

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 139
5379240

BETWEEN JAMES WEST
 Applicant

AND PYNE GOULD CORPORATION
 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Jeff Goldstein and Linda Ryder, Counsel for Applicant
 Malcolm Crotty, Counsel for Respondent

Investigation Meeting: 26 and 27 February 2013 at Christchurch

Further information and
submissions by: 3 April 2013

Date of Determination: 9 July 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr West claims that he was unjustifiably dismissed on 16 April 2012. He further claims that he was unjustifiably disadvantaged in his employment in relation to the respondent's alleged failure to properly consult over the decision to disestablish his position. Mr West claims the respondent breached its good faith obligations to him.

[2] Mr West has claimed an outstanding bonus payment of \$140,000 gross. It is further claimed that the respondent failed to pay Mr West his contractual notice, redundancy compensation and annual leave. He is seeking a penalty, lost wages, interest and costs.

[3] Pyne Gould Corporation Limited (PGC and/or Pyne Gould) denies all the claims and says that Mr West was not entitled to the bonus because:

- The required documents had not been prepared and executed.
- The timing had not been agreed.
- The price of the shares for the purposes of determining tax had not been agreed.
- The terms had not been set.

[4] PGC's position on the claim for unjustified dismissal is:

- That Mr West was not dismissed.
- That Mr West agreed to go on special leave while settlement discussions took place.
- That Mr West elected to treat his employment as being at an end on 16 April 2012.
- That PGC continued to pay Mr West until 7 May 2012.

[5] The matter of annual leave has been dealt with separately, once the respondent accepted at the Authority's investigation meeting that there was an amount of money owed to Mr West. The amount has been calculated and interest added. At the investigation meeting I made an oral consent order accordingly. This is formalised later.

The facts

[6] Mr West was employed by PGC as head of Perpetual Operations and Financial Controller in June 2011. He had worked for PGC since 2009 in other roles. He was employed fulltime and paid a salary of \$225,000 per annum. The parties had a written employment agreement dated 8 September 2011 and it had been signed off. The terms and conditions of that agreement provided for the respondent to award Mr West an incentive based bonus payment. Also the agreement provided for either party to provide three months' notice if the employment was to come to an end. There is provision for redundancy compensation of three months wages in the event of a

change of control. Three months wages was also to be paid in addition, as long as the notice period was worked out.

[7] Mr West was the only Christchurch based executive. For Perpetual matters he reported to Mr Patrick Middleton (Perpetual's CEO) and for PGC matters he reported to Mr John Duncan (Managing Director).

[8] Between June and August 2011 Mr Bryan Mogridge, Pyne Gould's Chairman and Mr Duncan discussed whether or not senior executives should receive a bonus, based on their performance for the year ending 30 June 2011. Subsequently it was agreed that Mr Duncan, Mr Middleton, Mr West and another person in the team would receive a bonus for their work. The bonus payments were booked in the 30 June 2011 accounts signed and issued on 16 September 2011. There was a Board meeting recorded to have taken place on 16 August 2011. The minutes produced of the meeting were signed by Mr Mogridge. The minutes were filed in the company minute book. PGC says that no such Board meeting took place and that the minutes were never approved.

[9] Mr West was made aware of the bonus by a letter written to him dated 16 September 2011 and signed off by Mr Duncan. Mr Mogridge agreed that he had reviewed that letter at the time Mr Duncan signed it. Indeed Mr Mogridge confirmed that there were similar letters to the other staff outlining their entitlement to a bonus.

[10] The letter of 16 September 2011 informed Mr West that:

- a. The Board had decided to pay him a bonus.
- b. The bonus would be calculated with reference to 250,000 PGC shares multiplied by the company's average share price over a period to be determined, and then grossed up for tax.
- c. The bonus would be subject to Mr West remaining in his current role until 30 June 2012.
- d. That in the event of a "change of control of PGC", as defined in Mr West's employment agreement, the bonus would be payable.
- e. That Mr West was told that he "*will shortly be provided with formal documentation to be executed in connection with the bonus*".

[11] The bonus provided that Mr West would receive payment calculated with reference to 250,000 PGC shares. This was quantified to equate to \$140,000 gross by Mr West. Mr West says that the bonus became payable in the event of a change of control of PGC as defined in clause 24 of Mr West's employment agreement.

[12] That provision reads as follows:

24 *Change of Control*

- a. *If a Change of Control Event occurs, you will be entitled to resign from your employment by giving notice of resignation no later than two months after the Change of Control Event. If you elect to resign, you will be entitled to the period of notice specified in Schedule A, plus a payment equivalent to three months' base salary (Payment") payable at the date of termination of your employment, conditional on your acceptance of that payment in full and final settlement of all issues arising out of your employment with us (including the termination of employment).*
- b. *If a payment is made pursuant to clause 24. (a) you will not be entitled to any redundancy compensation or notice of redundancy under clause 22.*
- c. *If you exercise your rights under clause 24. (a), in order to be eligible to receive the Payment you must remain in employment, until the end of your notice period, and you must undertake whatever duties and tasks are reasonably required of you by us during your notice period, provided that we will retain our rights under clause 20. (d).*
- d. *For the purposes of this clause a "Change of Control Event" shall occur if any person and that person's associates (as defined in the Takeovers Code) become the holders of 50.1% or more of the voting rights (as defined in the Takeovers Code) of PGC.*

[13] Mr Mogridge confirmed that it was intended that the issue of the bonus was to be a two stage process, whereby PGC set a financial sum that would then be converted into shares. He confirmed that PGC's intention at all times was to issue shares to Mr West and this would be done forthwith after 16 September 2011. He agreed that the 16 September 2011 letter did not reflect the intention to issue shares and that it only provided for a payment.

[14] PGC says that the intention was for Mr West's bonus of shares to be held in trust until 30 June 2012. The documentation to reflect the intention, while drafted, was not completed. Mr Mogridge says that the intention was to issue shares and not cash. From October to December 2011 PGC did not progress the bonus allocation of the shares to Mr West and the other executives.

[15] On or about 10 October 2011 there was a takeover bid for PGC, and as a consequence of that Mr George Kerr, a director of PGC who was behind the takeover, decided it would be inappropriate to issue the shares to the chosen executives. As a consequence, nothing further was done in regard to the issue of the shares or the payment of the bonus to Mr West.

[16] Mr West says that on 2 April 2012 the change of control event took effect, although the takeover had gone unconditional on 15 February 2012. On 13 March 2012 Mr Duncan gave Mr West specific written instructions to pay the bonuses to the four executives. Mr West was one of the recipients of the bonus payment. He was again advised that he was to maintain confidentiality in relation to the payments. He did maintain that confidentiality including ensuring confidentiality was maintained by PGC's bankers.

[17] On 29 March 2012 Mr West was instructed by Mr Duncan to prepare the payment of the bonuses to the executives and to maintain confidentiality. Payment was being made as the takeover of PGC had been completed and Mr Kerr and his associates had obtained approximately 78% of PGC shares.

[18] Mr Duncan relied upon the 16 August Minutes and Mr West has relied upon the letter dated 16 August 2011 for authorities and payments, but Mr Mogridge believes first that all that was expressed was an intention to make the bonus (although it is accepted that the letter of 16 September does not record PGC's intention) and that it did not create a binding obligation. Second Mr Duncan had a personal interest. Third, only Mr Duncan gave instructions on the preparation of the minutes of the meeting of 16 August.

[19] Mr West says he believes that his entitlement also existed by virtue that he had made provision in the accounts for the financial year 2011 and that a waiver was obtained for the issue of shares during the takeover period.

[20] Mr Michael Tinkler, General Counsel for PGC, says that Mr Duncan had requested him to prepare the letters dated 16 September for the executives, but that they were later prepared in his absence and sent out. He says he was requested also by Mr Duncan to prepare the board resolutions approving the bonuses, using copies of other documents, and a trust deed to lock up the share allocations. At around the same time he contacted Mr George Kerr to advise him what was going on. Mr

Tinkler now says that there was no board meeting on 16 August and no board resolution, except on Mr Duncan's say so. He says he did not attend any such meeting and he typically would attend board meetings. The minutes were written with advice and he says that they were written after 16 September 2011 and not on 16 August. He subsequently learnt that the minutes had been signed by Mr Mogridge.

[21] Mr West arranged for the payments to go through the payroll system as instructed. Mr West and Mr Duncan confirmed that Mr West was acting under instructions from Mr Duncan, and Mr Duncan had the authority to instruct Mr West to pay the bonuses. PGC denies this. The bonus payments were made on 30 March 2012.

[22] Later the same day (30 March 2012) a further request was made to Mr West by Mr Kerr to make some other payments. Mr West says he had no prior knowledge of the payments Mr Kerr wanted made. As the bonuses had been paid there were insufficient funds to meet the request from Mr Kerr. On Saturday, 31 March 2012 and Sunday 1 April 2012 Mr West spoke with Mr Mogridge and it would have become clear to Mr West that the matter was being treated as a serious matter of concern to Mr Mogridge and Mr Kerr. As a result it was confirmed that Mr West was to have Monday off and that the parties would discuss the resolution of Mr West's employment position. Mr Mogridge asked for a summary of events from Mr West. Mr West was asked to return the payment of the bonus and he was informed that if he did not, it would be considered as a misappropriation. Mr West signalled that his position had become untenable.

[23] It was agreed that Mr West would take leave on Monday, 2 April 2012 while the issues involving Mr Duncan's approval of payments was resolved. Mr West did as agreed and he did not attend work on Monday 2 April 2012. He went to log on to send Mr Mogridge the summary that Mr Mogridge had requested. However, his system access had been revoked. Mr West notified Mr Mogridge and later in the day Mr West's access was reinstated.

[24] On the same day Mr West's entire team's reporting line was permanently changed to other Auckland based executives. One team member was made redundant-allegedly on the spot and with no consultation. There was a takeover or a handover of the PGC Group financial reporting to another accounting provider

(Deloitte) taking away a significant part of Mr West's overall responsibilities (document 43).

[25] Mr West's Perpetual responsibilities were given to staff members in Auckland. Mr West's team were given varying explanations for Mr West's absence such as that Mr West was involved in an irregular transaction, or that he would be coming back in a consulting capacity or not at all. Mr West's Christchurch office responsibilities were assigned to a contractor, effectively immediately. No discussion occurred with Mr West in relation to any of the above events.

[26] On 2 April 2012 Mr West spoke with Mr Tinkler. Mr Tinkler asked why the bonus payment had not been returned and Mr West stated that he believed that the bonus was legally owed and therefore he did not understand why the bonus should be repaid. He also told Mr Tinkler that his system access had been revoked, that his team had been restructured and that he no longer had a position. Mr West requested that he be able to talk about his future with the company. Mr Tinkler allegedly stated that there would be no conversation about his future until the funds were returned. Mr West then received an email from Mr Tinkler to repay the bonus which included the threat to Mr West about his future if the payment was not made (document 3).

[27] There was another telephone conference between Mr West and Mr Mogridge that night. Mr Mogridge reiterated that there would be no discussion about Mr West's future until he had returned the funds. Mr West says that he was told that if the funds were not returned then he would be suspended. Mr West explained that his team had been restructured and that he no longer had a role and Mr Mogridge said he had no knowledge of this. Mr Mogridge agreed to resolve the employment situation that week if the money was returned. He said that there would be a Board meeting on the following Wednesday to address the matter and it was agreed that Mr West would stay on leave until the position was resolved.

[28] Mr West repaid the bonus on 3 April 2012. Mr West remained on leave however. On 6 April 2012, Mr Mogridge offered Mr West a settlement. Mr West agreed to Mr Mogridge's terms. Mr Tinkler was left to draft a settlement agreement. Mr West asked Mr Tinkler to send through the settlement agreement but it was not forthcoming. Instead, on Friday, 13 April 2012 a different settlement agreement was sent through to Mr West. Mr West emailed Mr Tinkler and Mr Mogridge that the

settlement agreement did not reflect the agreement reached between him and Mr Mogridge earlier and that he would now have to seek legal advice.

[29] On 16 April 2012, Mr West was directed to hand back his company keys and swipe card. His access to the PGC computer system had already been denied at an earlier date and his name as an executive was removed from the PGC website. Mr West considered he had been summarily dismissed.

[30] The causes of action for assessment are the events of 2 April 2012 and the claim of unjustified dismissal on 16 April 2012. The Full Court has held in *Angus & McKean v. Ports of Auckland Limited* [2011] NZEmpC 160 that at [22]:

The Authority and the Court must continue to make an assessment of the conduct of a fair and reasonable employer in the circumstances of the parties and judge the employer's response to the situation that gave rise to the personal grievance against that standard. What new s.103A("could") contemplates is that the Authority or the Court is no longer to determine justification (what the employer did and how the employer did it) by a single standard of what a notional fair and reasonable employer in the circumstances would have done.

[31] Also, in *Angus & McKean v. Ports of Auckland* [2011] NZEmpC 160 the Full Court dealt with the application of s.103A in practise. It held at para [57]ff:

[57] *The Authority or the Court must first determine, as matters of fact, what the employer did leading to the employer's dismissal or disadvantaging of the employee, and how the employer did it. This may include findings about what occurred which brought about the employer's acts or omissions that led to the dismissal or disadvantage, if the facts about material events are disputed.*

[58] *Next, relying upon evidence, relevant legal provisions, relevant documents or instruments and upon the specialist knowledge of employment relations, the Authority and the Court must determine what a fair and reasonable employer could have done, and how a fair and reasonable employer could have done it, in all the relevant circumstances at the time at which the dismissal or disadvantage occurred. These relevant circumstances will include those of the employer, of the employee, of the nature of the employer's enterprise or the work, and any other circumstances that may be relevant to the determination of what a fair and reasonable employer could have done and how a fair and reasonable employer could have done it. Subsections 3, 4 and 5 must be applied to this exercise.*

[59] *Finally, in determining justification under new s103A, the Authority or the Court must determine whether what the*

employer did and how the employer did it, were what that notional fair and reasonable employer in the circumstances could have done, bearing in mind that there may be more than one justifiable process and/or outcome. The Court or the Authority must do so objectively, that is ensuring that they do not substitute their own decisions for that of a fair and reasonable employer in all the circumstances.

Subsections 3-5 of section 103A of the Employment Relations Act provide as follows:

- (3) *In applying the test in subsection (2), the Authority or the Court must consider –*
- (a) *whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and*
 - (b) *whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and*
 - (c) *whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and*
 - (d) *whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*
- (4) *In addition to the factors described in subsection (3), the Authority or the Court may consider any other factors it considers appropriate.*
- (5) *The Authority or the Court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were –*
- (a) *minor; and*
 - (b) *did not result in the employee being treated unfairly.*

[32] The test is whether on an objective basis and in all the circumstances the respondent could have dismissed Mr West. The respondent was required to follow a procedure outlined under the Act in s 103A (3) (a)-(d) and regard must be had to s 103A (4) and (5) of the Act.

[33] On the unjustified disadvantage claim, Mr West relies on Mr Mogridge's and Mr Middleton's evidence that confirmed that as a result of the bonus payments being made on Friday, 30 March 2012 his duties and his staff management responsibilities were removed on 2 April 2012. One of his staff, for example, was made redundant on that day.

[34] The evidence before the Authority confirmed that the changes to Mr West's role were permanent. This was notwithstanding that the statement in reply records the changes as being temporary. The effect of the changes was that after Mr West had agreed to take leave for one day changes were made that amounted to a unilateral variation of the terms and conditions of his employment. Mr West's position was disestablished on 2 April 2012 when his reports were removed and his duties transferred to Deloitte and the Auckland office. There was no consultation or discussion with Mr West on these changes by Mr Kerr, or anyone else for that matter. This action represents a complete failure by PGC of its good faith obligations towards Mr West. Mr Kerr says that Mr West's continued employment with PGC was untenable because of his actions about the payment of the bonuses. As a result, Mr West's position with PGC was disestablished, because the view had been formed over the weekend of 31 March and 1 April that he had done something wrong. Mr West had no opportunity, given the short time involved, to respond to any of the concerns.

[35] I hold that the applicant did not resign (SIR para.22) because Mr Mogridge at no time had any discussion with Mr West about Mr West resigning. There was no letter provided by Mr West of him resigning and I accept that in no way did he ever tell Mr Mogridge that he was resigning. Mr Patrick Middleton (CEO) also supported this position. He was never told that Mr West had resigned.

[36] Mr West's employment ended when the proposed settlement offer, which was changed by Mr Tinkler resulted in Mr West being locked out by PGC from the workplace, the unavailability of work and the collapse of the settlement which meant that he had been dismissed, I hold.

[37] Mr West accepts that he told Mr Mogridge that his position was untenable and accepts that he wanted to negotiate an early exit following the change of control event. However, any arrangement around negotiated terms for this was effectively prevented when he was not allowed to return to the workplace effective from

16 April. This was after his duties and reports had been unilaterally removed from him on 2 April while he was on a day's leave.

Determination

[38] I confirm the discussion held at the Authority's investigation meeting that resulted in the respondent agreeing to pay Mr West his holiday pay. In addition as he had been deprived of the use of his money interest of 5% per annum is payable on the sum from the date it was due until the date of the Authority's investigation meeting.

[39] Mr West's claim for the payment of the bonus entitlement has been based on the following:

- a. Clause 6, Schedule A of the employment agreement that provided:

PGC may put in place a discretionary performance related incentive scheme. Your participation in any such scheme, and any payment that you may receive under such a scheme, will be at PGC's discretion.

- b. The 30 June 2011 audited financial reports which record an obligation to pay executive bonuses.
- c. The signed minutes of the Board meeting dated 16 August 2011 containing a resolution that confirms the payment of the bonus.
- d. The letter to Mr West dated 16 September 2011.
- e. The authority provided by Mr Duncan to Mr West dated 30 March 2012.
- f. The respondent's statement in reply.
- g. The evidence of Mr Worrall that he was entitled to a bonus on the same terms as the applicant, where the respondent confirmed his entitlement.
- h. The evidence of Mr Duncan that Mr West was entitled to a bonus payment based on the terms contained in his letter.
- i. The evidence of Mr Mogridge about the bonus.

[40] Mr West reasonably believed from his supervisor that he was authorised to pay the bonuses. When the issue about this was raised he, upon request, did pay the money back.

[41] The factors supporting the bonus being paid include:

- a. Clause 6, Schedule A of the employment agreement that provided
PGC may put in place a discretionary performance related incentive scheme. Your participation in any such scheme, and any payment that you may receive under such a scheme, will be at PGC's discretion
- b. The 30 June 2011 audited financial reports which record an obligation to pay executive bonuses.
- c. The signed minutes of the Board meeting dated 16 August 2011 containing a resolution that confirms the payment of the bonus.
- d. The letter to Mr West dated 16 September 2011. This is clear on its terms and plainly provides for the payment of the bonus.
- e. The authority provided by Mr Duncan to Mr West dated 30 March 2012.
- f. The statement in reply filed by the respondent. The arguments against a bonus payment are not supported by the evidence, I hold. This is supported by the letter dated 16 September 2011. The letter did not require that the payment was subject to formal documentation being agreed, executed and approved by the Board. It seems that it was entirely within the control of PGC to complete any formal documentation to enable the bonus to be paid.
- g. The evidence of the other person entitled to a bonus on the same terms as the applicant and the respondent confirmed his entitlement. He has not been paid.
- h. The evidence of John Duncan that Mr West was entitled to a bonus payment based on the terms contained in his letter.
- i. The evidence of Mr Mogridge is that Mr West was owed a bonus. The amount Mr West is entitled to would be \$140,000 gross if the discretion was executed.

[42] Also, the respondent has asked the Authority to rely on the terms of trust Deed (document 11) between PGC and Perpetual Trust Limited and that is called Share Trust Number 2. It was limited to those two parties in its ambit. It did not involve Mr West. It follows that the requirement for Mr West to sign some documentation could not have been the Trust Deed as he was not a party. The deed prepared by Mr Tinkler was not executed. Mr West was never provided with a copy of the document. He had no knowledge of the terms.

[43] I hold that the differences of opinion that have emerged in regard to the board meeting and whether or not it was properly constituted, the letter dated 16 September 2011, and Mr Duncan's authority make the payment problematic given it is underwritten as a discretionary payment. Also, there is the matter of how the bonus was to be executed in shares and/or paid in cash, which the parties have differing opinions about. I am left with doubts about the proper authority surrounding the matter of the bonus payment. In such circumstances as it was a discretionary bonus I must disallow it.

[44] I now turn to the claims in regard to a personal grievance. Mr West alleges that PGC:

- a. Failed to undertake any investigation before it unilaterally removed him from his duties and reports.
- b. Breached the requirement of raising its concerns with him before dismissing or taking action against him.
- c. Failed to meet its obligations to give him a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against him.
- d. Did not genuinely consider any explanation from him in regard to the allegations against him before dismissing or taking action against him.

[45] In applying s.103A(3)(a)-(d) I make the following observations:

- a. That there was a failure to undertake any investigation before Mr West's duties and reports were unilaterally removed.

- b. That there was no sufficient investigation to find out whether or not Mr West's explanation was accurate and reliable. No-one even bothered to speak with Mr West about the matter after the offer of settlement was agreed on 6 April 2012. It is my conclusion that PGC failed to investigate and thus did not meet its obligations as set out in s.103A(3)(a).
- c. That PGC failed to put all of its concerns and allegations to Mr West before both removing his duties and dismissing him.
- d. That PGC also completely failed to meet its obligations to give Mr West a reasonable opportunity to respond to the employer's concerns. It failed to put the allegations upon which Mr West was dismissed, and he was disadvantaged without any opportunity to properly respond to the allegations before the dismissal.
- e. That PGC also breached s.103A(3)(d) because without meeting its obligations under s.103A(3)(b) and (c) PGC could not have genuinely considered the non-existent explanations.

[46] Additional factors that the Authority has been asked to take into account include first that the respondent failed to meet its obligations to provide Mr West with all of the information relevant to the issue in hand. Second, it is submitted that there were prejudicial comments made by Mr Middleton to staff about Mr West on 2 April 2012, which are set out in witness statements of various other employees. The statements that Mr Middleton allegedly made have been uncontested and provide further confirmation that PGC had by 2 or 3 April 2012 decided that it could no longer employ Mr West. Third that PGC accepted responsibility to pay any liability on the claim. I hold that Mr West has a personal grievance and that he is entitled to remedies subject to mitigation and consideration of any contribution.

[47] My reasons are:

- a. That there were no discussions with Mr West in regard to the events of 2 April when he was excluded from the computer system and changes were made to his employment. The actions had a direct impact on his employment.

- b. That there was no investigation as required given that a decision was made to change Mr West's employment.
- c. That the concerns were not raised with Mr West before the decision to cease his employment was made.
- d. That there was no reasonable opportunity given to Mr West to respond to the employer's concerns before dismissal and before the action taken against him.

[48] These are serious defects, and clearly a fair and reasonable employer could not reach a decision to dismiss in the absence of an adequate investigation, including providing Mr West with the details of any concerns and allegations, not giving him the reasonable opportunity to respond to the concerns, nor an opportunity to have some discussion on any decision impacting on his job, including any other options.

[49] Finally, I accept Mr West's claim for arrears for wages in lieu of notice and the lost opportunity in regard to the change of control event and/or redundancy, but these must be off set with the lost wages claimed for a personal grievance, because Mr West's claims have been made as alternate remedies. He is entitled to compensation for the lost opportunity on notice and redundancy because ostensibly his employment was changed and he was dismissed when he would have been given choices to resign and or be made redundant and/or to reasonably settle on terms which did not happen. Such remedies can be incorporated and off set with compensation for lost wages.

[50] It is more likely than not that Mr Kerr formed an adverse view about Mr West and set out not to pay him.

Orders of the Authority

[51] I confirm by consent the arrangements entered into during the Authority's investigation meeting that Mr West is entitled to holiday pay and interest. The sum was calculated by Mr Mogridge at the Authority's investigation meeting and should not be any less than \$21,268.11 gross plus \$797.55 interest. By consent PGC is to pay James West \$22,065.55 holiday pay and interest.

[52] Mr West is entitled to lost wages due to his dismissal including notice and the compensation for the lost opportunity for redundancy.

[53] The claim is calculated (on his base salary of \$225,000) for 26 weeks (6 months) from 7 May 2012 when his employment ceased. This amounts to \$112,500. Mr West is entitled to interest on the 26 weeks' pay because he was denied the opportunity for the use of the money. He is further entitled to the balance of his claim for 8 months lost wages that have been assessed by his representative as \$4,166.66 per month. Two extra months amounts to \$8,333.32. I have not awarded interest on the sum for the two months' extra claimed because it is not money that Mr West has been deprived of, but a claim that relied on a finding that there was a personal grievance involving a discretionary remedy. Thus, although interest is able to be awarded, I consider it is not appropriate for the two months because Mr West has not been deprived of the use of money by PGC in this instance.

[54] The amount of interest is \$2,743.15 under the Judicature (prescribed Rate of Interest) Order 2011 (5% pa) and pursuant to clause 11 of Schedule 2 of the Employment Relations Act.

[55] I am satisfied Mr West attempted to mitigate his loss because he got another job very quickly, but at a lesser rate of pay. He has not contributed to his personal grievance because he believed genuinely in the authority to make a payment of the bonuses and repaid the money when asked to do so. This involves no reduction for contribution.

[56] Mr West is entitled to compensation for hurt and humiliation. I accept what he says he felt like and the impact on him of the employer's action, and in particular his evidence of embarrassment and humiliation involving his family and professional standing given Mr Kerr's actions and comments. There was an absence of any corroborating evidence and thus I have had to rely on what Mr West said in his evidence. I award him globally \$10,000 under s 123 (1) (c) (i) of the Employment Relations Act.

Other claims

[57] The claim from Mr West for the payment of a bonus is dismissed.

[58] This is not a matter for any penalty given the above orders to resolve the employment relationship problem. Although a penalty has been claimed for a breach of good faith it would be inequitable to make PGC pay a penalty when the

employment relationship problem can be fixed by the remedies for the personal grievance.

Orders of the Authority

[59] Pyne Gould Corporation is required to pay Mr West

- i. \$120,833.32 lost wages.
- ii. \$2,743.15 interest.
- iii. \$10,000 compensation for hurt and humiliation.
- iv. By consent I confirm \$22,065.55 holiday pay and interest.

Costs

[60] Costs are reserved.

P R Stapp
Member of the Employment Relations Authority