BusinessCentral

EMPLOYER BULLETIN

1 May 2023

A Weekly News Digest for Employers

EMPLOYER NEWS

IRD report shows wealthy NZers pay much lower tax rates than other earners

Inland Revenue research released last week reveals a large differential between the tax rates ordinary New Zealanders pay on their full income compared with the super-wealthy, Revenue Minister David Parker says.

"This internationally ground-breaking research provides hard data showing that the wealthiest New Zealanders pay tax at much less than half the rate of other Kiwis," David Parker said.

"The data, based on full income information from 311 of our wealthiest citizens, shows that the average person in this group pays an effective tax rate of just 8.9% tax on their economic income – that is, income from all sources, including capital gains on investments.

"In contrast, most New Zealanders pay tax at more than twice that rate. For example, someone earning a salary of $80,000, with no other income, pays 22% tax on that income, excluding GST.

"The difference is mainly because the very wealthy earn only a small portion of their income from wages and salaries, unlike most New Zealanders.

"The differential is even larger when GST is included: for the wealthiest, their effective tax rate rises to 9.5%, but for the person on an $80,000 salary, it goes up to around 28 or 29%. That is because wealthy New Zealanders spend a much smaller portion of their income each year, compared with other earners."

New Zealand Government [26 April 2023]

Funding boost to strengthen primary, community and rural care

Primary care providers will receive a $44 million funding boost to deliver high quality services focused on benefitting Māori and Pacific populations. The funding, which will roll out over two years, will directly impact those with the highest needs in New Zealand, Minister of Health Dr Ayesha Verrall and Associate Minister of Health Peeni Henare announced last week.

Comprehensive care teams, including kaiāwhina, physiotherapists, pharmacists, care coordinators, and in some rural areas, paramedics, will be established in all early localities. Kaiāwhina roles will also be introduced across Counties Manukau, Northland, Auckland, Waitematā and Bay of Plenty regions as a first phase of this initiative.

"I've heard from primary care clinicians that they face increasing needs of patients. Funding for clinical roles such as physiotherapists and pharmacists will help them to meet these needs," Ayesha Verrall said.

"To support the winter pressures and beyond, we're funding up to 193 additional frontline clinical team members across the country to focus on early intervention, faster treatment and better support for whānau."

"Funding for these roles will be prioritised to providers serving Māori, Pacific, and rural populations with complex needs, including those with limited access to primary healthcare services. Better access to local care will go a long way improve early intervention rates and help patients avoid hospital care, improving the hauora of those who need it the most."

New Zealand Government [26 April 2023]

Napier apple export quantities down, value remains stable

Total exports of apples from the port of Napier in March 2023 were valued at $61 million, slightly up (2.0 percent) from March last year, according to data released by Stats NZ last week.

The quantity of apples exported from the port of Napier fell 17 percent, to 20 million kilograms, in March 2023. The average quantity of apples exported from the port of Napier in March months, from 2018 to 2022, was 34 million kilograms.

Over the past 12 months, 62 percent of New Zealand apple exports (by value) were from the port of Napier. The ports of Tauranga and Nelson exported 15 percent and 14 percent, respectively.

Statistics New Zealand [26 April 2023]

Transport sector agreement finalised and Green List changes confirmed

Transport sector agreement details confirmed

In December 2022, the Minister of Immigration and Transport announced a transport sector agreement with a 2-year work to residence pathway for truck and bus drivers, and later announced that this would be extended to include critical maritime transport roles. This was intended to support critical national infrastructure (public transport, waste collection and supply chains) as the industries work towards improved pay and conditions and increased training of New Zealanders.

Median wage exemption for bus drivers

Employers will have a median wage exemption set at $28 an hour when hiring bus drivers for an eligible role on an Accredited Employer Work Visa. This exemption takes effect immediately.

To be eligible for the exemption, the role must either:

- be for an employer who has signed the All Parties Memorandum of Understanding on Improving Bus Driver Pay and Conditions, or
- be as a school bus driver on a Ministry of Education-funded school bus service.

Bus drivers hired under the sector agreement will be eligible for Accredited Employer Work Visas (AEWV) for 3 years, despite being paid below the median wage. This will ensure that they have enough time to complete their 2 years of work in New Zealand required to apply for residence.

Immigration New Zealand [26 April 2023]

Government rules out cyclone levy in no-frills Budget

- No cyclone levy in the Budget
- No frills Budget balancing fiscal restraint with funding the basics
- Alongside cost of living support and cyclone recovery, PM signals Budget focus on investments in skills, science and technology and infrastructure to grow economy

The Government has ruled out a specific cyclone levy in the upcoming Budget to pay for the recovery from the Auckland floods and Cyclone Gabrielle, Prime Minister Chris Hipkins announced last week.

In a pre-Budget speech in Auckland last Thursday, the Prime Minister has set out that the costs of the recovery will instead be largely met within the Budget's operating and capital allowances.

"There will be no new tax everyone would have had to pay, like a cyclone levy, to fund the recovery," Chris Hipkins said.

New Zealand Government [27 April 2023]

EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

Employer owed bonus and wage increase payments based on company promises

Ms Ong was employed by Comsol (Computer Solutions) Limited (Comsol) as its chief operating officer. In early 2022, she received letters awarding her a $40,000 bonus and a five percent pay rise. The letters were signed by Comsol's managing director, Mr Lamerton. However, neither the bonus nor pay rise was paid, as Comsol's other director, Mr King, claimed that Mr Lamerton was not authorised to make those payments. Ms Ong sought payment of the bonus and wage increase plus interest, along with compensation for hurt and humiliation.

Ms Ong was hired by and reported to Mr Lamerton, who was responsible for Comsol's day-to-day operations including tasks relating to staffing, customers, and contractors. Mr King's director role was described as 'governance', and unlike Mr Lamerton he was not involved in managing the company.

On 17 January 2022, Ms Ong received a letter signed by Mr Lamerton using Comsol's company letterhead, stating she was being awarded a $40,000 bonus to be paid the following day. Then, on 21 February 2022, Comsol wrote to Ms Ong and another senior employee awarding them a five percent pay rise to reflect the increased cost of living. Mr King, however, disagreed with the bonus and pay rise and refused to approve them. He relied on Comsol's company constitution, which required all significant payments to be approved by both directors prior to finalising and granting them. Mr King claimed that since Mr Lamerton had not gained prior mutual consent, he could not alone commit to Comsol honouring these payments. While Mr King authorised the pay rise for the other employee, he refused to do so for Ms Ong. This resulted in Comsol not paying the bonus or the wage increase to her.

The Employment Relations Authority (the Authority) determined that the promises made to Ms Ong by Mr Lamerton on Comsol's behalf amounted to a binding and enforceable contractual agreement. Her evidence, which the Authority accepted, was that she acted on the promises and performed additional duties in response to them. Ms Ong's position was that she was not deeply familiar with Comsol's constitution and stated that Mr King had never been involved in the decision-making.

She instead relied on Mr Lamerton to act as her employer on a day-to-day basis. Further, Ms Ong's employment agreement provided for bonus payments as "determined by the Managing Director" and she had previously received a $40,000 bonus authorised by Mr Lamerton seemingly without issue.

Companies may only act through and by the actions of their directors as the 'hands and mind' of the company. Comsol, via Mr Lamerton as Comsol's managing director, entered into binding promises to make a bonus payment and a wage increase to Ms Ong. The Authority stated that even if Mr King was correct that Comsol did not have the capacity to make the payments due to non-compliance with its constitution, this did not invalidate its obligations to do so under section 17 of the Companies Act 1993 (the Act).

For Mr King to advance his position, section 18 of the Act required him to show that Ms Ong had knowledge, or ought to have knowledge, of Comsol's constitution that prevented Mr Lamerton from being able to award her with the payments with Mr King's mutual agreement.

Ms Ong resisted any suggestion that she had knowledge of either the company constitution and how it operated, or knowledge that decisions about wages and bonus payments required unanimous agreement by Mr Lamerton and Mr King. Her evidence, which the Authority accepted, was that this was simply not how the business operated in practice. Moreover, there was no suggestion that Mr King had ever communicated to Ms Ong that Mr Lamerton was not authorised by Comsol's constitution to make decisions around staff payments.

Having concluded that Comsol owed Ms Ong the bonus payment and wage arrears for her pay rise, Comsol were ordered to pay the amounts plus interest totaling $47,485. Ms Ong also gave evidence that she had worked hard for Comsol to earn the bonus and pay rise she was awarded. To have Mr King refuse to authorise them without discussing it with her was very stressful and she described feeling exploited and unvalued. The Authority accepted her claim for hurt and humiliation and awarded $5,000 as compensation. No issue as to costs was ordered as Ms Ong was not represented.

Ong v Comsol (Computer Solutions) Limited [[2022] NZERA 667; 21/11/2022; C English]

Breach of settlement agreement results in compliance order but no penalty

Mr Nelson worked as a tyre fitter at Tyrepower Kerikeri, a business operated by Dynaco Limited (referred to as Tyrepower). Mr Nelson and Tyrepower attended mediation and reached an agreement. Mr Stevens, the manager of Tyre Power in Kerikeri, attended some of the mediation. Tyrepower, Mr Nelson and a mediator from the Ministry of Business, Innovation and Employment (MBIE) signed a settlement agreement.

Six weeks after the mediation, a heated incident occurred at Mr Nelson's new workplace, a car dealership, between Mr Nelson and Mr Crompton, the partner of another Tyrepower staff member. Mr Stevens was present at the time. Subsequently, Mr Stevens and Mr Mulder, a sales representative of Tyrepower, talked in a carpark across the road. As a result of those interactions, Mr Nelson claimed that Tyrepower and Mr Stevens breached confidentiality and non-disparagement provisions of the settlement agreement.

Mr Denize, Tyrepower's owner, was not always at Tyrepower on a day-to-day basis as he also had another business. Mr Stevens had a supervisory role but had few or no human resource responsibilities, so did not see employment agreements nor discipline staff. Ms Horsfall, an employee of Tyrepower, had complained about Mr Nelson's behaviour towards her. Mr Nelson had also made complaints about the way he was treated in the workplace by several people, including Mr Stevens and Ms Horsfall.

Mediation was held via Zoom on 5 May 2021. Mr Denize asked Mr Stevens to be there as Mr Denize was sometimes away from the Tyrepower premises. Mr Denize told the staff that they were not to discuss Mr Nelson's employment or say anything negative about him to anyone but could say he had worked at Tyrepower and had resigned.

On 19 June 2021, Ms Horsfall became upset about social media posts on Tyrepower's social media page by an extended family member of Mr Nelson, who she thought must have been told information by Mr Nelson. This appeared to be based on her thinking "how else would they know?"

Ms Horsfall was upset and let her partner know. Mr Crompton wanted to do something to make the social media posts stop. Ms Horsfall also sent a screenshot of the message to Mr Denize. Mr Nelson denied having any knowledge of, or involvement in, the social media posts and maintains that he had not had contact with the extended family member for a year or so. There was no evidence of Mr Nelson making the posts himself.

Mr Stevens also parked in the carpark in a ute with Tyrepower branding. As he was checking online about what cars the dealership had, he noticed Mr Crompton getting out of his car and heading towards the dealership to talk to Mr Nelson.

Mr Nelson assumed that Mr Stevens and Mr Crompton had come into his workplace together in an alliance to confront Mr Nelson. The Employment Relations Authority (the Authority) did not accept that and concluded that Mr Stevens got caught up in a situation not of his own making. A discussion was had between Mr Mulder, who made notes shortly after, Mr Stevens and Mr Nelson.

After Mr Nelson's representative raised concerns about the settlement agreement being breached, Mr Denize undertook an investigation, seeking written responses from Mr Stevens, Ms Horsfall and Mr Crompton. Although Mr Stevens was not told that a settlement agreement had been achieved, he was aware that the parties were attempting to resolve things between them by attending mediation. He had attended part of the mediation on 5 May 2022 and knew that a negotiated exit was proposed. The Authority concluded that Mr Stevens was sufficiently aware of an agreement having been reached and that there were restrictions imposed on what could be said about Mr Nelson.

Turning to whether Tyrepower breached the settlement agreement, Mr Denize denied having disparaged Mr Nelson and claimed he had done his upmost to uphold the settlement agreement obligations. Tyrepower's employment agreement with Mr Stevens required him to follow reasonable directions. The company tried to distance itself from Mr Steven's actions, stating he was acting in his personal capacity. Instructions had been given and Mr Denize, expecting them to be followed. There was no evidence of a direct breach by Mr Denize. However, employers may be vicariously liable and responsible for the acts of their employees.

The Authority stated that where employers choose to involve employees in the mediation process, they risk liability for their potential breaches of confidentiality or other terms. Tyrepower and Mr Stevens were ordered to comply with the terms of the settlement agreement with Mr Nelson, effective immediately. As this was a one-off situation with no evidence of Mr Stevens being involved in other incidents, the Authority concluded that no penalty should be imposed on Mr Stevens. Having imposed a compliance order, any repeated breached would not be looked upon as leniently. The Authority also did not consider that Tyrepower should be penalised. Tyrepower took advice from its former representative about what it should tell staff and carried that out. Costs were reserved.

Nelson v Dynaco Limited [[2022] NZERA 591; 11/11/2022; N Craig]

Authority awards employee over $18,000 for employer's enduring verbal abuse

Ms Tahuhu started employment with Alpine 182 Degrees Limited who traded as The Springfield Hotel (the hotel), first as a cleaner in mid-2020 and then as a front-of-house manager from June 2021. There was a history of verbal abuse towards Ms Tahuhu by Mr Wallace, the hotel's owner. On 25 January 2021, Ms Tahuhu sent him an email raising a personal grievance referring to an incident on 24 January 2022. Ms Tahuhu believed that she was dismissed without notice and accordingly sought a personal grievance for unjustified dismissal, a penalty for no written employment agreement, repayment of unlawful wage deductions and wage arrears.

The incident involved Mr Wallace's partner, Ms Watson, making a comment in front of staff that Ms Tuhuhu could no longer work Friday nights because she was "not young enough" and lacked "big enough boobs." On the same day after sending the email, she was blocked from the online payroll system, her final pay had been calculated and she was instructed to return her hotel keys.

The Employment Relations Authority (the Authority) found compelling evidence that Ms Tahuhu did endure multiple occasions of verbal abuse. Her adult son, a trainee in the kitchen, witnessed some of the verbal abuse and claimed that he had to drive his mother to hospital because she suffered a mental breakdown due to being "regularly abused, degraded and belittled by Mr Wallace." Ms Tahuhu's colleague, Mr Innes, stated that he observed a lot of the abuse take place where Mr Wallace would lecture Ms Tahuhu in a demeaning and aggravating manner. Ms Atkins made a statement that she overhead him call her "stupid" and "emotional." Ms Learned also made a statement that Ms Wallace knew Ms Tahuhu was sensitive to any abuse and was frightened by his outbursts. Accordingly, the Authority decided that Ms Tahuhu was unjustifiably disadvantaged as a result of the verbal abuse and intimidating behaviour she had to tolerate. Although the 90-day period to raise a personal grievance had lapsed, Ms Tahuhu was still found to be entitled to remedies. While Ms Tahuhu claimed that she never received an employment agreement, an agreement was provided to the Authority with Ms Tahuhu's name written in her own handwriting. Both she and the Authority accepted the agreement was hers.

The Authority also assessed whether Ms Tahuhu was unjustifiably disadvantaged by an unauthorised deduction of $316.25 from her wages. The deduction was the cost of her bar manager's licence which had not been in use since the dismissal. Acting arbitrarily against the Wages Protection Act 1983 meant that the hotel was ordered to pay back $316.25 since the deduction was made without consultation and written consent.

The hotel's timesheets proved that Ms Tahuhu was underpaid. It showed that she was paid $17 per hour when the minimum wage was $18.90 and then $18 per hour when it was $20. The difference between what she was paid and what she ought to have been paid was $2,707.46. $17.40 and $10 were also claimed for not being paid for working Good Friday and two 10-minute paid breaks respectively. As the hotel did not contest the calculation of Ms Tahuhu's wage arrears, the Authority ordered $2,734.86 with interest to be paid.

In considering the actions of the hotel cumulatively, namely the email raising the personal grievance taken as a letter of resignation, then locking Ms Tahuhu out of the payroll system, determining the final pay so quickly and asking for the keys to be returned, the Authority concluded that Ms Tahuhu was unjustifiably dismissed from her job.

The hotel was ordered to pay Ms Tahuhu $18,000 in compensation for humiliation, loss of dignity and injury to feelings as she was mentally and physically "shattered" transitioning from a bubbly person to a depressed person since working at the hotel. She was also required to visit a mental health facility at one point. Lost wages equating to $1,800 was ordered to be paid for the weeks in between her dismissal and her start of alternative employment. The hotel was also ordered to pay $3,500 for legal costs and $71.56 for the filing fee.

Tahuhu v Alphine 182 Degrees Limited [[2022] NZERA 620; 25/11/22; P Fuiava]

Disciplinary process was not fair due to omitting information

Mr Rutene was employed as a labourer and knife-hand with Ashburton Meat Processors Limited (Ashburton Meat) from 23 December 2013, until his summary dismissal for serious misconduct on 20 April 2021. He raised personal grievances for unjustified dismissal and unjustifiable disadvantages. He claimed Ashburton Meat failed to adequately address concerns he raised about bullying, or adequately support him during his graduated return to work, and for issuing him an unjustified final written warning. Mr Rutene sought lost wages, compensation and contribution to costs.

On 17 November 2020, Mr Rutene suffered a work-related injury and Ashburton Meat incorporated a graduated return to work plan. On 22 February 2021, Mr Rutene took more than double his permitted break time and did so instead of handling product, resulting in it needing to be thrown out. Mr Rutene later declined an instruction to do work. The supervisor, Mr Neal, said Mr Rutene "might as well f--- off." The two reportedly moved forward and Mr Neal did not repeat the behaviour.

On 25 February 2021, Ashburton Meat held a disciplinary meeting with Mr Rutene for the 22 February break issue and misrepresenting his hours. Mr Rutene was provided the opportunity to explain, which he used to apologise. The 23 February incidents were not in the invitation letter but were discussed. The preliminary decision, conclusion, and letter for final warning, all issued on 4 March 2021, only referred to the 22 February break issue.

Later, Mr Rutene and his representative raised his own work issues. Ms Morley, Ashburton Meat's human resource manager, offered the company's Employee Assistance Program and her own checking in, to help with Mr Rutene's injury. Mr Rutene also said staff called him a "bludger", which Ms Morley stressed was not tolerated and would be investigated. Mr Rutene chose not to give identifying details, so Ashburton Meat could not act on the information.

Mr Rutene exited the workplace on 6 April 2021, citing a medical certificate to work seven-hour days. Mr Neal claimed the graduated return to work plan said Mr Rutene could work eight-hour days. Mr Rutene later apologised after confirming he mistakenly thought his medical certificate cleared him to work seven-hour days. When Mr Rutene entered work on 7 April 2021, Mr Neal asked for a copy of the medical certificate. Upset by the interaction, Mr Rutene left for the rest of the day. Mr Rutene possessed a doctor's letter and clinical notes dated 8 April 2021, which said work stressed and upset him, but he did not provide these to Ashburton Meat.

On 9 April 2021, Mr Rutene was invited to another disciplinary meeting. The invitation letter referenced his final written warning for issues "relating to work attendance, punctuality and following work instructions". It established his behaviour may have been serious misconduct, defined in his collective agreement to include all the allegations, and it informed him of his right to a representative.

On 13 April 2021, Mr Rutene attended the meeting. On 15 April 2021, Ashburton Meat held another meeting for the preliminary decision of serious misconduct warranting dismissal, where they provided him a letter and outlined its contents. Ashburton Meat told Mr Rutene the decision-maker was the general manager, Mr Swete, who signed the letter, but the letter's contents only named Mr Neal and he was the one who attended the meeting.

The letter invited Mr Rutene to comment in writing or by phone. Mr Rutene said he desired an in-person meeting where he would "beg for his job" but was told one would not take place, and to leave a letter. This led him to lose hope and give up writing a response. Ashburton Meat did not locate any such instruction. While Mr Neal submitted that he would have set up a meeting, the Authority found the letter did not clearly establish this. Mr Rutene was dismissed in a letter dated 20 April 2021 from Mr Swete.

The Authority considered if Ashburton Meat had caused any unjustified disadvantage. It found Ashburton Meat responded appropriately to all complaints of bullying. It also found Ashburton Meat was supportive during the graduated return to work plan. Ashburton Meat's actions did not fail to address these issues or to support him.

The 25 February meeting, however, did not address all the allegations that Mr Rutene received in the final written warning. A fair and reasonable employer should have established everything. The Authority found Ashburton Meat did not make clear that the incidents of 23 February 2021 would be considered in a disciplinary outcome before they came up at the meeting. Consequently, Mr Rutene did not have an opportunity to respond and have his explanation considered. This was not procedurally fair and therefore the final warning was unjustified.

On Mr Rutene's dismissal, the Authority established his right to be heard by the decision-maker during his preliminary decision meeting. This provides opportunity to overcome the bias of the employer, alter the conclusion or convince of a different outcome. This procedural failing was serious and Mr Rutene's dismissal was found to be unjustified.

The Authority awarded Mr Rutene reimbursement of lost wages until his next employment. It considered compensation for Mr Rutene's humiliation, loss of dignity and injury to feelings. Mr Rutene and his partner were put in serious financial trouble where they could not pay for rent or food. Mr Rutene attempted suicide. The Authority set an initial award of $20,000. This was reduced by 30 percent due to Mr Rutene's acceptance that he committed the breaches and demonstrated blameworthiness for the disciplinary outcomes. The final calculation was for Ashburton Meat to pay $10,712.08 for reimbursement of lost wages and $14,000 for hurt and humiliation. Costs were reserved.

Rutene v Ashburton Meat Processors Limited [[2022] NZERA 599; 16/11/2022; H Doyle]

Employee dismissed after inappropriate email communications

Mr Green commenced employment with NZ Bus (Tauranga) Limited (NZ Bus) as an operator/bus driver in November 2019 and was promoted to the position of service delivery supervisor in 2020. Mr Green's employment ended in February 2021 by way of dismissal which claimed was unjustified. NZ Bus said Mr Green was justifiably dismissed after he made inappropriate and personally abusive communications with Mr Zmijewski, the chief operating officer.

On 17 December 2020, Mr Green was instructed by his direct manager, Ms B, to post a notice at his depot advising drivers that NZ Bus intended to change roster patterns. The email was copied to Mr Zmijewski. Mr Green said that he had been very worried about the consultation document because he believed the proposal would be unpopular with some drivers and make his job more difficult. He placed the notice on the staff notice board and emailed Ms B to confirm he had done so, including Mr Zmijewski on the response.

In the email he stated: "The notice has been posted. I'll provide proper feedback in due course, but I have to say, this is the worst idea since the Hitlers decided to get jiggy and have a baby boy called Adolf." The email contained further details on his concerns.

Mr Zmijewski said he was disappointed when he received the email because he considered it to be unprofessional and irresponsible. He expected Mr Green, as an employee in a supervisory position, to have adhered to professional standards of behaviour. He considered Mr Green's comment to have trivialised a very important and deeply tragic period of recent history and to be offensive.

Mr Zmijewski responded to Mr Green by email that same day and advised of his disappointment. He said he would be asking Ms B to meet with Mr Green to discuss the matter further as he needed to be confident that Mr Green could meet the standard required of an NZ Bus employee and supervisor moving forward. He also advised he was happy to discuss the matter with Mr Green personally. Mr Zmijewski said his expectation had been that Mr Green would appreciate the inappropriateness of his comments, and that would be the end of the matter.

Mr Green said he had considered Mr Zmijewski's response to have been over the top. He said that while he would have accepted Mr Zmijewski telling him the comment he had made was not appropriate, he did not consider it significant enough to escalate it to a meeting with his manager. In an email response to Mr Zmijewski, Mr Green commented that the remark about the "Hitlers" had been intended as a joke and he was sorry if Mr Zmijewski had felt personally offended. Regarding the meeting with his manager to discuss the expected standards of him, Mr Green stated: "Now THAT is offensive. Unwarranted, undeserved, personally insulting and frankly, abuse of your position as COO… It is management bullying Jay, pure and simple in a position of authority, you stand tall by strengthening the support of the people underneath you, not by knocking them down."

Mr Zmijewski said he was personally offended and dismayed by the response because it indicated that Mr Green was utterly unrepentant. He accepted that there was a form of apology, but no acknowledgment by Mr Green that the comment had been inappropriate. He said in fact Mr Green appeared so convinced that his comment was acceptable and appropriate that he had accused him, Mr Zmijewski, of bullying. Mr Zmijewski appointed Ms B to deal with the disciplinary process. Mr Green was suspended and, following a detailed disciplinary process, NZ Bus dismissed him in February 2021 for serious misconduct based on its concern that it may not be able to trust him to carry out his role properly.

The Employment Relations Authority (the Authority) outlined the test of justification and found that NZ Bus acted in a manner that was substantively and procedurally fair. Mr Green held a senior position with leadership responsibilities and the Authority found that NZ Bus was entitled to expect him to behave in a professional manner. The Authority found that the fair and reasonable employer in receipt of the second email could have regarded the behaviour of Mr Green to have lacked respect and been serious enough to commence a disciplinary process. The Authority observed that Mr Green had later made unreserved apologies for his behaviour.

The Authority then considered whether the email comments constituted abuse and found that while the first email was not personally abusive of Mr Zmijewski, the comments in the second email could be considered abuse of him and accorded with the definition of serious misconduct as abuse included in the employment agreement.

The Authority said that although the decision to dismiss Mr Green in light of his later repeated apologies might be seen as severe, it found that NZ Bus acted as a fair and reasonable employer could have acted in all the circumstances at the relevant time. The Authority determined Mr Green was not unjustifiably dismissed by NZ Bus. Costs were reserved.

Green v NZ Bus (Tauranga) Limited [[2022] NZERA 631; 29/11/2023; E Robinson]

LEGISLATION

Note: Bills go through several stages before becoming an Act of Parliament: Introduction; First Reading; Referral to Select Committee; Select Committee Report, Consideration of Report; Committee Stage; Second Reading; Third Reading; and Royal Assent.

Four Bills are currently open for public submissions to select committee.

- Land Transport Management (Regulation of Public Transport) Amendment Bill (28 April 2023)
- Regulatory Systems (Education) Amendment Bill (1 May 2023)
- Education and Training Amendment Bill (No 3) (1 May 2023)
- Integrity Sport and Recreation Bill (3 May 2023)

Overviews of bills-and advice on how to make a select committee submission-are available at: https://www.parliament.nz/en/pb/sc/make-a-submission/

The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations.

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LEGAL

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