

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2018] NZERA Wellington 40
3005393

BETWEEN MANU TAEFU
Applicant

AND ALLIED SECURITY LIMITED
Respondent

Member of Authority: Trish MacKinnon

Representatives: Geoff O’Sullivan, Counsel for Applicant
Chris McDowall, Respondent’s representative

Investigation Meeting: 8 February 2018

Submissions and other 8 February 2018, orally and in writing from the Applicant
documentation received: and further documents on 21 February 2018
8 February 2018, orally from the Respondent

Determination: 14 May 2018

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Manu Taefu was employed by Allied Security Limited (Allied Security) as a security guard from 27 April 2016 until his dismissal without notice on 30 November 2016. He claims his dismissal was unjustifiable and seeks compensation and lost wages.

[2] Allied Security rejects Mr Taefu’s claims. In its statement in reply it says he was dismissed for falsifying his patrol records on client sites and failing to complete the requirements of several clients. It says Mr Taefu admitted all allegations at an investigation meeting with his employer and confirmed he had falsified his patrol records.

[3] The parties attended mediation but were unable to resolve the matter.

Identity of respondent

[4] A question arose as to the correct identity of Mr Taefu's employer after the statement in reply was lodged in the name of Allied Investments Limited (Allied Investments). It was dealt with as a preliminary matter at the Authority's investigation of Mr Taefu's claims. Mr Chris McDowall, who represented the employer at the investigation meeting, described Allied Investments as the parent company of Allied Security.

[5] Mr McDowall is one of two directors, and a minority shareholder, of Allied Investments. He is also the New Zealand Operations Manager of Allied Security. Mr Damian Black is the other director and majority shareholder of Allied Investments as well as being the Managing Director and sole shareholder of Allied Security. Allied Security is recorded on the New Zealand Companies Office Register as a registered company, incorporated in July 2010.

[6] Mr Taefu's employment agreement cites the employer party as Allied Security. All documents provided to the Authority, including Mr Taefu's individual employment agreement and correspondence with him, are on Allied Security's letterhead. None are on Allied Investments letterhead. On reflection I am satisfied that Mr Taefu has correctly identified his employer as Allied Security.

Relevant background

[7] Mr Taefu has been a security guard for approximately 28 years. He was employed for over two years by a company purchased by Allied Security in 2016. Mr Taefu worked rostered shifts from 6.00 p.m. until 6.00 a.m. working four days on and four days off. Amongst the premises he patrolled were a chartered club which I will refer to as the Club and a rest home and hospital I will refer to as the Home. He was paid \$15.25 per hour which was the minimum wage at the time.

[8] On Thursday 24 November 2016 the then Branch Manager for Allied Security in Wellington, Michael Ellwood, wrote two letters to Mr Taefu. Each of the letters notified Mr Taefu of "*of several employment problems*" that had arisen. One of the letters raised concerns about Mr Taefu's work in relation to the Club and the other related to concerns about his work in relation to the Home.

[9] With regard to the Club, it was alleged that on 6 and 7 November 2016 Mr Taefu had not properly carried out the internal and external checks he had been tasked to do and he had not filled in the log book correctly. The letter stated that the customer had noted the internal checks were not of a duration that allowed for the full check that was required; a second internal check had not been carried out as required prior to staff arriving; full checks of the carparks and storeroom door had not been carried out as required; and Mr Taefu had filled in his visit times for the night on his first visit and did not fill out the log book as required on each subsequent visit.

[10] The letter stated that the allegations were supported by CCTV footage that the Branch Manager had viewed and that such acts “*are deemed Gross Misconduct if it is proven*”.

[11] The second letter contained allegations about Mr Taefu’s performance of his duties in relation to the Home over the period Friday 18 to Sunday 20 November 2016. It was alleged Mr Taefu had not carried out the internal check as he was required to do, but had simply come in and filled out the log book then left. It was also alleged he had pre-filled the 3 am time on his 11 pm visit and did not do the 3 am visit.

[12] The letter said this had been confirmed by the Senior Registered Nurse on duty each night and stated that these acts were deemed gross misconduct if proven.

[13] Each letter advised Mr Taefu of the Branch Manager’s intention to investigate the matters under the guidelines of the Allied Security Disciplinary Process and requested Mr Taefu to attend a disciplinary meeting on Monday 28 November. He was informed he could bring a support person to the meeting if he felt it appropriate and was advised that if, at the end of the meeting, serious or gross misconduct was found to have occurred, he may “*have (his) employment terminated or be dismissed or another disciplinary action may be taken.*”

[14] Mr Taefu attended the disciplinary meeting without a support person. The Branch Manager and the assistant manager (at the time) represented Allied Security. The Branch Manager produced for the Authority’s investigation a document headed “*Minutes of the Investigative Meeting with Manu TEAFU*” (sic). He attended the Authority’s investigation meeting: the former assistant manager did not.

[15] The Branch Manager and Mr Taefu differ significantly in their evidence of what took place in the disciplinary meeting. They agree, however, that the matters raised in the two letters of 24 November were discussed. They also agree that the Branch Manager raised an issue regarding a traffic infringement notice for running a red light on 14 November 2016. Their evidence about Mr Taefu's response to that issue differs.

[16] The Branch Manager's minutes record he informed Mr Taefu that the time and date of the red light offence matched with Mr Taefu's shift on 14 November 2016 and that, considering the purpose of the disciplinary meeting, he would also be taking the infringement notice into account.

[17] The disciplinary meeting is recorded in those minutes as commencing at 1.00 pm and finishing at 1.25 pm on 28 November 2016. The Branch Manager's final comment is noted as being his intention to provide a copy of the minutes of the meeting to Mr Taefu the next day and as stating that:

Once we have considered and consulted on these matters we will have a response to you in the next day or two.

[18] Mr Ellwood's letter to Mr Taefu notifying him of the termination of his employment is dated 30 November 2016. The parties disagree over the timing of Mr Taefu's receipt of that letter and of the minutes of the meeting of 28 November.

[19] His final pay included a deduction of \$150 for the traffic infringement notice. This was later refunded after Mr Taefu had raised a personal grievance by letter from his legal representative dated 8 December 2016.

Issues

[20] The major issue for determination is whether Mr Taefu's dismissal was justifiable or not. If his dismissal is found to be unjustifiable, issues of remedies and contribution will arise.

[21] The test for determining whether a dismissal is justifiable is set out at s. 103A of the Employment Relations Act 2000 (the Act). The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the action occurred.

[22] In applying the test a number of specified factors must be considered which may broadly be described as coming under the umbrella of natural justice. Additionally, other factors the Authority considers appropriate may be taken into account. However, a dismissal is not to be found unjustifiable solely because of defects in the employer's process if those defects were minor and did not result in the employee being treated unfairly.¹

Evidence of the parties

[23] As I have earlier noted, there are significant differences between the evidence of the Branch Manager and Mr Taefu. These relate to Mr Taefu's responses in the disciplinary meeting to the allegations contained in his manager's two letters of 24 November 2016. Mr Taefu's evidence is that he denied the allegations in respect of both the Club and the Home in that meeting. Mr Ellwood's evidence is that Mr Taefu admitted everything and, accordingly, there was no need for him to carry out further investigation.

[24] His minutes reflect his account of Mr Taefu having admitted all allegations against him. Mr Ellwood told the Authority he wrote the minutes after the disciplinary meeting, mainly from notes he took during the meeting but also from notes the assistant manager had taken.

[25] The Branch Manager said he and the assistant manager had conferred 15 to 20 minutes after the meeting and he completed the minutes approximately five hours after their discussion. Mr Ellwood did not keep his original notes. He checked the completed document for accuracy with the assistant manager but did not show it to Mr Taefu. Under cross examination the Branch Manager said he came to the decision to terminate Mr Taefu's employment on 28 November and did not want to send the minutes of the meeting to Mr Taefu until he had told him of that decision.

[26] With regard to the Club, Mr Taefu said he could not fill in the log book because it was not there. He said he had already told his employer the log book was absent and had left a note at the premises to this effect. With regard to the checks he was required to carry out at the Club's premises, he said he told his employer he had conducted all the required full checks.

¹ Section 103A(5) of the Act

[27] Mr Ellwood's written evidence was that Mr Taefu had said he had not bothered to get out of the car and patrol at the Club as he was required to do because he had not seen the log book on previous visits, and said "*Manu stated he had not bothered to conduct the full patrols.*" He said the required time for the full patrol was 20 minutes but Mr Taefu had said his initial check was "*only around 8 minutes*".

[28] The Branch Manager referred in his evidence to GPS data which he said he had used to verify the checks, or lack of checks, Mr Taefu had carried out at the Club. He also referred to the manual patrol check sheets employees filled in each night. It was his evidence that the information clearly illustrated the checks were not completed and showed Mr Taefu's vehicle as being elsewhere in the city at the times stated in the manual check sheet submitted by Mr Taefu. He said "*Manu did not wish to view or confirm this information, as he admitted all accusations during the meeting on the 28th.*"

[29] Mr Taefu's evidence is that Mr Ellwood did not mention GPS or the manual check sheets in the disciplinary meeting and did not have that documentation with him. In his reply evidence to the Authority Mr Taefu reiterated he had denied all the accusations at that meeting, and had not admitted them as alleged by the Branch Manager. He said he told his employer he had completed all the required checks.

[30] Mr Taefu said he was not aware of any requirement for those checks to take 20 minutes and that timeframe was not specified on the Club nightly site specification sheet. A copy of that document was provided to the Authority and confirms that, apart from providing times at, or between which, checks were to be carried out, no time is stipulated for each check.

[31] Mr Taefu said he had not seen the manual timesheets since completing them and handing them in after his shift in November 2016 until Allied Security provided them for inclusion in an agreed bundle of documents for the Authority hearing. The manual run sheet for the night shows that the first internal and external check Mr Taefu completed for the Club on 6 November took him 10 minutes.

[32] The minutes of the disciplinary meeting compiled by Mr Ellwood attribute the reference to "*only around 8 minutes*" to himself, not Mr Taefu. The minutes paraphrase Mr Taefu's response as:

“Other than staff and log books not being available he made no excuse but admitted that he had not carried out the duties and requirements of both sites when doing checks and patrols and in filling out the log books.”

[33] Mr Taefu says he asked for proof of the allegations made against him but Mr Ellwood refused to show him CCTV footage. He says the Branch Manager told him he *“had already checked with the clients and that was enough for them to be happy”*.

[34] Mr Ellwood denies Mr Taefu asked to see the CCTV footage. In his written evidence he said Mr Taefu had asked him if he had seen the footage and he had confirmed he had. He said he had offered Mr Taefu the opportunity to view the footage at the client’s premises *“and he replied he did not need to see it as he admits to not doing what was required.”* In oral evidence Mr Ellwood quoted Mr Taefu as saying *“You’ve seen it and that’s enough for me”*.

[35] The minutes of the disciplinary meeting produced by Mr Ellwood do not record Mr Taefu making that comment. They document Mr Taefu asking if Mr Ellwood had seen the video footage and Mr Ellwood’s response that the manager of the Club had shown him the footage for all visits on 6 and 7 November. The Branch Manager’s minutes then quote him as telling Mr Taefu:

“...and I can confirm it is you on the footage and that you have not carried out the required checks. Your first check was for a total of only 8 minutes. This is not long enough to do the checks properly.”

[36] With regard to the Home allegations, the Branch Manager’s evidence is that, when he asked Mr Taefu why he had not done as required for that client, Mr Taefu had stated he had intended to come back and do the patrols so had filled out the log book in advance but he had not come back. Mr Ellwood said Mr Taefu could give no reason for not coming back to conduct the patrols and when questioned why he did not go in to check on staff, Mr Taefu said sometimes he could not find them so he did not bother.

[37] Mr Taefu denies he gave these answers and says he told his employer he always carried out the required checks. At no stage did he say or agree that he filled out the log book in advance. Mr Taefu’s evidence is that he told the Branch Manager and the assistant manager they needed to check the log book and he had always signed the log book at the correct time.

[38] In relation to the red light issue, Mr Taefu says he asked his employer to review the traffic infringement because he had not been driving when the infringement was incurred. Mr Ellwood's minutes of the disciplinary meeting record that he brought the matter to Mr Taefu's attention; told Mr Taefu that the time and date of the offence matched with Mr Taefu's shift on 14 November 2016 at 0201 hours; and stated that, considering the purpose of the meeting, he would also be taking the infringement notice into account.

[39] The minutes of the meeting do not record any response from Mr Taefu.

[40] Mr Taefu contacted the Branch Manager on 29 November and was informed that no decision about his employment had been finalised at that time. Mr Ellwood told the Authority he was the decision maker and had made the decision to terminate Mr Taefu's employment on 28 November. However, he had not finalised his decision until 30 November, after being advised by Mr McDowall to consider it for 24 to 48 hours. He had been contacted by Mr Taefu on 29 November while he was still in that consideration period and, by his account, had made but not finalised the decision.

[41] Mr Taefu and the Branch Manager agree Mr Taefu was informed his employment had been terminated when he contacted Mr Ellwood by phone on 30 November. Mr Ellwood's evidence is that he followed up the verbal dismissal with a written confirmation of termination of employment which he dispatched in hard copy "*via a patrol guard to his home, and then electronically via email...*".

[42] Mr Taefu says the only notification he received of his termination in 2016 was the verbal dismissal from Mr Ellwood. He said there was no delivery of the letter of termination by a patrol guard and he did not receive it, or the minutes of the 28 November disciplinary meeting, by email. The Branch Manager acknowledged he had no evidence the documents had been delivered to Mr Taefu although he believed he would have checked with the patrol guard at the time.

[43] Mr Taefu's evidence is that he first received those documents almost a year later when Allied Security responded to a Privacy Act request from his lawyer. He realised at that time his employer had emailed the letter of termination and the minutes of the disciplinary meeting to his former email address. He had advised his employer in writing of his change of email address in August 2016 and provided evidence of this to the Authority.

[44] On 9 December 2016 Mr Ellwood emailed Mr Taefu, this time using his correct email address, stating that after “*some time and effort in research and double checking*” he could confirm it was not Mr Taefu who had been driving when the traffic infringement had been incurred. He apologised for the deduction of the \$150 speeding fine from Mr Taefu’s final pay, but attributed the error to Mr Taefu’s confirmation in the disciplinary meeting that he had been the driver of the vehicle on the day in question.

[45] Mr Taefu was later reimbursed for the amount of the traffic infringement fine.

Discussion

[46] I am not satisfied Allied Security’s decision to terminate Mr Taefu’s employment was one a fair and reasonable employer could have reached in all the circumstances at the time. My reasons for reaching this conclusion are set out below.

[47] Mr Taefu was entitled to access to relevant information when his employer was proposing to make a decision that would, or was likely to, adversely affect the continuation of his employment.² The only information Allied Security supplied to him before, or after, the disciplinary meeting was the two letters of 24 November written by his manager regarding allegations made by two of Allied Security’s clients. Mr Taefu was not shown the complaints themselves, but only the Branch Manager’s summary of them.

[48] There was some discussion about this in the Authority’s investigation arising from Mr Taefu’s recollection of being shown two letters in the disciplinary meeting. However, Mr Ellwood’s evidence was that these were the two letters dated 24 November that he had written to Mr Taefu. The Branch Manager was uncertain whether he had a complaint in writing from both clients or whether one of the complaints had been conveyed by a phone call. In any event, Mr Taefu was shown no direct evidence of either client’s complaint.

[49] Nor was he shown the CCTV footage or GPS information and manual patrol sheets. Mr Ellwood had accessed all of these, and he had formed views which clearly influenced the way he approached the disciplinary meeting with Mr Taefu. I will return to this shortly.

² Section 4(1A) of the Act

[50] The Branch Manager's evidence was that he had identified Mr Taefu as the guard who was the subject of the complaints from timesheets and manual patrol records that employees fill in each night. He had examined GPS records to verify the checks Mr Taefu had, and apparently had not, carried out at the Club. He provided none of this information to Mr Taefu before or at the disciplinary meeting. As it was all relevant to the allegations made against him, I find the failure to provide Mr Taefu with that information placed him at a disadvantage and undermined the fairness and integrity of the employer's process.

[51] Allied Security submitted it would have made no difference if Mr Taefu had seen the information as he had admitted to all the allegations made against him. I reject that submission. I note that Allied Security belatedly acknowledged, after deducting \$150 from Mr Taefu's final pay, that he had not been the driver who incurred the traffic infringement on 14 November 2016.

[52] I do not accept the employer's claim that Mr Taefu had admitted being the driver during the disciplinary meeting. I prefer Mr Taefu's evidence of having denied driving the vehicle that night. It stretches credulity that he would admit to driving through a red light at a time when he knew he had not been driving the vehicle and I accept his evidence that he did not make such an admission.

[53] Further investigation was required before the Branch Manager ascertained Mr Taefu had been wrongly accused and had his final pay wrongly deducted over the red light issue. It is possible that further investigation of the allegations raised by the Club and the Home, and the opportunity for Mr Taefu to view and comment on that information, may have uncovered similar discrepancies.

[54] I find the manner in which Allied Security approached the traffic infringement matter is indicative of the approach it took to the investigation of the complaints raised by two of its clients.

[55] The Branch Manager's minutes of the disciplinary meeting show that he raised the red light matter with Mr Taefu in a way that brooked no argument over the identity of the driver. Mr Taefu was informed that the time and date of the offence matched with his shift and he was told this matter would also be taken into consideration.

[56] The context is that the Branch Manager's previous comment was recorded in the minutes as advising Mr Taefu the complaints and allegations were serious and the range of options open were from warnings to dismissal. It is clear from the minutes that he intended to take the red light incident into account when he considered the range of options open to him in relation to Mr Taefu's employment.

[57] When cross examined about this, and about the email he subsequently wrote to Mr Taefu apologising for the deduction from his final pay, Mr Ellwood attributed the traffic infringement error to Mr Taefu's confirmation in the disciplinary meeting to being the driver of the vehicle at that time. Under questioning he acknowledged he could not actually recall Mr Taefu admitting to being the driver. However, he was certain Mr Taefu must have made that admission as he would not have referred to it in his 9 December 2016 email unless Mr Taefu had done so.

[58] After considering the evidence I find the Branch Manager went into the disciplinary meeting of 28 November 2016 having formed the view that Mr Taefu was guilty of the allegations made against him. The wording of the two letters of 24 November concerning the Club allegations and the Home allegations support this view. Immediately after setting out the three allegations of failure by Mr Taefu to carry out his checking duties properly at the Club, and a fourth allegation that he had recorded his visit times inaccurately in the log book, Mr Ellwood stated they were supported by CCTV footage that he had viewed.

[59] In his letter setting out the Home allegations the Branch Manager's next statement was that this had been confirmed by the SRN on duty each night. There was nothing in his letter to suggest he had checked, or intended to check, the information: it was put as a fact to Mr Taefu and was followed by the statement that the SRNs had "*discussed the issue and made a point of checking over this period.*"

[60] The fact that the letters of 24 November asked Mr Taefu to attend a disciplinary meeting, rather than an investigation meeting, also indicate the employer did not have an open mind entering the meeting of 28 November. While the minutes of the meeting refer to it as an "*investigative*" meeting, that description is at odds with the way the meeting is described in the letters requesting his attendance.

[61] As I have previously noted, there are some significant differences between the evidence of the Branch Manager and that of Mr Taefu over what occurred in the

disciplinary meeting. Allied Security submits its evidence should be preferred due to the notes made during the meeting by two managers, which were compiled shortly thereafter into the document it refers to as minutes, particularly as Mr Taefu acknowledged he had not made notes during the meeting.

[62] I do not accept that submission. While the minutes may accurately represent the questions asked, and comments made, by the Branch Manager in the meeting, I am not confident they accurately reflect Mr Taefu's responses. As noted above, the minutes record no response from Mr Taefu to the traffic infringement incident. I prefer Mr Taefu's evidence that he denied confirming that he was the driver who incurred the infringement notice.

[63] Additionally, the minutes do not record Mr Taefu asking to see the CCTV footage and I do not accept the Branch Manager's evidence that he offered Mr Taefu the opportunity to accompany him to the Club to view the footage. If he had, it is likely such a significant fact would have been recorded in the minutes of the meeting. It was not.

[64] Nor do I accept Mr Ellwood's written evidence to the Authority that Mr Taefu said "*he did not need to see it as he admits to not doing what was required*" or his oral evidence that Mr Taefu said "*you've seen it and that's good enough for me*". Neither statement was included in the minutes. The relevant part of the minutes document is as follows:

"Manu - Have you seen the video footage? Did they have it?"

Mike - Yes, and the manager showed me the footage for all visits on the 6-7 Nov and I can confirm it is you on the footage and that you have not carried out the required checks. Your first check was for a total of only 8 minutes. This is not long enough to do the checks properly.

Why have you cut short and omitted checks and failed to follow proper procedure for filling in log books?"

Manu - Other than staff and log books not being available he made no excuse but admitted he had not carried out the duties and requirements of both sites when doing checks and patrols and in filling in the log books."

[65] The reporting of Mr Ellwood's part of the discussion in an apparently verbatim manner contrasts with the third person summary of Mr Taefu's comments. I

am not satisfied Mr Taefu's responses were recorded accurately and I accept his evidence of having denied the allegations. This increases my concern as to whether the investigator/decision maker approached the disciplinary meeting with an open mind or listened to Mr Taefu's responses.

[66] As I have previously noted, the minutes were, according to the Branch Manager, a composite document he had drafted from his own notes of the disciplinary meeting and those of the other note taker. Although he checked that person was satisfied with the minutes he had compiled, he did not give Mr Taefu the opportunity to comment on their accuracy. While not fatal on its own, I find it disquieting, particularly in the context of the Branch Manager's response under questioning that he did not intend to send Mr Taefu the minutes until after he had told him of his decision he had reached about his employment. It is also inconsistent with the Branch Manager's stated intention in the minutes to provide Mr Taefu a copy of those minutes "tomorrow".

[67] In the Authority's investigation Mr Ellwood responded to a question as to why he had not taken the CCTV footage to the 28 November disciplinary meeting, he responded that it was not necessary for him to do so as he regarded it as a preliminary investigation which he anticipated would be followed by a further investigative process. That explanation is not consistent with the wording of the letters requesting Mr Taefu to attend the disciplinary meeting. Both letters required Mr Taefu to be aware that

"at the end of this meeting if serious or gross misconduct is found to have occurred you may have your employment terminated or be dismissed or another disciplinary action may be taken".
(underlining added)

[68] Neither letter referred to any ongoing process occurring after the 28 November disciplinary meeting.

[69] For these reasons I find the decision maker in the matter did not approach the disciplinary meeting with an open mind. As a result Mr Taefu was not afforded the opportunity to have his employer genuinely consider any explanations he made.

Post termination

[70] It is Mr Taefu's evidence that he did not see the minutes, or the letter of termination, until several months later. I am satisfied from the evidence provided by

both parties that he is correct. Allied Security's evidence shows those documents were sent to an old email address rather than the current one that Mr Taefu had informed his employer of in writing some three months earlier.

[71] It appears Allied Security did not correct its error until December 2016 as Mr Ellwood's email to Mr Taefu apologising for the incorrect deduction of the speeding fine from his final pay was sent to his current email address rather than to the old address he no longer used.

[72] Mr Ellwood provided no independent verification that the letter of termination of 30 November and the minutes of 28 November were also hand delivered to Mr Taefu at his home address. His oral evidence regarding the delivery of the termination letter was that he "*would have*" arranged for an employee to deliver a copy to Mr Taefu's address. In the face of Mr Taefu's denial of receiving the document by delivery to his home, and the lack of independent verification that it occurred, I am not satisfied that the dismissal letter or the minutes were delivered to him.

[73] While these matters occurred after Mr Taefu had been informed verbally of the termination of his employment, they underline the offhand treatment he had received from his employer over the allegations from clients and his employer's investigation of them.

Conclusion

[74] I find Allied Security failed to provide Mr Taefu with information relevant to the investigation in breach of its good faith obligation under s4A of the Act. The investigation into the allegations made against Mr Taefu was procedurally defective resulting in a lack of opportunity for Mr Taefu to have his denials of the allegations genuinely heard.

[75] The defects were significant and resulted in Allied Security reaching a decision to dismiss Mr Taefu that a fair and reasonable employer could not have reached in all the circumstances at the time.

Remedies and Contribution

[76] Mr Taefu's evidence is that he searched for work for five months before obtaining a permanent position in April 2017. He found casual employment from mid-February 2017 and has provided evidence of his earnings for the period from 18 November 2016 to 16 February 2017.

[77] I am satisfied he made appropriate attempts to mitigate his losses and that an award of compensation for wages lost from 1 December 2016 to 15 February 2017 is appropriate.

[78] I am also satisfied that the loss of his employment with Allied Security was extremely humiliating and hurtful to Mr Taefu and he is entitled to compensation for that.

[79] I am not persuaded the evidence establishes that Mr Taefu contributed to the situation that gave rise to his personal grievance. Accordingly there will be no deduction under s.124 of the Act to the awards made to him.

[80] Mr Taefu sought, in submissions on his behalf, the imposition of a penalty against Allied Security. The penalty was for the employer's breach of good faith in not providing Mr Taefu with access to information it had, and sought to rely on, that had an adverse effect on his employment.

[81] I have considered that submission and note that the statement of problem referred to a breach of good faith by the employer in relation to failing to conduct a proper process or be an open and communicative employer. It did not refer to the grounds it has referred to in submissions and nor did it seek the imposition of a penalty.

[82] The employer had not been put on notice of Mr Taefu's intention to ask that a penalty be imposed and was unaware it would be required to make submissions on the matter until the day of the Authority's investigation meeting. In such circumstances I do not consider it appropriate to impose a penalty on Allied Security and I decline to do so.

Determination and Orders

[83] Mr Taefu was unjustifiably dismissed from his employment with Allied Security.

[84] Allied Security Limited is ordered to pay the following to Mr Taefu:

- a. The sum of \$6,725.25 gross, being 10.5 weeks' wages, pursuant to ss.123(1)(b) and 128 of the Act; and
- b. The sum of \$15,000 without deduction as compensation for humiliation, loss of dignity and injury to feelings, pursuant to s. 123(1)(c)(i) of the Act.

Costs

[85] The issue of costs is reserved.

Trish MacKinnon
Member of the Employment Relations Authority