IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2020] NZEmpC 142
EMPC 493/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	KWIK KIWI CARS LTD T/A MARK CROMIE MOTOR GROUP Plaintiff
AND	KERRY CROSSLEY Defendant

Hearing:	24 August 2020 (Heard at Whangārei)
Appearances:	P Magee, counsel for plaintiff R M Harrison, counsel for defendant
Judgment:	7 September 2020

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] The issue in this case is whether Ms Kerry Crossley was employed under a valid fixed-term agreement by Kwik Kiwi Cars Limited (KKCL), when trading as Mark Cromie Motor Group (MCMG).

[2] Ms Crossley's fixed-term employment agreement was entered into in the context of the merger of two separate business entities, from which it was expected there would be staff surpluses.

[3] Her employment concluded at the end of the agreed term. Because she believed ongoing employment had in fact been assured, she raised an employment relationship problem with the Employment Relations Authority. It determined that the possibility of the business needing to restructure, and employees becoming surplus to requirements, was an ordinary business risk, and that the criteria for fixed-term agreements in s 66 of the Employment Relations Act 2000 (the Act) were accordingly not satisfied.[1]

[4] The Authority went on to determine that Ms Crossley had accordingly been unjustifiably dismissed, and that remedies should be awarded to her, being lost wages of $3,770, and compensation of $20,000 for humiliation, loss of dignity and injury to feelings. Costs were reserved.

[5] This judgment resolves the de novo challenge which KKCL then brought to the Court.

Key facts

Background

[6] KKCL traded as Mark Cromie Holden (MCH) at a series of properties located at Hannah Street, Whāngaréi. It also operated car franchises for other vehicle brands in the Whangārei area and its surrounds.

[7] In September to November 2017, Holden New Zealand Limited (HNZL) commenced a review of its franchise arrangements with MCH, the result of which was that the business was required to amalgamate its operation on to one site.

[8] It became clear that MCH could not comply with the obligation to amalgamate if it were to attempt to do so at its current locations at Hannah Street.

[9] The company therefore purchased an area of land elsewhere and commenced development. However, it became evident that the cost of this initiative would

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1 *Crossley v Kwik Kiwi Cars Ltd t/a Mark Cromie Motor Group* [2019] NZERA 693 (Member Fitzgibbon).

ultimately be prohibitive. Alternative options were explored, including the possibility of purchasing an existing site with buildings which could house the MCH operation.

[10] This led to negotiations with IC Motor Group Limited (ICMG) which owned a property at Port Road on which it operated a vehicle franchise.

[11] On 14 December 2018, MCH signed an agreement for sale and purchase with ICMG for its land and business. The agreement contained an early settlement date, of 8 February 2019. MCH agreed to this so as to secure the site. However, the timing had some flow-on effects, including:

a) First, HNZL would not allow the intended relocation of MCH to another site without approved signage being available. This was ordered in mid-January 2019, but it was not expected to arrive from Australia until late April 2019.

b) Second, New Zealand Transport Agency required an application to relocate MCH's authorised warrant of fitness status from Hannah Street to Port Road. This could not be obtained prior to the date of settlement.

[12] Consequently, an immediate transfer of the MCH operation and amalgamation of the two businesses to form a new trading entity could not take place prior to the purchase. There would need to be an interim phase following settlement where the two businesses would continue to operate at their current locations before merging.

Staff arrangements

[13] At the time of the merger, MCH employed 36 staff; ICMG employed 44 staff.

[14] Prior to the sale of ICMG, Ms Crossley had worked for it on and off for approximately 20 years.

[15] In mid-December 2018, the existing owners of that company, Kelly and Tracey Illerbrun, announced to staff that they had decided to sell their business to MCH, following which a merger of the two operations would take place. Staff were told that

Mr Cromie would take over ICMG, and that he would discuss new employment arrangements with each employee. Ms Crossley said Mr Cromie then assured staff they would have ongoing employment.

[16] Mr Richard Evans, a director of KKCL and Dealer Principal of the new operation, and Mr Mark Cromie then met one-on-one with all ICMG staff. All employees except for four were offered the opportunity to consider and accept a four-month fixed-term employment agreement; Ms Crossley was part of the group to whom this offer was extended.

[17] The meeting with Ms Crossley occurred between 7 and 11 January 2019. Mr Evans said that she was told – as were all staff – that the upcoming merger would more than likely create some role duplications across departments, and that some form of restructuring would therefore be required. However, because of compliance with existing franchise agreements and the business having to be run at separate sites for up to three months, extra staff would be required over this period.

[18] After the meeting Ms Crossley was provided with an individual employment agreement (IEA), and given the opportunity of taking it away to read it and to seek advice before accepting it. She read the agreement overnight. She did not take advice, she said, because she could not afford to do so. She signed it and returned it the next day.

The employment agreement

[19] The IEA stated Ms Crossley would work for the new business, to be known as Mark Cromie Motor Group, from 8 February 2019 to 7 June 2019. The employment relationship would automatically end, without notice or pay instead of notice, on 7 June 2019 unless the employer or the employee ended it earlier in line with the agreement.

[20] Then it recorded:

> The employer and employee agree there is a genuine reason for the fixed term and for employment to finish when the term ends. The reason for it being fixed term, and finishing at the end of the term, is within this four month period there will be a merger between the two existing entities, this will more than

> likely create some role duplications across most departments and therefore require some restructuring.

[21] The agreement went on to state that the employer had explained why the employment would finish when the term was to end, and that the employee had been provided with a chance to obtain advice.

[22] Later in the document, Ms Crossley was required to specifically acknowledge that she had been given an adequate opportunity to read, consider and take independent advice before agreeing to its terms, that the agreement was of a genuine fixed-term nature, that she understood the reason for this, and that this was a genuine reason based on reasonable grounds. She also acknowledged she would have no expectation of continued employment after the term ended.

[23] The IEA also contained a redundancy provision which stated that although the employee was on a fixed-term agreement, there could be circumstances that meant the role might no longer be needed prior to the ending of the term. In that event, there would be a good faith restructuring process, and if the employee was then made redundant notice of termination would be provided; however, redundancy compensation would not be payable.

[24] Attached to the IEA were house policies, which were acknowledged to be part of the employment agreement. These also included a provision relating to redundancy. This was described as being a situation where an employee's position was superfluous to the employer's needs. The policy stated that prior to making an employee redundant, there would be consultation to determine alternatives, which would include but would not be limited to:

- re-development to another position;
- demotion;
- reduced hours of work; or
- reduced remuneration.

[25] The IEA annexed a job description, which confirmed Ms Crossley would be a "Booking Consultant" responsible for customer bookings and customer follow-up; she would deal with service reception, costing, invoicing and administration as required; she would communicate with a warranty adjudicator as needed; and she would also undertake telephone follow-up calls at the direction of the customer retention manager. She was to report to the service manager.

The course of Ms Crossley's fixed-term employment

[26] Ms Crossley said that in light of what staff had been told by Mr Cromie, she understood the term "restructuring" in cl 1.3 of the agreement to mean that staff such as her would be offered other jobs at the end of the fixed term.

[27] She observed new employees being engaged by the merged entity shortly before her employment ended. She trained one of those persons for the role she herself was carrying out. She thought this indicated that her employment was safe and that other options would be available to her.

[28] She was also aware that one of the service advisors, who performed related functions, was about to take maternity leave; she thought there was a reasonable prospect of her assuming that employee's role, given her experience.

[29] On several occasions she asked members of management what would happen next; when she did so she was told the issue would be dealt with later, and that they would catch up with her in that regard. However, this did not happen.

[30] Mr Evans said that the two businesses amalgamated to the Port Road site in early March 2019. He was then in a position to review the policies and practices of the two previous entities, and to select staff who were better qualified to suit the needs of the new entity. He said charts of proposed staffing requirements of the merged business were worked through with managers.

[31] In her role as booking consultant, Ms Crossley worked near Mr Evans who was able to observe her activities. At some point he asked her what her role entailed, and why it was a necessary one, as MCH had previously used service advisors and sales

persons to follow-up and make bookings for service clients. She explained to him that it was a necessary role, particularly with regard to some of the bigger fleet customers like Māori trusts.

[32] Mr Evans and his colleagues concluded that the operation was over-staffed and inefficient; and that there was no need for the role of a booking consultant in its current form.

The ending of Ms Crossley's employment

[33] On 8 May 2019, Mr Evans, Mr Cromie and Mr Heath Kendall, Brand Manager, met with a number of staff who were on fixed-term contracts to update them on the review process that had been carried out, and to discuss the potential restructuring that was anticipated for the business.

[34] The intention in each case was to discuss what options would be available for each fixed-term employee at the conclusion of their existing employment agreements. Management would consider those options. If no suitable alternative was available, an employee would have the choice either to work out the notice period or have time off whilst attempting to seek alternative employment. The interview with Ms Crossley was to proceed on this basis.

[35] No prior notice of the meeting with Ms Crossley was given. She was engaged in other work when she was asked by Mr Evans to accompany him to a meeting room, where Mr Cromie and Mr Kendall were present.

[36] Mr Evans told Ms Crossley that she no longer had a job. He read from a pre-prepared letter which stated her employment at MCMG would be ending. It referred to the fact that Ms Crossley had signed a fixed-term agreement which had been necessary because of the merger of the two large entities where there was obviously going to be some duplication of roles, which would lead to restructuring. The letter went on to state that after three months of trading, a structure had been identified to operate the dealership, which meant it would not be offering her a new contract at the end of her fixed-term. The letter concluded by thanking her for her

contribution and stated that by notifying her of their intentions one month in advance, she would have an opportunity to seek further employment prior to 8 June 2019.

[37] Ms Crossley immediately became upset because she was not expecting this development. Amongst other things, she had been training others and knew that other persons had recently obtained work with the company. She said she wished to go home so as to discuss the unexpected circumstances with her husband.

[38] Ms Crossley stood up to leave the room. Mr Evans said he encouraged Ms Crossley to stay and discuss the matter. She left without taking the letter of termination with her.

[39] Although the parties gave different estimates of the duration of the meeting, it was obviously very brief.

Events thereafter

[40] The next day, Mr Evans sent Ms Crossley an email attaching the letter which had been read to her the previous day. He said he understood she was upset when she left. He confirmed that MCMG would pay standard wages until 7 June 2019, without her having to return to work. He asked her to contact him if she needed anything else.

[41] Ms Crossley sent an email in response, confirming she had indeed been upset about what happened. She said she would definitely have wished to have had a support person if she knew she was going to be fired. She had been called suddenly to a meeting and was surprised to find that three members of management were waiting to meet with her, stating that her job no longer existed because the company could not afford to pay for it. This was the first time there had been a meeting regarding the end of her employment. She said that there was no opportunity to discuss other options, some of which she outlined in the letter. She also stated that she knew there were some vague ideas about restructuring, but every time she had asked about her future she was just fobbed off. She said she was looking forward to hearing from Mr Evans with his reply.

[42] In a further email Mr Evans said the meeting was never meant to be intimidating. He thought there would have been an opportunity for views to be discussed. He said she had not provided an opportunity for this to occur because she had left the room immediately after the explanation for the meeting had been given. He said it was her choice that she did not get the opportunity to suggest lower hours or other jobs. The email ended by Mr Evans stating that he hoped he had clarified the situation.

[43] On 17 May 2019, the company advertised a frontline receptionist's position. Mr Evans said this was a standard receptionist's role which was different from that of booking consultant. It was a backup role to the work of the finance controller, which required some accounting knowledge. The company had experienced some difficulty in finding an ideal person for the role.

[44] Ms Crossley then raised her relationship problem.

Overview of parties' cases

[45] Mr Magee, counsel for MCMG, submitted in summary:

a) There could be no question that there was a qualifying agreement under s 66(1) of the Act. After offering a proper opportunity for Ms Crossley to consider signing the agreement, which stated her employment would end on a specified date, she did so.

b) The twin requirements of s 66(2) of the Act were also met. First, there were genuine reasons based on reasonable grounds for the fixed term. There would be a four-month period during which two existing businesses would be amalgamated, the timing of which had some uncertainty. Once the two entities operated from a single site, there would need to be a review of the business structure, as alluded to in cl 1.3 of the agreement.

c) Second, the advice required by s 66(2)(b) of the Act was given; this was evident not only from the statements contained in the fixed-term

employment agreement, but also from the fact that Ms Crossley was aware MCMG was operating from more than one site, that she was told her role was subject to review, and that she was aware of the ultimate goal of MCMG having one operational site.

d) None of the disqualifying reasons in s 66(3) of the Act applied. In particular, role suitability was not the issue; the problem which arose was one of role duplication.

e) Accordingly, the tests of s 66 were met.

[46] Mr Harrison, counsel for Ms Crossley, submitted in summary:

a) At the time of signing of Ms Crossley's IEA, the business would likely undergo a restructuring in the foreseeable future. Such potential, with staff downsizing in order to meet a changed business environment or reduce operating costs, is common to many businesses. These circumstances could not justify placing staff on fixed-term agreements in order to make such a determination at a later date.

b) Ms Crossley's circumstances did not involve a "role duplication", as referred to in cl 1.3, but a "restructuring".

c) The approach taken deprived Ms Crossley of fair treatment that would normally be associated with a restructuring process.

d) None of the usual procedural safeguards were followed.

e) The absence of any fair process or genuine engagement led to her being dismissed unjustifiably. Relief was sought in terms of that which had been granted by the Authority.

Legal framework

[47] Section 66 of the Act provides:

66 Fixed term employment

(1) An employee and an employer may agree that the employment of the employee will end—

(a) at the close of a specified date or period; or

(b) on the occurrence of a specified event; or

(c) at the conclusion of a specified project.

(2) Before an employee and employer agree that the employment of the employee will end in a way specified in subsection (1), the employer must—

(a) have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way; and

(b) advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.

(3) The following reasons are not genuine reasons for the purposes of subsection (2)(a):

(a) to exclude or limit the rights of the employee under this Act:

(b) to establish the suitability of the employee for permanent employment:

(c) to exclude or limit the rights of an employee under the Holidays Act 2003.

(4) If an employee and an employer agree that the employment of the employee will end in a way specified in subsection (1), the employee's employment agreement must state in writing—

(a) the way in which the employment will end; and

(b) the reasons for ending the employment in that way.

(5) Failure to comply with subsection (4), including failure to comply because the reasons for ending the employment are not genuine reasons based on reasonable grounds, does not affect the validity of the employment agreement between the employee and the employer.

(6) However, if the employer does not comply with subsection (4), the employer may not rely on any term agreed under subsection (1)—

(a) to end the employee's employment if the employee elects, at any time, to treat that term as ineffective; or

(b) as having been effective to end the employee's employment, if the former employee elects to treat that term as ineffective.

[48] In the recent decision of *Morgan v Tranzit Coachlines Wairarapa Ltd*,[2] Chief Judge Inglis analysed the history of s 66. She explained that prior to the introduction of the section in 2000, the Court had exercised a degree of control over such circumstances by reference to International Labour Organization Convention 158 (the

[2] *Morgan v Tranzit Coachlines Wairarapa Ltd* [2019] NZEmpC 66, [2019] ERNZ 200.

Convention), which had been adopted in 1982.[3] She said that while the Convention recognises there may be circumstances in which fixed-term agreements may legitimately be utilised, it also states that:[4]

> Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

[49] Chief Judge Inglis also referred to the preamble of the Convention in which it is noted that new international standards on termination were being adopted in light of serious problems arising from the economic difficulties and technological changes experienced in many countries in recent years.

[50] Although New Zealand has not ratified the Convention, the Court of Appeal has recognised that s 66 of the Act gives effect to it.[5]

[51] Next, she referred to dicta in *Canterbury Westland Free Kindergarten Assoc (t/a Kidsfirst Kindergartens) v New Zealand Educational Institute*, which emphasised that "reasons must not only be sincerely held but they must also not be improper reasons."[6]

[52] Chief Judge Inglis went on to make the important point that sincerity and/or improper motive must also be assessed in the context of the principles underlying the Convention;[7] the statutory provision is intended to ensure that the normal protections available to an employee upon termination of employment should not be circumvented.

[53] In *Morgan*, the presence of redundancy provisions undermined the employer's claim that a fixed-term provision was justified. The Court found that such a provision

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3 Convention (No 158) Concerning Termination of Employment at the Initiative of the Employer 1412 UNTS 159 (22 June 1982).
4 Article 2(3).
5 *Norske Skog Tasman Ltd v Clark* [2004] 3 NZLR 323, [2004] 1 ERNZ 127 (CA) at [157].
6 *Morgan*, above n 2, at [12] citing *Canterbury Westland Free Kindergarten Assoc (t/a Kidsfirst Kindergartens) v New Zealand Educational Institute* [2004] 1 ERNZ 547 (EmpC) at [16].
7 At [13].

strongly undermined the employer's claim that the fixed-term was both genuine and reasonable.[8]

[54] These themes were encapsulated in Chief Judge Inglis' conclusion, with which I respectfully agree:[9]

> ... It may be arguable that an agreement will fall foul of s 66 where the employer utilises the fixed-term employment model where other mechanisms were reasonably available, that would have less violated the protective principles underlying the provision and ILO 158.

Analysis

[55] The focus of the challenge is on several elements of s 66 of the Act, each of which must be carefully analysed.

Section 66(1)

[56] The first requirement for fixed-term employment is that the parties must agree the employment will end on one of three specified events, in this case a particular date.

[57] There is no doubt that the parties did enter into an agreement, which specified that the period of employment would run from 8 February 2019 to 7 June 2019.

[58] In cross-examination of Ms Crossley, it was put to her that she had an ample opportunity to peruse the agreement and to take advice with regard to it; and that following that opportunity she signed the document, acknowledging that it was of a genuine fixed-term nature. She had expressly accepted there was a genuine reason based on reasonable grounds; and that she had no expectation of continued employment after the term ended.

[59] I do not consider that these factors can reinforce the legitimacy of the justification given in the agreement for a fixed-term arrangement.

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8 *Morgan,* above n 2, at [22]–[23].
9 At [27].

[60] Ms Crossley had worked on and off for ICMG, but not for the incoming entity which was subsuming the business for whom she had worked. She had no option but to rely on what she and others were told by Mr Cromie as a director of the purchasing company, which was to the effect that if changes in employment were made there would be other opportunities within the business.

[61] There was a significant power imbalance between the parties. The employer was managing the various steps which had to be taken to effect the merger, including potential staffing arrangements. Management was aware of the detail of the potential options; Ms Crossley was not. As she said, she had only a vague idea as to what was intended. She signed the agreement presented to her so as to retain employment.

[62] Given the circumstances, I do not place any weight on the acknowledgments she gave at the time of the signing of the agreement.

Sections 66(2) and (3)

[63] Section 66(2) describes two tests which the employer must satisfy. Before the agreement is entered into, the employer must:

a) Have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in the specified way; and

b) Advise the employee of when or how his or her employment will end and the reasons for his or her employment ending in that way.

[64] The reason recorded in Ms Crossley's IEA was that it was more than likely the merger would create some role duplications in most departments, and therefore a restructuring would be required.

[65] It is to be noted that all of the 44 staff employed by ICMG, with the exception of four, were offered, and given the opportunity to consider, a four-month fixed-term employment agreement. Mr Cromie confirmed that all the agreements had a provision in the same terms as cl 1.3 of Ms Crossley's IEA.

[66] I find that a generic approach was adopted with regard to practically all staff of ICMG. The intention was to allow a physical merger of the two business operations to take place, and for the company to then determine its staffing needs; it was in that context that a restructuring was envisaged.

[67] I accept that the company was sincere when concluding that it may need to effect a restructuring, and that it believed this constituted a reasonable ground for entering into multiple fixed-term agreements, including with Ms Crossley.

[68] However, that does not mean that the reason was genuine, as required under s 66(2)(a). When effecting a restructuring, MCMG intended to rely on fixed-term agreements to end employment relationships which were surplus to its requirements. This meant there were no protections for affected employees. That is to be contrasted with the more appropriate means of effecting a restructuring via a redundancy process containing protective provisions which would ensure procedural and substantive fairness.

[69] In Ms Crossley's IEA the redundancy clause was subject to a caveat. It stated that although the employee was on a fixed-term agreement, there could be circumstances that meant the role might no longer be needed before the term ended and in that event the redundancy clause would apply.

[70] In the result, the redundancy provisions relating to a restructuring would apply during the term of the employment relationship, but not at the end of that defined term.

[71] I conclude that the fixed-term agreement had the effect of overriding the protections of the redundancy regime which would otherwise have applied. Consequently, the reason given for the fixed-term arrangement cannot be regarded, from an objective standpoint, as genuine.

[72] There is a further factor which supports this conclusion. It is evident that the intention was to undertake a careful review of staffing needs once the two businesses merged. This would involve not only a consideration of roles, but suitability of existing staff to fulfil those roles. This is clear from the steps which the company

subsequently took. As noted earlier, Mr Evans said that MCMG needed time to evaluate and select practices and staff that were best qualified to suit the needs of the new entity.

[73] This process falls squarely within the confines of s 66(3)(b): staff were being assessed for suitability for permanent employment. This could not qualify as a genuine reason for the purposes of s 66(2).

[74] There is a yet further problem which arises from the requirements of s 66(2)(b). Although the subsection requires advice being given as to how the employment will end, and the reasons for that employment ending in the specified way, the IEA did not contain any explanation of these factors.

[75] Mr Magee referred to dicta of the Court of Appeal in *Norske Skog*.[10] The majority, Anderson P and William Young J, referred to the fact that under this subsection the obligation is on an employer to provide relevant information, rather than to offer advice or counsel.[11] The subsection requires the employer to bring the relevant reasons to the attention of the employee. Any background knowledge held by the employer is highly relevant.[12]

[76] Here, the advice given to Ms Crossley and other staff by Mr Cromie was that if changes were made there would be other opportunities within the business.

[77] That was still the position in early May 2019, because Mr Evans, Mr Cromie and Mr Kendall wished to discuss with those who were on fixed-term agreements whether there were other options for employment; such a process in fact resulted in some staff obtaining alternative positions.

[78] In short, there were mixed messages as to when or how Ms Crossley's employment would end, and the reasons for doing so. The oral statements that were made in fact suggested there was a possibility that employment would continue.

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10 *Norske Skog,* above n 5.
11 At [51].
12 At [52].

Conclusion as to s 66 requirements

[79] I am not satisfied that the statutory tests in s 66 have been met. I find that Ms Crossley's IEA was not a qualifying fixed-term agreement under that section.

Unjustified dismissal?

[80] That being the case, Ms Crossley was a permanent employee. If MCMG considered her role was surplus to requirements, it needed to undertake a procedurally fair process as its own policy presumed.

[81] I accept Mr Harrison's submission that the following procedural defects occurred:

a) Ms Crossley was not given any prior notification of the meeting or that her employment may be in jeopardy.

b) There was no compliance with the good faith provisions in the Act including disclosure of the information which the employer possessed about its decision concerning Ms Crossley's role.

c) There was no opportunity for consultation in any genuine sense, or at all; the decision to end Ms Crossley's employment was made without reference to her.

d) The letter to Ms Crossley of 7 May 2019, which was read out to her at the meeting the next day, was clear and unambiguous; the employer had identified a structure which it said regrettably meant it would not offer her a new contract at the end of the term. It did not refer to other options.

[82] Mr Evans said that Ms Crossley chose not to engage, when she left the meeting held on 8 May 2019, stating she would not return.

[83] However, he also accepted that she was upset, which was understandable in the circumstances. Even when communications took place the next day, Mr Evans did not invite further consultation. At that point, MCMG walked away from Ms Crossley.

[84] The Court makes no findings as to what would have occurred if genuine consultation had taken place, other than to observe that Ms Crossley had relevant qualifications and experience, which may well have been relevant to the company's needs, particularly in respect of a receptionist's position which it advertised a few days later. She was also prepared to be flexible as to the terms of ongoing employment.

[85] I find that Ms Crossley was unjustifiably dismissed having regard to these failures.

Remedies

[86] MCMG did not contest the remedies, as awarded by the Authority.

[87] Ms Crossley claims reimbursement of three month's wages, under s 128 of the Act.

[88] She said that she started applying for work soon after her employment ended at MCMG, even although she was emotionally disturbed by what had occurred. She took the first job she was offered, as she had bills to pay and a family to support. She started with her new employer on 10 June 2019, working for 30 hours per week, in contrast to the 42.5 hours per week she had worked for MCMG. Her new role paid $22 an hour in contrast to the $20 per hour she had been paid previously.

[89] For the three-month period, the difference in what she was able to earn, compared with what she would have earned had she remained with MCMG was $2,470 gross.[13] There are no contributory factors under s 124.

[90] Turning to compensation for humiliation, loss of dignity and injury to feelings, there was unchallenged evidence as to the significant emotional impact of these events on Ms Crossley, as given both by her and her partner. I accept their evidence. I have no doubt that Ms Crossley was devastated by the circumstances, and that her confidence was significantly affected.

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[13] The sum of $3,370 was awarded for lost wages by the Authority (*Crossley*, above n 1, at [57]) but its calculation contained an arithmetical error: 42.5 hours at $20 per hour produces a figure of $850 per week not $950; for 13 weeks the total is $11,050; not $12,350.

[91] Mr Harrison submitted that an award for humiliation, loss of dignity and injury to feelings should fall within the upper end of Band 2.[14] I accept this submission, and find Ms Crossley is entitled to compensation under this head of $20,000.

Result

[92] The challenge is dismissed.

[93] There was not a qualifying fixed-term agreement under s 66 of the Act.

[94] Ms Crossley was unjustifiably dismissed.

[95] She is entitled to the following payments by MCMG, which should be paid within 21 days of the date of this judgment:

(1) The sum of $2,470 gross, for lost remuneration; and

(2) the sum of $20,000, for compensation for humiliation, loss of dignity and injury to feelings.

[96] Ms Crossley is also entitled to costs, which should be assessed on a 2B basis. If there is any difficulty in that regard, an application may be made within 14 days, and any response within 14 days thereafter.

B A Corkill
Judge

Judgment signed at 12.20 pm on 7 September 2020

[14] *Waikato District Health Board v Archibald* [2017] NZEmpC 132, [2017] ERNZ 791 at [62].