IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2016] NZERA Christchurch 69
5549261

	BETWEEN	MOHAMMAD MAHBUBUR RAHMAN Applicant
	A N D	INITIATIVE! UN LIMITED Respondent

Member of Authority:	Helen Doyle
Representatives:	Robert Thompson, Advocate for Applicant Peter Moore, Advocate for Respondent
Investigation Meeting:	3 March 2016 at Christchurch
Submissions Received:	5 April 2016 on behalf of Applicant 21 April 2016 on behalf of Respondent
Date of Determination:	25 May 2016

DETERMINATION OF THE AUTHORITY

A The 90 day trial period in Mohammad Rahman's employment agreement was not valid as it did not comply with the requirements of s 67A(2)(a) of the Employment Relations Act 2000.

B Mohammad Rahman was unjustifiably dismissed from his employment.

C Initiative! Un Limited is ordered to pay the following:

i. **the sum of $7436 gross being reimbursement of lost wages under s 123 (1) (b) of the Act;**

ii. the sum of $8000 without deduction being compensation for humiliation, loss of dignity and injury to feelings under s 123 (1) (c) (i) of the Act.

iii. the sum of $143 gross being payment for overtime worked.

D There is no award of a penalty.

E Costs are reserved and failing agreement a timetable has been set.

Employment relationship problem

[2] Mohammad Mahbubur Rahman says that he was unjustifiably dismissed from his employment with Initiative! Un Limited (Initiative). Initiative is an engineering and fabricating company having its registered office at Christchurch. Its sole director is Peter Lochead.

[3] Mr Rahman says that the trial period in his employment agreement which Initiative relied on to terminate his employment is not valid. He says that he had already been offered and had accepted employment before he received and signed his employment agreement. Further, or alternatively he says there was no specified period for the trial period as required under s 67A(2)(a) of the Employment Relations Act 2000 (the Act).

[4] Mr Rahman says that he was also unjustifiably disadvantaged in his employment. Mr Thompson clarified in an email sent on 2 March 2016, shortly before the investigation meeting, the actions Mr Rahman said disadvantaged him are:

(a) That he was treated unfairly during his employment;

(b) That he was not paid overtime in accordance with the provisions of his employment agreement;

(c) That from time to time wages were not paid on the agreed day;

(d) That there was no response to his text dated 23 September 2014 raising concerns about the manner in which the employment relationship was progressing and unfair treatment in the workplace; and

(e) That Initiative had engaged in unfair bargaining under s 68 of the Employment Relations Act 2000 (the Act).

[5] It was confirmed at the investigation meeting that the alleged action in (c) is not pursued by Mr Rahman.

[6] I record unfair bargaining is a separate cause of action in s 68 of the Act. The remedies if a claim is made out are set out in s 69 of the Act. Unfair bargaining was alleged in the statement of problem although as a disadvantage personal grievance.

[7] Mr Rahman seeks reimbursement of lost wages, compensation and a penalty for the failure to provide time and wage records.

[8] Initiative says that Mr Rahman's employment was terminated under a trial period in clause 3.2 of his employment agreement in accordance with s 67A of the Act. It says that s 67B of the Act therefore prevents Mr Rahman from bringing a personal grievance in respect of the dismissal. It does not accept that there was an offer and acceptance of employment before the agreement was signed. It does not agree that there was unfair bargaining.

[9] Initiative does not accept that Mr Rahman was unjustifiably disadvantaged during his employment. It says that it provided all the payslips to Mr Rahman's previous advocate upon request and no penalty should be awarded.

[10] Although there was no clear evidence about the exact date that Mr Rahman commenced his employment it is not disputed that his employment was terminated within 90 days of his start date. I find that the start date was in all likelihood on or shortly after 12 August 2014. I have arrived at that date taking into account the first pay slip dated 17 August 2014 and the evidence that Mr Rahman's work visa was extended from 12 August 2014.

The issues

[11] The Authority needs to determine the following issues:

(a) Whether at the time of signing the employment agreement Mr Rahman was already an employee of Initiative;

(b) If he was not then was there a valid trial period in Mr Rahman's employment agreement;

(c) If Mr Rahman was already an employee of Initiative when he signed his employment agreement or the trial period was not otherwise valid the Authority will not need to consider the claim of unfair bargaining;

(d) In those circumstances the Authority will need to consider whether the dismissal was justified;

(e) The Authority also needs to consider the matters which Mr Rahman has raised as unjustified actions causing disadvantage;

(f) If Mr Rahman was unjustifiably dismissed and/or unjustifiably disadvantaged in his employment then the Authority needs to consider remedies and will need to consider issues of contribution and mitigation;

(g) The Authority needs to consider whether there is a breach in respect of the provision of time and wage records for which a penalty should be awarded.

The trial period

[12] Clause 3.2 of Mr Rahman's individual employment agreement with Initiative provided:

> ***3.2 Trial Periods***
>
> *A trial period will apply for a period of **NOT EXCEEDING 90 CALENDAR DAYS** employment to assess and confirm suitability for the position. The parties may only agree to a trial period if the employee has not previously been employed by the employer.*
>
> *During the trial period the employer may terminate the employment relationship, and the employee may not pursue a personal grievance on the grounds of unjustified dismissal. The employee may pursue a personal grievance on grounds as specified in sections 103(1)b-g of the Employment Relations Act 2000 (such as: unjustified disadvantage; discrimination; sexual harassment; racial harassment; duress with respect to union membership; and the employer not complying with Part 6A of the Employment Relations Act 2000).*

> *Any notice, as specified in the employment agreement, must be given within the trial period, even if the actual dismissal does not become effective until after the trial period ends. This trial period does not limit the legal rights and obligations of the employer or the employee (including access to mediation services), except as specified in section 67A (5) of the Employment Relations Act 2000.*

[13] Clause 13 of the employment agreement deals with termination of employment and clause 13.1 provides for termination of the trial period:

> *The employer may terminate the trial period by providing 24 hours' notice to the employee within the trial period.*

The events leading to the signing of the employment agreement

[14] I will set out relevant events leading to the signing of the employment agreement in order to reach a conclusion about whether Mr Rahman was offered and accepted employment before signing the employment agreement. If I am required to consider the fairness of bargaining then this background will be relevant for determination of that matter.

[15] There was general agreement between Mr Rahman and Mr Lochead that there were three meetings before the employment agreement was signed.

[16] Before the first meeting Mr Lochead had been approached in early July 2014 by a friend of Mr Rahman's who was at that time an employee of Initiative, Rajab Sakar. Mr Lochead was advised by Mr Sakar that Mr Rahman needed a work visa and could be beneficial to Initiative. Mr Lochead felt under some pressure to meet with Mr Rahman because he understood there was only 8 days left on Mr Rahman's work visa. The evidence supported that the work visa was to expire on 14 August 2014 so there was about a month before the visa expired.

[17] Mrs Lochead advised in her evidence she was very strict about keeping home and business life separate, but Mr Lochead asked for an exception to be made to allow Mr Rahman to come to the home to speed things up with the visa, and she agreed.

First meeting in early July

[18] Mr Rahman came to the Lochead's home and there was a discussion about his work history, qualifications and what he thought he could do for the business.

Mr Rahman was asked to undertake a presentational plan for the Locheads about how he saw his employment being beneficial to the business. Mrs Lochead could not see at the first meeting what the benefit would be to the business as Mr Rahman was not a welder which is the main group of employees at Initiative. Mr Rahman's background was business and he advised the Locheads that he had an MBA and experience working at an international bank.

Second meeting in early July

[19] Within a few days after the first meeting Mr Rahman made a presentation about some marketing ideas, financial matters and how to get investors for the business, to Mr and Mrs Lochead. Mr and Mrs Lochead advised that on the strength of that presentation they were prepared to give Mr Rahman a chance and would help him by making him a job offer. Initiative had not previously employed a Marketing Coordinator and I accept was not in a good financial position at that time. The evidence supported some hope Mr Rahman may be able to have a positive impact on the financial position after his presentation.

[20] Mr Lochead said that the focus was on the adequacy of a job offer for immigration purposes because Mr Rahman was employed in a customer service representation role at a petrol station. Mr Rahman who could not recall any requirement on the part of immigration about the adequacy of a job offer.

[21] Mr Rahman says the exchange that took place during that second meeting after the presentation amounted to an offer of a job and acceptance. He said that he knew he was to be employed as a Marketing Coordinator and be paid $26 per hour. He said that he was advised he could start as soon as possible.

[22] It is common ground that the job description, job offer for immigration purposes, and employment agreement were not signed by Mr Rahman until 11 July during the third meeting. Mr and Mrs Lochead says that the employment agreement was provided to Mr Rahman at the end of the second meeting.

[23] Mr Rahman does not accept that he was given a draft employment agreement at the second meeting. He says that he simply contributed verbally to the content of the job description at some point before the third meeting on 11 July 2014 rather than going away to write one. Mr Lochead says that Mr Rahman wrote the job description

and I accept that the wording in that job description does seem to be the sort of language Mr Rahman may have used.

[24] The day before the Authority investigation meeting Mr Thompson provided an email from Mr Lochead to Mr Rahman dated 11 July 2014 at 4.47pm with an offer of employment for immigration purposes that had been written for another employee with an employment agreement attached which had room for a job description at the back but was left blank.

[25] Mr Lochead could not clearly recall what happened between the second and third meetings. He said he vaguely recalled being asked by Mr Rahman to provide the job offer and the employment agreement by email. He said that this was done so that Mr Rahman could draft a job description and letter of offer to be shown to immigration based on the other employee's letter. Mr Rahman's evidence was that he hardly looked at the documents sent by email before shortly thereafter signing his employment agreement.

[26] As a result of this confusing series of events I gave Mr Lochead an opportunity after the investigation meeting to ascertain whether he could derive from the properties of the various documents the time of their creation and any changes made. Mr Moore advised that although there were attempts to obtain that information they were ultimately unsuccessful.

Third meeting 11 July 2014

[27] It was common ground that the employment agreement, letter of offer, job description and job offer letter for immigration purposes were signed by both parties on this date.

[28] There is a dispute about who provided the final copies of the employment agreement, letter of offer and job description for signing. Mr Lochead said that Mr Rahman came with the documents; he then confirmed they were acceptable and they were then signed during a short meeting. Mr Rahman said that Mr Lochead had them printed out for his signature when he arrived at Mr and Mrs Lochead's home.

Offer and acceptance before employment agreement signed?

[29] There is a signed letter dated 11 July 2014 from Mr Lochead offering Mr Rahman employment for the position of Marketing Coordinator. It provides amongst other matters that *Your employment will be confirmed upon signing this employment agreement* and that the offer is valid until Mr Rahman's application for a work visa has been finalised.

[30] Another letter also dated 11 July 2014 from Mr Lochead clearly contains details of an offer of employment for immigration purposes and stated additionally that the employment was conditional on obtaining a work visa.

[31] I am not satisfied that there was offer and acceptance of employment before the employment agreement was signed. I find that it was clear that acceptance required the signing of an employment agreement and in all likelihood the obtaining of a work visa. Mr Rahman did not start employment for about a month after he signed his employment agreement.

[32] Mr Rahman was not an employee of Initiative before he signed the employment agreement on 11 July 2014.

Is there a valid trial period?

[33] Mr Thompson submits that the trial period in Mr Rahman's employment agreement is not valid because it does not specify, as required in s 67A(2)(a) of the Act, a specified period (not exceeding 90 days) starting at the beginning of the employee's employment.

[34] Clause 3.2 of Mr Rahmans employment agreement provides *A trial period will apply for a period of* ***NOT EXCEEDING 90 CALENDER DAYS***.

[35] Section 67A provides that

> ***67A When employment agreement may contain provision for trial period for 90 days or less***
>
> *(1) An employment agreement containing a trial provision, as defined in subsection (2), may be entered into by an employee, as defined in subsection (3), and an employer.*
>
> *(2)* ***Trial provision*** *means a written provision in an employment agreement that states, or is to the effect, that—*

> *(a) for a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period; and*
>
> *(b) during that period the employer may dismiss the employee; and*
>
> *(c) if the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.*
>
> *(3) Employee means an employee who has not been previously employed by the employer.*
>
> *(4) [Repealed].*
>
> *(5) To avoid doubt, a trial provision may be included in an employment agreement under section 61(1)(a), but subject to section 61 (1)(b).*

[36] The requirement in s 67A (2) (a) that the trial provision states, or is to the effect that the employee is to serve a trial period for a specified period (not exceeding 90 days) starting at the beginning of the employee's employment has been the subject of another determination: *Lumb-Vaipapa v. B & Y Trust Co 2015 Ltd*[1].

[37] In that case the trial period clause provided that *a trial period will apply for a period of up to 90 calendar days employment*. Member Appleton considered the adequacy of that in light of the Employment Court judgment in *Smith v. Stokes Valley Pharmacy (2009) Ltd*[2], and the statement as follows:[3]

> *Sections 67A and 67B remove longstanding employee protection and access to dispute resolution and to justice. As such, they should be interpreted strictly and not liberally because they are an exception to the general employee protective scheme of the Act as it otherwise deals with issues of disadvantage in, and dismissal from, employment. Legislation that removes previously available access to courts and tribunals should be strictly interpreted and its having that consequence only to the extent that this is clearly articulated.*

[38] Member Appleton concluded the provision in Ms Lumb-Vaipapa's employment agreement assessed against the requirements in *Smith* of strict interpretation and application of ss 67A and 67B did not satisfy s 67A(2)(a) of the Act because the statutory provision makes clear the period of the trial period must be specified. Member Appleton concluded that the actual number of days of the trial

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1 [2015] NZERA Christchurch 187, Member Appleton
2 [2010] NZEmpC 111
3 *Smith* n 2 above at [48]

period must be named expressly to satisfy the requirements of s 67A(2)(a) of the Act[4] and found that as the clause did not comply with the requirements of s 67A(2)(a) of the Act with the effect that Ms Lumb-Vaipapa's dismissal was not protected under s 67B of the Act.

[39] The wording in Mr Rahman's employment agreement about the period of the trial period, whilst not identical to that in Ms Lumb-Vaipapa's employment agreement, does not provide the actual number of the days of the trial period. The same reasoning in *Lumb-Vaipapa* applies that the period of the trial period was not specified.

[40] Mr Moore in his submissions urges me not to follow *Lumb-Vaipapa* and submits that the words *not exceeding 90 calendar days* suffice for the purposes of s 67A(2)(a) of the Act. I accept that I am not bound to follow a determination of the Authority. A trial provision is required to state, or should be to the effect that it is for a specified period not exceeding 90 days starting from the beginning of the employees employment under s 67A(2)(a) of the Act. Mr Rahman's trial period was to apply for a period *of not exceeding 90 calendar days*. Consistent with *Lumb-Vaipapa* there is no specified period provided and all Mr Rahman knew was that a trial period will not exceed 90 days.

[41] One of the grounds Mr Moore advances as to why the Authority should not follow *Lumb-Vaipapa* is that the wording about the period of the trial came from the Ministry of Business, Innovation and Employment (MBIE) online employment agreement builder tool. I have, in light of Mr Moore's submission, considered what it provides currently for the specified period of a trial period. I am not in a position to know whether that has changed. Currently the tool provides the following; *The first* ***type a number, eg 90*** *days of employment will be a trial period, starting from the first day of work* which is consistent with *Lumb-Vaipapa* and the need for the actual number of days to be specified.

[42] I do not find there is good reason not to follow *Lumb-Vaipapa* in this case where the actual number of days of the trial period was not provided expressly. The findings in *Lumb-Vaipapa* are reasoned and accord with the statement in *Smith* about the strict rather than liberal interpretation of ss 67A and 67B. The actual number of

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[4] Lumb-Vaipapa n1 at [32]

days of the trial period is not specified in Mr Rahman's employment agreement as required by s 67A (2)(a) of the Act, simply the maximum length of the trial period.

[43] I find that the trial period in clause 3.2 of Mr Rahman's employment agreement does not comply with the requirements of s 67A(2)(a) of the Act. In relying on that to dismiss Mr Rahman, Initiative does not have protection under s 67B of the Act and Mr Rahman can bring a personal grievance for unjustified dismissal.

Unfair bargaining

[44] Given my finding above, I do not find that I need to separately consider the allegations of unfair bargaining and I do not need to reach conclusions on when the employment agreement was provided to Mr Rahman.

The test of justification in s 103A of the Act

[45] Having found that Initiative is not able to rely on the protections afforded by ss 67A and 67B of the Act the justification of the dismissal then has to be considered under the test in s 103A of the Act. That requires the Authority to determine on an objective basis whether Initiative's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time of dismissal.

[46] The Authority must also have regard to the four procedural factors set out in s 103A (3) (a) to (d) and any other factors it thinks appropriate. It must not determine a dismissal unjustifiable because of defects in the process if they were minor and did not result in Mr Rahman being treated unfairly. Regard must also be had to good faith obligations in considering the fairness and reasonableness of the process.

[47] In this case the dismissal was for unsatisfactory work performance. A fair and reasonable employer could be expected in those circumstances to have raised specific reasons for dissatisfaction and identify specific and measurable improvement with an employee. A reasonable period of time should be given for the employee to demonstrate such improvement and at the end of that time consideration should be given as to whether enough progress has been made to avert dismissal including some consideration about redeployment if that is possible.

Was the dismissal justified?

[48] Mr Lochead became dissatisfied with Mr Rahman's performance. He said that he had to ask Mr Rahman repeatedly to provide documents to the accountant and that he was advised by the accountant they were not received. He said that Mr Rahman's presentation to bank managers at an event he attended was a shambles and *it sunk the relationship with the bank*. In a letter he gave to Mr Rahman on 7 October 2014 he referred to Mr Rahman's lack of familiarity within the industry not enabling him to work to the company's expectations and gave two examples of that. The letter provided that due to those matters and a lack of skills required by Initiative he would be given 24 hours' notice of termination.

[49] I find that Mr Lochead concluded that Mr Rahman was not performing to his satisfaction or expectation. Mr Rahman was employed in a new role within the company but Mr Lochead was able to identify some failings which he felt were irreconcilable with the skills Mr Rahman had identified he had when he was employed.

[50] Mr Lochead did not put the concerns to Mr Rahman before he was dismissed and Mr Rahman was not given a reasonable time for improvement and, if improvement was not forthcoming, then an opportunity to be heard on whether he should be dismissed.

[51] Mr Rahman was unaware that there were concerns about his performance that were so serious termination was being considered until Mr Lochead gave him the letter terminating his employment on 7 October 2014. I do not conclude that Initiative was able to justifiably dismiss Mr Rahman for poor performance. The procedural defects in the process used to dismiss Mr Rahman were not minor and resulted in him being treated unfairly.

[52] Mr Rahman was unjustifiably dismissed. I shall consider the allegations of unjustified action causing disadvantage before turning to remedies.

Unjustified actions causing disadvantage

Overtime and unpaid hours claimed

[53] Mr Rahman worked for about nine weeks for Initiative before his employment was terminated on 6 October 2014 with 24 hours' notice.[5] Nine payslips were generated over that period. His payslips reflect that for the week ending 7 and 14 September he worked 45 and 46 hours respectively. His employment agreement provided in clause 7.3 that where the employee works requested overtime, the employee shall be entitled to payment for each hour of overtime at 1.5.

[54] Mr Thompson also asked the Authority to consider whether Mr Rahman had been underpaid. It makes sense to consider both of these matters together.

[55] Pay slips were the only records provided to the Authority. The evidence supported that office based employees recorded hours worked in a diary. The Authority heard evidence from Jacob Kumar who was employed as General Manager of Initiative from 8 September 2014. He said that there was no requirement for Mr Rahman to work over 40 hours per week and Mr Lochead was concerned that hours were being worked over 30 per week because he said that was all the company could afford to pay him for and that was discussed at the time of appointment. I note that was recorded as a minimum in the hours of work clause in the employment agreement with an expectation of work of 32 hours per week.

[56] The pay slips inform the Authority of the hours Mr Rahman was paid for each week over the nine week period and the hours vary each week. If Mr Rahman claimed that he worked more hours each week then he was paid for then I would have expected to see more consistency with the hours worked each week. It would in my view have been less likely that Mr Rahman would have been paid two weeks for hours worked over 40.

[57] Mr Rahman did not raise a concern about being underpaid whilst he was employed except in respect of his final pay and that concern was addressed. Under s 130 of the Act the wage and time record should provide the number of hours worked

[5] There was a dispute as to the exact time Mr Lochead gave Mr Rahman the letter of termination but given my findings about the validity of the trial period resolution of that matter is not material.

each day together with the pay for those hours where there is a degree of variation of the number of hours worked each day in the pay period.

[58] Mr Thompson has placed some weight on the evidence of Mr Kumar about hours worked but Mr Kumar started his employment with Initiative on 8 September 2014 only about four weeks before Mr Rahman's employment agreement terminated. I could not be satisfied that Mr Kumar kept any sort of formal record about when Mr Rahman was working and at the most his evidence supports an instruction to get work undertaken within 40 hours. I accept that upon his appointment Mr Kumar became Mr Rahman's line manager. Mr Moore asked Mr Kumar whether he had a reason to believe that he did not work the hours he was claiming. Mr Kumar responded that Mr Rahman did not produce anything.

[59] The Authority is tasked with resolving employment relationship problems and I intend to deal with the matter in this way. There is no clear evidence that Mr Rahman was asked to work overtime on the two days however there is an issue that the wage and time record was inadequate and I was not provided with the diary. There is no particularly clear evidence from Mr Rahman what hours he worked and why.

[60] I find that Mr Rahman should be reimbursed for 11 hours he was paid for over and above 40 hours per week at time and a half. That is $26 x 1.5 which equals $39 per hour for the 11 hours worked. The difference is $13 x 11 = $143 gross. There is no further reimbursement ordered.

[61] I order Initiative! Un Limited to pay to Mohammad Rahman the sum of $143 gross being additional payment for working overtime.

Balance of unjustified actions alleged

[62] I find that the balance of the unjustified actions can be considered as part of the unjustified dismissal. Mr Kumar started to question and challenge Mr Rahman about his qualifications after he commenced as General Manager because he considered Mr Rahman did not know his job. Mr Rahman sent a text message to Mr Lochead about this and a concern that he was trying to prove that Mr Rahman was not *valuable for the job.* In the text Mr Rahman says that he had no complaint from Mr Lochead about his work. I could not be satisfied that Mr Lochead dealt directly with Mr Rahman about the text even though he had lunch with him shortly after it was

sent. Mr Lochead said that he told Mr Kumar to *back off*. It does seem clear from that time that Mr Kumar was having concerns about Mr Rahman's ability to undertake the role and had some doubts about Mr Rahman's previous experience. Those matters I imagine were advised to Mr Lochead who had some concerns of his own.

[63] The failure to deal properly with the text and advise Mr Rahman that in fact Initiative was concerned about his performance is part of the unjustified dismissal claim.

[64] I did not find any other matters that were said to be unfair were separate and unrelated to the findings of unjustified dismissal. Mr Rahman for example says that he should have been given training. Mr Rahman told Initiative he had an MBA and had worked in an international bank and I agree with Mr Lochead that it is less likely there was any discussion about training or indeed expectation that it would be required. It did seem from the evidence that Mr Rahman was trained in the Xero accounting package and may have undertaken some training with IRD.

[65] I now turn to the issue of remedies.

Remedies

Lost wages

[66] Mr Rahman claims three months lost wages but says that he was out of work for six months until 7 April 2015. Mr Rahman said that he tried hard to obtain another job and applied for jobs that suited his skills and some jobs that did not. There was no documentary evidence provided about attempts to mitigate loss and Mr Rahman said that his previous employer in Bangladesh confirmed he was able to have his job back but he could not recall an exact date that was offered although said it was toward the end of October /November 2014. Mr Rahman wanted to continue to live in New Zealand.

[67] Initiative was at the time of Mr Rahman's appointment experiencing some financial difficulties. Mr Rahman had not had previous experience in an engineering firm. His experience was in a banking setting. I find if Initiative had undertaken a fair process any reasonable opportunity to improve would have to recognise some of the financial constraints that the company faced in terms of its duration. It is telling in my view that Mr Kumar, who was employed only a short time before Mr Rahman's

employment was terminated, started to have considerable doubt about Mr Rahman's ability to undertake the role. There is some doubt even if there had been an appropriate opportunity for improvement that Mr Rahman would have achieved the standard required within that time.

[68] I accept that Mr Rahman wanted to stay in New Zealand and there should be a period within which he is able to attempt to find a job in New Zealand. He was offered his previous job in October or November 2014 in Bangladesh and I find it fair to limit reimbursement to eight weeks' wages subject to contribution. I agree with Mr Thompson's assessment of average wages per week based on eight full weeks as $929.50 gross per week.

Compensation

[69] I accept that the dismissal was a great shock to Mr Rahman because there was no warning that Mr Lochead was unhappy with his employment. He was not able to prepare himself for a loss of his wages with one day's notice and I accept that he felt anxious and upset. Mr Thompson submits that Mr Rahman suffered more than *meagre injury to feelings* and had to tell family in Bangladesh who he supported that he could no longer do so. Compensation is sought in the sum of $14,000.

[70] This may not have been a lengthy relationship even with a fair process but I have to recognise and weigh with that the shock that the sudden dismissal had on Mr Rahman. Weighing both those matters and subject to contribution a suitable award for compensation is the sum of $8000.

Contribution

[71] Initiative did have concerns about Mr Rahman's ability to perform the role. As he was unaware of those concerns I do not find that he contributed to the situation that gave rise to his grievance because he was unable to make attempts to remedy the concerns. There was some doubt on the part of Mr Kumar about Mr Rahman's qualifications but there was insufficient evidence in front of me to reach a clear view on that. Mr Lochead said that he had seen a copy of the MBA at the time Mr Rahman was interviewed but had given the documentation back to Mr Rahman. I cannot conclude that Mr Rahman contributed to the personal grievance in a blameworthy way so that remedies should be reduced.

Penalty

[72] There was a view on the part of Initiative that the provision of pay slips fulfilled its obligations under s 130 of the Act. It was not adequate in this case because Mr Rahman's hours varied but the omission I find was inadvertent and not deliberate and I do not find a penalty should be awarded.

[73] I am not satisfied that the grounds are made out to award a penalty for a breach of s 130 of the Act.

Costs

[74] I reserve the issue of costs. Mr Thompson has until 10 June to lodge and serve submissions as to costs and Mr Moore has until 24 June 2016 to lodge and serve submissions in reply.

Summary of orders made:

(a) I order Initiative! Un Limited to pay to Mohammad Rahman the sum of $7436 being reimbursement of lost wages under s 123 (1) (b) of the Act.

(b) I order Initiative! Un Limited to pay to Mohammad Rahman the sum of $8000 being compensation for humiliation, loss of dignity and injury to feelings under s 123 (1)(c)(i) of the Act.

(c) I order Initiative! Un Limited to pay to Mohammad Rahman the sum of $143 gross being money owed for overtime.

(d) There is no award of a penalty.

(e) Costs are reserved and failing agreement a timetable set.

Helen Doyle
Member of the Employment Relations Authority