

[13] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

¹ Employment Relations Act 2000, s 114.

Issues

[14] As described above, Mr Paetz's employment relationship problem comprises three parts:

- (a) Personal grievances for unjustified action causing disadvantage based on the six areas of complaint.
- (b) A personal grievance for unjustified dismissal based on Mr Paetz resigning in response to the six areas of complaint.
- (c) The alleged unlawful deduction from Mr Paetz's final pay.

Personal grievances raised in time

[15] I will deal with the issue of whether Mr Paetz raised personal grievances for unjustified disadvantage within the required time frame, first. The outcome of this analysis will determine whether each grievance is then subject to further assessment in terms of the process set out below.

Unjustified action causing disadvantage

[16] An unjustified action causing disadvantage personal grievance is set out in section 103(1)(b) of the Act. This provides that an employee may have a personal grievance where their employment or any condition of employment is or was affected to their disadvantage by some unjustified action by their employer.

[17] Based on section 103(1)(b) of the Act, the questions to be addressed are:

- (a) What are the actions complained of and did Solly's do them?
- (b) If Solly's did carry out the actions, were they unjustified?

(c) If the actions were unjustified, did they cause any disadvantage to Mr Paetz's employment or a condition of employment?

Unjustifiable dismissal

[18] The first issue for an unjustifiable dismissal grievance is, was the employee dismissed?

[19] In this case Mr Paetz was not dismissed by Solly's, he resigned. Mr Paetz says that his resignation amounts to a dismissal because he resigned in response to breaches of duty by Solly's, this being a constructive dismissal.

[20] To resolve this, I need to establish what occurred and whether the events amount to a breach of duty. If there was a breach of duty I must then determine if that gives rise to a constructive dismissal applying the legal requirements established in relevant case law.²

[21] If these things are established such that Mr Paetz was dismissed, I must then consider the second issue; was the dismissal justified?

Steps for determining this employment relationship problem relating to personal grievances

[22] In the first instance I will consider what it is that Mr Paetz complains of in terms of Solly's actions and determine if these actions occurred.

[23] If I determine that Solly's did act as alleged I will then assess if the actions are unjustifiable and/or amount to breaches of duty.

[24] If any of Solly's action are unjustified and/or are a breach of a duty owed to Mr Paetz I will then decide if these actions give rise to an unjustifiable dismissal personal grievance and/or

² *Auckland Shop Employees Union v. Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA); *Wellington etc Clerical Workers etc IUOW v Greenwich* [1983] ACJ 965; and *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA).

an unjustified disadvantage personal grievance (assuming the applicable grievances have been raised within the required time frame).

[25] If a personal grievance is established, I will then consider what remedies Mr Paetz is entitled to.

Unlawful deductions from wages

[26] I will assess this aspect by considering the circumstances giving rise to the deduction from Mr Paetz's final pay and establishing if this deduction was compliant with the Wages Protection Act 1983.

Were Mr Paetz's personal grievances for unjustified action causing disadvantage raised in time?

[27] The starting point for this issue is section 114(1) of the Act. Section 114(1) of the Act provides:

An employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with their employer within the applicable employee notification period unless the employer consents to the personal grievance being raised after the expiration of that period.

[28] The applicable employee notification period is the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later.³

[29] In relation to Mr Paetz's complaints that inform his personal grievances for unjustified action causing disadvantage the evidence shows he raised concerns about these matters with Ed Solly, a director of Solly's, in a meeting on 19 November 2023 and then formally raised personal grievances through his lawyer on 4 December 2023.

³ Employment Relations Act 2000, s 114(7)(b).

[30] What is clear from the evidence is that Mr Solly engaged with Mr Paetz over his concerns in the meeting on 11 November 2023 and then Solly's provided a written response to the personal grievances raised on 4 December 2023, in a letter of 8 December 2023.

[31] Having considered these responses I am satisfied that by engaging as it did over the concerns raised by Mr Paetz, Solly's consented to the grievances being raised outside the 90 day time frame; on this basis I conclude that there is no issue with any of Mr Paetz's complaints being raised in time and I can proceed to analyse the grievances.

Analysis of personal grievances

Was Mr Paetz required to work overtime in breach of the IEA?

[32] Mr Paetz commenced work with Solly's at the end of March 2022. Initially Mr Paetz was employed as a Truck Driver, driving concrete trucks and other Class 4 trucks.

[33] On 1 July 2022, Fulton Hogan contacted Solly's and requested drivers for emergency slip work on Saturday 2 July 2022. By 5:30 pm on 1 July Solly's had not organised all the necessary drivers and required one further person. Mr Solly approached Mr Paetz to ask him to do this work; knowing it was the first Saturday Mr Paetz had been asked to do, Mr Solly thought this was reasonable, although he did expect Mr Paetz to refuse. Mr Paetz did refuse to work the Saturday. Mr Solly was frustrated by this and by the failure of his staff to have arranged the necessary drivers, so in response Mr Solly reminded Mr Paetz of his obligations under the IEA and mentioned Solly's support of his visa. Mr Paetz felt threatened by this and believed he had no choice but to work the Saturday or Solly's might not support his ongoing work visa; so, he agreed to work Saturday 2 July.

[34] The time records produced by Solly's show that Mr Paetz did not work any other Saturdays whilst he was employed as a Truck Driver.

[35] As part of his work as a Truck Driver Mr Paetz drove a cement truck for Solly's. While driving the cement truck Mr Paetz showed an interest in batching and producing concrete and he worked with Solly's Concrete Plant Manager.

[36] In August 2022 when Solly's Concrete Plant Manager resigned Mr Solly and Mr Paetz discussed the possibility of him taking on the role. As part of the negotiations over taking on this role Mr Paetz and Mr Solly discussed the hours of work. Mr Paetz had always been reluctant to work weekends because he was building a house and reiterated this to Mr Solly. However, Mr Paetz could not take on the Concrete Plant Manger without committing to doing some Saturday work. In the end a compromise was agreed in which Mr Paetz accepted he may have to work additional hours in excess of the minimum 40 per week but this would be by agreement, and Mr Paetz would be paid time and a half for hours worked over 40 per week – this was recorded in the IEA.

[37] Mr Paetz then commenced work as the Concrete Plant Manager with the job title being Material Engineer and Driver.

[38] The time records produced by Solly's show that in the course of his work as Material Engineer and Driver Mr Paetz often worked more than 40 hours per week including work on 12 Saturdays.

[39] Mr Paetz says he was unhappy about the hours he worked as this was excessive; he says he did not have much time for anything else once work was finished as it was exhausting and stressful. Mr Paetz also says he felt he had no choice but to work the additional hours because he had previously been threatened with the withdrawal of support for his work visa, and therefore the loss of his employment, if he did not work the hours required.

[40] My observation based on the evidence is that this "threat" was never intended by Solly's and the incident on 1 July 2022 in relation to working additional hours was a product of frustration for Mr Solly. However, it is not the case that Mr Paetz was not required to work additional hours. The evidence shows that if additional work was required in terms of batching

and pouring concrete then Mr Paetz was the only employee who could do it; by implication he was required to work if concrete batching and pouring was required, so he really had no element of choice in terms of working in excess of 40 hours per week if there was concrete batching and delivery work to be done in excess of 40 hours. There was no element of choice or agreement for Mr Paetz.

[41] My conclusion is that Solly's did require Mr Paetz to work over 40 hours per week and in the circumstances – the agreement regarding additional hours as recorded in the IEA – this was unjustified.

Was Mr Paetz required to drive for excessive hours?

[42] Mr Paetz says that as a driver, in both roles, he was required to comply with the Class 4 Truck driving regulations, which included adhering to the driving hour restrictions and keeping a logbook as a record of compliance. Mr Paetz says the volume of driving required on occasion meant he had to drive in excess of the time restrictions, and he felt obliged to do this and alter his logbook as a consequence.

[43] Solly's expressly and vehemently denied that there was any obligation or expectation on its drivers to exceed driving limits.

[44] Solly's points to the joint obligations set out in drivers' employment agreements (this includes the IEA) that drivers comply with driving limits imposed under the Transport Act 1962. Further the employment agreements record that work, particularly driving, was planned so that drivers could comply with the relevant restrictions and Solly's would meet the obligations in respect of breaks under the Act.

[45] Solly's says work was planned and assigned with this in mind and it was expected that drivers would manage their trips to meet the obligations.

[46] Having considered the evidence on the driving expectations imposed by Solly's and the driving Mr Paetz undertook, including the specific examples from Mr Paetz of driving

expectation on 30 October 2022 and 7 November 2022, I am satisfied that Solly's did not require Mr Paetz to drive more than the applicable driving regulations allowed, if this occurred then that was a product of Mr Paetz failing to manage his driving time.

[47] The action alleged in this instance did not occur.

Was Mr Paetz required to take on responsibilities outside of the position description in the IEA?

[48] Mr Paetz's complaint here is that in his role as Material Engineer and Driver he was required to do additional (and excessive) amounts of work on duties that were not part of his position description. This included, cleaning up spills and contamination such as aggregate and coal contamination, sweeping up cement dust, tidying up equipment left by other employees and clearing obstacles in his work area.

[49] Solly's says that many of the tasks identified by Mr Paetz were required as part of managing the cement plant and other tasks were ones that Mr Paetz took upon himself to do.

[50] Having considered the evidence in light of the position description for the Material Engineer and Driver in the IEA I am satisfied that Solly's did not require Mr Paetz to undertake additional work that was not part of his role. The position description includes various generic and wide-ranging tasks that align with the role, particularly managing the concrete plant and batching of concrete and there do not appear to be any tasks that Mr Paetz was expected to undertake that were outside of these parameters.

[51] The action alleged in this instance did not occur.

Did Solly's threaten Mr Paetz with personal liability for faulty concrete that he delivered?

[52] In September 2022 Solly's batched and delivered concrete for construction work being managed by Naylor Love. This concrete was batched by Mr Paetz, and it was defective – it appears that outdated batch cards had been used. This created a liability for Solly's.

[53] Solly's evidence on this point, which I accept, is that the liability arising for Solly's was raised with Mr Paetz but only in the context of understanding what had happened as a learning experience for Mr Paetz; Solly's did not threaten to hold Mr Paetz liable and it never took any other steps in this connection with the incident either in relation to performance or in terms of recouping the cost to it for remedial work.

[54] The action alleged in this instance did not occur.

Did Solly's fail to provide a safe work environment?

[55] Mr Paetz complains of many things in regard to Solly's health and safety. These complaints include insufficient training, exposure to dust and hazardous chemicals, insufficient PPE, structural faults in the concrete plant, lack of ventilation in the plant, excessive vibration at work, unsafe driving by others in the Solly's yard and hazardous obstacles on site.

[56] Solly's denies these allegations and says it takes health and safety very seriously, its commitment to this and the high standards achieved by it are evidenced by its policies and procedures, safety requirements on site and excellent results achieved in the SiteWise audit done every year, attaining gold standard compliance.

[57] On my assessment of the evidence, the issues with health and safety that concerned Mr Paetz were largely issues he perceived, subjectively. An objective assessment does not support Mr Paetz's assessment.

[58] First, whilst there was conflicting evidence about what training Mr Paetz received on concrete batching and when this occurred, I am satisfied that he was trained by Solly's. In particular I found the evidence of Franklin Aravena, a concrete consultant to Solly's, to be credible and instructive – based on Mr Aravena's evidence it is clear that Mr Paetz must have received training by Solly's and he was, as a result, competent at his role.

[59] Second, Solly's provided sufficient and compliant PPE to staff. Specifically for Mr Paetz additional steps were taken in connection with a dust and particle mask (because of fit issues arising with Mr Paetz's beard) and headphones.

[60] Third, there were no problematic issues with Solly's concrete plant. I make two observations here, the nature of concrete work is hazardous because of dust and noise and Solly's plant was old – however sufficient steps were in place to mitigate any issues, including provision of PPE, ventilation and ongoing maintenance.

[61] Fourth, on occasions issues arose because Mr Solly undertook work not expected of him – an example of this was a climbing concrete silo, which was not required and should not have been carried out by him.

[62] Fifth, to the extent Mr Paetz had specific complaints I am not satisfied there were risks as identified. Examples of this were based on unsafe driving in Solly's yard being unreasonable, which objectively were not borne out - Solly's business necessitates the use of trucks and heavy machinery and there is always going to be high volume in terms of such use in a yard, but there was no evidence this was unsafe or that there were insufficient safeguards in place to mitigate any risk arising.

[63] I am satisfied that Solly's did meet its health and safety requirements. The action alleged in this instance did not occur.

Did Solly's carry out a remuneration review for Mr Paetz?

[64] The IEA contained two obligations for Solly's to review Mr Paetz's remuneration. First after a three-month probationary period with a possible increase in wage rate specified if conditions had been met within the probationary period (also outlined in the IEA). And second on the anniversary of the IEA, i.e. annually from 5 September 2022 when the IEA was signed.

[65] Neither review took place, at least not formally.

[66] Solly's says the requirements of the probationary period had not been met and therefore the obligation to conduct the remuneration review after the three-month probationary period was not triggered.

[67] Solly's also says Mr Paetz asked for wage increases in the first year of his employment and it considered each request but did not feel Mr Paetz's performance warranted an increase in his wages and he was told this.

[68] I find that Solly's failed to carry out formal remuneration reviews as required under the IEA.

[69] The review at the end of the probationary period needed to be completed with Mr Paetz to review the probationary period and assess if he should receive the proposed increase in his wage. The obligation was not simply for Solly's to do an assessment without engaging Mr Paetz. Likewise, the annual review as set out in the IEA needed to be with Mr Paetz as it had to address not only remuneration but conditions of employment and performance – it cannot be the case that this would be a unilateral assessment that Mr Paetz would have no input into.

[70] My conclusion is that Solly's failed to review Mr Paetz's remuneration as required by the IEA and this was unjustified.

Do any of these actions give rise to a personal grievance?

[71] Based on my findings I have concluded that there were two areas of complaint raised by Mr Paetz where Solly's did act as alleged, and the actions were unjustified and it follows, were a breach of duty (particularly as the actions amounted to breaches of the IEA). Those actions were requiring Mr Paetz to work over 40 hours per week without his agreement and failing to conduct remuneration reviews in terms of what was required under the IEA.

[72] I must now consider whether either of these actions by Solly's, which are unjustified and a breach of a duty, give rise to an unjustifiable dismissal personal grievance and/or an unjustified disadvantage personal grievance.

[73] Turning first to unjustified dismissal, the case law for constructive dismissal requires there to be:⁴

- (a) A breach of duty by the employer - which is established, here.
- (b) A breach that is sufficiently serious such that it is foreseeable that an employee would resign in response to the breach.
- (c) The employee did resign in response to the breach.

[74] In this case, applying the criteria, neither of Solly's breaches are such to support a finding of constructive dismissal – I am not satisfied that in the circumstances it was foreseeable that Mr Paetz would resign in response to the breaches nor am I satisfied that he did resign because of the two breaches alone.

[75] Turning to the unjustifiable action causing disadvantage grievances, I find that Solly's actions did cause a disadvantage to Mr Paetz's employment.

Conclusion on personal grievances

[76] Mr Paetz has established personal grievances for unjustified action causing disadvantage in connection with Solly's requiring him to work more than 40 hours per week and Solly's failing to review his pay as required in the IEA.

⁴ *Auckland Shop Employees Union v. Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA); *Wellington etc Clerical Workers etc IUOW v Greenwich* [1983] ACJ 965; and *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA).

Remedies

[77] As Mr Paetz has been successful with two personal grievances, I must turn to consider what remedies he may be entitled to in terms of those provided for under s 123 of the Act.

Compensation

[78] Compensation is awarded pursuant to s 123(1)(c)(i) of the Act; it is for the humiliation, loss of dignity and injury to feelings that an applicant suffers as a result of the unjustified actions (including dismissal).

[79] When assessing compensation, I need to quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of Solly's unjustified actions.⁵ I must consider the effect of the unjustified actions on Mr Paetz and establish what that shows in terms of the harm caused to him and the loss he suffered as a result, which I must then quantify. This is done by assessing that harm and loss against others who have been treated unjustifiably and establishing where that sits compared to the range of compensation awarded.⁶

[80] In assessing the effects of Solly's actions I must look at the effect of those actions alone. It is clear from the evidence that Mr Paetz perceived many issues with his employment in connection with Solly's actions. It is also clear to me that he struggled with his role and this created anxiety and stress for him. I need to separate out the humiliation, loss of dignity and injury to feelings arising for Mr Paetz out of his perceived failings by Solly's and his own shortcomings in terms of his role.

[81] I note here that there was medical evidence relating to Mr Paetz's response to the culmination of events at Solly's. I have assessed this and am not satisfied that the medical

⁵ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

⁶ *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

evidence informs any of the humiliation, loss of dignity and injury to feelings arising out of Solly's unjustified actions – the causal link is not evident.

[82] Taking all of this into account I assess the harm caused to Mr Paetz and the loss suffered by him, due to Solly's unjustified actions, as being:

- (a) Humiliation at not receiving a remuneration review.
- (b) Loss of dignity through lack of control over the hours he had to work.
- (c) Injury to feelings through being upset and frustrated over not receiving the remuneration reviews, and through being stressed and anxious over the hours he had to work and feeling threatened by what he perceived as a risk to his job if he did not work the hours expected.

[83] This harm and loss is consistent with the lower-level harm and loss suffered by those who are subjected to unjustifiable actions by their employer. In the circumstances I quantify the compensation to be \$14,000.

Reimbursement

[84] Pursuant to sections 123 and 128 of the Act if an employee has a personal grievance and they have lost remuneration because of that grievance then they are entitled to their actual lost remuneration or three months ordinary time remuneration. The key issue at the outset being whether the employee has lost remuneration because of the grievance, and the further issues then arising relate to quantification of the loss.

[85] In this case Mr Paetz has not lost any remuneration because of his personal grievances as he continued to be employed and continued to be paid his wages.

[86] Mr Paetz is not entitled to any lost remuneration.

Contribution

[87] As I have awarded a remedy to Mr Paetz, I must now consider whether he contributed to the situation that gave rise to his grievances.⁷ This assessment requires me to determine if Mr Paetz behaved in a manner that was culpable or blameworthy, and this behaviour contributed to his grievances.⁸

[88] I find that Mr Paetz did not contribute to the unjustified actions of Solly's requiring him to work more than 40 hours per week and Solly's not reviewing his remuneration. There is no basis for Mr Paetz's compensation to be reduced.

Unlawful deduction of wages

[89] Solly's deducted \$2,207.70 from Mr Paetz's final pay for money it says was owed under a bonding agreement it had with Mr Paetz – it originally deducted more than this but subsequently realised it had miscalculated what was owed and paid the difference to Mr Paetz.

[90] The bonding agreement related to costs incurred for Mr Paetz's advanced driver training and heavy vehicle licences, including driver training costs. The agreement that Mr Paetz signed acknowledged that such costs would be repayable by him to Solly's if he left employment within two years of signing the agreement. The agreement also included a clause whereby Mr Paetz consented to the deduction of any money owed under the agreement from his final pay.

[91] Based on this bonding agreement, because Mr Paetz resigned within two years of it being signed, Solly's deducted the amount it calculated as the cost of the driver training and licencing for Mr Paetz, from Mr Paetz's final pay.

⁷ Employment Relations Act 2000, s 124.

⁸ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136.

[92] Despite this bonding agreement Mr Paetz says the deduction was unlawful because the bonding agreement was not valid, the amount deducted was not verified and he had not given specific consent to the deduction at the time it was taken.

[93] The starting point for assessing an unlawful deduction from wages is that an employer has no right to withhold payment or deduct any amount from any final pay due to the employee except for an authorised deduction from wages or holiday pay due pursuant to s 5 of the Wages Protection Act 1983.⁹

[94] So, I need to decide if the bonding agreement constituted authorisation for Solly's to deduct the payment as it did.

[95] I find that:

- (a) The bonding agreement was a valid agreement that Mr Paetz entered with Solly's.
- (b) The bonding agreement included a specific authorisation for money to be deducted from Mr Paetz's final pay if such money was due to be paid back under the terms of the agreement.
- (c) The terms of the bonding agreement were met in this case in that Mr Paetz had resigned within two years of the bonding agreement being signed and Solly's had paid driver training and licencing costs for Mr Paetz.
- (d) Solly's correctly calculated the amount owing under the bonding agreement relating to driver training and licencing for Mr Paetz – this is so notwithstanding that Solly's initial calculation was incorrect.

⁹ *Edwards (Labour Inspector) v Topo Gigio Restaurant Ltd* AEC 109/95; and *Drake Personnel (New Zealand) Ltd v Taylor* [1996] 2 NZLR 644 (CA).

[96] In all of the circumstances Solly's deduction from Mr Paetz's final pay of \$2,207.70 for driver training and licencing was lawful – noting that I do not find that specific, contemporaneous consent after consultation was required as might have been the case for a general deductions clause in an employment agreement or where there was no authorisation clause at all.

Summary

[97] Solly's acted unjustifiably toward Mr Paetz by requiring him to work more than 40 hours per week and by not reviewing his remuneration as required under the IEA; these actions cause a disadvantage to Mr Paetz's employment.

[98] Mr Paetz has established personal grievances of unjustified dismissal causing disadvantage for both sets of actions. In settlement of these grievances Solly's must pay Mr Paetz \$14,000 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

[99] Solly's lawfully deducted \$2,207.70 from Mr Paetz's final pay and Mr Paetz's claim for payment of this amount is unsuccessful.

Costs

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

[101] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Paetz may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Solly's will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[102] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹⁰

Peter van Keulen
Member of the Employment Relations Authority

¹⁰ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1