

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 410
3365023

BETWEEN NEIL HALL
Applicant

AND CONSULTEX COMPANY
LIMITED
Respondent

Member of Authority: Matthew Piper

Representatives: John Dustow, advocate for the Applicant
Mark Beech and Kirsten Lombard, counsel for the
Respondent

Investigation Meeting: 4 February 2026 in Kerikeri
23 March 2026 by Audio Visual Link

Submissions received: 24 March 2026 and 10 April 2026 from the Applicant
9 April 2026 from the Respondent

Determination: 25 June 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Neil Hall was employed by Consultex Company Limited (Consultex) as a Certified Mould Testing Technician and Asbestos Surveyor when his employment was terminated for redundancy in March 2025. Mr Hall claimed that the process undertaken by the company in deciding whether his role should be disestablished was unfair and that his dismissal was unjustified.

[2] Consultex's position was that the termination of Mr Hall's employment for redundancy was justified and followed a fair restructuring process.



The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Mr Hall, Consultex's Operations Manager, Michaela Lewis, and Consultex's Managing Director, William Morris-Whyte.

[4] All witnesses answered questions under oath or affirmation from me and the parties' representatives.

[5] The representatives also lodged written submissions. In the applicant's closing submissions, his claim for lost wages was withdrawn.

[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.

The issues

[7] The issues requiring investigation and determination were:

- (i) Was Mr Hall unjustifiably dismissed?
- (ii) Was the restructure process undertaken by Consultex compliant with its obligations under the Act?
- (iii) If Consultex's actions were not justified should compensation be awarded to Mr Hall under s 123(1)(c)(i) of the Act?
- (iv) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Mr Hall that contributed to the situation giving rise to his grievance?
- (v) Should either party contribute to the costs of representation of the other party?

Background

[8] Consultex is a hazardous materials consultancy that provides testing, assessment and identification services relating to asbestos and other hazardous



materials. The company operates in Northland, Auckland, Waikato, Nelson, Christchurch and Dunedin. Mr Hall worked in Northland.

[9] Mr Hall's employment with Consultex commenced in August 2021 when he was employed as a Trainee Hazmat Consultant. At the time of the termination of his employment Mr Hall was an asbestos surveyor and mould specialist undertaking asbestos surveys. His duties involved visiting residential and commercial properties to obtain samples.

[10] Mr Hall has experience in owning and running businesses, which included the fact he ran another business providing tiling services while employed by Consultex.

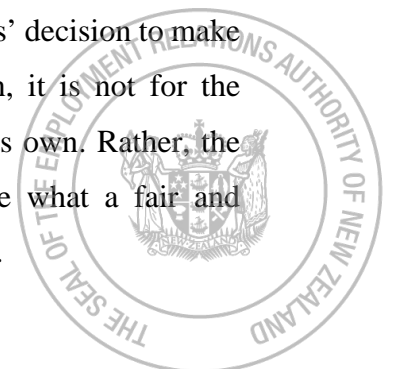
[11] Ms Lewis joined Consultex in September 2024. Ms Lewis is a subject matter expert on working with asbestos, which is a highly regulated and safety sensitive industry.

[12] In 2024 and early 2025 Northland had no physical branch. Mr Hall worked with and reported to Gareth Jones who was the Northland Regional Manager. The Auckland office undertook most paperwork, such as invoicing, for the Northland branch.

Was the disestablishment of Mr Hall's position substantively justified?

[13] The test for justification applicable to all dismissals, including redundancies, is found in s 103A(2) of the Act and 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 dismissal occurred. An employer may justify dismissal for redundancy where there are genuine reasons for the disestablishment of an employee's position and where the decision to disestablish the role and terminate the employee's employment was reached in a fair manner compliant with the Act.

[14] While the Authority may inquire into the merits of a business' decision to make a position redundant as part of applying the test for justification, it is not for the Authority to substitute the employer's commercial judgment for its own. Rather, the question is whether the decision, and how it was reached, were what a fair and reasonable employer could have done in the relevant circumstances.



The commercial justification for disestablishing Mr Hall's position

[15] Consultex said its decision to restructure and disestablish Mr Hall's position was for genuine commercial reasons, including its assessment of market conditions, the trajectory of the business' performance in the Northland region and its view that changes in the market meant there would be limited upcoming work.

[16] Ms Lewis gave evidence that a slump in the need for identification of asbestos and other hazardous substances had occurred alongside a downward trend in the construction industry. She further said that the impact of a new competitor and changes to government policy relating to social housing that had previously been a presumed source of forward revenue meant that it was reasonable to form the view Northland would only require one person to undertake the available work.

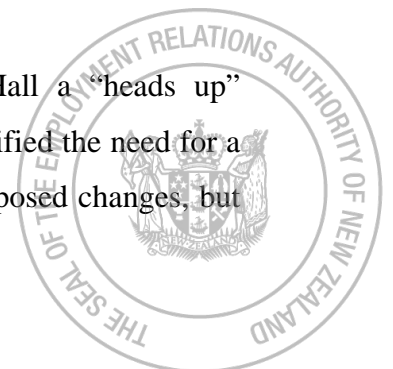
[17] Ms Lewis said that the reduction in available work meant the Northland branch was losing money in the latter part of 2024 and that she and Mr Morris-Whyte formed the view that something needed to be done to ensure the business was not suffering because of Northland's poor performance.

[18] Mr Hall told the Authority he did not observe a reduction in work and felt he was always busy. However, based on the evidence received, as a person who had run and been involved in businesses, it is more likely than not that Mr Hall, too, would have been aware of the slowdown in profitable work.

[19] A fair and reasonable employer could have concluded that a reduction in headcount was appropriate in these circumstances. Consultex has established that there were genuine commercial reasons for the decision to disestablish Mr Hall's employment.

The redundancy process

[20] On 10 February 2025 Mr Morris-Whyte emailed Mr Hall a "heads up" indicating that a review of upper North Island operations had identified the need for a restructure. The email did not contain detail of the company's proposed changes, but



reference was made to optimising productivity and managing costs effectively in the context of poor financial performance, a declining workload and increased competition.

[21] Later that day, Mr Morris-Whyte emailed Mr Hall a proposal document. The proposal document recorded that a steady decline in revenue and profitability over the last eight months in the upper North Island meant that it was necessary for the company to “restore productivity and reduce costs”. It said the decline in revenue and profitability was able to be attributed to increased competition, government budget cuts impacting social housing projects and the wider recessionary environment affecting the private sector.

[22] The document said that to address these challenges the company proposed to integrate the Northland Branch under the operational oversight of the Auckland Branch with Ms Lewis as the Operations Manager. It further proposed to “abolish” the Northland Regional Manager Role held by Mr Jones, and replace it with a Senior HAZMAT Consultant role, which would have a revised contract and salary.

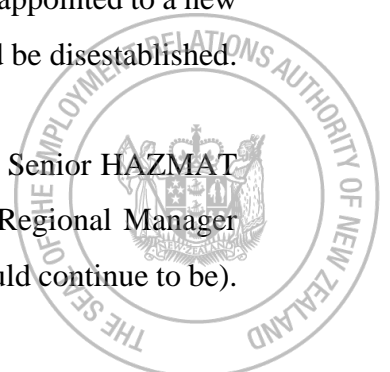
[23] The proposal then said that Mr Jones, who was an Asbestos Surveyor and Assessor, was proposed to be appointed to the new Senior HAZMAT Consultant role.

[24] The proposal letter said Mr Hall did not hold the required Asbestos Assessor Licence and therefore did not meet the criteria for the new Senior HAZMAT Consultant role and that his position would be made redundant.

[25] Feedback was invited on the proposed changes as well as any alternative suggestions by 14 February 2025 and a final decision regarding the business’ structure in Northland would be communicated by 28 February 2025.

[26] In essence, the change proposed was that Mr Jones’ position of Northland Regional Manager would be disestablished, that Mr Jones would be appointed to a new Senior HAZMAT Consultant role and that Mr Hall’s position would be disestablished.

[27] The proposal document did not, however, describe what the Senior HAZMAT Consultant would do as compared to the then existing Northland Regional Manager role, or how Mr Hall’s work would be undertaken (or whether it would continue to be).

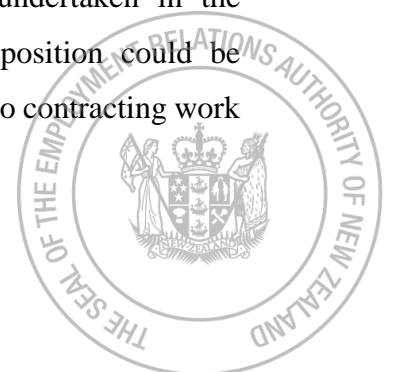


It further made the assertion that Mr Hall did not meet the criteria for the Senior HAZMAT Consultant role without providing any real context or support for this proposition.

[28] Also on 10 February 2025, Mr Hall incorporated a new company which started trading in the months following the conclusion of his employment at Consultex. Mr Morris-Whyte told the Authority that Mr Hall's new business provided services that competed with Consultex.

[29] On 13 February 2025 Mr Hall emailed to Mr Morris-Whyte to raise a number of matters and concerns related to the proposal letter. In his email Mr Hall:

- a. asked about how the change would affect his ongoing employment, rather than merely his position and inquired as to whether redeployment was an option. In this context Mr Hall noted his view that he had worked hard to become a certified mould tester;
- b. asked about the financial rationale underpinning the proposal, particularly given Ms Lewis had emailed his ACC case manager in December 2024 and had referred to the company having a full workload in the area. In his request for further financial information, Mr Hall said "I require all relevant financials to be submitted for the past 6 months" and asked for detail of any other cost cutting measures that had been considered. Mr Hall also asked whether a reduction to his hours of work could be considered. Mr Hall told the Authority he asked for this information because he was confused about the basis for the proposal given Ms Lewis had recently indicated to a third party that there was plenty of work for Mr Hall to do;
- c. made detailed references to the types of work undertaken in the Northland region and suggested that Mr Jones' position could be disestablished instead of his if a particular approach to contracting work was adopted;

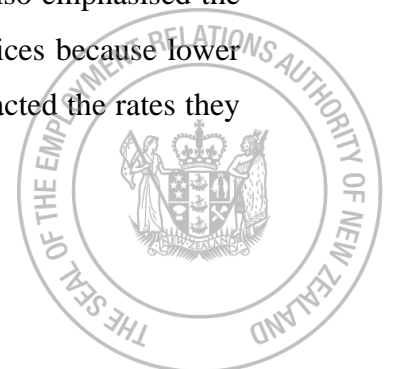


- d. noted that he had been locked out of the surveying software recording jobs on 12 February 2025 and that this limited his ability to provide other comments or suggestions;
- e. said that the reasoning behind the restructuring appeared unclear in that the changed proposed to how administration would be handled appeared to reflect the current structure because Northland, he said, had always been administered by Auckland with only few exceptions. He further said he would be willing to take on this administrative work and was capable of doing so; and
- f. said the proposal had impacted him emotionally and that he believed a conversation would be beneficial so the points he was raising could be talked through. He asked for an enlargement to the timeframe within which he was to provide his feedback from 14 February 2025 to 21 February 2025.

[30] On 20 February 2025 Ms Lewis responded to Mr Hall's 13 February 2025 email. In her reply, Ms Lewis said that the company believed having one consultant in the region was in the best interests of the business and that one fieldwork-based position in Northland "*will be made redundant due to insufficient work volume to sustain two roles, even part-time*".

[31] Ms Lewis acknowledged that administrative tasks have been managed by the Auckland Branch for some time and said the Northland role requires full capability for all types of asbestos surveys and clearance inspections, including physically demanding work.

[32] Ms Lewis went on to say that the slowdown in work was "palpable" and they were having difficulty filling a single consultant's workday. She also emphasised the slowdown flowed from decreased demand for the company's services because lower rates of public sector spending and increased competition had impacted the rates they could charge.



[33] Ms Lewis specifically responded to the outsourcing alternative Mr Hall had suggested in his email and provided reasoning as to why it was not suitable. Ms Lewis commented that Mr Jones' salary was comparable to Mr Hall's but that he completes a wider range of jobs more efficiently, even with his administrative tasks outsourced to Auckland. Reference was made to the Northland Regional Manager's salary already having been reduced to reflect his work.

[34] Ms Lewis contested accuracy of the detail of work type Mr Hall had provided and then gave a breakdown of how different types of work contributed to revenue by percentage.

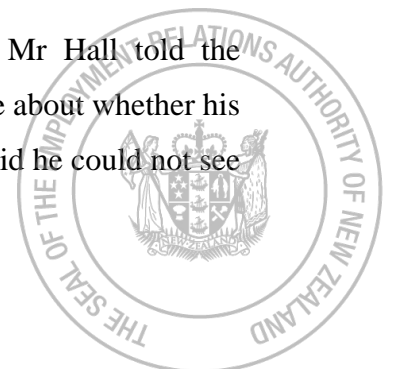
[35] Ms Lewis also said that gross revenue for 2024 had been 30% lower than the prior 12-month average and that it was trending down. Ms Lewis said that the figures supported the conclusion that "maintaining Gareth's adjusted role is the most logical option".

[36] Lastly, Ms Lewis offered to arrange a call to discuss matters further and asked that Mr Hall share his availability for one.

[37] It is notable that Ms Lewis' email did not address the availability of redeployment options within the company, whether Mr Hall's skills could be utilised in a different way or whether alternatives to the termination of his employment such as working reduced hours had been considered. These omissions would have given Mr Hall the impression that further discussion was only to explain the company's position, rather than to receive further feedback or consider alternatives.

[38] Similarly although further financial information was provided in Ms Lewis' email, the information sought by Mr Hall was not. Nor did Ms Lewis say why she was providing only the information she did and not the information Mr Hall had requested.

[39] After considering Ms Lewis' email of 20 March 2025, Mr Hall told the Authority he formed the view that a decision had already been made about whether his role was to be disestablished and his employment terminated. He said he could not see any point in engaging further.



[40] On 26 February 2025 Ms Lewis emailed Mr Hall following up on her 20 February 2024 email. Mr Hall did not respond.

[41] On 28 February Ms Lewis again contacted Mr Hall, offering a final opportunity to discuss the proposed changes. In the email she said a final decision would be made the following week and she was willing to schedule a call to discuss the matter or receive any further feedback.

[42] On 6 March 2025 Mr Morris-Whyte wrote to Mr Hall confirming that the company was proceeding with the restructure as proposed on 10 February 2025 and that his role would be disestablished as of 7 March 2025. The letter said that each branch had been considered for redeployment but that at present there were no vacancies that did not require an Asbestos Assessor License.

[43] Also on 6 March 2025, Mr Hall, via his representative, raised a personal grievance.

[44] Mr Hall's final day of employment was 4 April 2025.

Was the process fair?

[45] An employer who is considering disestablishing an employee's position must provide them with information relevant to the continuation of their employment (ie the change under consideration) so as to enable the employee to comment on the change before the decision is made.¹ It must also engage with the employee in a manner which is active and constructive in maintaining a productive employment relationship. This means also being communicative.²

[46] The Act, as it read at the time of these events, said in s 103A(5) that the Authority must not determine a dismissal to be unjustifiable solely because of defects in the process that were minor and did not result in the employee being treated unfairly.

¹ Section 4(1A)(c) of the Employment Relations Act 2000

² Section 4(1A)(a) and (b) of the Employment Relations Act 2000



Mr Hall's injury

[47] In September 2024, Mr Hall sustained a back injury at work. He remained off work and was receiving ACC compensation in February 2025 when Consultex began a restructuring consultation process with him.

[48] Mr Hall claimed that the decision to disestablish his role and not redeploy him elsewhere was, in reality, unfairly driven by Consultex wanting to remove him from the business because he was away from work recovering from a back injury. Ms Lewis denied that this was correct and said Mr Hall's injury was not a factor in the decision to disestablish Mr Hall's role.

[49] While he was away and receiving compensation from ACC, Mr Hall's draw on the company finances was limited to it topping up his salary to cover the difference between his full pay and the compensation he received from ACC. This top up was not contractual and could have been stopped by the company following appropriate consultation.

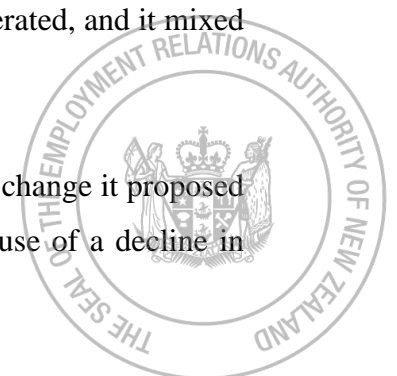
[50] Consultex did not have an urgent need for Mr Hall to return to work, nor was it trying to replace him while he was on leave.

[51] I find Consultex was not motivated to end Mr Hall's employment because of his injury and that his being away from work recovering was not a material factor in the decision to disestablish his role. He was therefore not unfairly treated by the company by virtue of it having a secondary motive related to his injury.

The 10 February 2025 letter

[52] The 10 February 2025 correspondence from Mr Morris-Whyte to Mr Hall was not well drafted. It twice suggested that a change would be made to administrative management, that was not in fact a change to how the company operated, and it mixed referencing roles and individuals in a manner which was confusing.

[53] However, the letter did provide Consultex's reasons for the change it proposed by indicating that a restructure was required to reduce costs because of a decline in



revenue and profitability. It also provided the company's view on what had caused the commercial issues.

[54] I find that Mr Hall understood the 10 February 2025 letter and that its drafting issues did not, in reality, create an unfairness for him. This is demonstrated by the fact Mr Hall was able to respond to it with probing questions that reflected an understanding of the letter's point. That it was proposed his and Mr Jones' roles would be disestablished, and that Mr Jones would be appointed to a newly created position, was all information Mr Hall had in mind when he suggested an alternative and asked for more information.

[55] Mr Hall was also able to ask further questions about the commercial justification for the change based on the information provided to him and he did so.

[56] Accordingly, the drafting difficulties in Mr Morris-Whyte's 10 February 2025 letter did not, in isolation, cause unfairness to Mr Hall.

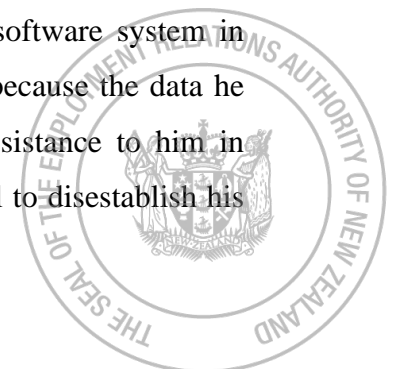
Mr Hall being locked out of certain systems

[57] Mr Hall said he was locked out of a particular platform used by Consultex to track its operations and that this impacted on his ability to comment on the company's proposal.

[58] Consultex said Mr Hall's being locked out of the software coincided with a subscription renewal anniversary and that Mr Hall did not need the system at the time because he was away on ACC with no return date.

[59] Under cross-examination Mr Hall accepted that he continued to have access to the company's other IT systems despite having access cancelled to the software.

[60] I do not consider that Mr Hall being locked out of the software system in question created any unfairness for him in all the circumstances because the data he may have obtained from it would not have been of any real assistance to him in responding to the core reasons given by Consultex for its proposal to disestablish his position.



The email exchange between Mr Hall and Ms Lewis about the proposed change

[61] Mr Hall's email of 13 February 2025 and Ms Lewis' response on 20 February 2025 were of particular importance to the question of whether Consultex complied with its good faith obligations during the restructure.

[62] As a full bench of the Employment Court said in *Vice-Chancellor of Massey University v Wrigley*, good faith is “the principal means of achieving successful employment relationships” and it should be interpreted in a manner which minimises the likelihood of employment relationship problems developing.³ This, the Court said, was more likely to be achieved by giving timely and ample access to relevant information which, among other things, will avoid or reduce the sense of grievance which may otherwise result from what is occurring.

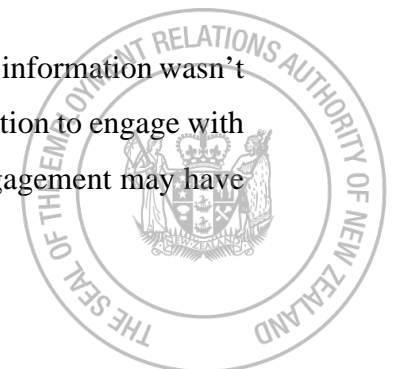
[63] Mr Hall's seeking further information, asking questions and proposing alternatives was consistent with his good faith obligations under s 4 of the Act. He showed he understood the proposal, wished to engage regarding its details and that he wished to continue his employment if possible.

[64] Ms Lewis' email in response on 20 February 2025 contained some answers to Mr Hall's queries but did not provide him with the information he said he would have needed in order to meaningfully comment on the proposal, or say why that information was not provided.

[65] For example, Ms Lewis did not provide the six months' of “relevant financials” Mr Hall had requested. Instead, she referred to a gross revenue reduction of 30% compared the prior 12-month average and said it was “trending down”. Mr Hall's request for information was, on its face, intended to allow him to make comments or suggestions for alternatives that would have kept him employed.

[66] By not responding directly to this question or saying why the information wasn't being provided, Consultex did not comply with its good faith obligation to engage with Mr Hall regarding relevant information. I note in this case, that engagement may have

³ [2011] NZEmpC 37



included stating a position as to why the information was not relevant or would not be provided.

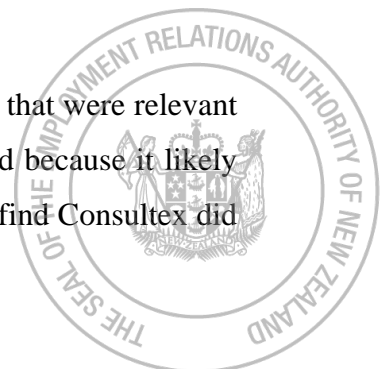
[67] The information and answers Ms Lewis did provide would have been of some assistance to Mr Hall in understanding the proposal and allowing him the ability to comment. For example, Ms Lewis elaborated on why only one person was needed in Northland, why Mr Hall's contracting proposal would not be practical and why Mr Jones would be the right fit for the newly created role. These responses did not, however, cure the failure to provide a meaningful response regarding the financial information requested.

[68] Importantly, Ms Lewis' email also did not provide information about alternative roles or whether Mr Hall's employment might otherwise continue, which had been requested by Mr Hall in his email of 13 February 2025. If there were no roles that Mr Hall could have been redeployed to, this should have been put to him in good faith and there should have been an opportunity for him to comment on this position, particularly given the fact there were multiple offices across the country.

[69] The obligation to consider redeployment and an employer's duty of good faith are closely intertwined and Consultex had an obligation to engage with Mr Hall regarding redeployment, particularly when he specifically asked about it, but failed to do so.

[70] Ms Lewis' email presented as saying that the relevant decisions to disestablish Mr Hall's position and not appoint him to the new position had already been made. Although the company said it was open to meeting to discuss matters further, the email's tone and use of definitive language strongly suggested that a decision had already been made regarding Mr Hall's employment ending. This finality occurred before the conclusion of the consultation process and sooner than had been previously indicated to Mr Hall would be the case.

[71] By failing to properly engage with Mr Hall regarding issues that were relevant to the decision it was going to make regarding his employment and because it likely determined the outcome of the restructuring process prematurely, I find Consultex did not comply with its good faith obligations to Mr Hall.



Mr Hall stops engaging

[72] After receiving Ms Lewis' 20 February 2025 email, Mr Hall failed to engage further. Mr Hall said he did not take any further steps because he considered the outcome was already known to Consultex and because the company had not provided him with the information he had asked for.

[73] Although these frustrations were reasonable, the duty of good faith is robust and requires parties to an employment relationship to be active and communicative in maintaining the employment relationship. Mr Hall could, and should, have raised concerns in the period between 20 February 2025 and 6 March 2025. Multiple opportunities for further conversations were given to him by Ms Lewis, which he chose not to take.

Redeployment

[74] Mr Hall claimed that others were hired into the Consultex business around the time of the restructure affecting his role, and that these roles should have been offered to him.

[75] As noted above, Mr Hall asked about redeployment and Consultex was obliged to reply to this question. It failed to do so. However, the evidence showed that there were no roles that would have been realistic redeployment prospects for Mr Hall.

Finding

[76] In order for its decision to dismiss Mr Hall to be justifiable under s 103A of the Act, Consultex had to comply with its good faith obligations as set out in s 4(1A) of the Act to be responsive and communicative. This is particularly the case where the subject matter in question pertains to the factors which will inform whether an employee's employment will end.

[77] By failing to properly consult or to be responsive and communicative regarding important matters during the restructure process, Consultex did not comply with its obligations under s 4(1A) of the Act. This has rendered Mr Hall's dismissal unjustified and he has established a personal grievance.



Remedies

[78] Given he has established a personal grievance, Mr Hall is entitled to consideration of remedies.

[79] Mr Hall seeks compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123(1)(c)(i) of the Act.

[80] Mr Hall was upset at the prospect of losing his role. I find the company's responses, or lack thereof, to the questions he posed about the financial justification for the change and whether there were any other roles available to him were unfair that this unfairness would have caused him humiliation and distress. This was particularly the case when the initial articulation of the proposed change was confusing and referred to the status quo as a change, when it was not.

[81] The task for the Authority when assessing awards for emotional distress in this context is fact specific. The Authority must consider the actual harm suffered by the applicant flowing from the personal grievance they have established.⁴

[82] Mr Hall is an experienced businessperson. At the time of Consultex's breaches of good faith, he had another business, and had incorporated to begin running another, which he went on to do in competition with Consultex.

[83] No medical evidence was provided regarding the emotional impact suffered by Mr Hall, and the evidence he did provide largely related to matters which occurred months after the termination of his employment when he had stopped receiving ACC compensation.

[84] Mr Hall's evidence and the above factors warrant an award of \$8,000 in distress compensation.

⁴ *Richora Group Ltd v Cheng* [2018] NZEmpC 113



Contribution

[85] Where remedies are awarded by the Authority in respect of a personal grievance, the Authority must, in deciding both the nature and extent of the remedies to be provided, consider the extent to which the actions of the employee contributed to the situation giving rise to the grievance. Where there is relevant contribution the Authority may reduce the remedies awarded. In order to justify a reduction, the employee's actions must be blameful or wrong, which when assessed in a commonsense way contributed to the situation giving rise to the grievance.

[86] At the time of Consultex's breaches of good faith toward Mr Hall, he had not engaged in blameworthy conduct that would justify a reduction in remedies.

[87] For completeness, I have considered whether Mr Hall's non-engagement with the process after Ms Lewis' 20 February 2025 email and his incorporation of a company on 10 February 2025 which would ultimately compete with Consultex were blameworthy behaviours that would justify a reduction in remedies.

[88] Mr Hall's non-engagement after the 20 February 2025 email did not contribute to the content of that email and does not justify a reduction.

[89] Similarly, permissible preparatory steps such as incorporating a company that may compete with your employer is not blameworthy conduct for the purposes of s 124 provided doing so was not in breach of a contractual obligation and any trade in competition did not occur during the employees employment. Neither of these were the case here.

[90] Accordingly, no reduction for blameworthy conduct is made to the award to Mr Hall.

Summary and orders

[91] Mr Hall was unjustifiably dismissed by Consultex.

[92] Within 28 days of the date of this determination, Consultex is ordered to pay Mr Hall \$8,000 pursuant to s 123(1)(c)(i) of the Act.



Costs

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

[94] If they are not able to do so and an Authority determination on costs is needed Mr Hall may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Consultex 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.

[95] 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.⁵



Matthew Piper
Member of the Employment Relations Authority

⁵ See www.era.govt.nz/determinations/awarding-costs-remedies.

