

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 761
3318400

BETWEEN

PHILIP STEWART
Applicant

AND

ROONEY FARMS LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Paul Mathews, advocate for the Applicant
Rachel Webster, counsel for the Respondent

Investigation Meeting: 17 October 2025 in Timaru

Submissions Received: 29 October 2025 from the Applicant
31 October 2025 from the Respondent

Date of Determination: 25 November 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Philip Stewart was employed as a Senior Shepherd by Rooney Farms Limited (RFL) on a South Canterbury Farm from June 2023 until the employment ended in disputed circumstances, when Mr Stewart resigned on 5 June 2024 and was paid up to 19 June.

[2] Mr Stewart has claimed he was unjustifiably disadvantaged by an imposed suspension and then says he had to resign in circumstances he claims amount to a constructive dismissal. Mr Stewart's advocate in submissions, has placed reliance upon the first and third limbs of categories of potential constructive dismissal identified by the Court of Appeal in

Auckland Shop Employees Union v Woolworths (NZ) Ltd (an employer-initiated ultimatum to resign or be dismissed and/or a breach of duty by the employer leads an employee to resign).¹

[3] Mr Stewart also asserted that in suspending him without due process or cause, he was the subject of an employer action or omission that caused him to be disadvantaged during the period of employment.

[4] RFL says Mr Stewart was legitimately suspended and not constructively dismissed by any actions of RFL - they maintain Mr Stewart voluntarily resigned to avoid performance scrutiny.

The Authority's investigation

[5] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders, but I do not record all evidence. I, likewise, have considered the submissions received and refer to them where appropriate and relevant.

[6] Philip Stewart and his partner gave evidence at the investigation meeting and for RFL I heard from the company's sole director, Gary Rooney and two former employees who I will refer to by their respective designations in this determination (The Business Manager and Farm Manager).

Issues

[7] The Authority must determine the following issues to resolve the employment relationship problem:

- (a) Did RFL engage in any actions or omissions that breached obligations owed to Mr Stewart?
- (b) Was Mr Stewart dismissed and if so, was the dismissal justified?
- (c) If any of Mr Stewart's claims are established what remedies should follow?

¹ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372, (1985) ERNZ Sel Cas 136 (CA).

(d) If Mr Stewart is successful in all or any element of his claims should the Authority reduce any remedies granted because of contributory conduct?

(e) How costs are to be dealt with.

The dismissal

[8] Mr Stewart says after Gary Rooney urged him to find another job or face a disciplinary process and then suspended him, he was forced to resign on 5 June 2024. In contrast, Mr Rooney says he merely urged Mr Stewart in a conversation of 27 May 2024, to improve his performance and then identified some performance issues that required Mr Stewart be suspended pending an investigation.

[9] To determine the predominant constructive dismissal claim, established case law² suggests the Authority must address:

- (a) Could the conversation of 27 May be construed as an indication RFL was contemplating Mr Stewart's dismissal and/or were there any breaches of duties owed by RFL?
- (b) Was any breach of duty sufficiently serious that it was reasonably foreseeable that Mr Stewart might resign in response; and
- (c) Did Mr Stewart resign in response to any breach of duty?

Justification

[10] If I conclude RFL constructively dismissed Mr Stewart, I then must consider whether the dismissal was justified. An initial finding that this was a constructive dismissal would shift the onus to RFL to demonstrate their actions or omissions were justified and undertaken in accord with s 103A of the Act (Justification test) and consistent with s 4 of the Act, good faith obligations.

Background events pertaining to the alleged breaches of duty

[11] Mr Stewart on 23 January 2023, commenced as a senior shepherd working across several RFL farms in South Canterbury. Mr Stewart says he has around 20 year's farming

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; *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA).

experience in similar roles and relocated from the North Island. The position was salaried and the subject of an individual employment agreement. The position came with provided farm accommodation. The employment agreement's hours of work clause was:

The employee will be required to work such hours as may be reasonably required by the Employer in order for the Employee to properly perform their duties. The Employee will be required to work a minimum of 45 hours per week.

The parties agree that the Employee's salary fully compensates them for all hours worked.

[12] The remuneration clause reiterated that the parties agree that the annual salary (\$66,000 pa) "includes compensation for the Employee making themselves available to properly perform their duties under this agreement". No working days or start/finish times were specified in the employment agreement. Mr Stewart says he worked from 7:30 am to 5pm Monday to Friday and every other weekend but he had an agreement that he would start every second Monday at 9 am, to allow him time to drop off his children at school.

[13] Mr Stewart reported to a farm manager, who was overseen by RFL's business manager. Latterly, Mr Stewart worked on one large 2,000-hectare South Canterbury farm (Taiko) with a high stocking rate, and he split responsibilities with a stock manager (who later became the other Senior Shepherd). Mr Stewart took charge of sheep and the stock manager the deer and, they both ran cattle.

[14] While Mr Stewart described initial satisfaction with his work, he acknowledged that he became a spokesperson for raising issues with farm management and that he had a strong personality and was someone not afraid to speak up about farm issues. Areas of concern he says he highlighted included a long-standing lack of phone service on the farm and the danger of staff being sometimes out of contact in steep and dangerous terrain (an issue that was eventually resolved with the introduction of radios).

[15] A particular issue of concern emerging in early 2024, was a management direction communicated at a 25 March meeting to significantly increase the sheep mob to what Mr Stewart, and he says others, considered unsustainable levels and to introduce cattle to run with sheep. A further issue Mr Stewart had communicated dissatisfaction to the farm manager was what he saw as the poor condition of sheep and lambs being transported to his

farm from other RFL farms. These issues contributed to an, at times, tense relationship between Mr Stewart and the farm manager and the business manager.

Monday 27 May meeting

[16] Gary Rooney, RFL's sole director and majority shareholder, says he visits RFL farms on an ad-hoc basis for recreational and operational reasons and on Sunday 26 May after a morning duck shooting outing, he resolved to drive around the Taiko farm. Mr Rooney says he was very concerned with what he observed, suggesting he thought: "The farm was in a shambles". Mr Rooney says he observed some gates were left open and he became concerned of the possibility that stock may wander onto roads or to areas where they inappropriately mixed. Mr Rooney says what he saw raised red flags about the farm's operation.

[17] Mr Rooney then called the business manager and advised he would attend Taiko farm's morning planning meeting the next day at 7:30 am. Mr Rooney says he asked the business manager not to give prior notice of his attendance and asked the business manager to also attend. Neither party briefed the farm manager of Mr Rooney's intended visit.

[18] Mr Rooney says he arrived at 7:30 am and noticed others assembling including the farm manager and business manager over the next twenty or so minutes but no Mr Stewart. Mr Rooney says he inquired why Mr Stewart had not arrived, and the farm manager disclosed the arrangement that every second Monday he came in late after dropping his children off at school. Mr Rooney resolved to wait for Mr Stewart before starting the meeting. Mr Stewart arrived at 8:50 am as one of the other workers had alerted him to Mr Rooney's presence.

[19] Mr Rooney then says he addressed the meeting with his concerns and set out his expectations. He says he concluded the meeting with an exhortation that those present should devise a plan to address his concerns and be prepared to meet with him the following day to outline solutions they had come up with. Mr Stewart says Mr Rooney raised several operational matters during the meeting and expressed his frustration at what he had observed. Mr Stewart says he challenged Mr Rooney during the meeting specifically suggesting that a decision to place sheep in a paddock that contained a tree plantation had been agreed by the farm and business managers' and there was an issue of feed shortage. Mr Stewart and other

witnesses also recalled that on being pushed by Mr Rooney to accept ultimate responsibility for gates being left open, he (Mr Stewart) disagreed with this assertion.

[20] Mr Stewart conceded Mr Rooney had raised legitimate issues during the meeting and he recalled at one point during the meeting, Mr Rooney asked everyone if the farm was a shambles - and the response was we all said “yes”.

[21] Mr Rooney denied getting angry at the meeting and giving the participants a ‘rark up’ (a term relayed to a third party by a meeting participant). The farm manager however, described Mr Rooney as being upset during the meeting and later calming down.

[22] At the end of the staff meeting, Mr Rooney asked Mr Stewart to meet him in the woolshed. The evidence given suggested that Mr Rooney had already resolved to single out Mr Stewart believing he was the instigator of deteriorating relationships and that he had been briefed generally by the business manager on several occasions of Mr Stewart’s undermining behaviour of the Farm Manager. In addition, I objectively consider that Mr Stewart challenging Mr Rooney during the earlier meeting, may likely have been a contributing factor to what next occurred.

[23] Mr Rooney’s written evidence was when the staff meeting ended, he asked Mr Stewart to stay behind as he “knew he was the ‘disruptor’”. In oral evidence Mr Rooney twice confirmed his prior view of Mr Stewart as the sole disrupter or ‘instigator’, informed his approach to the meeting with him alone.

[24] Mr Stewart’s written evidence says at the meeting alone with Mr Rooney, without preamble, Mr Rooney told him he needed to find another job as soon as possible and if he didn’t do so, he was going to start a disciplinary process. Mr Stewart says he inquired why he held this view and Mr Rooney replied, “you know why”. When further pressed was it to do with leaving gates open, Mr Stewart says Mr Rooney emphasised his seniority made him responsible (it transpired Mr Stewart was not rostered on to work that weekend). Mr Stewart says he then asked do you want me to drive around behind people to make sure they close gates and Mr Rooney replied in the affirmative. Mr Stewart says they both got wound up and Mr Rooney also accused him of causing the Farm Manager’s recent resignation, to which Mr

Stewart concedes he made a derogatory comment about the farm manager's capabilities and infrequent presence at the Taiko farm.

[25] Mr Stewart says he was also asked about being late for the earlier meeting, and when he explained the arrangement, he had to pick up his children was approved and a long-standing practice, Mr Rooney responded by saying he did not give a fuck about his family situation. Mr Stewart says at this point in the meeting he got up and walked out.

[26] Immediately after leaving the meeting, Mr Stewart says he explained to others waiting, that Mr Rooney had asked him to resign, and he was now going to look for another job. Interview notes made during a subsequent RFL initiated investigation on 13 June, disclose Mr Stewart told his senior co-worker Mr Rooney had told him to find another job as soon as possible or a disciplinary process would commence. The farm manager says afterwards Mr Stewart said he was going home to look for another job and he resolved to leave him be, to calm down. The farm manager later acknowledged Mr Stewart did return to work to complete some jobs on 27 May.

[27] The business manager's written evidence confirmed Mr Stewart advised two co-workers Mr Rooney had told him to resign and then related, Mr Stewart angrily said he was not putting up with this shit. In oral evidence, the business manager recalled Mr Stewart saying Mr Rooney had told him to find another job. The business manager says they subsequently relayed to Mr Rooney what Mr Stewart had said after their woolshed meeting to others but could not recall his response.

[28] In contrast, Mr Rooney says in his written evidence he specifically said to Mr Stewart he was not sacking him (Mr Stewart says he did not say this) but he was to "shape up or ship out and find another job". Mr Rooney says nothing else was said as this was a short and sharp conversation. In oral evidence, Mr Rooney says all he said was "step up or I will sack you".

[29] In an email to the business manager of mid-afternoon 28 May, Mr Stewart recounted his above detailed recollection of the exchange with Mr Rooney in the woolshed that day before. In a further letter to RFL's inhouse counsel, Lisa Smith, of 10 June, Mr Stewart

reiterated that Mr Rooney had demanded his resignation, or he would start a disciplinary process during the woolshed meeting of 27 May.

[30] From documentation supplied to the Authority, RFL did not respond to Mr Stewart's recollection of what he recalled Mr Rooney saying on 27 May 2024 in the woolshed, until they filed an amended statement in reply of 25 July 2025. However, the Authority was provided with a meeting record of 13 June between Lisa Smith and Gary Rooney that is consistent with the above explanations given to the Authority where Mr Rooney denies saying he threatened to sack Mr Stewart if he did not shape up and says: "I was only giving him an opportunity to prove himself and his capability or move on if he didn't want to step up".

Assessment

[31] In coming to a critical factual finding of what was said during the woolshed meeting of 27 May, I find it is more likely than not, that Mr Rooney said he was planning to embark upon a disciplinary process if Mr Stewart did not seek alternative employment. I cautiously come to this finding as being consistent with what Mr Stewart relayed to co-workers immediately after the woolshed meeting and the at the time, unchallenged account of the meeting Mr Stewart forwarded to the business manager the next day. Consistent with his version of what Mr Rooney said, Mr Stewart also started to look for alternative employment soon after the meeting and says he was visibly distraught after the exchange (a premise his partner corroborated).

[32] I also found Mr Stewart to be a consistent and credible witness. This finding is also significantly reinforced with what happened next (discussed below), which was that Mr Rooney for RFL, embarked upon a disciplinary process for reasons formulated prior to the 27 May meeting. This action is inconsistent with Mr Rooney's subsequent explanation that he was only trying to warn Mr Stewart in a short and sharp manner, that his perceived underperformance had to improve. I also note that amongst several concerns raised by Mr Rooney, it was inexplicable why he only targeted Mr Stewart, unless an ulterior motive was involved.

[33] As an alternative, had I not found that Mr Stewart's recollection of the conversation to be more plausible it would remain on Mr Rooney's admission, that he told him to 'shape up

or ship out' or his later recall during the investigation meeting, that he said, 'shape up or I will sack you'. This at least, suggests Mr Rooney had formed a firm and pre-determined view of Mr Stewart before any investigation had been embarked upon to identify what was causing the farm issues. The later, limited investigation RFL undertook and disclosed to the Authority, demonstrated that a multiplicity of systemic issues spread across several staff was at issue. I also observe, Mr Rooney objectively on either version engaged in the use of threatening language.

Tuesday 28 May

[34] The next day at 7:30 am, Mr Rooney the business manager and the farm manager attended a follow up meeting with the Taiko farm team. Mr Stewart had communicated he was taking sick leave that day just prior to the meeting starting. This was acknowledged during the investigation meeting as being a rare event for Mr Stewart who had an impressive attendance record. During the meeting to discuss how operational concerns were being addressed, Mr Rooney expressed concern about Mr Stewart's absence and the farm manager's interview note taken during RFL's investigation, observe Mr Rooney "asked the question to staff if Phil was wanted to continue working on the farm". Mr Rooney when asked about this comment during the investigation meeting, says he could not recall asking the attendees of the Tuesday meeting if they wanted to continue working with Mr Stewart. The farm manager during the investigation meeting however, did recall Mr Rooney asking the meeting attendees if they still wished to work with Mr Stewart.

[35] I find it is more likely than not that Mr Rooney did ask the 28 May meeting attendees if they wished to continue working with Mr Stewart as it was also clear from subsequent events that Mr Rooney was annoyed about Mr Stewart's absence that day.

[36] Immediately after the meeting above, Mr Rooney accompanied by the business manager, visited Mr Stewart's home. Mr Rooney and the business manager gave slightly different accounts of the purpose of this visit. Their written evidence was Mr Rooney says he merely wanted to update Mr Stewart on the meeting they had just had and, explain his part in improving the farm operations and because he had called in sick, they expected him to be at home.

[37] The business manager says they went to “check on” Mr Stewart after the previous day and see if he was up to participating in the changes they had discussed earlier in the day. However, when questioned on the purpose of the visit during the investigation meeting Mr Rooney claimed it was apparent Mr Stewart had abandoned his job, and the business manager recalled the purpose was to advise Mr Stewart he was going to be suspended.

[38] The business manager than says Mr Rooney left and instructed them to find Mr Stewart and place him on ‘garden leave’. Mr Rooney says his legal advice suggested this course of action because Mr Stewart did not appear to be sick, and they had knowledge he had applied for another job the previous day.

[39] The business manager then had a telephone conversation with Mr Stewart later in the morning, in which they recounted their visit and not finding him at home when he was supposed to be sick. Mr Stewart offered to obtain a medical certificate but was told that was not required as he was clearly off work but ‘out and about’. The business manager then offered to put him on garden leave until matters could be resolved. Mr Stewart inquired what this meant and said he would be in touch. The business manager says they thought the leave had been agreed.

[40] However, at 3:30 pm on the same day (28 May) Mr Stewart made it clear he had not agreed to being placed on garden leave and asked he be supplied with a copy of his employment agreement. Mr Stewart also noted in his email he had apprised the business manager of Mr Rooney’s conversation with him in the woolshed the previous day and he detailed it again in the email. Mr Stewart also explained why he had taken sick leave and why he had not been present at home when they visited. Mr Stewart recounted concern that the business manager had suggested Mr Rooney could have legitimately dismissed him for an unexplained absence. Mr Stewart concluded the email saying he would consider the garden leave proposal once information was provided but otherwise, he would return to work the next day as normal.

[41] The business manager says after relaying the above to Mr Rooney he resolved to suspend Mr Stewart and that they would meet with him the next day to discuss this.

29 May

[42] At just after 7:30 am on 29 May, the business manager arrived at Taiko Farm and observed Mr Rooney's presence, talking to Mr Stewart. The business manager says she saw Mr Stewart reading a letter Mr Rooney had given him and was asked to look after Mr Stewart's dogs. The business manager recalled Mr Rooney and Mr Stewart then left to drive to Mr Stewart's property and they promptly returned with Mr Stewart's utility vehicle (ute). Mr Stewart then loaded his ute with personal belongings and after a discussion about what was RFL property, Mr Stewart drove away, and they returned to meet with Taiko farm staff (admonishing them about a confidentiality breach as someone had spoken to a local supplier about the events of 27 May).

[43] There were conflicting accounts of the 7:30 am, 29 May exchange, between Mr Rooney and Mr Stewart. Mr Stewart's account was based on his notes of the exchange he had communicated by email to the business manager the next day via his advocate. This was in summary that:

- Mr Rooney bluntly and angrily while yelling at him, refused to allow Mr Stewart to record the conversation (telling him "you're not fucken recording me").
- Mr Rooney asserted Mr Stewart had lied in his email (28 May) to the business manager.
- Mr Rooney then presented a copy of his employment agreement and a letter of suspension that he insisted Mr Stewart read there and then.
- Mr Stewart then read the letter and advised he was still unclear why he was being suspended to which Mr Rooney responded that further information would be provided in due course, and he was to forthwith have no contact with anyone on the farm or be at the farm without Mr Rooney's permission.
- Mr Rooney advised he was to surrender his farm bike, and Mr Rooney would take him home to get his ute so he could remove his dogs and personal items (at this point the business manager turned up).

- When he gathered up personal belongings from the farm bike, he was told by Mr Rooney nothing better be RFL property as that was theft and he had to arrange for the business manager to photograph what he was taking.

[44] Mr Rooney in contrast, says he recalled telling Mr Stewart he could not record their conversation but did not yell or swear at him and merely handed him the suspension letter to read which Mr Stewart said he understood and took away and that was the whole brief conversation. Mr Rooney described his approach as “matter of fact and professional”.

Assessment

[45] I find it not critical to determine what was said during the 29 May meeting as the key point was by this stage, it was evident the suspension was pre-determined, and Mr Stewart had no opportunity to comment on a suspension proposal. In addition, the reason for the suspension was not immediately made clear (discussed below).

The suspension letter

[46] The 29 May suspension letter purported to be to allow RFL to carry out an investigation but of what, was not immediately made clear. The preamble of the letter suggested Mr Stewart was suspended on pay from the date of the letter:

.... until further notice while an investigation is done into behavioural and conduct concerns and issues we have arising from your employment. We discussed these matters earlier this week. We can change or add to these matters as appropriate in light of our investigation. I will write to you within the next day or so to detail these concerns and allegations.

[47] The letter forbade Mr Stewart having contact with co-workers unless authorised by Mr Rooney and directed Mr Stewart to make himself available for interviews or meetings during the investigation process.

Personal grievance

[48] By email of 30 May Mr Stewart’s advocate raised a personal grievance asserting Mr Stewart had been disadvantaged by events leading up to the suspension that were recounted in detail. They noted the suspension was not preceded by consultation and was thus unlawful and, incidentally unjustified. The advocate placed RFL on notice that

Mr Stewart considered Mr Rooney was attempting to constructively dismiss him. Immediate reinstatement, an apology and compensation was sought and mediation suggested.

[49] RFL's in-house counsel, Ms Smith responded on 31 May, contesting the suspension was justified and opined it did not disadvantage Mr Stewart. Ms Smith noted an investigation would proceed and Mr Stewart would remain suspended. The letter noted the allegations made against Mr Rooney and asked, "please provide the evidence (if any) which substantiate those allegations". On the same date over Mr Rooney's signature a letter addressed to Mr Stewart confirmed his suspension to investigate employment matters concerning him – the matters to be investigated were described as his: Failure to:

- i) Follow lawful instruction.
- ii) Perform duties with all reasonable skill, care and diligence.
- iii) Conduct duties within the best interests of Ronney Farms Limited (**RFL**).
- iv) Take all practical steps to perform the job in a way that is safe and healthy.

[50] The list proceeded to add two more generalised matters being a suggestion Mr Stewart had disregarded his duties under the Health and Safety at Work Act 2015 and: "Substantial contribution to team dysfunctionality and the breakdown of team harmony and respect".

[51] Mr Rooney then proceeded to suggest a concern he held was the well-being of stock under Mr Stewart's influence and control and he then claimed further allegations of "insubordination, undermining and contradictory behaviour" had come to light. "In addition" Mr Rooney suggested Mr Stewart had been giving junior staff instructions that contradicted those given by his farm manager.

[52] Mr Rooney then detailed the investigation process emphasising it would be full and fair and that: "I will be doing the investigation" with support from the business manager and Ms Smith who he described as "General Counsel". No counselling support was offered but Mr Rooney noted that the process may be unsettling and, Mr Stewart was reminded he could seek support and guidance from his own general practitioner.

[53] Mr Stewart's advocate responded by email of 1 June to Ms Smith, noting the suspension had proceeded without consultation and the allegations made were "vague". The

advocate asked for detail of what new matters had “come to light” and asserted that the suspension had been implemented to allow RFL to build a case against Mr Stewart.

[54] I was not provided with a response from Ms Smith.

Resignation

[55] In the interim, by email of 5 June 2024 at 3 pm, Mr Stewart’s advocate tendered Mr Stewart’s resignation, stating:

My client has come to the conclusion that he has no choice but to resign.

He was told that he should resign or face dismissal. It is evident now that was not a bluff. He started looking for new work the night that he was told this.

He does not intend to engage in a process where the outcome is predetermined.

You can take this as a grievance for unjustified dismissal.

[56] Mr Stewart then commented at length about his dismay at being accused of poor stock management practices, emphasising several occasions where he had highlighted animal welfare issues.

[57] Ms Smith did not promptly respond to the resignation and Mr Stewart, in a letter of 10 June, set out his personal response to Mr Rooney’s letter of 31 May. The letter concluded by noting no evidence had been advanced to support any of the allegations made and that prior to 27 May no performance issues had been raised with him and, he could not recall any prior dealings with Mr Rooney.

[58] On the latter point, evidence from the business manager was they had been aware of tension between Mr Stewart and the farm manager for some time but apart from counselling Mr Stewart over an inappropriate messaging that was critical of the farm manager, no formal disciplinary issues had been documented and Mr Stewart was viewed as a very able and experienced shepherd.

[59] There were further emails of 11 June between Ms Smith and Mr Stewart’s advocate that identified 19 June as an end date for the employment relationship. Ms Smith claimed there had been unspecified complaints and concerns raised about Mr Stewart and their

investigation would proceed and Mr Stewart could view their subsequent investigation report. I observe that the investigation report when completed was not provided to Mr Stewart for comment.

[60] On the latter issue, an investigation report was completed by 11 September 2024 and authored by Gary Rooney, Lisa Smith and the business manager. I observe the report was of limited assistance. It contained an unsustainable claim by Mr Rooney that they had been “impartial; and unbiased” in their investigation and decision making despite Mr Rooney essentially investigating his own actions and decision making. However, it did conclude the style of management communication had caused staff frustration but then singled Mr Stewart out for supposedly causing disharmony by being more direct in venting staff frustration.

[61] The matter remained unresolved and on 21 August 2024, Mr Stewart made an application to the Authority. The Authority directed the parties to mediation, but this did not resolve matters.

Assessment of whether breaches of duty have been established

[62] The first issue is whether RFL acted in a fair and reasonable manner, including regarding statutory provisions, pertaining to their allegations about Mr Stewart’s contribution to team disharmony.

[63] A central issue was did Mr Rooney have sufficiently identified grounds of concern to engage in a performance discussion with Mr Stewart and then subsequently to suspend him.

[64] The first observation I make is in managing concerns about Mr Stewart, Mr Rooney did not adopt a formal approach, and it was evident that he was angry with Taiko staff and then he singled Mr Stewart out for his ire. Given the management structure and limited to no contact Mr Rooney had had working with Mr Stewart, it was incomprehensible that he did not delegate matters to the business or farm managers to resolve.

[65] The business manager working closely with the farm manager conducted Mr Stewart’s performance appraisal and the latter had a direct working relationship. Mr Rooney appeared convinced Mr Stewart was the instigator of disharmony, and I have found Mr Rooney essentially threatened Mr Stewart with a disciplinary process and when

Mr Stewart openly reacted to this threat by briefing co-workers and leaving the farm, Mr Rooney in a 'kneejerk' reaction resolved to immediately suspend Mr Stewart. The decision to go to Mr Stewart's home the next day was ill-advised and further evidence that Mr Rooney was becoming unnecessarily fixated on Mr Stewart. I find embarking on an investigation, objectively was at best unreasonable and at worst a ruse to switch attention away from how Mr Rooney had acted the day before with Mr Stewart which was in an objectively overbearing manner.

[66] There was simply no compelling reason to suspend Mr Stewart and no haste required nor fair process adhered to. The suspension was unjustified and causative of unnecessary distress. Further, it was not clear what Mr Rooney's actual concerns were at the time he suspended Mr Stewart after a clumsy attempt to place him on 'garden leave'. It was reasonably clear that Mr Rooney had pre-determined the outcome of RFL's 'investigation'. These actions and omissions significantly breached good faith obligations.

[67] Asking co-workers if they were comfortable with working with Mr Stewart compounded the unfairness Mr Rooney engaged in as it had the very real likelihood of further isolating Mr Stewart. This was a further unjustified action.

[68] I conclude Mr Rooney's approach to his own concerns was not how a fair and reasonable employer could have acted in the circumstances and for RFL, he acted in an unjustified manner that caused Mr Stewart to suffer disadvantage in making him feel understandably insecure in his ongoing employment.

[69] A fair and reasonable employer could have taken a formal approach of setting out their concerns in writing, meeting to discuss those concerns, getting feedback and then deciding whether a further investigation or disciplinary approach was warranted.

Finding on breaches

[70] I find the totality of Mr Rooney's actions and omissions, unjustifiably disadvantaged Mr Stewart and placed his job in jeopardy. They were objectively not the actions of a fair and reasonable employer. The breaches are made out and as a result it was reasonably foreseeable that Mr Stewart would resign rather than as suggested, engage in an investigation that had no reasonable indication of being justified or fairly conducted.

[71] While Mr Stewart reacted swiftly to the negative interchange with Mr Rooney it was understandable that he felt shocked by his blunt approach and would seek to protect his own and family interests. Mr Stewart had no immediate better position to go to and I got no indication he planned the resignation given the upheaval this involved of securing alternative accommodation and the impact on his family circumstances.

[72] Mr Stewart although at times critical of his employer stressed, he enjoyed his position and had hitherto no reason to want to leave. No evidence was proffered by RFL to displace this construct other than some past tension in communication with the farm manager who had already resolved to leave before the issues with Mr Stewart blew up. I observe that the farm manager's evidence was he left RFL predominantly for family reasons and he was even handed in his views of Mr Stewart and acknowledged his experience and capability despite concerns he at times had, that Mr Stewart challenged his authority and decision making.

Conclusion on personal grievance claims

[73] RFL's actions and omissions were unjustified and overall have resulted in:

- (a) Mr Stewart suffering a disadvantage in his employment relationship.
- (b) Mr Stewart resigning in circumstances where it was reasonably foreseeable by RFL that this would result from their actions including an attempt to induce his resignation then an unjustified and procedurally deficient suspension. As a result, Mr Stewart was dismissed and, I find the dismissal was unjustified in all the circumstances.

Remedies

[74] As Mr Stewart is successful in establishing his personal grievance claims I turn to remedies available under s 123 of the Act.

Compensation for hurt and Humiliation

[75] Mr Stewart and his partner gave compelling evidence of the stress caused by what they considered humiliating and demeaning treatment by RFL's director. In addition, they detailed the impact of the suspension and the dismissal on their family and personal circumstances. This included a fear the family would find themselves without suitable accommodation and having to relocate their children from settled schooling.

[76] Mr Stewart described loss of sleep, appetite, worry and anxiety about the impact on him and the wider family of a sudden upheaval from a workplace that was his home and centre of social connection with co-workers. He felt aggrieved by the unwarranted allegations related stock management issues and potential damage to his reputation which was compounded by him knowing he had raised distressing animal welfare issues on several occasions. Mr Stewart's partner noted the latter particularly impacted Mr Stewart as rumours circulated in the community that he had left because he was ill-treating stock. The impact on their relationship was also a distressing factor as Mr Stewart sought to find a comparable role. Eventually he found a position some distance away that acted as a temporary solution.

[77] I accept Mr Stewart was humiliated by events that led up to his resignation including the unwarranted suspension and would have felt powerless and lacking agency in responding to RFL's unwarranted pressure in singling him out and forcing him to reassess his employment future.

Finding

[78] Considering the evidence and awards made by the Authority and Court in similar situations and surveying cases brought to my attention in submissions, and considering the harm caused by the breaches, I find that Mr Stewart's evidence and the context of the suspension and constructive dismissal warrants significant combined compensation of \$25,000 under s 123(1)(c)(i) of the Act.

Lost wages

[79] Mr Stewart provided evidence that he commenced alternative employment at the end of July 2024 but had a gap of 19 days with no income and claimed \$7,000 lost wages.

Finding

[80] I find the lost wages as calculated above should be awarded.

Contribution

[81] Section 124 of the Act states that I must assess the extent to which, if any, of Mr Stewart's actions contributed to the situation that gave rise to the personal grievances and then assess whether any calculated remedy should be reduced.

[82] In the circumstances I do not find Mr Stewart contributed to the circumstances giving rise to his personal grievance. The causative factors lay with the actions of RFL's Director.

Orders

[83] Rooney Farms Limited breached duties owed to Philip Stewart, and I have found that Mr Stewart has established he was unjustifiably disadvantaged and unjustifiably dismissed. Rooney Farms Limited must pay Philip Stewart:

- (a) \$25,000 compensation without deductions pursuant to s 123(1)(c)(i) Employment Relations Act 2000 for the unjustified action; and the sum of:
- (b) \$7,000.00 gross lost wages pursuant to s 123(1)(c)(ii) Employment Relations Act.

Costs

[84] Costs are reserved.

[85] The parties are encouraged to resolve any issue of costs between themselves.

[86] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Philip Stewart may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Rooney Farms Limited will then have 14 days to lodge any reply memorandum. Upon request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[87] The parties can expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.³

David G Beck
Member of the Employment Relations Authority

³ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1