



to be brought out of time. That decision is currently on challenge before the Employment Court.

- [2] The substance of Mr Peacock's claims is that he was verbally abused and assaulted by his manager. He alleges other unjustified actions to his disadvantage, including a claim he was required to undertake unsafe work. The respondent (the Company) denies all of the allegations and says it investigated the original complaint and concluded Mr Peacock was as likely to have assaulted his manager as *vice versa*.

### **The Investigation**

- [3] Following my original determination, and per s. 114 of the Employment Relations Act 2000 (the Act), the parties undertook further (but unsuccessful) mediation.

- [4] During a telephone conference on 10 March the parties agreed to a one-day investigation in Whanganui in respect of Mr Peacock's substantive allegations.

### **Background**

- [5] The background to this problem is set out in determination WA 14/10.

### **Discussion and Findings**

- [6] Further evidence was provided by Mr Peacock and his witnesses at the investigation on 5 April. However, I am satisfied it amounted only to a reiteration of what had previously been provided the Authority, namely: that he was assaulted by a supervisor on 28 August 2008, that at a subsequent meeting on 5 September he was abused by the plant manager, Shaun O'Neill, issued with a written warning and taken off overtime; that at a meeting on 25 October he was again abused and threatened by Mr O'Neill; on 17 or 18 December, in plain view of other employees, he was again abused by Mr O'Neill for refusing to undertake unsafe saw work and, amongst other things,

was unjustifiably taken off that work (after it was made safe); and that there were further issues about unsafe saw work in July 2009.

- [7] Amongst other things, Mr Peacock says the Company's handling of these matters was unfair, that he was assaulted, victimised and abused, that he experienced stress and humiliation as a result of the respondent's unjustified actions and lost overtime earnings.
- [8] As set out in para 12 of WA 14/10, my preliminary view was that without additional evidence, Mr Peacock's claims were unlikely to succeed. That was because the Company investigated the original complaint of assault and abuse and found there were competing claims as to who was responsible for the contact (as some witnesses reported Mr Peacock backing into the supervisor, i.e. assaulting the supervisor) but that there was evidence to justify the warning given Mr Peacock (that he had knowingly breached a directive in respect of a specific work practice).
- [9] There was no evidence to dispute the Company's response that Mr Peacock was not denied overtime, or threatened with its loss. The respondent's position is strengthened by the production of its pay records which indicate no loss of overtime earnings by Mr Peacock related to the timing of his allegations, and that the variations recorded were because of usual, seasonal and operational variations.
- [10] There was also no fresh evidence to challenge the Company's claim that it looked into and satisfied itself the workplace was not unsafe, and that it was undertaking a trial of new equipment and Mr Peacock was not obliged to work in that environment if it created discomfort for him..
- [11] The evidence arising out of the Authority's most recent investigation confirmed that the parties had entered into frank exchanges of competing views. I therefore repeat here my comment set out in WA 14/10, that the manner in which Mr Peacock was spoken to, including the use of obscene language, was unnecessary, offensive and raises the risk – if repeated – of unjustified disadvantage. In mitigation, Company witnesses pointed out, and

Mr Peacock's union delegate witness confirmed, that the applicant had difficulty accepting directions. He would often challenge them if he disagreed with instructions and reserved to himself the right to determine what was safe or not despite others (including his union), and regardless of comparative expertise, disputing his assessment. Furthermore, in these exchanges, Mr Peacock often spoke loudly, talked over others and did not lend himself to a measured exchange. What can be said in his favour is that Mr Peacock does not use the obscene language to his managers that he has complained of being used at him.

[12] As a result of the above, I find that Mr Peacock's various claims of unjustified disadvantage do not succeed.

[13] I record here the significant contributory fault admitted by Mr Peacock in respect of the 28 August 2008 incident, of deliberately ignoring an instruction as to procedure that culminated in contact between himself and a supervisor who was, bodily, attempting to enforce that instruction.

[14] Finally, I record here my observation of Mr Peacock, that he is a proud, strong willed but hard working and capable individual. His interests would be best served by applying his abilities so as to work with his employer; the Company's interests would be advanced by doing what it can to similarly work with the applicant.

### **Determination**

[39] Mr Peacock's claims are dismissed.

[40] Costs are reserved.

**Denis Asher**

**Member of the Employment Relations Authority**