

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 34
3230659

BETWEEN LOUIS UERATA
Applicant

AND EXPERT MOVING GROUP
LIMITED
Respondent

Member of Authority: Jeremy Lynch

Representatives: Dave Cain, advocate for the Applicant
No appearance for the Respondent

Investigation Meeting: 10 May 2024 in Hamilton, 8 August 2024, and 5
November 2024 by telephone

Submissions and Further At the investigation meeting and 22 May, 20 June 2024,
Information Received: 8 August 2024, 6 and 15 November 2024 from the
Applicant
No submissions or further information received from the
Respondent

Determination: 22 January 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Expert Moving Group Limited (Expert Moving) is a freight services company having its registered office in Hamilton.

[2] Louis Uerata commenced his employment with Expert Moving in 2021. Mr Uerata says he was unjustifiably dismissed and seeks personal grievance remedies. He also seeks wage arrears arising from Expert Moving's failure to pay him for work performed on two occasions, as well as arrears of holiday pay.

The Authority's process

[3] Expert Moving's sole director and sole shareholder is Michael James Wood. The Companies Register shows that Expert Moving's registered office and address for service share the same Hamilton address.

[4] A case management conference (CMC) was held by telephone in October 2023. At the CMC timetable directions were made for the filing of witness statements, and an investigation meeting date was set. Nobody attended the CMC on behalf of Expert Moving. The Authority directed that a copy of the written directions made at the CMC, together with a copy of the notice of investigation, and a further copy of the statement of problem, be delivered to Expert Moving's registered address for service. The directions advised that Expert Moving could provide any comment about the timetable directions via the Authority Officer using the contact details set out in the accompanying letter. No comment was received from Expert Moving.

[5] In addition to being sent by email, copies of the witness statements were sent by courier to Expert Moving's registered address for service in Hamilton in November 2023.

[6] On the morning of the investigation meeting scheduled for 21 December 2023, it became apparent that Mr Uerata would be unable to attend the meeting. Mr Uerata provided a reasonable explanation for his non-attendance, and the Authority adjourned the matter.

[7] A further CMC was then held on 30 January 2024, at which a new investigation meeting date was set for March 2024. In addition to being sent by email, a copy of the letter advising of the details of the CMC was sent by courier to Expert Moving's registered address for service. Expert moving did not attend the CMC.

[8] After the 30 January CMC, a copy of the new notice of investigation was sent by courier to Expert Moving's registered address for service in Hamilton.

[9] Two days prior to the March 2024 investigation meeting, the applicant's advocate contacted the Authority to advise that for medical reasons he was unable to travel to Hamilton, or attend an investigation meeting remotely by AVL, and sought an adjournment.

[10] The Authority accepted that Mr Cain had genuine reasons for being unable to attend the investigation meeting, and the March investigation meeting date was vacated.

[11] A further CMC was held on 22 March 2024 to set the matter down for investigation. Despite the Authority taking all reasonable steps to ensure it was aware of the CMC, Expert Moving did not attend.

[12] The Authority sent by courier to Expert Moving's registered address, a copy of the directions setting the matter down for investigation, and the new notice of investigation. These were also sent by email. The directions of the Authority dated 22 March 2024 note that Expert Moving could provide comment about the directions, including as to the new investigation meeting date, by contacting the Authority Officer using the contact details set out in the accompanying letter. No comment was received from Expert Moving.

[13] The Authority is satisfied that Expert Moving was served with a copy of the statement of problem, and the witness statements, and was aware of the details of the investigation meeting.

[14] On the morning of the investigation meeting on 10 May 2024, Expert Moving had not arrived at the premises by the scheduled start time. The investigation meeting start time was delayed while the Authority attempted to make contact with Expert Moving.

[15] An Authority Officer eventually managed to reach Mr Wood by telephone, and advised him that the Authority's investigation was scheduled to commence. Despite being served with documents by the Authority on multiple occasions, Mr Wood advised the Authority Officer that he had no idea what the Employment Relations Authority was. He further said he did not know anything about the matter and advised the Authority Officer to speak to his lawyer. When the Authority Officer asked for his lawyer's name, he promptly disconnected the call.

[16] The Authority then advised the parties by email that the investigation meeting was proceeding that day, and again provided the address details for the venue. The Authority's email advised that the matter had been adjourned until 11.00 am in order to give Expert Moving the opportunity to participate in the proceeding, or alternatively to advise the Authority of the reason for its non-attendance. The Authority's email also set out that if Expert Moving fails to attend, or fails to provide any valid reason why

the matter should be adjourned, the investigation meeting would proceed at 11.00 am, regardless of whether Expert Moving chose to participate.

[17] Expert Moving made no contact with the Authority, and did not attend the investigation meeting.

[18] Being satisfied that Expert Moving was aware of the date and time of the meeting, and with no good cause provided for its non-attendance, the Authority proceeded with its investigation in Expert Moving's absence.

[19] Mr Uerata attended the meeting in person, together with his son Thomas Uerata. Both witnesses answered questions under oath or affirmation, and Mr Uerata's representative gave oral submissions. The Authority carefully considered the available documents and assessed the evidence given during the investigation meeting.

[20] As a result of information provided to the Authority by Mr Uerata, a further investigation meeting was held (by telephone) on 8 August 2024. Following that investigation meeting further information was requested by the Authority. After this information was provided, the Authority convened a third investigation meeting (also held by telephone) on 5 November 2024. Despite being made aware of the subsequent investigation meetings, the Authority was unable to reach Expert Moving, and it did not attend either of the additional investigation meetings.

[21] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made. It has not recorded all the evidence and submissions received.

Issues

[22] The issues for investigation and determination are:

- (a) whether Mr Uerata was unjustifiably dismissed from his employment by Expert Moving?
- (b) Is Mr Uerata owed unpaid wages and/or holiday pay by Expert Moving?
- (c) Has Expert Moving breached the provisions of s 63A, and/or s 130 of the Act, and/or s 27 of the Holidays Act 2003, and/or s 4 of the Wages Protection Act 1983; and if so, should penalties be ordered?

- (d) What (if any) remedies should Mr Uerata receive?
- (e) Should any remedy awarded be reduced under s 124 of the Act for blameworthy conduct by Mr Uerata, which contributed to the circumstances which gave rise to his grievance?
- (f) Should either party be required to contribute to the representation costs of the other party?

Relevant background

[23] Mr Uerata was employed by Expert Moving in 2021. He was not provided with a written employment agreement. Initially he was not provided with payslips. These were not provided until later during the employment relationship.

[24] Mr Uerata says he asked Mr Wood for a written employment agreement at least four times during his employment, including at the commencement of the employment relationship. His evidence (unchallenged by Expert Moving) was that each time he asked about this, Mr Wood would tell him that he was finalising the details of it, and that the agreement would be with him soon. Mr Uerata says that Expert Moving did not provide Mr Uerata with a written employment agreement at any stage during his employment.

[25] Mr Uerata said that he worked on a fulltime basis, Monday to Friday, starting at 7.30 am. Occasionally he was required to work on Saturdays. His work usually consisted of unloading shipping containers.

[26] Mr Uerata said that although he usually worked at one particular site, this was not always the case, and he was occasionally required to work at other locations. He said that he would receive a text from Ilene Wood, Expert Moving's site manager, the night before his shift. The text would advise him of the details of his shift for the following day, including advice as to location.

[27] Mr Uerata's evidence was that his pay rate increased during his employment. By the end of his employment, he was receiving regular payslips. Copies of these were provided to the Authority, and record an hourly rate of \$25.00.

[28] After his employment commenced, he helped his sons, Tyson and Thomas Uerata gain employment with Expert Moving. Thomas Uerata gave evidence before the Authority in this matter.

[29] Mr Uerata told the Authority that he "...genuinely enjoyed my role, and it felt great to be back in employment... I hoped to be doing this work for many years".

Termination

[30] Mr Uerata's evidence is that he and his sons were approached at the worksite by Ms Wood on 15 November 2022. She advised that the business had reached its container capacity, meaning that Expert Moving had run out of room for any further containers to be loaded or unloaded. The effect of this was that there was no more work that Mr Uerata could perform.

[31] Mr Uerata says that he and his sons and him were sent home, and were told that Expert Moving was waiting to receive advice from one of the logistics companies it worked with as to when further work would be available. Mr Uerata says that Ms Wood was unequivocal that there was no more work until further notice, and that Expert Moving would be in contact once that position changed.

[32] Mr Uerata said that although being sent home was uncommon, it was not unprecedented. He said that he had previously been sent home "once or twice" because Expert Moving was unable to provide him with any further work to perform. On previous occasions he was contacted and told to come back to work the following day.

[33] Mr Uerata says he was not contacted by Expert Moving the following day. Nor did he receive any contact from Expert Moving on 17 November 2022. Mr Uerata said that occasionally, if he had not received a text message from Expert Moving between 6.00 pm – 7.00 pm the night before he was meant to be working, he would contact Ms Wood to ask for the details. However, he said that he did not do that in this situation, because of the very clear advice she had given, that the company would contact him to advise when he was to come back to work.

[34] Mr Uerata's evidence is that on the morning of 18 November 2022 he received an email from Expert Moving. The email advised:

Notice of termination

Dear Louis Uerata, Tyson Uerata and Thomas Uerata

I'm sorry to inform you that as of 18th of November 2022 you will be no longer employed with Expert Moving Group. As discussed we asked for you to do a full week this week (not including Wednesday) and yesterday not turning up as well as today without contact with Ilene and myself this is not acceptable. Because of poor excuses and reasoning in regard to working and turning up

to work. This is the final step in our disciplinary process and a decision we have made after further thought and discussion.

From 18/11/22 on, you won't be eligible for any compensation or benefits associated with your position.

If you have questions or clarifications. I'm at your disposal for up to *[five]* working days after your last day of employment.

We wish you all the best of luck in the future.

Directors and Owners

Shereena Kire

Michael Wood

NZ & AUS

18/11/22 (emphasis in the original)

[35] Mr Uerata's evidence was that this was the first communication he had received from Expert Moving since being sent home from work on 15 November 2022. Mr Uerata said he was not aware of any problems with his employment relationship. He said that he had not been involved in any disciplinary process with Expert Moving, and the only reason he had not attended work on 16 and 17 November, was because he had been sent home by Expert Moving on 15 November, and told that he would be advised when there was further work available.

[36] His evidence was "...this was the first time I heard about any disciplinary process, and the dismissal came as a complete shock".

Was Mr Uerata unjustifiably dismissed?

[37] The Authority accepts Mr Uerata's unchallenged evidence in relation to the circumstances of his dismissal.

[38] The Authority now considers whether Mr Uerata's dismissal was unjustified.

[39] The test in s 103A(2) of the Act is whether the employer's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. Section 103A(3) of the Act requires the Authority to consider a number of factors, including whether concerns were raised by the employer with the employee prior to the dismissal occurring, whether a reasonable opportunity to respond to those concerns was provided, and whether the employer genuinely considered the employee's explanations (if any) before the dismissal.

[40] Expert Moving, as a fair and reasonable employer, could also be expected to comply with the good faith obligations set out in s 4(1A)(c) of the Act, and in particular

the obligation to provide access to information relevant to the continuation of an employee's employment, and an opportunity to comment on the information.

[41] If there were concerns around his attendance, there is no evidence that Expert Moving made any attempt to contact Mr Uerata. The dismissal letter appears to confirm Mr Uerata's evidence that he was sent home from work and told not to work for at least one day of that week.

[42] Mr Uerata's employment was terminated summarily by Expert Moving's email of 18 November 2022. Expert Moving failed to comply with any of the minimum procedural fairness tests under the Act. The manner of Mr Uerata's dismissal was abrupt, and there was no opportunity provided for Mr Uerata to obtain representation, or have any input into the process prior to the decision to dismiss him. There was no evidence that Expert Moving sufficiently investigated any concerns around Mr Uerata's attendance, in breach of s 103A(3)(a) of the Act. Expert Moving failed to raise any such concerns with Mr Uerata in breach of s 103A(3)(b) of the Act. Expert Moving failed to give Mr Uerata any opportunity, much less a reasonable opportunity, to respond to its concerns in breach of s 103A(3)(c) of the Act.

[43] Whatever investigation (if any) Expert Moving undertook prior to Mr Uerata's dismissal, there is no evidence that Mr Uerata was given the opportunity to participate. Instead, he was simply informed of his dismissal, after Expert Moving had supposedly concluded "the final step in [its] disciplinary process ...after further thought and discussion". There is no evidence of any discussion or communication with Mr Uerata.

[44] Because of this, Mr Uerata was deprived of any opportunity to respond to Expert Moving's concerns in breach of s 103A(3)(d) of the Act. The concerns Expert Moving had (if any) were not put to Mr Uerata.

[45] Expert Moving's actions, and how it acted, were not consistent with what a fair and reasonable employer could have done in all the circumstances.

[46] Expert Moving's failure to meet any of the minimum procedural fairness tests in s 103A(3) of the Act, or comply with the obligations under s 4(1A)(c) of the Act renders Mr Uerata's dismissal both procedurally and substantively unjustifiable.

What remedies (if any) should Mr Uerata receive?

[47] Mr Uerata has established a personal grievance for unjustified dismissal. He is therefore entitled to a consideration of the remedies sought.

Lost wages

[48] Upon establishing a personal grievance for unjustified dismissal, an employee is entitled to a consideration of the reimbursement of the remuneration he or she would otherwise have received but for the unjustified dismissal.¹

[49] Mr Uerata seeks reimbursement of three months' ordinary time remuneration.

[50] Mr Uerata was summarily dismissed by Expert Moving on 18 November 2022. He submits that he did what he reasonably could to obtain alternative employment following his dismissal. This was not challenged by Expert Moving. His evidence was that he sought assistance from WINZ and was able to obtain a small amount of paid work. He says that he received \$500.00 (gross) performing casual work. His evidence was that he was still looking for new employment in February 2023, when he received a call from Expert Moving, inviting him and his sons to return to work for the business. All three men agreed, as they had not found alternative employment at that stage.

[51] Mr Uerata says that when he returned to Expert Moving in February 2023, he only worked for two weeks in total. He says that he was short paid for his first week's work, and when he attempted to discuss this with Mr Wood, he was dismissed again. Mr Uerata confirmed to the Authority that he was not seeking any remedies in respect of his second period of employment with Expert Moving, and that his claims relate solely to his first period of employment.

[52] The Authority observes that the fact that Expert Moving would re-employ Mr Uerata, having only recently dismissed him summarily for cause, (ostensibly at the conclusion of a disciplinary process) reinforces the finding that Expert Moving's decision to dismiss Mr Uerata in November 2022 was substantively unjustifiable.

Expert Moving makes further payments to Mr Uerata post dismissal

[53] At the conclusion of the in-person investigation meeting held in May, the Authority requested further bank statements from Mr Uerata, showing payments

¹ Employment Relations Act 2000, s 123(1)(b).

received from Expert Moving up to the end of 2022. These were promptly provided. The bank statements show a number of payments made by Expert Moving to Mr Uerata after his dismissal, including on 24 November 2022, as well as on 1, 8, and 22 December 2022.

[54] To try and establish what these payments related to, an investigation meeting was held by telephone on 8 August 2024. At this meeting, the Authority questioned Mr Uerata as to the nature of these payments. Mr Uerata's affirmed evidence (unchallenged by Expert Moving, who chose not to attend) was that he did not know what the payments were for. He said as he was not provided with a written employment agreement, or any payslips for the payments, or a copy of his wages and time record when requested (discussed below), so therefore had no idea what the payments related to. He said he had tried to enquire of Mr Wood what the payments were for, but Mr Wood had blocked his telephone number. He said that he telephoned Mr Wood using someone else's mobile phone. Although Mr Wood answered, when he realised it was Mr Uerata calling, he told Mr Uerata to "fuck off" and disconnected the call.

[55] Mr Uerata's evidence was that other than the payments referred to above, he did not receive any further payments from Expert Moving.

[56] The payments were made during the period for which Mr Uerata is claiming reimbursement for lost wages. So as to avoid any potential for 'double dipping', the Authority requested Mr Uerata's bank statements up to the end of February 2023, being the end of the three month period for which Mr Uerata seeks lost wages.

[57] On receipt of Mr Uerata's further bank statement information, it was evident Expert Moving had made a number of further payments not disclosed by Mr Uerata. Further payments were made to Mr Uerata by Expert Moving on 13, 19 and 26 January 2023, as well as on 2, 9 and 16 February 2023.

[58] In total, in the three month period following Mr Uerata's dismissal, Expert Moving made net payments totalling \$3141.90 (unexplained payments). Using Inland Revenue's online PAYE calculator, this equates to a gross amount of approximately \$4000.00. This is a significant sum.

[59] A second telephone investigation meeting was held on 5 November 2024. Despite Expert Moving being served with copies of the notice of investigation and copies of Mr Uerata's bank statements, it chose not to attend.

[60] At this investigation meeting, Mr Uerata acknowledged that he had indicated previously that no further payments had been received from Expert Moving. He said the period of his life following his dismissal had been a very challenging one, and that the Authority proceeding had added a layer of complexity to the situation. He said this caused him confusion as to the dates on when things occurred, and he acknowledged that he had been mistaken as to when the additional payments from Expert Moving had ended.

[61] Mr Uerata reiterated his previous evidence that without a written employment agreement, wages and time record, or any payslips, he was unable to say what the payments related to.

[62] As set out below, Mr Uerata seeks arrears of wages and holiday pay. The payments made by Expert Moving after his dismissal (either individually or in their totality), do not correspond with the amount of arrears sought by Mr Uerata. There is no evidence that these payments are in satisfaction of Mr Uerata's final pay.

[63] Although I accept Mr Uerata's evidence that he is unable to say with any certainty what the payments relate to, the frequency and regularity of the payments suggest they are akin to some form of post dismissal wages, and I treat them as such below.

Quantum of lost wages

[64] The Authority is satisfied that Mr Uerata has a personal grievance, and has lost remuneration as a result of the personal grievance.² Under s 128(2) of the Act, if the Authority is satisfied that the employee has a personal grievance, and has lost remuneration as a result, it must order the employer to pay to the employee the lesser of a sum equal to that lost remuneration, or to three months' ordinary time remuneration.

[65] In his personal grievance letter of 9 January 2023, Mr Uerata requested a copy of his wages and time record from Expert Moving. No such wages and time record was provided.

[66] Under s 130 of the Act, Expert Moving is required to keep at all times a wages and time record. Under s 132 of the Act, where an employer fails to produce a wages

² Section 128(1).

and time record the Authority may accept as proved, all claims made by the employee in respect of the hours, days and time worked by the employee.³

[67] At the time of his dismissal, Mr Uerata's hourly wage was \$25.00, and he says he worked an average of 35 hours per week. This was not challenged by Expert Moving.

[68] However, the bank statements provided by Mr Uerata do not wholly support this claim. If Mr Uerata's wage deposits to his bank account are averaged for the period comprising his final six months of employment, using Inland Revenue's online PAYE calculator (and the tax code information from Mr Uerata's payslip), it is possible to work out gross weekly earnings from the net figures shown on the bank statements. In his last six months of employment, Mr Uerata earned an average weekly wage of \$648.50 (gross), which equates to approximately 26 hours of work per week.

[69] I am satisfied that Mr Uerata was working an average of 26 hours per week at the time of his dismissal, and that this is the appropriate basis for an assessment of his lost wages.

[70] Accordingly, Expert Moving Group Limited is ordered to pay to Mr Uerata lost wages under s 123(1)(b) of the Act in the sum of \$8,450.00.00 (gross), being \$25 per hour for 26 hours per week, for three months (being 13 weeks) following his dismissal. From this, the sum of \$500.00 (gross) is to be deducted in respect of Mr Uerata's casual work during this period. A further deduction of \$4000.00 (gross) is then applied, in respect of the unexplained payments set out above at [58].

[71] After the above deductions, the total sum of lost wages Expert Moving is ordered to pay to Mr Uerata is \$3950.00 (gross).

Compensation for humiliation, loss of dignity and injury to feelings

[72] Mr Uerata's evidence is that he suffered financially and mentally as a result of his dismissal. He says he experienced sleepless nights and feelings of anger after his dismissal. He also said he felt embarrassed and ashamed. He said that the effects of his dismissal put a huge strain on his relationship with his partner, and that the dismissal affected every area of his life. He said he struggled to keep up with his financial

³ Employment Relations Act s 132(2).

commitments, resulting in many arrears, which in turn resulted in further stress and uncertainty.

[73] Thomas Uerata's evidence was that he could see that the dismissal was impacting his father's personal relationship. Thomas Uerata's evidence was that he could see his father "going into his shell", and that he was much quieter than usual.

[74] Mr Uerata's evidence establishes that he has experienced harm under each of the heads in s 123(1)(c)(i) of the Act.

[75] In *Wikaira v Chief Executive of the Department of Corrections*, the Employment Court confirmed that it was desirable that awards of compensation pursuant to s 123(1)(c)(i) of the Act "... should be, although not over-generous, nevertheless fair, realistic and not miserly".⁴

[76] Having regard to the particular circumstances of this case, an award of \$15,000.00 under s 123(1)(c)(i) of the Act is appropriate to compensate Mr Uerata for the humiliation, loss of dignity and injury to feelings he experienced as a result of his unjustified dismissal.

Contribution

[77] Where the Authority determines an employee has a personal grievance, it is required under s 124 of the Act to consider the extent to which the employee's actions contributed towards the situation that gave rise to the personal grievance, and if the actions so require, reduce the remedies that would otherwise have been awarded.

[78] No deduction from remedies awarded is to be made under s 124 of the Act. The unjustifiability of Mr Uerata's dismissal from his employment has been established in Expert Moving's failure to follow statutory requirements. These obligations were not Mr Uerata's and there is to be no deduction from the monetary remedies for reason of contribution.

⁴ *Wikaira v Chief Executive of the Department of Corrections* [2016] NZEmpC 175 at [237].

Other remedies

Wage arrears

[79] Mr Uerata's unchallenged evidence is that he worked for eight hours on 14 November 2022, and for four hours on 15 November 2022 before he was sent home by Ms Wood. Mr Uerata says he has not been paid for these hours, despite raising this with Expert Moving several times.

[80] The Authority is satisfied that Mr Uerata is owed wage arrears for the work he performed on 14 and 15 November 2022. Expert Moving is ordered to pay Mr Uerata wage arrears of 12 hours, at \$25.00 per hour, being \$300.00 (gross).

[81] Expert Moving is ordered to pay to Mr Uerata an additional sum of \$24.00 (gross), being holiday pay of eight per cent on the wage arrears ordered above.

Holiday pay

[82] Mr Uerata has provided the Authority with the final two pay slips he received from Expert Moving. The latter of these two pay slips covers the period up to 18 November 2022, the day of Mr Uerata's dismissal. This pay slip records that Mr Uerata had accrued 84 hours of annual leave, which Mr Uerata says has never been paid to him.

[83] Mr Uerata says he had tried to resolve the issue of wages and holiday pay arrears with Expert Moving. He said he tried to reach Mr Wood and then Ms Wood by telephone, but neither would take his calls. In addition, he said he sent text messages to Ms Wood but received no response. He also attempted to raise the issue with Mr Wood using Facebook Messenger, but was blocked shortly after sending his message. He said he then telephoned Mr Wood using a new mobile phone number. Mr Wood answered, but upon learning of the issue Mr Uerata wished to raise, Mr Uerata says that Mr Wood told him to "fuck off and talk to my lawyer". Mr Wood did not advise the name of his lawyer, so this was not something Mr Uerata was able to do.

[84] In addition, the issue of wage and holiday pay arrears was raised in his personal grievance letter of 9 January 2023.

[85] Mr Uerata says he accepts Expert Moving's calculation (as recorded on his final pay slip) of 84 hours accrued annual leave, and seeks payment of this amount.

[86] Accordingly, Expert Moving is ordered to pay to Mr Uerata arrears of holiday pay of 84 hours, at \$25.00 per hour, which is the sum of \$2,100.00 (gross).

Interest

[87] Mr Uerata is entitled to interest on the above awards of wage arrears and holiday pay arrears. This is to be calculated using the civil debt interest calculator.⁵ Interest is to be calculated from the period commencing 19 November 2022 (being the day after the date on which Mr Uerata's final pay became due) until the date Expert Moving makes payment in full.

Penalties

Wages and Time record

[88] Mr Uerata seeks a penalty under s 130 of the Act for Expert Moving's failure to provide his wages and time record upon request. Section 130(2) provides that an employer must provide the employee's wages and time record immediately upon request, and s 130(4) provides for the Authority to impose a penalty on an employer who fails to comply. The Authority is satisfied a penalty against Expert Moving should be contemplated for its failure to provide Mr Uerata's wages and time record.

[89] Contained in the personal grievance letter sent by Mr Uerata's advocate on 9 January 2023 was a request for Mr Uerata's wages and time record to be provided. This appears to be the only request made on Mr Uerata's behalf for his wages and time record. In response to questions from the Authority, Mr Uerata could not identify any other occasion when such a request had been made of Expert Moving.

[90] Expert Moving's failure to provide Mr Uerata's wage and time record is a breach of s 130. However, a breach need not necessarily result in a penalty. As set out above, wage and holiday pay arrears have been ordered, together with interest. Mr Uerata accepts that Expert Moving's failure to provide his wages and time record did not have any significant impact on his ability to bring his wage and holiday pay arrears claim. This is not a matter in which the absence of a wages and time record has meant that Mr Uerata has been unable to accurately quantify his arrears. In its discretion, the Authority makes no order for a penalty in relation to Expert Moving's

⁵ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>

failure to provide Mr Uerata's wages and time record.

Other penalties

[91] Section 4 of the Wages Protection Act 1983 provides that an employer must pay the entire amount of wages when they fall due.

[92] Section 27 of the Holidays Act 2003 provides that an employer must pay annual holiday pay in the pay that relates to the employee's final period of employment.⁶

[93] In addition, s 63A of the Act requires an employer to provide a copy of the intended employment agreement, and (inter alia) provide the employee with a reasonable opportunity to seek advice on the intended employment agreement.⁷

[94] Accordingly, Mr Uerata seeks penalties against Expert Moving for its failure to pay wages when they are due; failing to pay holiday pay, and its failure to provide a written employment agreement.

[95] This is a case where a penalty is warranted. The breaches could not be said to be unintentional, inadvertent, or negligent.⁸

[96] In the circumstances of this matter, I am satisfied that the above three breaches are sufficiently connected that consolidation should occur.

[97] The Authority's jurisdiction to impose a penalty is discretionary, and penalties are generally imposed for the purposes of punishment and deterrence. Every person who is liable to a penalty under the Act, in the case of a company, is liable to a penalty of up to \$20,000.00.⁹

[98] In this matter, there are three breaches for which a penalty is warranted. The maximum penalty against a company being \$20,000.00 per breach, the starting point is therefore a total of \$60,000.00.

[99] The failure to pay wages and holiday pay is a breach of minimum entitlements and of employment standards.¹⁰ These are important rights. This case also

⁶ Holidays Act 2003, s 27(2)

⁷ Employment Relations Act s 63A(2)(a) and (c).

⁸ Section 133A(c).

⁹ Section 135(2)(b).

¹⁰ Section 5.

demonstrates some of the difficulties in operating without a written employment agreement.

[100] The level of penalty is determined by an assessment of the factors set out in s 133A of the Act, as well as in light of judgments of the Employment Court.¹¹ The breaches were intentional in that the decision to withhold wages and holiday pay, and/or to refuse Mr Uerata an employment agreement were decisions made by Expert Moving.

[101] Mr Uerata's evidence was that he repeatedly requested a written employment agreement throughout his employment. He said that he was aware that a handful of other employees (whom he says were all related to Mr Wood) had been provided with written employment agreements. In refusing to provide Mr Uerata with an employment agreement, despite repeated requests, Expert Moving was preferring one group of employees over Mr Uerata. In this regard, Expert Moving has acted unlawfully, and such conduct can only be seen as intentional. Similarly, the refusal to pay wages and holiday pay arrears is also intentional conduct.

[102] Mr Uerata has been put to considerable inconvenience as a result of Expert Moving's failure to pay wages and holiday pay, and the failure to provide him a written employment agreement.

[103] A search of the relevant databases does not reveal any previous proceedings for similar breaches involving Expert Moving.

[104] Taking all the factors into account, Expert Moving is liable for a penalty in the sum of \$3,000.00, which is within the range of penalties currently imposed for similar breaches, and is proportionate to the seriousness of the breaches and the harm caused.

[105] In the circumstances of this matter, it is just for half of the penalty sum ordered (being \$1,500.00) to be paid to Mr Uerata by Expert Moving. The remainder is to be paid to the Authority for transferral to a Crown bank account.

Summary of orders

[106] Within 28 days of the date of this determination, Expert Moving Group Limited must pay to Louis Uerata the following amounts:

¹¹ For example, *Borsboom (Labour Inspector) v Preet PVT Limited* [2016] NZEmpC 143; *Nicholson v Ford* [2018] NZEmpC 132; *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

- (a) lost wages in the sum of \$3950.00 (gross) under s 123(1)(b) of the Act.
- (b) Compensation in the sum of \$15,000.00 (without deduction) under s 123(1)(c)(i) of the Act.
- (c) Wage arrears in the sum of \$300.00 (gross), plus an additional sum of \$24.00 (gross) by way of holiday pay on this amount.
- (d) Annual holiday pay arrears in the sum of \$2,100.00 (gross).
- (e) Interest on the wages arrears and holiday pay arrears set out at (c) and (d) above in the manner set out at paragraph [87] above.

[107] In addition, within 28 days of the date of this determination, Expert Moving Group Limited must pay a penalty of \$3,000.00, half of which is to be paid to Louis Uerata and the remainder to be paid to the Authority for transferral to a Crown bank account.

Costs

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

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

[110] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹²

Jeremy Lynch
Member of the Employment Relations Authority

¹² For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1