

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2014] NZEmpC 70
CRC 44/12**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

BETWEEN RUSSELL BROCKS
 Plaintiff

AND PRIME RANGE MEATS LIMITED
 Defendant

Hearing: 2, 23 and 24 September 2013
 Heard at Invercargill

Appearances: M-J Thomas and R W Donnelly, counsel for the plaintiff
 R T Chapman and A J Stevens, counsel for the defendant

Judgment: 14 May 2014

JUDGMENT OF JUDGE A A COUCH

[1] Russell Brocks was employed by Prime Range Meats Limited (PRM) as chief executive officer from late April 2008 until his summary dismissal on 25 August 2010. This judgment decides whether that dismissal was justifiable and, if it was not, what remedies ought to be awarded to Mr Brocks. It also decides whether Mr Brocks was entitled to a bonus provided for in his employment agreement and, if so, the amount of that bonus.

[2] Following his dismissal, Mr Brocks pursued a personal grievance alleging that his dismissal was unjustifiable and that, prior to his dismissal, he had been unjustifiably disadvantaged in his employment. He also claimed payment of the bonus as money owing under an employment agreement. In its determination¹ the Employment Relations Authority sustained Mr Brocks' grievances but found that he

¹ [2012] NZERA Christchurch 229.

had contributed significantly to the situation giving rise to those grievances. It reduced Mr Brocks' remedies by 50 percent on that account. The Authority also determined that Mr Brocks was entitled to a bonus but at a much lower level than he had claimed.

[3] Mr Brocks challenged certain aspects of the determination affecting remedies. PRM then challenged the whole of the determination. I directed that the two proceedings be consolidated and the matter proceeded by way of a hearing de novo with all issues to be decided.

Background and sequence of events

[4] PRM operates a stock killing and meat processing works in Southland. PRM commenced operations in 1992 after purchasing an existing meat processing business. In 1993, PRM bought Livestock Purchase Co Ltd which was renamed Prime Range Livestock Limited (PRL) and became a wholly owned subsidiary of PRM.

[5] PRL procures stock for processing by PRM. PRL also purchases processed meat from PRM² which it sells on the New Zealand market. Much of this is sold wholesale but PRL also operates a retail shop in Invercargill. The bulk of PRM's output is sold on the international market. The businesses of PRM and PRL were closely interconnected and, although PRL had some specific employees, many functions of PRL were carried out by PRM employees. When referring to the overall operations of both companies, it is convenient to use the term "Prime Range".

[6] There were originally three shareholders of PRM: Dennis Cairns, Tony Forde and Ian Tulloch. The business was managed for some years by Mr Cairns. He retired in 2000 and his shareholding was purchased by the company leaving Mr Forde and Mr Tulloch as the remaining shareholders in equal parts³. Mr Forde then took over as managing director. In that role, he controlled the operations of PRM and PRL.

² Estimated at 10 percent of PRM's output.

³ Their shareholdings were subsequently transferred to family trusts. Nothing turns on this.

[7] When Mr Cairns' shares were purchased by PRM, he also retired as a director. Tom Pryde, an experienced Invercargill solicitor, was then appointed as a director and became chairman of the board⁴. The other two directors were Mr Forde and Mr Tulloch. All three men were also directors of PRL which remained throughout wholly owned by PRM.

[8] Mr Brocks had experience in the meat industry. He had previously been general manager of a meat company and, from 2007, he was employed as manager of Southland Cool Stores Limited. In that role he had dealings with Mr Forde regarding the storage of meat for PRM. Mr Brocks was also engaged by PRM to carry out validation work at the meat processing plant.

[9] In November 2007, Mr Forde invited Mr Brocks to dinner where they discussed the business of Prime Range. Mr Brocks reasonably took from this discussion that Mr Forde wished him to take up a senior role in Prime Range but the matter was not taken further at that stage.

[10] In February 2008, Mr Forde had further discussions with Mr Brocks about a position in Prime Range. This culminated in Mr Forde writing a job description which he gave to Mr Brocks to consider. It was a handwritten document, the text of which was:

Chief Executive Officer Prime Range Meats Limited

This position holds responsibility for the overall administration, control and direction of the Prime Range Meats company. Reporting to the Managing Director, the emphasis initially on management and development of the company's operations, developing into the wide administrative role incorporating the broader activities. Key functions include:

Stock Procurement - maintaining stock-buying policy to enable the company's incoming stock supply to be maintained. This includes analysing stock pricing trends against market returns and operational costs.

Operations: The main emphasis of the role is to maintain effective operational results throughout the plant. This includes the overview of suitable recruitment, on-going development and support of a management

⁴ In the course of the hearing, it became apparent that Mr Pryde had ceased to be a director of PRM for a period prior to 2009 but I accept that neither he nor the other directors was aware of this at the time and he was regarded throughout as the legitimate chair of the board of directors of both companies.

team, an effective compliance programme, overview of health and safety systems.

Liaison with Authorities Outside The Company - The various functions of management will include liaison with other parties, most frequently NZFSA VA, but including OSH, Environment Southland, consultants engaged for specialised functions, and various which interact with the company's affairs.

Projects . The ongoing development of the company requires that a current project to further develop opportunities is usually in progress. The position includes the development of these initiatives and the overview of their completion.

Purchasing and Expenditure: Overseeing and approving expenditure for consumables, upgrades and repairs.

Recruitment and Maintenance of Labour Requirements - Recruitment and training of new and replacement staff is an ongoing function. While this is carried out at Departmental level, monitoring of this function is necessary.

Compliance/Market Access - this function takes a dominant position in the day to day management of the operation. Working through the Compliance Manager and Auditor, and liaison with NZFSA VA it is a requirement that an acceptable level of compliance be maintained.

Maintenance of the Plant - while the maintenance/engineering programme is overseen by a specialist Manager the scheduling and prioritising of work is included in the task.

Development into the Position - as the position is a comprehensive one considering the diversity of the company's activities and the historic role played by the Managing Director it is intended that the position be developed on a phase in / phase out basis.

The priority of the management programme would be targeted toward outstanding operational issues. As effective systems are secured functions traditionally undertaken by the Managing Director will be included to the extent that the CEO takes full responsibility for the Prime Range Meats /Livestock company.

[11] In March 2008, Mr Pryde approached Mr Brocks to negotiate terms on which Mr Brocks would accept employment. That process ended in a meeting at Mr Pryde's office on 3 April 2008 between Mr Brocks, Mr Pryde and Mr Forde. It was agreed that Mr Brocks would be employed by PRM as "CEO (or other equivalent title)" as detailed in Mr Forde's handwritten job description. This was confirmed in an email from Mr Pryde to Mr Brocks that evening in which the agreed terms of employment were summarised. They included a salary of \$110,00 per year, five weeks' annual holidays, superannuation contributions of 8 percent of his salary and the following benefit:

You will be entitled to a performance bonus of 5% of the nett profit of the company each year under your management – the nett profit will be the tax paid profit of the company as per the company's annual financial accounts. An arrangement will be worked out with you for periodic payments on account of prospective profit, with unders and overs adjusted at the end of each financial year on completion of the accounts.

[12] Two of the reasons for Mr Brocks' employment were to enable Mr Forde to step back from day to day management of Prime Range and to bring a fresh approach to management of compliance issues in the meat processing plant which had led to PRM being unable to export to key markets.

[13] Mr Brocks began working at Prime Range on a part time basis in late April 2008 and full time from early May 2008.

[14] Mr Brocks and Mr Forde had differing views about the quality of Mr Brocks' work during the following two years. Mr Forde said in evidence that he was disappointed with Mr Brocks' performance and that his style of management led to the development of divided loyalty amongst staff. Mr Forde also said that shortcomings in Mr Brocks' performance did not enable the transfer of full management responsibility to Mr Brocks as had been anticipated. Mr Brocks evidence was that he achieved significant improvements in efficiency in the meat processing plant and that, while he and Mr Forde frequently discussed management issues, Mr Forde did not criticise his work. It was common ground that Mr Forde never raised any issues in a disciplinary context.

[15] In October 2009 an issue arose regarding bobby calf ear tags. It was a requirement of export markets that all meat be traceable from the farm to the end consumer. An important aspect of this process was that uniquely numbered ear tags were issued to farmers who attached them to stock before they were sent for processing. After slaughter, the number on each tag accompanied the carcass and the meat from that carcass throughout processing and was recorded on the final product. These ear tag numbers were also used to calculate payments due to each farmer.

[16] It was a routine event that some stock would die in the stock yards at the processing plant or in transit to the plant. The meat from those animals could not be

sold for human consumption. It was also not uncommon that animals would lose their ear tags before slaughter. The meat from those animals could not be exported.

[17] In late October 2009, it came to light that staff had been taking the ear tags from some dead bobby calves and using them to process other animals who had lost their tags. This meant that the meat from those animals could not be accurately traced to the farm of origin and that the wrong farmer received payment for the live animal. It was a serious breach of the compliance requirements for export meat processing.

[18] There was conflicting evidence about how this issue was managed at the time. Mr Brocks said that when he became aware of it in early November 2009, he spoke with the slaughter board supervisor, Shane Jones and directed him to ensure the practice was stopped. The evidence for PRM was that concern about the practice was initially raised with Mr Brocks by Paul Hamilton the plant engineering manager but that Mr Brocks did nothing about it. Mr Hamilton said he was asked about it by Prime Range's in-house accountant, Gretchen Wilson, who wrote a memorandum to Mr Forde. Mr Forde said that, when he then raised it with Mr Brocks, he was guarded in his responses to questions but said that he had already stopped it. An email from Mr Brocks sent to Mr Jones shortly after that discussion was produced. Mr Brocks said this was to reinforce the directions he had given Mr Jones previously.

[19] Mr Forde then conducted an investigation to establish how the practice had come about. While some staff speculated that Mr Brocks may have been involved, Mr Forde was unable to reach any conclusion and did nothing further about the matter then. This issue did, however, colour Mr Forde's view of Mr Brocks.

[20] On 13 May 2010, Mr Forde drafted a letter to Mr Brocks headed "Employment Performance". In it, Mr Forde noted the circumstances in which Mr Brocks had been employed and said:

You will of course be aware that since you started, there have been numerous occasions when I have felt it necessary to question you about your performance including in relation to inexplicable decisions you have made

and measures you have implemented. These occasions indicated to me that your judgment, management skills and experience were quite limited.

Having regard to your overall performance in the role, we have reached a view that your skills at this level of management are far less than you assured us of, and we observe, quite insufficient to complete the level of administration the Board considered then, and still considers now, to be apriority.

We are extremely concerned that the upgrade of management effectiveness, rather than following the agreed course, is running down further than at the time of your appointment. Additionally a pattern of highly questionable judgment and neglect is evident which in some cases is threatening the Company's immediate security. The lack of openness and honesty in these matters is also of extreme concern to us.

In addition, we find ourselves in the position where we must recruit additional personnel to undertake management duties which we understood would be completed by yourself.

Given that you have not been able to perform at the level of Company management you undertook, and the Board have a responsibility to ensure the Company is secure in its activities, we find ourselves in a position where we must address your management capabilities with your continued involvement in mind and we will have regard for your input on these matters.

[21] Mr Forde gave this letter to Mr Brocks at the second of two meetings between them on 17 May 2010. At the same time, Mr Forde suggested Mr Brocks take annual leave. He took one day's leave and then returned to work.

[22] Mr Brocks promptly sought advice and representation from Ms Thomas. She wrote to Mr Forde the following day, 18 May 2010, seeking details of the several broad statements made by Mr Forde in his letter. She also noted that Mr Brocks was entitled to a bonus and sought financial information related to it.

[23] There followed several exchanges of correspondence between Ms Thomas and Mr Chapman of Cruickshank Pryde, the firm of solicitors engaged by Prime Range. On 24 June 2010, Mr Chapman provided Ms Thomas with extracts from the accounts of both PRM and PRL. He also forwarded a paper prepared by Mr Forde in response to Ms Thomas' request for particulars made in her letter of 18 May 2010. This was very detailed, running to 17 pages.

[24] On 5 July 2010, a meeting was held to discuss the issues raised by Mr Forde. Present were Mr Brocks, Mr Forde, Ms Thomas and Mr Chapman. It was a lengthy meeting.

[25] One of the issues raised at the meeting was whether Mr Brocks had authorised or condoned the ear tag swaps which had occurred in October and November 2009. Mr Brocks said that the practice had been initiated by a grader who had received a warning for doing so. Following the meeting, Ms Thomas sent an email to Mr Chapman saying that the slaughter board assistant foreman, Tim Garrett would confirm this and suggesting he be asked about it.

[26] Acting on this information, Mr Forde spoke to Mr Garrett who said he had given a warning to one of the graders, Daniel Kraak. Mr Forde then had PRM's employee records searched to see whether there was any record of a warning being given to Mr Kraak. A copy of Mr Kraak's record, known as a "training matrix", printed on 5 July 2010 showed no record of any warnings.

[27] The following day, Mr Forde asked Mr Garrett to provide copies of the warnings Mr Brock had said were given to the graders. About 40 minutes later, Mr Garrett provided Mr Forde with copies of warning letters addressed to both Mr Kraak and the other grader, Grant Thomas, dated 11 November 2009. A search of Mr Kraak's training matrix conducted that day, 6 July 2010, showed an entry reading "11/11/09 VERBAL WARNING 28/10/09 Miss use of bobby calf tags". Mr Forde then showed the warning letters to the graders who said they had not seen them before.

[28] Based on this information and knowledge that Mr Brocks had met with Mr Garrett and Mr Jones that day, Mr Forde concluded that the back dated warning letters and the new entry in the training matrix for Mr Kraak had been created on Mr Brocks' authority and with his knowledge. Mr Forde then went to Mr Brocks' office and took away the laptop computer which had been supplied for his use. Mr Forde also arranged for Mr Brock's access to the company's computer network to be stopped.

[29] At the time Mr Forde took the computer, there was a USB flash drive belonging to Mr Brocks plugged into it. When he went to his office and found both the computer and the flash drive gone, Mr Brocks sought return of the flash drive, alleging that it had been stolen and suggesting he might report the matter to the police.

[30] On 9 July 2010, Mr Chapman wrote to Ms Thomas recording Mr Forde's view of these events in detail, including his conclusion that Mr Brocks had "falsified" company records and saying "Regardless of Mr Brocks motivation for doing so, the deliberate falsification of the Company's personnel records is serious misconduct which would justify your client's dismissal." A meeting to discuss the issues raised in the letter was suggested.

[31] In the meantime, Ms Thomas had written to Mr Chapman on 7 July 2010 recording Mr Brocks' response to the issues raised by Mr Forde. This was a very detailed, paragraph by paragraph response running to 22 pages. On 8 July 2010, Mr Forde told Mr Brocks that he was not allowed to go to the meat processing plant, meaning his movements were effectively restricted to the administrative offices.

[32] A further meeting was held on 19 July 2010. Again, those present were Mr Brocks, Mr Forde, Ms Thomas and Mr Chapman. The subject of discussion was very largely the events of 5 to 8 July 2010. There was also some discussion of the bonus. Ms Thomas asked again for copies of the complete financial statements of PRM and PRL but Mr Chapman said that the balance sheets would not be provided.

[33] On 21 July 2010, another new issue was raised with Mr Brocks regarding what was known as "headage". These were payments made by Prime Range to agents who procured stock for killing. In particular, such payments were made for procuring bobby calves and cull cows. Prime Range had four established agents who received headage. During 2008 and 2009, Mr Brocks authorised payment of headage to Sally Orlowski, who was a personal friend of his⁵. She had procured about 300 animals for Prime Range and had been paid a little under \$1,000 in total.

⁵ Mr Forde characterised Ms Orlowski as Mr Brocks' "partner" implying a very close relationship but I am satisfied on the evidence that, in 2008 and 2009, she was no more than a friend.

Mr Forde thought that these payments were not warranted and that Mr Brocks had a conflict of interest in authorising payment to Ms Orlowski. Mr Chapman's letter raising this issue concluded with the statement "This practice is completely unacceptable and on the face of it constitutes serious misconduct". Mr Brocks was asked to provide a written explanation.

[34] During the following two weeks, there was intermittent correspondence between the lawyers involved but little progress. Mr Brocks remained confined to the administrative offices and was denied the use of a computer. As a result, he could not work. Ms Thomas sought and was provided with some details of the headage payments made to Ms Orlowski. There was also a dispute about the provision of notes Mr Forde said during the meeting of 19 July 2010 that he had made in the course of his investigations of the ear tag issue. Ms Thomas requested copies of these notes but they were not provided.

[35] On 2 August 2010, Ms Thomas raised three personal grievances on behalf of Mr Brocks. This was done by email addressed to Anna French, another solicitor at Cruickshank Pryde who was handling the matter in Mr Chapman's absence. It was alleged that Mr Brocks' employment had been affected to his disadvantage by three unjustifiable actions of PRM, being:

"Banning" our client from the Plant.

Refusal to return our client's work computer despite repeated requests.

Refusal to provide information sought regarding disciplinary proceedings despite repeated requests.

[36] On 3 August 2010, Ms French raised another disciplinary issue concerning Mr Brocks. After he took the computer from Mr Brocks' office, Mr Forde had a copy made of the information stored on it and the flash drive. The information on the flash drive included some of Prime Range's accounting records and board papers, described as "highly confidential information". These papers made reference to Mr Forde's family trust. It was alleged that Mr Brocks had no right to access or download this information. Again, a written response was requested.

[37] On 5 August 2010, the parties met again. They discussed in some detail the headage issue and the presence on Mr Brocks' flash drive of company information.

[38] On the headage issue, Mr Brocks provided statements from Ms Orlowski and the farmer who had supplied the stock. They confirmed that the farmer had previously been a loyal client of another processor and that, in return for a payment of \$1 headage for each bobby calf, Ms Orlowski had persuaded him to sell half of his calves to Prime Range in 2008. He was sufficiently satisfied that he sold more animals to Prime Range in 2009.

[39] On the issue of what was on the flash drive, Mr Brocks said that he had been asked by Ms Wilson to help her resolve a large discrepancy in the monthly accounts and mentioned a figure of \$200,000. He said that he had copied documents onto the flash drive so that he could work on the issue at home. Mr Brocks also said that he accessed other documents to obtain information he used in the course of his work. He said that all the documents he copied were on the "G: drive" of the office computer system and that he had full access to that drive until early 2010. He also said that Ms Wilson gave him passwords required to access certain spreadsheets.

[40] Mr Forde's notes of his conversations with staff about the ear tag issue were finally provided to Ms Thomas on 13 August 2010. The same day, statements from Ms Wilson and from Robyne Stenton, Mr Forde's personal assistant, were provided. Ms Wilson denied ever asking Mr Brocks to help resolve a large discrepancy in the accounts. Ms Stenton said that, on occasion, Mr Brocks asked her for documents from the G: drive and she would print them out for him.

[41] On 25 August 2010, Ms French wrote to Ms Thomas recording that Mr Brocks was summarily dismissed. It was a long letter but its focus was very largely on three issues: the ear tag issue, the headage issue and the presence of company information on Mr Brock's flash drive. The initial concerns about Mr Brock's management ability raised in Mr Forde's letter dated 13 May 2010 and which had been the subject of very extensive discussion and correspondence were mentioned only briefly and in general. The final part of the letter was:

16. Our client communicated his dissatisfaction with your client's general performance in May of this year. Those concerns have been particularised in some detail. The issues of concern have also been traversed at round-table meetings and responded to by your client

17. Our client's confidence in Mr Brock's ability to satisfactorily perform the role of CEO has been completely undermined by all of the above, and also his inability to clearly recall the incidents surrounding the ear tags and satisfactorily manage staff and the warning process, the untrue allegation that the Managing Director had stolen Mr Brock's personal flash drive from his bag.

18. The employer is dissatisfied with Mr Brocks performance and less than satisfied with his explanations in respect to both his general performance and the specific incidents that have been mentioned above. The employers confidence in Mr Brocks continuing in the CEO role has been seriously undermined by the allegation that the employer stole from him, the falsification of warnings, Mr Brocks failure to manage staff in respect to his knowledge surrounding the ear tag issue, and his unsatisfactory explanation as to why he was in possession of company and Mr Forde's personal information on his personal flash drive.

19. After careful consideration of all matters our client does not accept your client's explanations in respect to his performance. Your client's employment with Prime Range Meats is terminated immediately. In particular our client relies on your clients' explanation which it rejects as to why he was in personal possession of company information and Mr Fordes personal trust information. Mr Fordes subsequent investigations lead him to the conclusion that your client has lied in respect to why he was in possession of this information, regardless of how it was accessed and in respect of both Gretchen and Robyn has lied about his dealings with them. Mr Forde places further reliance on your client's inability to manage staff surrounding the ear tags issues, and to ensure that the switching of tags was ceased as soon as Mr Brocks became aware of the practise. Mr Forde believes that Mr Brocks was involved in the falsification of warnings given to employees over this issue. Furthermore our client does not believe that Mr Brocks could genuinely have believed it appropriate to have authorised the payment of headage to his partner. On considering all of the above, Mr Forde believes that your client is not capable of undertaking the role of CEO and does not have the skills and experience necessary to manage the plant and successfully carry it forward into the future, as was indicated to Mr Brocks was required at the time he was employed.

[42] In response, Mr Brocks raised a personal grievance that he had been unjustifiably dismissed.

Issues

[43] Before the Court, Mr Brocks pursued four personal grievances; three alleging unjustifiable disadvantage and one of unjustifiable dismissal. He also claimed payment of the bonus for the duration of his employment.

[44] The disadvantage grievances were based on the three issues recorded in Ms Thomas' email of 2 August 2010; that is Mr Brocks being excluded from the plant, his being denied access to the computer system and the failure to provide relevant information on request. In each case, there is little or no dispute about the facts. The issues are whether the action was justifiable and whether Mr Brocks was disadvantaged in his employment by that action.

[45] The unjustifiable dismissal was advanced on both procedural and substantive grounds. The procedural grounds specifically relied on were failure to provide relevant information, delay in raising issues and predetermination. In the course of the hearing, other issues arose, including failure to put to Mr Brocks concerns relied on for dismissal.

[46] The dismissal was also said to be substantively unjustifiable because the conclusions reached were irrational or unsupported by evidence. It was also submitted that the conclusions relied on by the employer were not serious enough to justify summary dismissal.

[47] If the dismissal is found to have been unjustifiable, the Court must also consider the extent to which Mr Brocks contributed to the situation giving rise to his dismissal.

[48] The bonus claim raised the following key issues:

- (a) Was the payment of a bonus discretionary?
- (b) Should the bonus reflect the financial performance of both PRM and PRL or just PRM?

- (c) Should the payment of a dividend from PRL to PRM be taken into account in calculating the bonus?
- (d) Should capital profits on the sale of land be taken into account in calculating the bonus?

Personal grievances

[49] All of the personal grievances require the Court to decide whether the employer's conduct was justifiable. Section 103A of the Employment Relations Act 2000 (the Act) provides a statutory test for justification. The current form of s 103A is the result of an amendment to the Act in April 2011. As all the events in this case occurred prior to that date, s 103A must be applied in its original form which was:

103A Test of justification

For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

Exclusion from the plant and denial of access to the computer system

[50] I deal with these claims together because, as Mr Forde accepted in answer to a question in cross examination, the combined effect was that Mr Brocks was effectively prevented from doing his job. This undoubtedly disadvantaged Mr Brocks in his employment.

[51] The real issue is whether these actions were justifiable. I find that they were not. Although Mr Forde said in evidence that he believed Mr Brocks' continued presence in the plant was an unwelcome distraction to staff once they knew Mr Brocks was subject to a disciplinary investigation, that did not of itself justify his being denied access to it. Any issues of staff attitude could have been effectively managed by other means.

[52] Similarly, any concerns Mr Forde may have had about Mr Brocks having access to the computer system could also have been satisfied by steps well short of

denying him access to it. Indeed, it appears from the evidence that those steps had already been taken in early 2010 when access to the G: drive was restricted. To the extent Mr Forde believed there was other information on the system which Mr Brocks might improperly access, it could have been protected by similar means.

Failure to provide information

[53] On the evidence, there is no doubt that Mr Brocks was denied access to information relevant to the allegations of misconduct made against him. That disadvantaged him in his employment because it limited his ability to respond to those allegations.

[54] No fair and reasonable employer would withhold information in this way. The most egregious example was the refusal to disclose the notes Mr Forde made in the course of his investigation of the warnings given in the ear tag issue. During the meeting on 19 July 2010, it became apparent that Mr Forde was working from notes. In response to requests by Ms Thomas for a copy of the notes, Mr Chapman refused to provide them at the meeting but did agree to provide them later. Subsequently, following three subsequent requests, Ms French refused to provide them at all. It was only on 13 August 2010 that copies were eventually sent to Ms Thomas. The notes were directly relevant as they recorded information relied on by Mr Forde for his allegation that Mr Brocks was implicated in the back dated warnings and alteration of the training matrix record. These actions were entirely unjustifiable. They were the antithesis what a fair and reasonable employer would have done. They were also in breach of PRM's statutory obligation under s 4(1A)(c) of the Act.

[55] Mr Forde was also disadvantaged in his claim for the bonus by Prime Range's refusal to provide full annual financial accounts. It was implicit in the agreement that the bonus would be based on the accounts that Mr Brocks would have access to them. Specifically, the refusal to provide the capital account information disadvantaged Mr Brocks because it hid from him the profit made on land sales. Overall, the refusal to provide the full accounts was unjustifiable.

Procedural fairness of the dismissal

[56] The statutory test in s 103A specifically requires consideration not only of the decision reached but also the means by which it was reached. In considering the process, however, the Court must have regard to overall fairness rather than subjecting the employer's conduct to minute and pedantic scrutiny

[57] A key aspect of fairness is that the employee must be properly informed of the employer's concerns and have a proper opportunity to respond before a decision is made. In this case, Mr Forde's initial letter dated 13 May 2010 which started the disciplinary process was in very general terms. Quite properly, Ms Thomas sought particulars. The lengthy document then provided by Mr Forde described many specific issues and was sufficient to allow Mr Brocks to give a meaningful reply on 7 July 2010.

[58] After that, however, Mr Forde's focus was almost entirely on issues of alleged misconduct and the performance issues he raised initially were not taken further. Importantly, Mr Brocks was not told which of the many issues raised by Mr Forde were resolved by his response. That response had included many statements about specific events and suggestions of errors or shortcomings on Mr Forde's part. It also included offers to provide supporting information if necessary. In the absence of any indication by Mr Forde which issues were still in contention, Mr Brocks could not know which of his responses had been accepted and which required further elaboration. The process of information and response was incomplete. In such circumstances, a fair and reasonable employer would not have relied on its view of the performance issues to dismiss Mr Brocks.

[59] The specific allegations of misconduct by Mr Brocks were mostly put to him fairly. With one exception, the specific actions said to be of concern were described in sufficient detail to enable him to give a full response. The only criticism which can be made is that PRM was tardy in providing some of the information relied on for the allegations. Although that disadvantaged Mr Brocks at the time, the subsequent provision of the information largely cured the overall unfairness of the delay.

[60] The exception was that, in the letter of dismissal, reliance was placed on Mr Brocks having made an allegation that his flash drive had been stolen. Although that was denied in Mr Chapman's letter of 9 July 2010, it was not made clear then or subsequently that the making of this allegation was regarded by Mr Forde as misconduct. At the meeting held on 19 July 2010 to discuss matters raised in Mr Chapman's letter of 9 July 2010, the issue was not mentioned. In a letter dated 3 August 2010, Ms French referred to the taking of the flash drive with the laptop computer but did not suggest any misconduct by Mr Brocks in that regard. Rather, her focus was on the contents of the flash drive. A fair and reasonable employer would have raised this concern immediately after the events in question occurred. Failing to raise it at all as a matter of concern meant that Mr Brocks had no opportunity to respond to it.

[61] Another significant shortcoming in the allegations of misconduct made against Mr Brocks and relied on for his dismissal was that his role in the ear tag issue in November 2009 was not raised as a matter of concern until July 2010. That was despite Mr Forde accepting in his evidence that no new information had emerged in the meantime. It is fundamentally unfair to store up disciplinary issues and raise them months or years later. The reasons are obvious. The detail of matters not raised promptly will be forgotten. The employee will reasonably assume that his or her conduct had been acceptable to the employer. In all the circumstances, a fair and reasonable employer would not have relied on Mr Brocks' conduct in November 2009 to dismiss him.

[62] A further issue of importance is that the correspondence suggested Mr Forde had reached a conclusion on a key issue before hearing Mr Brocks' response to it. The concern about Mr Brocks' role in the back dated warnings and alteration of the training matrix was first raised in Mr Chapman's letter of 9 July 2010. In that letter he referred to a meeting between Mr Brocks, Mr Garrett and Mr Jones on 6 July 2010 and said: "This meeting was initiated by Russell Brocks and the backdated warnings and falsification of the personnel records was done on his authority and with his knowledge." This was a conclusion rather than an expression of concern. No fair and reasonable employer would prejudge an issue this way.

[63] Overall, the manner in which the disciplinary process was conducted on behalf of PRM was significantly flawed. Indeed, it was flawed to the extent that no fair and reasonable employer could rely on several of the conclusions reached.

Substantive fairness of the dismissal

[64] I have already concluded that the investigation of the concerns about Mr Brocks' performance was substantially incomplete so that any conclusions reached could not be relied on.

[65] The conclusion that Mr Brocks' allegation his flash drive had been stolen was equally flawed by the failure to give Mr Brocks an opportunity to respond to it. In any event, the making of this allegation could not amount to serious misconduct. The flash drive had been taken without Mr Brocks' permission or knowledge. While there may have been explanations other than it being stolen, that was certainly one of the possibilities. Thus, although it was somewhat extravagant to say specifically that the flash drive had been stolen, there was a basis for doing so. It is also significant that, when the events were fully explained, the allegation of theft was not pursued further. It is also significant that, in the dismissal letter of 25 August 2010, the misconduct said to have occurred was that Mr Brocks had alleged that Mr Forde personally had stolen the flash drive. There is no evidence that such an allegation was ever made by Mr Brocks. Overall, I find that a fair and reasonable employer would not have placed any weight on this issue.

[66] The ear tag issue was in two parts. The first was Mr Brocks' role in the matter in October and November 2009. In the dismissal letter, it was said that one of the reasons Prime Range had lost of confidence in Mr Brocks was "his inability to clearly recall the incidents surrounding the ear tags and satisfactorily manage staff and the warning process." It is unfair and ironic that Mr Brocks should be found at fault for failing to recall details of events which Mr Forde raised seven months after they occurred.

[67] Later in the letter it was said "Mr Forde places further reliance on your client's inability to manage staff surrounding the ear tags issues and to ensure that

the switching of tags was ceased as soon as Mr Brocks became aware of the practice.” This conclusion was unsustainable on the evidence. Mr Forde said in his evidence in chief and confirmed in answer to questions in cross examination that he investigated the issue himself in November 2009 but was unable to reach any firm conclusions. He also said that his further enquiries in July 2010 revealed nothing new about the events in 2009. That was consistent with the evidence as a whole. Having been unable to get to the bottom of the issue himself, it was ironic that Mr Forde criticised Mr Brocks for not having followed it up. In any event, the steps taken by both Mr Brocks and Mr Forde in November 2009 apparently stopped the practice. There was no evidence it reoccurred subsequently.

[68] The only evidence specifically implicating Mr Brocks in the first part of this issue came from Mr Hamilton⁶. In his evidence in chief, he said that he had raised the ear tag swapping issue with Mr Brocks who had said it was “a good idea”. In answer to questions in cross examination and from the Court, Mr Hamilton largely resiled from this evidence. He said that he had asked Mr Brocks about the issue in general terms and that they did not go into it in any detail. He also said that he did not recall telling Mr Forde about this conversation. Mr Brocks told Mr Forde at the time that he did not approve of the practice and had stopped it happening. His evidence to the Court was consistent with that.

[69] The second part of this issue was whether Mr Brocks was involved in the back dating of warnings and alteration of the training matrices in July 2010. Having reviewed all of the evidence about what was known to Mr Forde at the time, it is clear that Mr Forde’s conclusion that Mr Brocks knew about these actions and authorised them was without any proper foundation. At most there was gossip and speculation.

[70] The whole ear tag issue was put in perspective at the hearing by Mr Garrett. He gave evidence that the graders had begun the practice, apparently at the suggestion of someone else but any suggestion that Mr Brocks had been that person was mere speculation. Mr Garret also said that he had created the backdated

⁶ There was evidence of other suggestion that Mr Brocks had been involved but this was acknowledged to be no more than speculation or gossip.

warnings and altered the training matrices in July 2010 of his own volition. He said that Mr Brocks was not involved in those actions.

[71] The issue of headage payments to Ms Orlowski had some substance to it but only in one respect. As chief executive officer, Mr Brocks had authority to approve the payments and Prime Range benefited from having the additional stock procured by Ms Orlowski. By authorising payment to a person widely known to be a personal friend, however, Mr Brocks created the appearance of a conflict of interest. Headage had previously been paid only to a small group of established agents, being three livestock companies and one transport operator. Paying headage to Ms Orlowski was therefore a significant departure from established practice at Prime Range. To Mr Brocks' credit, however, he stopped the payments when it was suggested to him by the assistant livestock manager of PRL that it was inappropriate. On this issue, Mr Brocks made an error of judgment which might be regarded as relatively minor misconduct. It was not open to Mr Forde to regard it as serious misconduct.

[72] The final issue was the presence on Mr Brocks' flash drive of company documents, including some information about Mr Forde's family trust. Mr Forde's investigation of this issue focussed on why Mr Brocks had these documents on the flash drive in particular. This seemed to have been sparked by the fact that, when it was taken by Mr Forde, Mr Brocks emphasised that the drive was his personal property. That was a red herring. It mattered little where the information was stored, be it on the flash drive, on the laptop computer or on Prime Range's network server. The issue was whether Mr Brocks had accessed information he was not permitted to see. The evidence was that Mr Brocks had open access to documents on the G: drive until it was restricted in early 2010 and that he copied the information onto the flash drive prior to that. There was no evidence that Mr Brocks was ever told that he should not look at any material to which he had access. It follows that he was not in breach of any obligation by accessing material on the G: drive, even if it was "confidential company information". As chief executive officer he had a duty to maintain confidentiality and there was never any suggestion that he breached that duty.

[73] The only questionable aspect of this issue was why Mr Brocks was accessing what Mr Forde described as “information in respect to my own personal family trust”. The nature of this information and the sort of documents it was contained in were not explained. Mr Forde said only that the information included board agendas, his “confidential reports” and briefings he made to the board. In the absence of any specific evidence suggesting that Mr Brocks should have recognised particular documents as “out of bounds”, a fair and reasonable employer would not conclude that Mr Brocks’ accessing the information was misconduct.

[74] In addition to the issue of Mr Brocks’ accessing the information stored on the flash drive, Mr Forde placed weight on a conclusion that Mr Brocks had lied in his explanation of why he accessed the particular files stored on the flash drive. If that was a matter of concern to Mr Forde, he had an obligation to inform Mr Brocks of it and give him an opportunity to respond. That did not happen and the conclusion that he lied could not be relied on.

Conclusion

[75] Applying the test in s 103A of the Act and having regard to all of the evidence, I find that each of Mr Brocks’ personal grievances must be sustained. He was disadvantaged in his employment by the unjustifiable actions of PRM and he was unjustifiably dismissed.

Remedies

[76] Mr Brocks sought reimbursement of lost remuneration arising from his dismissal and compensation for distress resulting from all four of his personal grievances.

[77] Following his dismissal, Mr Brocks was unemployed from 25 August 2010 until he commenced alternative employment on 11 October 2010 at a salary of \$80,000 per year. Mr Brocks gave up that position on 30 January 2011.

[78] In his evidence, Mr Brocks made a claim for loss of remuneration for a period of more than a year. No such claim can be sustained for a period beyond 30 January 2011 when he gave up the alternative position he had.

[79] Pursuant to s 128(2) of the Act, the Court must order PRM to pay him the amount of the remuneration he actually lost or three months' ordinary time remuneration, whichever is less. The calculations of daily rates set out by Mr Brocks in his evidence were not challenged and I use them to calculate his actual loss. Prior to obtaining alternative employment, Mr Brocks lost \$14,062.50. He was then employed at a rate of pay which was \$85.23 per day less than he received from PRM for a period of 110 days until 30 January 2011. That equates to a further loss of \$9,375.30. On this basis, the total loss was \$23,437.80. As this is less than three months' ordinary time remuneration, Mr Brocks is entitled to be reimbursed for the whole amount.

[80] Mr Brocks set out calculations of other amounts he claimed to have lost as a result of his dismissal but I do not allow them. The only reimbursement sought in the amended statement of claim was "lost wages". It would be unjust to grant remedies not pleaded and which, in some cases, were not explained and justified by evidence.

[81] Mr Brocks gave a good deal of evidence about the humiliation, loss of dignity and injury to his feelings he suffered as a result of his dismissal and this was supported by evidence from Ms Orlowski. That evidence was unchallenged and, to a large degree, I accept it. Mr Brocks also gave evidence about distress he said that he suffered as a result of the disadvantages which I have found were unjustifiable. As this evidence was also unchallenged, I accept it but I give it limited effect given the nature of the disadvantages. Overall, I find that a just award of compensation for the disadvantage grievances is \$3,000 and a just award for the unjustifiable dismissal is \$12,000.

Contribution

[82] Section 124 of the Act requires me to consider the extent to which Mr Brocks contributed to the situation giving rise to his grievances and, if required, reduce the remedies that would otherwise have been awarded.

[83] In his submissions, Mr Chapman relied on three aspects of Mr Brocks' conduct which he said warranted a reduction in remedies. The first was Mr Brocks' "complete failure as CEO to manage the ear tag issue". This was a reference to his conduct in 2009. As I have concluded earlier, the delay in raising this concern was unfair and made it difficult for Mr Brocks to respond to it. On the basis of the evidence before the Court, I find that Mr Brocks could have been more proactive in dealing with the issue when it arose. There is no doubt, however, that he did make it clear to staff that the practice was unacceptable. His email to the slaughter board staff on 9 November 2009 was a clear example of this. After that date, there was no recurrence of the practice and apparently no need for Mr Brocks to do more.

[84] The second matter relied on by Mr Chapman was what he described as a "serious lack of judgment" by Mr Brocks in authorising the payment of headage to Ms Orlowski without getting approval from Mr Forde. There is some weight in this submission but not a great deal. It was foreseeable that authorising those payments would give the appearance of a conflict of interest and Mr Brocks should have avoided that. I have found that this error of judgment by Mr Brocks could only be regarded as minor misconduct at most but it did contribute to the concern which later arose.

[85] The third aspect of Mr Brocks' conduct mentioned by Mr Chapman was his accusation that his flash drive had been stolen. In the course of submissions, Mr Chapman accepted that both Mr Brocks and Mr Forde made far too much of this issue. It was provocative of Mr Brocks to rush to the conclusion that his property had been stolen and Mr Forde's prolonged sense of indignation was out of proportion to the relatively minor nature of the incident.

[86] Overall, I find that Mr Brocks did contribute to the situation giving rise to the grievances but only to a small extent. That may properly be reflected in a reduction of \$5,000 in the compensation awarded to Mr Brocks.

Bonus

[87] In order to fully appreciate the issues relating to the bonus, it is necessary to record further facts.

[88] Expert evidence was given about accounting principles and practice by three witnesses, Ms Ball and Mr Ross for the plaintiff and Mr Hay for the defendant. The clear conclusion from their evidence was that the form in which the accounts for PRM and PRL were prepared did not meet the mandatory requirements of the Companies Act 1993, the Financial Reporting Act 1993 and the Financial Reporting Order 1994. Those mandatory requirements included an obligation to comply with the New Zealand Institute of Chartered Accountants standard for presentation of financial statements known as NZ IAS 1.

[89] Separate accounts had been prepared for each company. As PRL was a wholly owned subsidiary of PRM, there should have been only one set of consolidated accounts reflecting the combined activities of the two companies and eliminating intercompany transactions. As prepared, the accounts of the two companies included intercompany transactions such as payment of a dividend from PRL to PRM. That payment ought not to have been included as income of PRM.

[90] In 2009 and 2010, PRM and PRL sold land which had been owned for many years. The land had always been shown in the accounts of PRM and PRL at purchase value. The land realised substantially more on sale than had been paid for it on purchase. The resultant income was only shown in the companies' accounts as changes in equity. It should have been shown as income in the profit and loss account.

[91] One of the experts, Ms Ball, said that expenses of \$55,842 shown in the 2011 accounts of PRM ought not to be deducted if they were non-taxable expenses of sale

of the land. It was later clarified by Mr Hay, who prepared the original accounts, that these expenses did not relate to the land sale and were properly deductible in the profit and loss account.

[92] To assist the Court, Mr Hay prepared a spreadsheet showing five sets of calculations based on different combinations of the various factors in dispute. Ms Ball agreed with those calculations. It was common ground that, assuming Mr Brocks was entitled to be paid a bonus, it should be calculated pro rata for the parts of financial years in which he was employed. On this basis it was agreed that his entitlement would be based on 11/12 of the 2009 year, the whole of the 2010 year and 5/12 of the 2011 year.

Was the bonus discretionary?

[93] Mr Chapman submitted that the description of the bonus as a “performance” bonus should be interpreted as meaning that the bonus was discretionary and payable only if the employer regarded Mr Brocks’ performance as satisfactory. I do not accept that submission.

[94] Mr Chapman correctly summarised the approach the Court should take to the construction of employment agreements when he submitted:

The starting point is the words written in the agreement but the Court is not limited to giving the words a purely literal meaning. The Court looks to find the meaning which the agreement would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

[95] The evidence was that Mr Brocks negotiated the terms of his employment by reference to the benefits he was receiving in his existing employment at Southland Cool Stores Ltd. That included an annual bonus of five percent of the net profit of the business before interest and depreciation. Mr Forde and Mr Pryde were aware of this. In the course of negotiation, Mr Brocks insisted that he receive a comparable bonus from Prime Range and provided Mr Pryde with a copy of his existing employment agreement to show him what it was:

The employer shall pay the employee a bonus based on its performance during the bonus period...

[96] The inference I draw is that the reference in the employment agreement between the parties in this case to a “performance bonus” was intended to have a similar effect. It was a bonus based on the employer’s performance, not the employee’s performance.

[97] This interpretation accords with a common sense view of the evidence. At the time negotiations were undertaken, Prime Range was anxious to secure Mr Brocks’ services. He knew this and it gave him considerable bargaining power. As Mr Forde acknowledged in his evidence, Mr Brocks “drove a hard bargain in terms of his remuneration package”. Mr Forde also said in evidence that the discussion with Mr Brocks about the bonus “was pretty much based around Russell’s earlier experience of Southland Cool Stores. That was the basis for it.”. In his existing position, Mr Brocks was receiving a salary of \$90,000 plus a bonus of more than \$30,000 per year. I accept his evidence that he would not have agreed to move to Prime Range for a package that could possibly be of lesser value.

[98] Mr Brocks is entitled to payment of the bonus.

Should the bonus relate to both PRM and PRL?

[99] This was a strongly contested issue. The significance is a difference of at least \$50,000 and up to \$200,000 in the amount of the bonus.

[100] In his submissions, Mr Chapman relied on a carefully developed series of submissions. He noted that the offer of employment made by Mr Pryde was that Mr Brocks would “start with Prime Range Meats Ltd as CEO...” and that Mr Brocks accepted the offer by saying “I accept the position as CEO of Prime Range Meats”. In both cases, there was no explicit reference to PRL.

[101] Mr Chapman then noted that the offer of employment made reference to Mr Forde’s handwritten job description which was headed “Chief Executive Officer Prime Range Meats Limited” and whose opening paragraph recorded “This position

holds responsibility for the overall administration, control and direction of the Prime Range Meats Company.” Again, there was no explicit reference to PRL.

[102] As he was bound to do, Mr Chapman acknowledged that the final paragraph of the job description referred to being CEO of “the Prime Range Meats/Livestock company”. He submitted that this was a reference to what the position might become rather than what it was to be at the outset.

[103] Mr Chapman’s final submission was:

An important distinction needs to be drawn here between a job description of the one hand and a bonus entitlement on the other. The two should not be confused. It is perfectly understandable that there could be a situation where a person with a range of duties across a number of companies or organisation but the bonus entitlement might be linked to the performance of only one of those companies.

[104] Having heard and considered all of the evidence, I find that the proper interpretation of the parties’ agreement was that the bonus was to be based on the profit of both PRM and PRL.

[105] The operations of PRM and PRL were inextricably intertwined. The principal business of PRL was procuring the livestock that PRM needed for processing. PRL procured the large majority of stock PRM required and PRM was PRL’s only customer for stock. At a day to day level, there was constant communication and cooperation between PRM and PRL. PRM provided most of the administrative services required by PRL including accounting. Meetings of the directors of the two companies were held together and, when asked why, Mr Pryde said “Well that’s because the businesses of the two companies seem to have been intermingled...”. While a small matter, it was not insignificant that the signs at the retail shop operated by PRL read “Prime Range Meats”.

[106] Consistent with this intimate relationship between the companies, the inference I draw from the evidence about the discussions Mr Brocks had with Mr Forde and Mr Pryde prior to his being employed is that PRM and PRL were spoken of together. Reference to “the company” was a reference to them both. This is most clearly shown in the use by Mr Forde of the expression “the Prime Range Meats /

Livestock company” in the job description. Also, as Mr Forde accepted in answer to a question in cross examination, the job description included aspects of the operations of PRL, particularly “stock procurement”.

[107] In my view, little turns on the offer and acceptance and the job description referring to a position of employment by PRM. A wire diagram of Prime Range’s structure was produced which showed that PRL was regarded as a division of PRM. Staff of PRL reported to the chief executive officer of PRM. There was no position of chief executive officer of PRL, nor was there any need for one. Management of PRL was an integral part of the role of the chief executive officer of PRM.

[108] In reaching this conclusion, I have not overlooked the final paragraph of the job description which refers to the new CEO of PRM taking over the role on a “phase in / phase out basis” as the Managing Director withdrew from operations. Mr Forde said that this was to be accomplished division by division within PRM and that Mr Brocks had not performed well enough to be given responsibility for PRL. I find that evidence unconvincing. The extent to which the operations of the two companies were interconnected would have made that impossible at a practical level. Consistent with that conclusion, there was evidence that Mr Brocks was involved on a day to day basis with stock procurement which was the fundamental business of PRL. I accept that, after Mr Brocks’ appointment, Mr Forde remained more involved in the operations of PRM than he had originally anticipated but I do not accept that this meant Mr Brocks was excluded from involvement in the operations of PRL.

[109] As Ms Thomas pointed out in her submissions, the statutory requirement that PRM and PRL produce a single set of consolidated accounts is a further factor to be considered. This supports the conclusion that the reference in Mr Brocks’ terms of employment to “the company’s annual financial accounts” could only mean the accounts reporting on the activity of both PRM and PRL.

[110] Mr Brocks was entitled to receive a bonus based on the combined performance of PRM and PRL.

Should income from land sales be included in the bonus calculation?

[111] The expert evidence was that profit from land sales made by PRM and PRL during 2008 and 2009 should have been shown in the profit and loss accounts as income rather than being recorded solely as movements in equity. I accept that evidence. It gives rise to the issue whether that income should be taken into account in calculating the bonus due to Mr Brocks.

[112] Ms Thomas submitted that the income from the land sales should be included in the bonus calculation. She supported that submission with a careful and detailed analysis of the statutory and regulatory requirements for financial reporting by companies. That analysis was undoubtedly correct and leads to the conclusion that Prime Range was legally obliged to include the income from the sales of land in its profit and loss accounts.

[113] Although I accept that conclusion, it is not an easy step to then conclude that Mr Brocks is absolutely entitled to bonus payments based on what the accounts should have recorded. In particular, it is difficult to say that, when they entered into the employment agreement, the parties intended that Mr Brocks would be entitled to a share of the profit from sales of land which had been owned by Prime Range for many years.

[114] As I have detailed earlier, the focus of the parties was on the operational performance of the companies. The sales of land were not part of Prime Range's operations, nor were they prompted by anything to do with the companies' performance. Taking an objective view from the perspective of a disinterested bystander with the knowledge that the parties had at the time the employment agreement was formed, I would not conclude that they intended profits from the sale of capital assets to be included for the purposes of calculating Mr Brocks' bonus.

[115] The income from the sale of land by PRM and PRL should not be taken into account in calculating his bonus entitlement.

The dividend paid by PRL to PRM

[116] In 2009, the accounts for PRM showed income of \$1,129,573 from a dividend paid to PRM by PRL. As I have accepted that the accounts of PRM and PRL ought to have been consolidated, this dividend must be disregarded. The parties both accepted this would be so.

Quantum of bonus

[117] As I noted earlier, Mr Hay provided five sets of calculations based on differing combinations of the factors in contention. Ms Ball accepted the accuracy of those calculations. The conclusions I have reached are those on which calculation (c) was based. Accordingly, Mr Brocks is entitled to a bonus payment of \$132,035.

Conclusion

[118] In summary, the conclusions I have reached are:

- (a) Mr Brocks was disadvantaged in his employment in three respects by the unjustifiable actions of PRM.
- (b) Mr Brocks was unjustifiably dismissed by PRM.
- (c) PRM is ordered to pay Mr Brocks \$10,000 as compensation under s 123(1)(c)(i) of the Act.
- (d) PRM is ordered to pay Mr Brocks \$23,437.80 as reimbursement of lost remuneration.
- (e) PRM is ordered to pay Mr Brocks a bonus of \$132,035.

[119] By operation of s 183(2) of the Act, the determination of the Authority is set aside and this decision stands in its place.

Comments

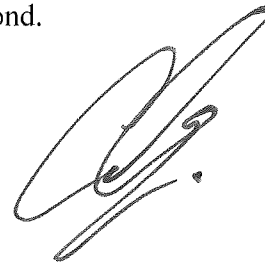
[120] In this judgment, I have dealt with the issues which needed to be resolved to decide the dispute between the parties. During the hearing, evidence was given on

other issues. I have not recorded that evidence or resolved those issues because it was unnecessary to do so. I confirm, however, that I have had regard to all of the evidence adduced. This included several hundred pages of transcript of meetings held between the parties during the months prior to Mr Brocks' dismissal.

[121] In deciding the amount of Mr Brocks' bonus, I have accepted the expert evidence that PRM and PRL were required by law to have a single set of consolidated accounts. One of the consequences is that the dividend which was paid by PRL to PRM was eliminated from the final calculation. That is because it was an intercompany transaction. To be fully compliant, all intercompany transactions ought to have been eliminated from the consolidated profit and loss account. That would require all transactions taken into account in compiling the accounts to be reconsidered. I have not directed that be done as the parties were content to accept that the outcome should be based on one of the five calculations prepared by Mr Hay.

Costs

[122] Costs are reserved. If they cannot be agreed, Ms Thomas should file and serve a memorandum within 25 working days after the date of this judgment. Mr Chapman will then have 20 working days in which respond.

A handwritten signature in black ink, appearing to be 'A A Couch', written in a cursive style.

A A Couch
Judge

Signed at 1.00 pm on 14 May 2014.