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Watkins v Highmark Homes Limited [2022] NZERA 632 (30 November 2022)

Last Updated: 7 December 2022

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

I TE RATONGA AHUMANA TAIMAHI TAMAKI MAKAUROU ROHĪE

BETWEEN AND

Member of Authority: Marija Urlich

[\[2022\] NZERA 632](#)

3085319

NICOLA MAREE WATKINS

Applicant

HIGHMARK HOMES LIMITED

Respondent

Representatives:

Applicant, in person

Danny Jacobson, representative for the Respondent

Investigation Meeting: 28 and 29 April 2022

Information and submissions received:

Determination:

12, 26 May - 31 August 2022 from the Applicant

11 May and 2 June 2022 from the Respondent

30 November 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

{ Nicola Watkins was employed by Highmark Homes Limited (HHL) from July 2014 until her employment ended by way of dismissal on 14 November 2017. In a preliminary determination the Authority found Ms Watkins had raised a personal grievance for unjustified actions causing disadvantage prior to her dismissal. ' This determination deals with that personal grievance and a wage arrears claim about holiday

pay and final pay calculation. This determination also deals with HHL's claim that Ms Watkins has breached her employment agreement for which it seeks damages.

[2] By application lodged 15 May 2022 Ms Watkins applied to reopen the preliminary determination in respect of the findings made that a personal grievance for unjustified dismissal and unjustified actions (other than those the subject of this determination) had not been raised and for which to do so leave was not granted. The reopening application has been allocated the file number 3172525. This determination does not resolve the reopening application which will be the subject of a separate determination.

The Authority's investigation

[3] The parties filed witness statements and relevant documents. The Authority heard evidence at the investigation meeting from:

- Ms Watkins;
- Robert Hunt, the managing director of HHL;

- Ryan Hunt, managing director of HHL: and
 - Ken Goebel, a HHL contractor.

[4] Issues concerning the filing of closing submissions with without prejudice material were referred to other Authority Members to resolve. This has occasioned delay in the filing of the closing submissions being referred to me. In addition, submissions and information filed in respect of the reopening application but which refer to events at the April investigation meeting and appear to be in reply to submissions filed by HHL have been considered, to the extent they are relevant to matters before the Authority for determination.

[5] A residual issue concerning without prejudice material was unable to be resolved by reference to another Authority Member because it concerned a document admitted by consent at the investigation meeting and labelled 'Exhibit Z'. I have considered the issues raised by the parties regarding the circumstances of the admission of the document and the subsequent issues raised in correspondence with the Authority. I have also considered the relevance of the document. I am satisfied the document is

properly before the Authority because the parties consented to it forming part of the evidence and it is relevant to the matters for investigation and determination.

[6] 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 evidence and submissions received. In determining this matter the Authority has carefully considered all the material before it, including all evidence of the parties and their submissions.

Issues

[7] The issues identified for investigation and determination are:

- a. Was Ms Watkins unjustifiably disadvantaged in her employment because Highmark stood her down for family reasons?
- b. If so, is Ms Watkins entitled to a consideration of remedies sought including:
 - i. Compensation pursuant to [section 123\(1\)\(c\)\(i\)](#) of the Act?

 - ii. Loss of any benefit pursuant to [section 123\(1\)\(c\)\(ii\)](#) of the Act?
- Are wage arrears owed for sick pay paid as annual leave?

- d) Was Ms Watkins final pay correctly calculated?

e. Should any remedy awarded be reduced (under [section 124](#) of the Act) for blameworthy conduct by Ms Watkins which contributed to the circumstances which gave rise to his grievance?

Did Ms Watkins breach the terms of her employment agreement?

g. If so, has Highmark established any loss consequent to the breach for which an award of damages should be made?

h. Is either party entitled to an award of costs?

' Third minute of the Authority IB December 2020,

Relevant law

The test for justification

[8] When the Authority considers justification for the actions of HHL it does so by applying the test of justification in [s 103A](#) of the [Employment Relations Act 2000](#) (the Act). In determining justification of actions the Authority does not consider what it may have done in the circumstances. It is required to consider on an objective basis whether the actions of HHL and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[9] As part of this process the Authority must consider the four procedural fairness factors set out in [s 103A\(3\)](#) of the Act. The Authority may take into account other factors as appropriate and must not determine an action or a dismissal to be unjustified solely because of defects in the process if they were minor and did not result in Ms Watkins being treated unfairly.

[10] HHL could also be expected as a fair and reasonable employer to comply with

the good faith obligations set out in [s 4](#) of the Act.

Background

[1] Ms Watkins was employed by HHL in its building business in the role described in the letter of offer dated 9 July 2014 as 'PA Office Manager Business Support'.* Her terms of employment were set out in a written individual employment agreement dated 10 July 2014 to which a position description was attached.

[12] The preliminary determination sets out relevant background which is repeated

for ease of reference:

[16] The factual matrix under consideration starts in mid-September 2017 when Ms Watkins proposed a pay increase to HHL. The parties exchanged emails with information relevant to Ms Watkins' proposal and met on 27 September to discuss. After the meeting Ms Watkins emailed Robert and Ryan Hunt, directors of HHL, in which she thanked them for their consideration of her proposal, explained her reaction to their offer and her understanding that it was a commercial decision. The email goes on to outline study costs HHL were going to pay for Ms Watkins, her personal thoughts and goals for her

' For completeness I record there is some dispute between the parties as to the scope of Ms Watkins position at the relevant time.

' Above n 1, at [17] [27].

work and, with respect to a "spec" house Ms Watkins was building, that HHL's will be ". . .the first bill I pay and I am extremely grateful for the extra help." In her affidavit dated 31 July 2020 Ms Watkins describes this email as the first time she raised concerns about HHL's conduct. Such concerns are not apparent on the face of the email.

[17] In October 2017 Ms Watkins arranged to work from home whilst caring for a dependant. She experienced some difficulties with her work email address and received inappropriate spam email to that address and other work emails addresses she administered which she drew to HHL's attention. The email chain between the parties shows HHL acknowledged and authorised work to address the issues Ms Watkins raised. The spam emails had been an ongoing issue since at least June 2017, HHL was aware of it and steps had been taken to address the issue. Ms Watkins is critical of the

swiftness and adequacy of these steps. Whether these criticisms as expressed by Ms Watkins to HHL in the relevant period amount to a raising of a personal grievance will be discussed further below.

18] On 6 October Ms Watkins emailed HHL asking to cash up a week of holiday pay. On 8 October HHL replied by email declining the request on grounds the relevant legislation only allowed one cashed up week of holiday pay per year and this had already occurred. This is the correct legal position. Ms Watkins emailed Robert and Ryan Hunt that evening "Are you pushing me into a forced dismissal Ryan. Let me know please Monday." On 9 October Ryan Hunt emailed Ms Watkins asking what she meant, how the question related to cashing up holiday pay and included "I am confused as to why you would say something like this after everything we have done to help make sure you are ok." Ms Watkins emailed Ryan Hunt that evening apologising for her misunderstanding of the annual leave cash up requirements. The email included she was tired and run down and had not had a break from thinking about work for three years, that she thought she should be on sick leave caring for a dependent but was on annual leave and she had worked through the last few weeks with technology problems including receiving inappropriate spam emails. The email closed outlining a task she could complete before going out of town on Thursday of that week.

[19] On 12 October Ms Watkins emailed Robert and Ryan Hunt and other members of the Hunt family involved in the business that her email had stopped working, outlining how this would impact negatively on business processes and asking for an explanation. The email then sets out a number of issues - the ongoing issue with spam email and its negative impact on staff, her work arrangements for school holidays and a general critique of employment practices in the work place. The critique continues that HHL failed to communicate with staff when issues were raised and purports to be made on behalf of a number of staff. The email ends expressing full support for the business, suggesting some human resource advice might be useful and asks for a reply before her return to work on Monday.

[20] Later on 12 October Robert Hunt telephoned Ms Watkins. In his affidavit he said the call was made in response to her concerns about rest, that during the call he suggested she take two weeks annual leave from Tuesday 17 October returning to work 30 October and that she would need to return the HHL laptop for a temp worker to use during her leave. The call was made on speaker phone and Ryan Hunt was also present. His affidavit confirms Robert Hunt's narration of the call. Robert Hunt emailed Ms Watkins that HHL was taking advice as she had suggested, confirming he would like her to take two weeks annual leave and the reasons, accepting her offer to come into work on

Monday to help the temp and restating the laptop needed to be brought into work that day.

[21] On 13 October, following a call made to Ryan Hunt, Ms Watkins emailed Robert Hunt in reply including that she was seeking advice regarding the annual leave offer, concerns about operational matters being managed by a temp and that she needed to remove personal items from the laptop. The final paragraph includes:

I have control of my life Bob. My concerns raised are as I said to Ryan, the feeling that a constructive dismissal is being created. I have been a business owner with 150 staff and received extensive training from The People Group in Auckland. I have raised my concerns with yourself and Ryan over the years many times and even offered you a copy of my Auckland Sieel Human resources documents and templates which I edited as draft specialised for Highmark Homes, to enlighten you on HR and employment law and offered to add it to your licensing manual. Free of charge. The training I received and work The People Group did with my company cost me \$150,000. It took our business from strength to strength achieving a \$30m turnover in 2006.

I'm not sure if you have read my CV Bob. Unfortunately both yourself and Ryan have declined any suggestions of mine that Highmark Homes has a legal compliance issue describing it as too complicated for a simple Builder.

I will come back to you once I have discussed things with Rob.

[22] Later on 13 October Ms Watkins sent a text message to Ryan Hunt that there would be a delay in returning the laptop because she would not rise Sunday to remove her personal items from it and had not yet had time to get advice.

[23] On 14 October Ms Watkins emailed Ryan Hunt that she would come into work Monday afternoon to train the temp and provided instructions relating to business operations. The email confirms she is taking two weeks holiday.

24] On Sunday 15 October a number of emails were exchanged. The first of these emails was Ryan Hunt to Ms Watkins at 10.16am setting out communications to date regarding the extended leave, offering Ms Watkins two weeks paid leave without effecting her annual leave balance, that a temp had been organised to start the following day and restating the expectation Ms Watkins would return the laptop to the office the morning of the following day. At 10.59am Ms Watkins replied she did not want to go on leave, she would prefer to work reduced hours and did not think it was practical to use a temp given the nature of the work. The email referred to the communication issues set out in earlier emails and the spam emails. At 1.08pm Ms Watkins emailed Ryan Hunt requesting a loan for \$2000 for the spec house, that asking her to stay away from the office was “not helping” and she looked forward to speaking with him on Monday “to iron all this out”. Ryan Hunt replied by email confirming Ms Watkins would receive two weeks paid leave returning to full duties on 30 October, the laptop was to be returned by 10am the following day and advice was being sought regarding the issues Ms Watkins had raised. At 3.41 pm Ms Watkins emailed Ryan Hunt:

Hi Ryan

Legally you cannot do that without consultation and agreement from

I have also just bumped into Shannon at Bayfair and she tells me you have informed all the staff I will be away on annual leave (or another two weeks).

This is highly unprofessional the way you have conducted yourself and I will also be seeking legal consultation Monday so I will be unavailable until I have received solid advice. I will not have time today or tonight to delete my files off the laptop so I will let you know when it is available.

In the meantime if I was you I would wait until you have received that advice you speak of before you place any more demands on me. This is a serious breach of trust and employment law and it is clear to me now that you have constructed this event with Amanda and Bob to kick me out.

Regards

{25] At 5.32pm Ryan Hunt replied by email confirming the leave and reasons, offering a further loan for the spec house and restating the expectation that the laptop be returned the following day. The email expressed disappointment she sought the need to seek legal advice. At 6.51 pm Ms Watkins replied to Ryan Hunt including she felt forced into a corner to seek advice given the constant email communication over the weekend, she had

been “stood down” with no reasonable duty of care and will get legal advice

on Monday. At 10.04pm Ms Watkins emailed HHL’s human resource advisor, lawyer and accountant copying in Ryan, Robert and Amanda Hunt including:

He [Ryan] has not followed any legal procedures according to my employment re the act and lied directly to my face and over phone call and email about his actions and the reasons I have been stood down. This has happened before with him and Bob on a similar manner of miscommunication between Amanda and Ryan. — FYI around the same time each year, last time a year ago. Bit of a pattern there. However, in giving people the benefit of the doubt I am prepared to discuss with you Monday off the record to help him as a friend and work colleague to resolve our differences and get the job done. . .

[26] The laptop was duly returned.

[27] On 25 October HHL commenced a disciplinary investigation against Ms Watkins into allegations of serious misconduct which led to Ms Watkins’ suspension on 26 October and her dismissal on 14 November.

The scope of this determination

[13] As stated above at [7] the only personal grievance before the Authority for determination is the unjustified action Ms Watkins established had been raised within the statutory 90-day time limit. This was determined in the preliminary determination and referred to in minutes of the Authority dated 23 December 2021 and 18 December 2020 (the minutes).

[14] Notwithstanding, subsequent to the preliminary determination and the case management conferences held during which the issues for determination were discussed and the minutes subsequently issued which set out the issues for investigation and determination, Ms Watkins has filed information prior to the investigation meeting, canvassed during the investigation meeting and in correspondence (including submissions) to the Authority following the investigation meeting which refers to issues which fall outside the scope of those currently before the Authority for investigation and determination including:



Ms Watkins was unjustifiably constructively dismissed;

her employment was negatively effected by exposure to spam emails and/or a dispute about payment for car repairs and/or the circumstances of her entering a house building project;



breaches of the [Privacy Act 2020](#) and [Human Rights Act 1993](#); and defamation by a person associated with HHL.

[15] The effect of this is that information relating to events from the whole employment relationship are before the Authority and though not directly relevant to the issues for investigation and determination, it is necessary to address whether they are within the scope of the determination. To this end the parties were invited to file submissions on a potential jurisdictional issue and their attention specifically drawn to the Supreme Court consideration of the jurisdiction of the Authority.⁵

[16] The parties' submissions on the jurisdictional issue have been considered. For the following reasons the issues referred to by Ms Watkins other than those identified at [7] are outside the scope of this determination because, in broad terms:

' *FI4K TZB* [\[2021\] NZSC 102](#).

(Q

(ii)

(iii)

(IV)

the preliminary determination found which personal grievance had been raised within the statutory timeframe;

the Authority does not have jurisdiction to deal with the statutory or tortious breaches alleged;

the dispute has been heard and determined in another jurisdiction; and/or the factual matters referred to are not relevant to the personal grievance before the Authority for determination.

[17] The issues are discussed further below.

Constructive dismissal

[18] The information Ms Watkins filed before and after the investigation meeting describe her dismissal as a constructive dismissal. So, despite the re-opening application concerning in part this issue and yet to be determined, the constructive dismissal issue must be addressed here in the context of this determination. In the preliminary determination the Authority determined a personal grievance for unjustified dismissal had not been raised within the statutory timeframe and leave to do

so was not granted. r' This finding applies to a constructive dismissal because the

concept of dismissal includes such and the Authority considered all the relevant communications between the parties in the consideration of whether a personal grievance for unjustified dismissal had been raised. '

The house building projecf

[19] A significant amount of information regarding the house building project is before the Authority. I have reviewed the information including the evidence at the investigation meeting and subsequently fi led. It is not directly relevant to the personal grievance with which this determination deals.

[20] Before the Authority are orders of the Disputes Tribunal dated 6 May 2020 and 9 October 2020 relating to the building

project, a Disputes Tribunal appeal report dated

* Above I at [47].

' *Auckland Shop Employees L mon v Woorvorlths (NZ) Lid* [\[1985\] 2 NZLR 372](#), (1985) ERNZ Set Cas 136 (CA).

23 December 2020 and a District Court judgment dated 23 August 2021 declining an appeal of the orders made by the Disputes Tribunal. The matter has been considered and decided in the appropriate jurisdiction. It is clear to the Authority Ms Watkins is dissatisfied with the orders made by the Disputes Tribunal and the subsequent appeal judgment. Those decisions and the factual basis of those decisions cannot be revisited by the Authority.

Alleged defamation

[21] Ms Watkins has sought to raise a claim in defamation subsequent to the investigation meeting or, at least put information before the Authority concerning the alleged actions of a person associated with HHL outside the work context which relate to her (Ms Watkins) and which she says have caused her harm, The Authority understands Ms Watkins says this information is relevant because it indicates a view towards her held by HHL. As alleged the events happened outside the work context. The Authority does not have jurisdiction for claims in defamation.* This matter is not properly before the Authority.

Breaches of the [Privacy Act 2020](#) and Human Rights Act 1993

[22] The Authority does not have jurisdiction to deal with alleged breaches of these laws. "

Payment for car repairs

[23] Bob Hunt paid for repairs to Ms Watkins' car. This payment is the subject of orders made by the Disputes Tribunal and appealed to the District Court . The dispute between the parties concerning the car repair payment has been considered and determined in another jurisdiction and cannot be re-considered by the Authority.

" Dispute Tribunal directions have also been provided. ' [Employment Relations Act 2000 s 161](#).

' Refer above.

Was Ms Watkins unjustifiably disadvantaged in her employment?

[24] Ms Watkins says she suffered an unjustified disadvantage in her employment when HHL directed her to take a period of paid leave because HHL:

- (i) expressed disappointment that she was seeking legal advice when they received professional advice;
- (ii) forced her onto leave with no consultation process, mutual agreement or proper explanation;

shut down attempts to tell them what her grievances were;

(!) 0

discrimination against her on specified grounds; neglected her as an employee;

(vi) ignored her pleas for help;

(vii) accused her of insubordination;

breached her privacy and human rights by seeking human resource advice about the situation; and

(ix) stood her down to avoid an agreed pay rise.

[25] It is unnecessary to detail the personal circumstances which occasioned this employment relationship problem other than to say Ms Watkins made HHL aware of the circumstances and HHL took steps which it

believed were appropriate to support her and the business.

[26] I am satisfied the events leading up to HHL's direction to Ms Watkins to take a period of paid leave are as narrated in the preliminary determination and repeated at [12] above. I have reviewed the supporting documents and the evidence received at the investigation meeting. This confirmed the narration and further clarified HHL's motivation for the direction. I am satisfied that motivation included information HHL had received about Ms Watkins conduct in the workplace which caused it further concern as to her wellbeing.

[27] The question this raises for the Authority is whether HHL's decision not to put this issue to Ms Watkins during the communications leading up to the direction to take a period of paid leave breached obligations owed to her under the employment agreement, including the statutory duty of good faith and caused her disadvantage in her employment. I find they did not because HHL had put to Ms Watkins their concerns about her well-being and the proposal that she have a period of paid time off, she was provided an opportunity to comment which she took and I am satisfied her comments were considered because the narration shows HHL responded.

[28] It is unfortunate that much of this process occurred over the weekend of 14 and 15 October 2017, which were not normal working days for Ms Watkins. However, I am satisfied that it was consistent with the information before the Authority of the parties' employment relationship and that it was appropriate that HHL seek to summarise the situation as it understood it, confirm that Ms Watkins would be taking a period of leave and the terms thereof and to confirm the requirement that she return the work laptop.

[29] The next consideration is whether the direction to take leave was a type of disciplinary action. The evidence does not support such a finding. It is clear HHL had a sincere concern for Ms Watkins well-being. That disciplinary action was subsequently initiated against Ms Watkins does not support a finding she was removed from the workplace for that purpose - the documents before the Authority do not establish this was HHL's intention or was a consideration in the decision that Ms Watkins should take a period of leave.

[30] Ms Watkins suffered no disadvantage in respect of pay or annual leave balance during the period of paid leave because the two-weeks was paid and not deducted from her annual leave entitlement.

[31] HHL was entitled to seek professional advice to deal with an employment issue. This did not occasion a disadvantage to Ms Watkins in her employment. I am satisfied the expression of disappointment by HHL to Ms Watkins' response to the proposal including that she would seek advice was sincere and could not reasonably be seen as seeking to dissuade her from seeking advice, which was entirely reasonable.

[32] The narration does not support a finding HHL shut down Ms Watkins' attempts to raise personal grievances. The narration demonstrates Ms Watkins able to assert her position.

[33] A ground of discrimination is family status. On the information before the Authority the elements of discrimination are not established,

[34] The claim that HHL neglected Ms Watkins as an employee, ignored her pleas for help or accused her of insubordination at the relevant time is not supported by the evidence. The information before the Authority shows HHL actively engaged with Ms Watkins, responded to issues she raised and communicated concerns and proposals.

[35] The narration shows the parties entered a discussion regarding Ms Watkins terms of employment in late September 2017. There is insufficient evidence the period of leave she was directed to take was to avoid giving a pay rise which had been agreed to because there is insufficient evidence to find a pay rise was agreed which was then not paid.

Was Ms Watkins underpaid annual leave entitlement?

[36] Ms Watkins full annual leave records and final pay details have been provided to the Authority. I have reviewed them and accept the submission they show \$614.83 in annual holiday entitlement has been overpaid in Ms Watkins final pay. HHL does not seek to recover the overpaid sum.

[37] The claim for annual leave arrears is unsuccessful.

HHL's counterclaim

[38] HHL seeks orders against Ms Watkins for the following damages:

- (i) special damages of \$500.25 (including GST) in relation to expenses incurred by HHL in engaging an IT

consultant to investigate deletion of company information from the laptop computer used by Ms Watkins and HHL's IT and server systems;

' [Employment Relations Act 2000](#), 105(1)(I). [Employment Relations Act 2000, s 104](#).

(ii) special damages of \$22,093.78 (including GST) for accountancy costs arising from the deletion of company data and records by Ms Watkins; and

(iii) general damages of \$5,000 in relation to the inconvenience and interruption caused to the operation of HHL's business and the loss of goodwill and reputation arising from Ms Watkin's breaches of contract including implied terms of fidelity, trust and confidence sand the statutory term of good faith: and

(iv) interest in the above.

{39} Ms Watkins filed a statement in reply to the HHL's claim on 11 February 2021. She does not deny deleting information from the work laptop, including company information but says this was reasonable given the limited notice she had to return the laptop and the need to delete personal information from the laptop. She says all the HHL information on the laptop was 'backed-up' and readily accessible in its data storage facility. In addition, she relies on emails from HHL's IT support provider including one dated 3 July 2017 advising her to remove superfluous data from the laptop to free up space.

[40] Ms Watkins also says HHL neglected to clean up the laptop when the inappropriate spam was drawn to its attention. As previously outlined Ms Watkins says the inappropriate spam email her laptop had been receiving in the months leading up to her going on leave had caused her stress and negatively impacted her mental wellbeing. The implication is this has affected her decision-making when deleting material from the laptop.

[41] There is no dispute Ms Watkins used a laptop provided by HHL to perform her duties. There is also no dispute she used it for personal matters including study or that she was entitled to remove personal material stored on the laptop before it was returned. I accept when Ms Watkins returned the laptop and HHL found the email inbox folder and deleted email folder deleted this caused it surprise and alarm. Ms Watkins had advised in email exchanges over the weekend that she would delete personal information from the laptop. I am satisfied the deletion went beyond that and included deletion of information belonging to HHL including business records the retrieval of

which it needed to seek advice on and then spend time and resources retrieving or implementing systems to re-create that information wilhin existing business systems.

[42] The evidence does not support a finding Ms Watkins sought or was provided permission to delete HHL's information from the laptop. Before deleting HHL's information she shou!d have communicated her intention to do so and sought its agreement. In failing to do so she has acted in a way inconsistent with the obligation she owed HHL to deal with it in good faith.'3

[43] In addition under the express terms of the parties' employment agreement, Ms Watkins was obliged not to use HHL's confidential information to its detriment. The deletion of such information without express permission is, I find a use of its confidential information to its detriment and amounts to a breach of the employment agreement.

[44] The costs HHL incurred in seeking professional advice to understand what Ms Watkins had deleted from the work laptop at the relevant time amounts to \$500.25. It is entitled to recover that cost from Ms Watkins because but for her actions, which I have found breached obligations she owed HHL, the costs would not have been incurred,

[45] HHL seeks to recover some of the costs it incurred by engaging a contractor, Mr Goebel, to undertake accounting duties while Ms Watkins was on leave and subsequent to that two-week period. The sum sought is \$22,093.78 and is made up of Mr Goebel's reconciliation of the work he needed to perform to discharge the accounts work for HHL arising in part from Ms Watkins deletion of information from the laptop.

[46] Mr Goebel gave careful and balanced evidence to the Authority. I am satisfied when he stepped into the role there was significant work he needed to do to establish or re-establish accounting records which had not been for some time as well as the recreatir n of records Ms Watkins had deleted from her laptop, It is therefore necessary to tease out from the re-creation work, the time that could reasonably be expected to be incurred in stepping into a role with no hand over, as was the case here and Mr Goebel's observation that work systems he understood Ms Watkins was responsible for had not been maintained for some months likely due to work pressure.

' ' [Employment Relations Act 2000, s 4](#).

[47]₁ I have considered Ms Watkins comments including that there were hard copy folders in the office which contained the **material** Mr Goebel needed to do the accounts work. I am not satisfied these documents would have addressed all the issues

arising from the deletions she made to the work laptop.

[48] Taking into account these factors, I assess HHL's loss in recreating the deleted work information as \$3,000 which Ms Watkins is ordered to pay.

[49] The claim for general damages is not successful. I have considered the evidence including the claim of loss of good will and reputational damage and the span of time the claim covers, which is understood to include after Ms Watkins was on leave. These matters are covered by the above awards or are too broad as to not be sufficiently specified to be established.

Interest

[50] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement. HHL is entitled to an award of interest on the damages award ordered.

[51] Ms Watkins is ordered to pay interest, using the civil debt interest calculator, within 21 days of this determination, as follows: '

(i) Interest on \$3,500.25 to be calculated from date of determination until the date payment is made in full.

Outcome

[52] Ms Watkins unjustified disadvantage claim and arrears claim are unsuccessful.

[53] Ms Watkins must pay Highmark Homes Limited \$3,500.25 within 21 days of the date of determination.

[54] Ms Watkins is to calculate and pay interest on \$3,500.25 from date of determination until the date the sum is paid in full to Highmark Homes Limited.

" www.justice.govt.nz/finae/civil-debt-interest-calculator

Costs

[55] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. I note the parties have both achieved a degree of success over the course of this and the preliminary determination.

[56] If they are not able to do so and at Authority determination on costs is needed Highmark Homes Limited may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Watkins would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[57] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence. The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.'

Marija Urlich

Member of the Employment Relations Authority

' ' For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-0avine-costs-1.