IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 318
3385083

	BETWEEN	PHILIP MOLLER Applicant
	AND	CARDINAL LOGISTICS LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Lawrence Anderson, advocate for the Applicant Brendon Furness, representing the Respondent	
Investigation Meeting:	5 May 2026 in Auckland	
Submissions and/or further evidence	5 May 2026 from the Applicant and from the Respondent	
Determination:	22 May 2026	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Philip Moller, claims that he was unjustifiably dismissed and unjustifiably disadvantaged in his employment by the Respondent, Cardinal Logistics Limited (Cardinal).

[2] Specifically, Mr Moller claims that he was unjustifiably suspended from his employment and that Cardinal carried out an unjustifiable investigation and disciplinary process.

[3] Cardinal denies the claims and claims that Mr Moller was justifiably suspended and dismissed following a fair disciplinary process.

The Authority's investigation

[4] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Moller.

[5] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Tori-Leigh Tito, Khyati Raja, and Giyanesh Nand.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[6] Oral and written submissions were received from Mr Anderson for the Applicant and from Mr Furness for the Respondent. Whilst I have not referred to all the submissions made by the parties; I have fully considered them.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Note

[8] Any persons no longer employed by Cardinal, and/or are not actively involved in the Authority's investigation process, will be referred to only by initials bearing no relation to their actual name.

Issues

[9] The issues requiring investigation are whether or not Mr Moller was

- Unjustifiably dismissed by Cardinal.
- Unjustifiably suspended by Cardinal.

Background

[10] Cardinal is a logistics company operating nationwide dealing with FMC customers and employing approximately 500 employees.

[11] Mr Moller was employed as a Class 5 Driver. He was issued with an individual employee agreement (the Employment Agreement) which he signed on 21 July 2014. The Employment Agreement contained the following clauses:

> **4.2 Obligations of the Employee**
>
> **…**
>
> **(v)** Comply with all policies and procedures (including any Codes of Conduct) implemented by the Employer from time to time.
>
> **10.2 Drug Testing**
>
> Cardinal Logistics have a vital interest in maintaining a safe & healthy work environment for its employees and are committed to a drug free workplace. …
>
> - Employees working under the influence of drugs or alcohol pose a serious health and safety risk to the Company's employees and customers. …
> - Any Employee who attends work in an unfit state may be stood down without pay.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

- If the Employee is working in a safety-sensitive role or environment, the company may test the Employee for drugs or alcohol at random intervals.

- If the Employee does not work in a safety-sensitive role or environment but the either the Company suspects, on reasonable grounds, that the Employee is under the influence of drugs or alcohol, or there is an incident involving the potential compromise of health and safety standards, then the Company may require the Employee to undergo drug and alcohol testing.

- By agreeing to be bound by this agreement the Employee consents to undergo, at the Company's expense, drug and alcohol testing by the Company's nominated testing agents in accordance with the Company's Drugs and Alcohol policy.

13.3 Suspension
In the event the Employer wishes to investigate any alleged misconduct, it may, after discussing the proposal of suspension with the Employee, and considering the Employee's views, suspend the Employee on pay whilst the investigation is carried out.

[12] Mr Moller had signed the Employment Agreement below a Declaration which stated:

> I, **Philip Moller,** declare that I have read and understand the conditions of employment detailed above and accept them fully. I have been advised of the right to seek independent advice in relation to this agreement and have been allowed reasonable time to do so.

[13] The Cardinal Code of Conduct with which Mr Moller agreed to comply contained following clauses:

> **Procedures**
>
> Failure to comply with Company work rules (and following due process) may result in disciplinary action, from a verbal warning to termination, depending on the nature of the offence.
>
> **…**
>
> - Possession or consumption on Company premises, or reporting to work under the influence of alcohol or illegal drugs.
> - …
> - Failure to follow policies and procedures/reasonable instructions.
> - ..
> - Refusal to accept of follows orders or directions from proper authority or any other form of insubordination.

[14] Mr Moller was also subject to the Cardinal Drug and Alcohol policy which stated that it applied: "to all of the Company's employees who perform work of any kind for and on behalf of the Company at any work site (including vehicles used for work-related purposes."

[15] The policy set out in the section entitled 'Drug and Alcohol Testing" the following clauses:

> **2. Drug and Alcohol Testing**
> **2.1 Testing Scenarios**
> …
> **I. Random testing:** Employees … who are appointed to safety sensitive positions and/or who perform their work in safety sensitive environments will be subject to random

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

testing. The selection of people for random testing will be carried out in accordance with a randomised selection process. …

V. Reasonable cause testing: If the company has genuine and reasonable cause to suspect that an employee … may be in breach of this policy, the company may require the employee … to undertake a drug and/or alcohol test. ..

3 Disciplinary Action and Suspension (Employees Only)

3.1 The Company will regard the following conduct as serious misconduct which may result in disciplinary action up to and including dismissal without notice:
…
v. Withholding/refusing written consent to the test without reasonable grounds that are acceptable to the Company.

vi. failing to undertake a drug or alcohol test without reasonable grounds that are acceptable to the Company;
…
3.2 The Company will be entitled to suspend an employee with or without pay in relation to any of the conduct referred to in clause 3.1 above.

[16] Attached as Appendix 4 to the Drug and Alcohol Policy was a non-exhaustive list of 'Reasonable Cause Indicators'. These included physical signs such as: "eyes: bloodshot, dilated pupils, pin-point pupils' and "excessive sweating".

[17] Mr Moller said during 2024 he had been off work with an injury which had been preceded by a period away from the workplace due to his having had his driving licence revoked for three months. However, he had resumed work after his injury had healed in early 2025.

[18] Mr Moller said that approximately two weeks prior to 29 May 2025 he underwent a drug test and the result was negative. Also prior to 29 May 2025 he had applied for annual and birthday leave which he understood had been approved. He expected to commence his leave after finishing work on 29 May 2025.

Events 29 May 2025

[19] Ms Tito, Acting Warehouse Manager, said on 29 May 2025 she received a text message from a former employee of Cardinal who had messaged stating that he had seen Mr Moller driving a Cardinal truck erratically, and he was concerned for public safety. The former employee stated he believed Mr Moller might be under the influence of drugs or alcohol.

[20] Ms Tito said her manager, the Warehouse Manager, was not available at that time so she called Mr Nand and told him about the call she had received.

[21] Mr Nand, at that time Operations and Transport Manager, said the drivers, including Mr Moller, reported to him. He knew Mr Moller, but not well because he commenced employment with Cardinal in November 2024 when Mr Moller was on leave and they met when Mr Moller returned to work in early 2025.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[22] Mr Nand said that Ms Tito informed him about the text message which was that Mr Moller had been driving erratically in the Sylvia Park Pak'n Save area of Auckland. He spoke to Ms P, the Head of People & Culture, and asked her for advice. She told him not to tell Mr Moller about the allegation received, so he called Mr Moller and told him he needed to speak to him when he returned to the Wiri Depot. He told Mr Moller this was in connection with a query.

[23] Mr Moller said he had completed his shifts for the day on 29 May 2025 when he received a telephone call from his manager, Mr Nand. He had been allocated shifts on the Auckland North Shore that day. He said Mr Nand did not mention anything about drug testing, impairment, or any allegation that he was under the influence of drugs or alcohol, telling him only that "We have a query". and stating that he needed to see him in person.

[24] Mr Nand said there were two reasons why he had not told Mr Moller the reason why he wanted to see him. The first reason was that a driver alerted to a possible drug or alcohol test might obtain a false urine sample for testing. Secondly that it might adversely affect the driver's driving.

[25] Mr Moller, who at the time had been on Auckland's North Shore, said he finished his shift duties, drove to the Mangere depot and clocked out at the Mangere depot. He was then driven by a colleague to the Wiri depot where his intention was to see Mr Nand, collect his car and drive to Whangaparaoa to pick up his son.

[26] When he arrived Mr Moller said he had gone to Mr Nand's office and asked him what the meeting was about, and Mr Nand lead him upstairs to an interview room.

[27] On arrival at the interview room Mr Nand told him he had received a complaint from a member of the public who believed he (Mr Moller) was under the influence of drugs. Mr Nand told him he was required to take a drug test.

[28] Mr Moller said he refused to take the drug test because he considered that Mr Nand, whom he did not like, had lied to him when he told him he had a query to discuss. When asked why he disliked Mr Nand, Mr Moller said there had been an incident involving a broken pole in a truck. He had been taking the truck to the mechanics workshop for repair when Mr Nand stopped him and told him the truck curtain was open and needed to be secured.

[29] Mr Nand said he did not realise Mr Moller disliked him. He did recall the truck incident. The concern about the truck curtains being open was that the drive to the mechanics workshop would take 20 minutes and the pole the curtains were attached to could swing out and hit a

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

passer-by. He said he did recall Mr Moller became agitated when he spoke to him about it, so he had agreed to speak to him the following day.

[30] Mr Moller said he believed that addressing the query would only take five minutes, he had clocked finished his shift and clocked out, and he wanted to leave and start his holiday leave. Even though the drug test would be done on site at Wiri, Mr Moller said this would take almost half an hour which Mr Nand confirmed.

[31] Mr Moller said he told Mr Nand he would not consent to the drug test because:

i. he had already clocked out and finished work for the day;
ii. he was about to commence approved leave;
iii. he had been given no specific details about the allegation; and
iv. in his experience, testing was usually done prior to the commencement of the working day.

[32] Mr Nand said that Mr Moller was sweaty when he arrived and his eyes were very red. He then asked Mr Moller to take a drug test. Mr Moller refused to do so.

[33] Mr Moller said he was shocked and upset by the allegation that he had been driving under the influence of drugs or alcohol. He asked for further details relating to the allegation, but these were not provided.

[34] Mr Moller said Mr Nand left the room and returned with Ms P who asked him why he would not take the drug test.

[35] Mr Nand said Ms P had explained Cardinal's process to him, including that he would be suspended from duty if he did not take the drugs and alcohol test. Mr Nand said Ms P also asked Mr Moller if there was any reason for his refusal, but he did not provide any explanation but said he understood the process and the next steps.

[36] Mr Moller said Ms P had tried to persuade him to take the test. She explained the procedure to him, and that if he refused, he would face suspension and said to him "Phil, don't make me do this."

[37] Mr Moller said Ms P told him that someone within Cardinal believed he was under the influence of drugs or alcohol, so he believed he was being lied to again since Mr Nand had told him it had been a member of the public who had complained.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[38] Mr Moller said he understood the repercussions of refusing to take the test including suspension, and possible dismissal for serious misconduct, but said even so, he still refused to be tested.

[39] Mr Moller said that due to his refusal to take a drug test, Ms P told him he would be suspended with immediate effect. He had understood this.

[40] Following his continued refusal, Ms P confirmed that he would be suspended. She asked him to return his scanner and swipe card and he left the premises.

Letter dated 30 May 2025

[41] The following day 30 May 2025, Cardinal wrote to Mr Moller. The letter stated:

> As communicated on Thursday, 29 May 2025, by [Ms P] … and Giyanesh Nand, … this letter serves to confirm that you are suspended from work without pay from 29 May 2025 pending disciplinary action. …
> It was explained to you that refusing to participate in Drug and Alcohol testing is deemed serious misconduct and would result in your immediate suspension, unpaid disciplinary action. You confirmed you understood but stated you would still be refusing to participate.

[42] The letter concluded by informing Mr Moller he should make himself available to attend a disciplinary meeting.

[43] By email sent at 6.40 p.m. on 10 June 2025 Ms Raja, People and Talent Advisor who reported to Ms P. confirmed the disciplinary meeting as advised by Mr Nand by telephone, voice message and text message.

First meeting 11 June 2025

[44] The first disciplinary meeting was held on 11 June 2025 at 2.00 p.m. It was attended by Ms P and Mr Nand, but Mr Moller did not attend.

[45] Ms Raja said that a few minutes before the meeting started, Mr Anderson called and spoke to her. When she asked who he was, he identified himself as Mr Moller's lawyer. When he asked her why Mr Moller was asked to take a drug test, she said she had told him she could not discuss the matter further or provide information over the telephone.

[46] Ms Raja said Mr Anderson's manner became more hostile, so she passed the telephone to Ms P who advised that all the information had been provided in the letter sent to Mr Moller. Ms Raja said she heard Mr Anderson's tone becoming aggressive, and he insisted Mr Moller would not attend the meeting. Ms Raja said that Mr Anderson terminated the call.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[47] Ms Raja emailed Mr Moller at 2.31 p.m. stating that he had not attended the meeting scheduled for 2.00 p.m. nor had he to communicated at all. It advised that Cardinal had tried to contact him, but without success.

[48] It was advised that the meeting would be rescheduled to the following day, 12 June 2025, at 10.30 a.m. Mr Moller was advised that if he failed to attend, the meeting would proceed without him, and a decision as to outcome would be made.

Second Meeting 12 June 2025

[49] The second meeting took place on 12 June 2025 but Mr Moller did not attend despite telephone calls and text messages. He said acting on his advocate's advice, he had made no response to the contact attempts by Cardinal.

[50] At 3.45 p.m. on 13 June 2025 Mr Anderson emailed Cardinal. The email stated:

> You are obviously a very stupid HR person. Before the meeting I telephoned to speak to you to enquire into the allegations, specifically I wanted to know exactly what it was that the company has to consider it has grounds to require Philip to take a drug test. You were entirely unable to tell me, you then forwarded the call onto [Ms P] who also was entirely unable to tell what grounds there may be for a drug test.
>
> Philip not attending your silly meeting is on my advice.
>
> We are filing claims in the Employment Relations Authority about this today, and also in relation to the unjustified suspension.

[51] Cardinal wrote to Mr Moller on 12 June 2025. The letter was entitled: "RE: Preliminary outcome of Disciplinary Meeting" and stated:

> As you were aware you were suspended unpaid effective 29 May 2025 pending disciplinary action …
>
> Once again today you have failed to show for the meeting. We waited an hour and again made several unsuccessful attempts to reach you by phone. When we rescheduled the meeting, we made it clear to you that … should you fail to attend the rescheduled meeting, the meeting would proceed without you, and a decision would be made based on the information at hand. …
>
> It is alleged that on Thursday 29 May 2025 when communicated to you that you were required to undertake a Drug & Alcohol test, you refused to participate. This testing was required in accordance with the company's Drug & Alcohol policy based on genuine and reasonable cause to suspect you were under the influence of drugs. It is also alleged that you failed to follow reasonable instructions when communicated to you a number of times regarding the requirement to participate in Drug & Alcohol testing, each and every time you stated you would not participate …
>
> Based on the information we have, we believe that serious misconduct has been established. ….
>
> As a result, we have no choice but to propose termination of your employment due to serious misconduct.
>
> We now await your response and any additional feedback you would like us to consider before we reach a final decision. The deadline for feedback on this preliminary decision is **Friday 13 June 2025, by 2.00 pm.**

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[52] That same day, 12 June 2025, Mr Moller lodged a Statement of Problem claiming an unjustifiable disadvantage arising from the suspension and the investigation and disciplinary process.

[53] Mr Anderson emailed Cardinal on 13 June 2025 at 1.41 p.m. confirming that Mr Moller would not be providing feedback on the basis that Cardinal had not specified the grounds for asking him to undertake a drug test. Mr Anderson also advised that if Cardinal proceeded to dismiss Mr Moller, the Statement of Problem would be amended by Mr Moller to include a claim of unjustifiable dismissal.

[54] Mr Moller did not provide any feedback and Cardinal confirmed by letter dated 13 June 2025 that although the deadline for feedback had been extended by an hour to 3.00 p.m. no feedback had been received. The letter which was headed: Re: Final Decision – Termination of Employment, stated:

> Your refusal to undertake drug and alcohol testing undermined the relationship and caused the company to lose trust, faith and confidence in you as a Driver. Therefore Cardinal stands by its view that your behaviour constitutes serious misconduct and now confirms our preliminary view to terminate your employment with immediate effect.

[55] On 4 September 2025 Mr Moller lodged an Amended Statement of Problem with the Authority to include a claim for unjustifiable dismissal.

[56] Mediation was arranged but did not in fact take place due to Mr Moller and Mr Anderson leaving it.

Was Mr Moller unjustifiably dismissed by Cardinal?

[57] Cardinal dismissed Mr Moller on the basis that it had genuine and reasonable grounds for asking him to participate in Drug and Alcohol testing and that he failed to follow reasonable instructions when asked to do so.

[58] Justification for dismissal is stated in the Employment Relations Act 2000 (the Act), which at s 103A sets out the Test of Justification as:

> **S103A Test of Justification**
>
> (1) 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 applying the test in subsection (2).

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

> (2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[59] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. An employer must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[60] In accordance with s 103A (3) of the Act, Cardinal was required to carry out a fair investigation and follow a fair procedure.

[61] *Ministry of Māori Development v Travers-Jones* Chief Judge Goddard stated in regards to a fair procedure:[1]

> What amounts to a fair procedure has been described often enough. It is generally accepted that the minimum elementary components must be clear notice to the employee of the misconduct alleged, a fair opportunity to answer or explain, including adequate time for preparation, followed by consideration by a mind at least receptive to the need to evaluate the answers and explanations and generally open to the possibility that there may be an innocent explanation for suspicious circumstances.

Genuine and Reasonable Grounds

[62] Mr Moller had agreed to undergo drug and alcohol testing.in accordance with Cardinal's Drug and Alcohol policy which set out that Cardinal could require an employee to undergo testing if it had genuine and reasonable cause to suspect that the employee might be in breach of the policy.

[63] The reported complaint was that Mr Moller had been observed driving erratically and the complainant believed him to be so doing so under the influence of drugs and alcohol. In those circumstances I find this was a serious complaint which I believe Cardinal was under a duty to act upon.

[64] It was not only a serious allegation, but one which carried potentially serious consequences for an employee if they were found to have contravened the Drug and Alcohol policy.

[65] Cardinal was expected to behave as a fair and reasonable employer would in similar circumstances, and to have genuine and reasonable grounds for asking the employee to take a test.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[1] *Ministry of Māori Development v Travers-Jones* [2003] 1 ERNZ 174 at [30].

[66] In this case it had received a complaint that an employee had been driving erratically in the vicinity of Sylvia Park.

[67] Mr Nand confirmed that he took no steps to investigate the complainant that Sylvia Park had been the location of the erratic driving prior to meeting with Mr Moller.

[68] As Operations and Transport Manager, it would be reasonable to conclude that Mr Nand would have had access to the schedule relating to the movement of trucks which he could have checked before seeing Mr Moller. I also note that all trucks are fitted with GPS (ERoad) technology tracking which would have made that process easier.

[69] I note that Mr Nand was notified of the complaint at approximately 2.40 p.m. and he met with Mr Moller after 4.50 p.m. That gave him a two-hour window to verify the complaint about the location of the alleged erratic driving.

[70] I find that the fair and reasonable employer would make reasonable steps to verify the details of such a serious allegation, but Cardinal had not made any enquiry to verify that it had been Mr Moller who had been driving the truck in the area of Sylvia Park.

[71] Moreover, the complainant alleged that he had observed the driver driving erratically and was concerned for public safety. In the circumstances, I find it extraordinary that Cardinal allowed a driver to continue driving for another two hours until the end of his shift.

[72] The fair and reasonable employer is expected to give the employee clear notice of the alleged misconduct.[2] Despite Mr Moller asking him for further details about the allegation that he had been under the influence of drugs or alcohol when driving, Mr Nand gave him no further details.

[73] Had Mr Nand provided the information that the complainant claimed the erratic driving had happened in the area of Sylvia Park, Mr Moller could have clarified that his delivery locations for that day had all been on Auckland's North Shore, and Mr Nand could have then checked Mr Moller's assertion against Cardinal schedules and GPS records.

[74] Accordingly, whilst it had received a complaint allegedly that it had been Mr Moller driving the Cardinal truck in Sylvia Park, I find Cardinal had not taken reasonable steps to confirm it had been Mr Moller driving at that time in the area identified in the call.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[2] *Ministry of Māori Development above n 1*

[75] I find that Cardinal failed to have a basis on which it could establish that it had genuine and reasonable grounds for requesting Mr Moller to take a drug and alcohol test.

[76] The Drug and Alcohol policy also set out that Cardinal regarded an employee failing to undertake a drug and alcohol test without reasonable grounds acceptable to Cardinal to be serious misconduct.

[77] However, when Cardinal asked Mr Moller to take the test I have found that it did not have genuine and reasonable grounds to ask him to take the test, and therefore his refusal to do so was not unreasonable.

A fair process?

[78] It is clear from Mr Moller's evidence that Ms P, with whom he said he had a good working relationship, tried to persuade him to take the test. She fully explained the consequences including that he would face suspension. However, Mr Moller, who confirmed that he had fully understood the consequences of his refusal, persisted in his refusal.

[79] Cardinal suspended Mr Moller following his reiterated refusals to take the drug and alcohol test.

[80] Refusal to undertake the drug and alcohol test was regarded as serious misconduct as set out in Cardinal's policies. Mr Moller was aware of this and Ms P also explained it to him.

[81] The Cardinal Drug and Alcohol policy stated in clause 3.2 that Cardinal was entitled to suspend an employee in relation to serious misconduct. Mr Moller was aware of this, and again Ms P explained it to him and his evidence was that he understood that suspension would be a consequence of his refusal, but he did not want to change his position.

[82] Cardinal confirmed Mr Moller's suspension in the letter dated 30 May 20225., which also informed him that it wanted to meet with him.

[83] Mr Moller did not request that the meeting on 11 June 2025 be rescheduled, nor did he attend it, despite Cardinal making several attempts to contact him.

[84] Cardinal rescheduled the meeting for the following day, but Mr Moller also failed to attend on that day despite having been informed that if he failed to attend, an outcome would be made without his participation.

[85] Whilst I find Cardinal acted as a fair and reasonable employer in giving Mr Moller a full opportunity both to reconsider his decision on 29 May 2025 to retake the test, and to subsequently attend a meeting to provide his explanation for refusing to do so, I find it did not

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

act as a fair and reasonable employer in requiring him to take the drug and alcohol test without verifying the complaint and by not providing the details to Mr Moller when he asked it to do so. .

[86] I determine that Mr Moller was unjustifiably dismissed by Cardinal.

Was Mr Moller unjustifiably disadvantaged by being suspended by Cardinal?

[87] The Cardinal Drug and Alcohol Policy outlined at clause 3.2 that Cardinal was entitled to suspend an employee in relation to serious misconduct which at clause 3.2 of the policy included " failing to undertake a drug test… without reasonable grounds acceptable to the Company'.

[88] As I have found, Mr Moller's refusal to take the drug and alcohol test was not unjustifiable in the circumstances.

[89] I find that Mr Moller was unjustifiably suspended by Cardinal.

Remedies

[90] Mr Moller has been unjustifiably dismissed, and he is entitled to remedies.

Lost remuneration

[91] Mr Moller who was dismissed on 13 June 2025 said that he started to look for alternative employment immediately. But he was unable to secure employment until 13 September 2025.

[92] I order that Cardinal pay lost remuneration to Mr Moller for a period of 13 weeks less any amount he may have earned in that period.

[93] The parties should be able to calculate the amount due, if they are unable to do so, leave is granted to revert to the Authority.

Compensation unjustifiable dismissal

[94] Mr Moller said the dismissal caused him financial loss and distress. He felt humiliated at being accused of being under the influence of drugs and/or alcohol. This had affected his confidence and his reputation as a driver.

[95] The loss of income meant he had got into debt and been unable to pay his body corporate fees, or council rates. This led to him having to borrow monies.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[96] He had also lost the opportunity to see his son because his annual leave period was spent trying to find alternative employment.

[97] I accept that the termination of his employment caused Mr Moller distress and financial difficulties.

[98] Considering all the circumstances and the range of awards in cases of this kind, I consider an award of compensation of $17,000.00 to be appropriate.

[99] Cardinal is ordered to pay Mr Moller the sum of $17,000.00 for humiliation, loss of dignity and injury to feelings, pursuant to s 123(1) (c) (i) of the Act.

Compensation unjustifiable dismissal

[100] The suspension arose from Cardinal's belief that it had genuine and reasonable grounds for asking Mr Moller to take the drug and alcohol test.

[101] I consider that the suspension constituted the natural consequence of Cardinal's perception that Mr Moller was unreasonable refusing to take the test. As such it formed part of the events which have resulted in the finding of unjustifiable dismissal for which Mr Moller has been compensated. As such I make no separate compensation award.

[102] I note however that Mr Moller is claiming a wages loss arising from the suspension.

[103] I order that Cardinal recompense Mr Moller for that amount. The parties should be able to calculate the amount due, if they are unable to do so, leave is granted to revert to the Authority

Contribution

[104] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[105] Mr Moller was a long serving employee of Cardinal. He was aware of the policies in place and that Cardinal took a strict approach to drugs and alcohol. He was aware that refusing to take a drug and alcohol test apart from on reasonable grounds acceptable to Cardinal would be considered to be serious misconduct.

[106] Even when told that Cardinal regarded his refusal as serious misconduct and that he could be suspended, Mr Moller refused to take the test.

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

[107] Mr Moller also refused to participate in either of the two meetings held by Cardinal, and to provide feedback when invited to do so.

[108] It is clear that Cardinal valued Mr Moller as an employee, he had worked for it for a number of years, and it had taken him back into employment following his driving suspension although it was not obligated to do so.

[109] In those circumstances, there is no reason for thinking it would not have been open to hearing his reasons for refusing the test and giving them genuine consideration before confirming the outcome.

[110] Whilst I have found that Cardinal did not act as a fair and reasonable employer as regards the grounds for its asking Mr Moller to take the test, Mr Moller's refusal to engage in the disciplinary process was not reasonable given the good faith requirement to 'active and constructive' in maintaining a productive employment relationship. Had he done so, it is possible that his dismissal may not have eventuated.

[111] I find that Mr Moller contributed towards the situation which resulted in his dismissal and reduce the compensation ordered by 30 per cent.

Filing Fee

[112] I order PNZ to pay Mr Wilkins filing fee of $71.56.

Orders

[113] I have made the following orders:

- **Cardinal is ordered to pay lost remuneration to Mr Moller for a period of 13 weeks less any amount he may have earned in that period.**
- **Cardinal is ordered to pay Mr Moller the sum of $17,000.00 for humiliation, loss of dignity and injury to feelings, pursuant to s 123(1) (c) (i) of the Act reduced by 30 per cent for contribution pursuant to s 124 of the Act.**
- **I order that Cardinal recompense Mr Moller for any monies lost as a result of the suspension**
- **Cardinal is ordered to pay Mr Moller the filing fee of $71.56.**
- **All orders for payment are to be paid within 28 days of the date of this determination.**

THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND

Costs

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

[115] If they are not able to do so and an Authority determination on costs is needed Mr Moller may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Cardinal would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[116] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[117] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment.

Eleanor Robinson
Member of the Employment Relations Authority