

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 275  
EMPC 346/2024**

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

BETWEEN                      YFR  
   Plaintiff

AND                              RESERVE BANK OF NEW ZEALAND /  
   TE PŪTEA MATUA  
   Defendant

Hearing:                      5–6 June 2025 (and further submissions filed on 9 and 13 June  
   2025)  
   (Heard at Auckland)

Appearances:                A Halse, advocate for plaintiff  
   E von Veh and P Chemis, counsel for defendant

Judgment:                    18 December 2025

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**JUDGMENT OF JUDGE KATHRYN BECK**

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[1]      This is a de novo challenge to a determination of the Employment Relations Authority.<sup>1</sup>

[2]      It concerns actions of the Reserve Bank of New Zealand/Te Pūtea Matua (the bank) four weeks prior to the end of YFR’s fixed term employment agreement with it.

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<sup>1</sup>      *YFR v Te Pūtea Matua/Reserve Bank of New Zealand* [2024] NZERA 491.

## Non-publication

[3] In its determination, the Authority made a non-publication order in respect of the plaintiff's name on the grounds that an assessment by a clinical psychologist had advised of the likely adverse effect of publication.<sup>2</sup>

[4] As the Authority had made a permanent non-publication order which still stands until the challenge is determined, and as the defendant did not oppose the application, I considered it appropriate to make an interim non-publication order pending determination of this challenge. I indicated that a decision in relation to a permanent order would be dealt with in this judgment.<sup>3</sup>

[5] YFR has made an application for a permanent non-publication order in this Court also. The defendant does not oppose a permanent order being made. It has said it will abide the decision of the Court and has filed a memorandum to assist.

[6] Pursuant to sch 3, cl 12 of the Employment Relations Act 20000 (the Act), the Court has a wide discretion to prohibit publication of evidence, the names of parties and other matters. The law concerning non-publication orders in the employment jurisdiction is as stated by the Supreme Court in *Erceg v Erceg*,<sup>4</sup> and as clarified by the majority of a full Court in *MW v Spiga*.<sup>5</sup>

[7] Applying *Erceg*, the majority in *MW v Spiga* held that open justice is of fundamental importance and may only be departed from to the extent necessary to serve the ends of justice.<sup>6</sup> Where non-publication orders are sought, there must generally be reason to believe that specific adverse consequences could reasonably be expected to occur, and that they would justify departure from open justice.<sup>7</sup>

[8] Given the evidence provided by YFR during the hearing as well as the material filed, including a letter from a clinical psychologist, I am able to conclude that there

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<sup>2</sup> At [3].

<sup>3</sup> Minute dated 20 May 2025.

<sup>4</sup> *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310.

<sup>5</sup> *MW v Spiga* [2024] NZEmpC 147, [2024] ERNZ 678.

<sup>6</sup> At [87].

<sup>7</sup> At [88]–[89].

is a risk of specific adverse consequences arising from the publication of her name such that it is necessary to make an order prohibiting publication. I do not consider that there is any public interest in YFR's name being published; nor does it hinder this Court's ability to provide a fair and accurate report of what occurred.

[9] Further, I find that the adverse consequences (that could be reasonably expected to occur) outweigh the departure from open justice in the circumstances of this case.

[10] Accordingly, I make orders prohibiting the publication of YFR's name or other particulars that would identify her.

[11] The letters utilised by the Authority continue to be used in this judgment.

## **Background**

[12] YFR had been employed at the bank as a payments and clearance officer under a fixed-term employment agreement from 26 October 2022 to 31 August 2023. Her work was based at the bank's Auckland office, although her team leader, Ms Comis, was based in Wellington. There are no issues with the nature or lawfulness of the fixed-term agreement.

[13] YFR was coming to the end of her term and so was applying for other jobs. She asked Ms Comis and another colleague to be referees, to which they both agreed. YFR was then offered a role with PGX<sup>8</sup> subject to pre-employment checks (including references). After concluding those checks, PGX withdrew its offer of employment. YFR was surprised and upset at this, particularly when it became apparent to her that it was as a result of what had been said during the reference check process.

[14] YFR then sent a number of angry Teams messages to her referees, accusing them of "backstabbing" her.

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<sup>8</sup> The random initials assigned by the Authority to this employer. See *YFR*, above n 1, at [2].

[15] She apologised for these messages the following day. However, in the meantime, she was invited to attend what the bank described as an informal meeting to discuss her wellbeing.

[16] YFR left the office after the meeting and did not return, although she was paid to the end of her fixed term. There is a dispute as to whether this absence was agreed.

[17] What was said in this meeting, how it was set up and the events that followed form the main basis for YFR's claim against the bank.

[18] YFR said that the bank's treatment of her has had significant and lasting effects. She has raised personal grievances for disadvantage. She said her inability to return to the workplace and say goodbye to her colleagues caused her considerable distress.

### **The issues**

[19] The defendant has listed the issues to be resolved as follows:

- (a) Did the bank unjustifiably disadvantage YFR by not telling her what the meeting on 3 August 2023 was about and not telling her to bring a representative with her?
- (b) Did the bank do or say anything at the meeting on 3 August 2023 that unjustifiably disadvantaged YFR?
- (c) Did the bank unjustifiably disadvantage YFR by removing her access to its systems on 4 August 2023?
- (d) Did the bank unjustifiably disadvantage YFR when it failed to respond to her representative's email of 14 August 2023, asking for her to return to the workplace?
- (e) To the extent that YFR is successful, what remedies, if any, should be awarded, including:

- (i) compensation for lost wages, in circumstances where YFR was paid up to the end of her fixed term;
  - (ii) compensation for humiliation, loss of dignity and injury to feelings (YFR seeks \$50,000); and
  - (iii) costs.
- (f) If YFR is successful, should the Court reduce any remedies it would otherwise award, due to any contributory conduct?

[20] Mr Halse, representative for YFR, has suggested further issues in relation to what YFR considers to be the unfavourable reference. However, a claim in relation to the reference does not form part of these proceedings; it did not form part of the Authority's determination. It is not included in the statement of claim and when it was discussed at a directions conference prior to the hearing, it was agreed that it was relevant in terms of background context only. The other issues raised by the plaintiff can be considered as part of those already cited above.

## References

[21] While it does not form part of the substantive matter before the Court, it is helpful at this stage, and for YFR's benefit, to record the legal position in relation to references.

[22] An entity (such as PGX) can only seek references from those people who have been authorised by the job applicant to provide them.<sup>9</sup> In this case, the referees who spoke to PGX were authorised by YFR.

[23] A person is not obliged to provide a reference, but if they do, there may be certain obligations which arise, placing limits on what can be said by the referee.<sup>10</sup> Pursuant to the bank's policy, references are given in a personal capacity, not on behalf

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<sup>9</sup> Privacy Act 2020, s 22.

<sup>10</sup> It cannot be false.

of the bank. There was no discussion between YFR and her manager as to what would be said in the reference.

[24] In any case, Ms Comis said that she did not consider the reference she gave to have been unfavourable per se. However, when asked if she would re-employ YFR, she said she would not. The remaining content of the reference was not before the Court.

[25] Ms Comis did note that a similar reference had been provided by one of YFR's referees when she applied for the job at the bank. The referee said that they would not re-employ YFR and that she should work on her response to becoming overwhelmed. Notwithstanding that reference, and at Ms Comis's urging, the bank still hired YFR. For that reason, Ms Comis did not consider that what she had said, in answer to the question put to her about re-employment, had been of any particular note. Unfortunately, PGX formed a different view.

[26] This is an unfortunate situation but no cause of action arises against the bank or Ms Comis in relation to the provision of the reference.

### **The events of 3 August 2023**

[27] YFR said that two grievances of disadvantage arise in relation to the meeting on 3 August 2023. The first relates to what she was told about the nature and purpose of the meeting and that she was not advised to have a support person. The second relates to the conduct and content of the meeting.

[28] The bank said it treated YFR fairly and reasonably by inviting her to an informal meeting on 3 August 2023.

### *Background*

[29] As noted above, YFR had applied for a job with PGX. She had been told that it was offering her the job, subject to satisfactory reference checks.

[30] On 1 August 2023, PGX’s recruitment consultant advised YFR that PGX was not going ahead with the appointment. YFR asked for details of the reasons but at that point was not provided with any. On 2 August 2023, the head of talent acquisition at PGX contacted YFR and confirmed that PGX was not proceeding with the appointment because of information provided by her referees. He also confirmed that there was nothing of concern in other background checks. YFR asked for details of what had been said about her but these were not provided due to promises of confidentiality. She said she was advised to use different referees in the future.

[31] YFR said she was extremely upset and angry and that it felt like a “kick in the teeth”; she felt betrayed and trapped and deeply concerned about finding another job.

[32] She messaged both Ms Comis and her supervisor and asked them if they had “backstabbed” her. On 2 August 2023, she and Ms Comis exchanged text messages in which she accused Ms Comis of “backstabbing” her. Ms Comis noted that they had not had a chance to discuss it and she did not wish to do so until YFR was ready to have a constructive conversation. She offered YFR the ability to take that day and the next off. YFR declined.

[33] In her evidence, YFR accepts that she was confronting but said that she was extremely upset at the time, overwhelmed, and had lost her self-control.

[34] YFR said that she was planning to travel to Wellington and work from the Wellington office the following day. This had been arranged in advance and had nothing to do with these issues.<sup>11</sup> She decided to continue with that plan and advised Ms Comis and her supervisor.

[35] Ms Comis, who is based in Wellington, decided to work from home.

[36] The following morning, on 3 August 2023, YFR sent apologies to both her supervisor and Ms Comis for how she had behaved towards them. Her supervisor

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<sup>11</sup> The bank said it was not aware of these arrangements but from YFR’s perspective, they had been in place for some time. It seems that YFR was planning to surprise her colleagues.

responded “i’m ok i know you were stressed yesterday”. There is no record of Ms Comis’s response.

[37] Ms Comis raised concerns about YFR’s wellbeing, as well as her own wellbeing and safety, with her manager, Ms Taylor-Burt. Later that morning, she attended a meeting via Microsoft Teams with Ms Taylor-Burt and Ms Tamapeau, strategic people partner, to discuss a way forward. It was agreed that Ms Taylor-Burt and Ms Tamapeau would manage the matter going forward.

[38] Following the meeting with Ms Taylor-Burt and Ms Tamapeau, Ms Tamapeau sent YFR a Microsoft Teams invitation for a 15-minute meeting at 11.45 am.

[39] As noted above, the setup of the meeting, the meeting itself and the events that followed are the subject of YFR’s claims of unjustified disadvantage.

*Nature and purpose of the meeting*

[40] While it was not available initially, a copy of the invitation to the meeting was provided during the hearing. It stated that the meeting was to “catch up” with YFR for 15 minutes. It said:

Hi [YFR]

We would like to catch up with you as Renee has expressed concern about your Wellbeing.

Renee is not going to be present – just myself and Jaimee.

Thanks so much and talk to you shortly.

Warm regards  
Erena

[41] It is not clear when this was sent but it is likely to have been between 10 am and 10.30 am, after the meeting with Ms Comis had concluded. The bank accepts that YFR was not given much notice of the meeting. It considered that the meeting needed to be held promptly in the circumstances.

[42] It is common ground that it was not suggested that YFR bring a support person. In evidence, Ms Taylor-Burt and Ms Tamapeau stated that because it was not a formal

process, they did not consider a support person necessary and that the suggestion may have made YFR more anxious.

[43] YFR is neurodivergent. She is autistic, has attention deficit hyperactivity disorder and mental health issues. The bank was fully aware of this and, by YFR's own evidence, had handled matters well with her in the past. Ms Comis had offered her significant support throughout her employment – in particular, when she became overwhelmed. This also extended to supporting her outside of work hours. Previously, Ms Comis had called a meeting to talk about YFR's health and wellbeing, and how it may be impacting her at work. YFR had been invited to bring a support person, which she did, and Ms Comis had managed the meeting well.

[44] The bank was well aware of YFR's challenges with her mental health. The letter recording the outcome of that earlier meeting with Ms Comis<sup>12</sup> set out YFR's entitlement to wellbeing leave, referred her to mental health first aid responders within the bank, and provided details of external agencies that provide mental health support such as Vitae. It also recorded Ms Comis's ongoing and active support for YFR and noted that there were no concerns with her work outputs.

[45] Ms Tamapeau said that the knowledge of YFR's mental health issues was the reason that the meeting was "informal" in the first instance. She said the meeting was held quickly because YFR had previously said she did not like a lengthy wait between the invitation and the meeting itself.

[46] YFR said that she should have been offered the opportunity to have a support person with her at such a meeting. She had felt ambushed as the purpose of the meeting (her wellbeing) was not as stated in the invitation. Instead, it was about Ms Comis's wellbeing and the bank's proposal that YFR not complete her fixed term.

[47] I will deal with the content of the meeting below. However, in relation to the purpose of the meeting, both Ms Taylor-Burt and Ms Tamapeau gave evidence that it was their intention to propose to YFR that she not work out the balance of her notice period. This is a significant proposal to put to an employee, particularly a vulnerable

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<sup>12</sup> The letter was dated 14 April 2023.

employee such as YFR. However, there is no indication of this in the invitation to a “catch up”. They both said that the proposal arose out of a concern for her wellbeing, and so the invitation was not inaccurate.

[48] It was also their intention to talk about the messages sent to Ms Comis, which they say were of concern. Ms Tamapeau accepted that was also not in the invitation but considered that it was obvious that they were going to talk about it.

[49] I note that an email sent by Ms Tamapeau to YFR the following day stated that the meeting was an informal one “to understand the situation, your level of wellbeing and also to explore a potential way forward given your expressed lack of trust in your leader and given you are already in your notice period and shortly finishing up with RNBZ.” This is significantly different from a “catch up ” because of concerns about YFR’s wellbeing.

[50] YFR accepted the meeting invitation at face value. She attended via Microsoft Teams in a meeting room, on her own, with no support person. She had little time to prepare. She became overwhelmed and upset during the meeting, which was entirely foreseeable.

[51] The way in which the bank set up the meeting was not fair or reasonable. The meeting was not informal; nor was its stated purpose accurate. It was not about the subject matter indicated by the bank in the invitation. The intention was to make a significant proposal to YFR and raise concerns about her behaviour. None of that is apparent in the invitation. It is not sufficient to say it should have been obvious; it should have been in the invitation. This is particularly so given its knowledge about YFR’s neurodivergence.

[52] Further, to have knowledge of YFR’s vulnerability and to not suggest that she have a support person was both unfair and unwise. A support person could have assisted with ensuring YFR’s wellbeing and that messaging was clear and not blurred by entirely predictable upset.

[53] The invitation was misleading. The bank's actions were inconsistent with its obligations of good faith and unjustified in the circumstances.

[54] The impact on YFR and the ensuing impact on the process caused significant disadvantage to her in her employment.

*The content and conduct*

[55] As noted above, the parties have differing recollections of the meeting itself. However, it is common ground that it went off track when YFR became upset.

[56] The differences primarily relate to the tone of the meeting, whether it was in fact informal, whether YFR was advised that there was an irreparable breakdown in the relationship with Ms Comis, and whether ceasing work was presented as the only option.

[57] Unfortunately, there were no notes taken of the meeting. The only records made close to the time were: a brief email from YFR to Ms Taylor-Burt and Ms Tamapeau a few hours after the meeting, a follow-up email the next day on 4 August 2023 from Ms Tamapeau (by which time events had overtaken matters), YFR's email on 6 August 2023 to her solicitor, Mr Fleming, setting out her recollection of events (which has been provided to the Court), and Mr Fleming's letter to the bank on 7 August 2023.

[58] The evidence for the bank was that once in the meeting, Ms Taylor-Burt and Ms Tamapeau explained to YFR that they were concerned about the messages she had sent to Ms Comis and the impact they had. They said that YFR was initially apologetic but reacted poorly to being told that Ms Comis was frightened and that the messages had damaged the relationship. They said they raised the possibility of YFR finishing her fixed-term employment early, with pay to the end. They said they told her that they were happy for her to work out the three weeks remaining (subject to finding a way forward with Ms Comis), but thought that finishing early would give YFR the time to focus on her wellbeing and job search. They believed she would be interested in this suggestion.

[59] Both Ms Taylor-Burt and Ms Tamapeau said that YFR did not react well to this suggestion and considered it was constructive dismissal. They said they tried to reassure her that they were not trying to dismiss her and that it was her choice. However, they noted that if she did remain at work, there would need to be a process in relation to the situation with Ms Comis. YFR responded that she was being given two choices – either to leave or be fired. Ms Taylor-Burt and Ms Tamapeau said they tried to reassure her that this was not the case and that it was a preliminary discussion only. YFR then asked to call her union. Ms Taylor-Burt and Ms Tamapeau said they encouraged her to seek advice, at which point YFR concluded the conversation. Rather than the 15 minutes scheduled for the meeting, it ran for 45 minutes.

[60] YFR said she was instructed to attend the meeting, was not given advance notice of what it was about, and did not have an opportunity to arrange for a representative to attend with her.

[61] Her evidence was that at the meeting, she was told that the relationship between her and Ms Comis had “irreparably broken down”; there had been an “irreparable loss of trust”; she should immediately pack up her laptop, return her swipe card and leave; and she would be paid to the end of her fixed-term agreement. She also said that she asked to be allowed to continue to attend work but was told that ceasing work was the only option. When she asked for a second option, she was given the option of a disciplinary process which, in her view, was a non-choice.

[62] YFR said she was “forced to hang up on the call just to get away from [Ms Taylor-Burt and Ms Tamapeau].”

[63] Later that afternoon, after speaking with her union, YFR called Ms Tamapeau.

[64] Ms Tamapeau’s evidence was that YFR was still upset and told her that the bank was acting unlawfully. She advised Ms Tamapeau that she wanted to apply for a secondment opportunity. Ms Tamapeau told her that for internal roles it was standard practice to check references with the current manager (Ms Comis). She noted that YFR said that it was her preference to work out her notice period. However, Ms

Tamapeau advised her that the bank would still need to address the messages she had sent to Ms Comis and the concerns that Ms Comis had raised.

[65] Ms Tamapeau said that she suggested that YFR take off the rest of the day and the following day to look after her wellbeing and talk more with her partner and union, and that they reconvene on the Monday. Her evidence was that YFR seemed agreeable to this and recalled her saying “Okay”.

[66] It is helpful to set out the message sent by YFR to Ms Taylor-Burt and Ms Tamapeau at 5.29 pm that same day after the phone call.

It's already SO traumatising. First [PGX] breaks this news and repeats the same thing (true or not I will not comment and have no judgement for this), then RBNZ pulls me into a meeting with NO summary, hardly ANY notice, NO opportunity to get a rep. Meeting goes OVER the SLOTTED time of 15 mins, I am 30 mins LATE for my lunch with [X]. In the meeting I am pretty much FORCED, advertised and cajoled. A JOKE. When I ask for 2 options instead of 1 ultimatum, I am given a more threatening 2nd option of disciplinary and a permanent mark on crown entity background checks. When I ask for a reasonable time to seek advice (it's a big thing after all) and reconvene to a meeting where I decide between the two options or refute with legal backing, I am also threatened with a SUSPENSION for today tomorrow and early next week. This ALSO may affect crown entity background checks. So I REFUSED to allow that to occur. It's so despicable and yes I accept what I messaged Renee is not ok and her mental well-being isn't ok but at the same time MY well-being is ALSO not ok – it was already fragile from [PGX's] news and WORSENERD by an unannounced, inflammatory forceful meeting where I was backed into a corner so many times and my rights trampled over.

...

Getting paid time off would WORSENERD my mental well-being as I would feel abruptly cut off from things, no opportunity to say bye to people I know, degradation, humiliation, embarrassment when people wonder why I vanished into thin air but I can only tell them it's confidential. Not able to apply for 3 month internal secondment either which [Y] thought I would be a great fit for.

...

[67] In relation to the tone of the meeting, the parties agree that it went longer than intended and ended badly with YFR becoming upset and concluding it abruptly. It is common ground that YFR was extremely upset and distressed.

[68] YFR claimed that the possibility of disciplinary action was used as a threat and that during the course of the meeting, she felt forced and pressured to leave. Ms

Taylor-Burt and Ms Tamapeau say they tried to reassure her that it was not a constructive dismissal, and spent considerable time listening to her.

[69] I accept that it was not the bank's intention to upset YFR in this way. However, it was entirely foreseeable that she would become distressed and upset in the face of the issues that Ms Taylor-Burt and Ms Tamapeau had raised with her, particularly the statements that she had damaged the relationship with her team leader, and the proposal that she not work out her notice period or, if she wanted to stay, that she undergo a disciplinary process.

[70] In the circumstances, this was not a process that a fair and reasonable employer could conduct informally, particularly with this employee.

[71] In terms of what was said at the meeting, Ms Taylor-Burt and Ms Tamapeau said that they told YFR that her relationship with Ms Comis had "been damaged and had broken down". They denied saying that there was an irreparable loss of trust.

[72] Given the impact on memories of the high emotion present, it is helpful to look at what the parties said at the time in their correspondence. While YFR refers to a number of things in her email later that day, she does not refer to an allegation that there was an irreparable loss of trust; however, it is apparent that she was told that there had been an impact on Ms Comis's mental wellbeing. In her email sent on 4 August 2023, Ms Tamapeau noted YFR's lack of trust in Ms Comis and stated that in her and Ms Taylor-Burt's view, the messages were "unprofessional, disrespectful, and potentially a breach of our Code of Conduct" and that the "working relationship with [Ms Comis] had been damaged". The email went on to note the difficulties YFR would have carrying out her role when she was "not able to communicate daily with [her] Team Leader". Referring to the phone call later that afternoon, Ms Tamapeau referred to the "current relationship breakdown with [Ms Comis]". In her email to Mr Fleming on Sunday, 6 August 2023, YFR said that she was told that "the relationship between [YFR] and [Ms Comis] has broken down, irreparable", and "[YFR] displayed a lack of trust towards her which is irreparable."

[73] Both parties agree that this meeting became highly emotional for YFR. As such, I consider she may well not have been in the right frame of mind to take in what was being said to her. The bank said that it told her that her relationship with Ms Comis had been damaged and had broken down. Ms Tamapeau also recorded that it raised concerns about YFR's stated lack of trust in Ms Comis.

[74] I consider it more likely than not that YFR conflated the loss of trust with the damaged and broken-down relationship and heard the message that there had been an irreparable loss of trust.

[75] While I accept the words "irreparable loss of trust" were not likely said by either Ms Tamapeau or Ms Taylor-Burt, the fact that this was heard by YFR is unsurprising. It is a good example of why she should have had the opportunity to have a support person with her.

[76] In any case, the message that the relationship was "damaged" and "broken down" was a significant one in and of itself. Describing the relationship as damaged at that point was open to the bank. However, it was premature and unjustified to describe it as "broken down" in the absence of any process. YFR and Ms Comis had a good and productive working relationship in the past and YFR had apologised for her messages.

[77] The bank says that YFR agreed to go on leave. YFR says that in both the meeting and the following phone call, she was given no option but to go on leave, whereas it was her preference to work out her notice period. Both Ms Taylor-Burt and Ms Tamapeau said that they explained that finishing work early was just one option which they thought would be preferable to support YFR's wellbeing, but that if she wanted to remain at work, there would need to be a process to address her behaviour.

[78] In her email of 4 August 2023, Ms Tamapeau said that in the meeting, she explained to YFR the difficulties in carrying out her role when she was not able to communicate daily with her team leader. She said that in the phone call that followed, YFR said that she had spoken to her union and needed more time. She said she wanted to continue to work her notice period. Ms Tamapeau explained that:

... if that were the case, we would have to address the messages you sent to [Ms Comis] by way of a disciplinary meeting. Because of the current relationship breakdown with [Ms Comis] it would also mean that you would need to be on paid leave or a possible suspension until that meeting could occur and that of course you would be able to bring your Union rep with you to such a meeting.

[79] Ms Tamapeau said that the bank's preference was not to have to go down the path of a disciplinary process given that YFR's contract would be terminating shortly. She recorded that at that point YFR became more upset and worried that if there was disciplinary action on her file, it may impact future job applications. She said that "... we think it best you remain on paid leave as you are upset, and the relationship has broken down with [Ms Comis]."

[80] Ms Tamapeau says she recalls YFR saying "Okay" to going on leave.

[81] In answer to questions from counsel for the bank, YFR accepted she said "Okay".

[82] However, her evidence was that she felt there was no other way and that the leave was forcibly imposed on her. The statement in the email clearly says that if she remained and chose to go down the path of a disciplinary meeting, she would still "... need to be on paid leave or a possible suspension until the meeting could occur ...". It is apparent that whatever option YFR "chose", it was going to result in her not being in the workplace in the immediate term. In that regard, while ultimately YFR agreed to go on leave (something she may have regretted later), I agree that she was left with no option but to do so. Further, whatever she decided, the bank had already determined the outcome – she was not to be in the workplace from the time of the meeting on 3 August 2023 and for at least a few days thereafter.

[83] These were serious matters that were not appropriate for an informal meeting. Stating that the relationship with Ms Comis was broken down to the extent that YFR could no longer be in her team was not something a fair and reasonable employer could say in the absence of a process. It is apparent that the bank had already determined that the outcome would be YFR leaving the workplace after the meeting, whatever her response. It had made these determinations without following any due process. The principles of natural justice were not observed.

[84] The bank's actions were inconsistent with its obligations of good faith including, in particular, being active and constructive in maintaining a productive employment relationship.<sup>13</sup> The bank's conduct, both in the meeting and subsequent phone call, was highly distressing for YFR and was not what a fair and reasonable employer could have done in the circumstances. The seriousness of the subject matter warranted a different process, particularly given the awareness surrounding YFR's vulnerabilities. Accordingly, the bank's actions were unjustified and resulted in disadvantage and distress to YFR.

**Did the bank unjustifiably disadvantage YFR by removing her access to its systems on 4 August 2023?**

[85] After speaking with Ms Tamapeau, Ms Comis advised the team that YFR "will be taking a couple of days leave (Fri and Mon) FYI".

[86] On 4 August 2023, YFR responded to the whole team in strong terms, saying that the bank was attempting to constructively dismiss her and that she would "take RBNZ to the cleaners," that Ms Taylor-Burt and Tamapeau had treated her callously, bullied and intimidated her, and that she was disgusted. She sent a similar message to another colleague in the bank, adding that "it's so unfortunate how toxic RBNZ is".

[87] The bank then removed YFR from the team chat and suspended her system access.

[88] That afternoon, the bank emailed YFR, setting out what it considered to be the background and content of the meeting. It denied attempting to constructively dismiss her. It recorded that as a result of the messages she had sent the previous day and that morning, it had temporarily suspended her systems and swipe card access "for now". It said that her message had a damaging and harmful impact on her peers who were uncomfortable to be in receipt of such messages. The bank proposed a meeting for Monday 7 August 2023, where it said it would like to discuss its preference that YFR remain offsite and without access to its systems.

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<sup>13</sup> Employment Relations Act 2000, s 4(1A).

[89] Later the same day, YFR responded that she would not be attending any meeting or replying until she had engaged a lawyer.

[90] Over the weekend, YFR engaged a lawyer, Mr Fleming, who wrote to the bank on 7 August 2023. That letter recorded YFR's recollection of the meeting, raised a personal grievance and noted that it would not be tenable for her to return to her role at that point in time, given the employer's recent actions.

[91] The bank says that it was justified in removing YFR's access to its systems. It says it did so in order to stabilise the situation in circumstances where it had good reason to be concerned that her behaviour would escalate further. It noted that expectations had been set with her previously about her online messaging in its letter to her of 14 April 2023.<sup>14</sup>

[92] Mr Halse did not make submissions on this issue but YFR's evidence was that not being able to access the system meant that she was unable to apply for a secondment opportunity or explore other alternative roles with the bank. She tried to apply for the secondment when it was advertised externally but was told that applications had closed.

[93] Given previous discussions with Ms Comis and the expectations set in its 14 April 2023 letter, YFR was aware of the bank's expectations that she refrain from involving other team members and using forums such as the team chat to raise personal work concerns or potentially controversial views or feedback. The messages sent were inconsistent with those expectations. The bank's concern about escalation was not without foundation. YFR herself acknowledged in her evidence that her conditions<sup>15</sup> made it harder for her to regulate her behaviour than someone who was neurotypical.

[94] Accordingly, I find that it was not unreasonable for the bank to remove her access (at least temporarily) from its systems. YFR's reaction upset others, and while it would have been understandable for her to send her response (albeit strongly

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<sup>14</sup> See above at [44].

<sup>15</sup> See above at [43].

worded) to Ms Taylor-Burt and Ms Tamapeau, it was not acceptable for her to send it to the whole team.

[95] The bank's actions were not unjustified in the circumstances.

**Did the bank unjustifiably disadvantage YFR by failing to respond to her representative's email seeking her return to the workplace?**

[96] It is the bank's position that YFR agreed to go on paid leave. I have dealt with that above. While it is correct, I have found that YFR was left with little or no choice in the face of an already determined outcome.

[97] Counsel for the bank submits that even if YFR did not initially go on leave voluntarily (which it denies), once the email was received from Mr Fleming, her absence was agreed from that point.

[98] Having set out YFR's concerns in his email of 7 August 2023, Mr Fleming, stated:

- (a) Even if RBNZ were willing to reconsider its position it would not be tenable for [YFR] to return to her role at this point in time, given the employer's actions. However, that does not mean [YFR] accepts RBNZ's decision to exclude her.

[99] I do not consider that statement amounts to an agreement that YFR be on paid leave. It simply records the position as it was at that point in time.

[100] Mr Fleming's email also noted that YFR was extremely upset at the way in which her employment had effectively been brought to an end, and at having been deprived of the ability to work until the end of her fixed term agreement. It raised a personal grievance for unjustified disadvantage and requested mediation.

[101] From that point, Mr Fleming and Ms Tamapeau engaged in without prejudice correspondence. Mr Fleming was also attempting to arrange a mediation which was not ultimately able to take place until after the end of YFR's fixed-term agreement.

[102] On 14 August 2023 at 8.11 am, Mr Fleming wrote to the bank, referring to the emails of 4 and 7 August 2023, noting that YFR had reconsidered her position. The email stated that while she had been distressed, she now felt able to contemplate a return to the workplace so that she could leave at the expiry of her fixed-term agreement, rather than just disappear before her term had come to an end. The email requested that the bank provide urgent confirmation that it would not prevent YFR from accessing the workplace and resuming her duties. It noted that she would not enter the workplace immediately and unexpectedly, but requested that the bank respond as soon as practicable.

[103] A few minutes after sending the email, Mr Fleming sent a further separate email containing a without prejudice proposal.

[104] The bank did not respond to the first 14 August 2023 email. It is common ground that this was an error on its part. Ms Tamapeau thought that the first email was superseded by the one that followed. She accepted that she was mistaken.

[105] Mr Fleming gave evidence at the hearing. At the time he considered that the bank's silence amounted to a negative response. However, he did not follow it up. He accepted that this was an assumption on his part but said it was in the context of ongoing discussions.

[106] The bank says that it is regrettable it did not respond, but that in any case there would have been difficulties with YFR returning to her role. I do not need to look further into the issues in relation to her return. It would be speculative to consider what the parties might have done or said had they discussed the request. Further, speculation is not necessary given my finding below.

[107] While it is unfortunate that the bank did not respond, it does not amount to an unjustified action or, in this case, inaction. I accept it was a genuine mistake on Ms Tamapeau's part. While YFR's lawyer took the silence as refusal in the context of ongoing (without prejudice) communication with Ms Tamapeau, he did not clarify the position. I accept that the failure to respond was an oversight by the bank, not a deliberate act of discourtesy or strategy.

[108] In the context of ongoing discussions, including attempts to arrange a mediation, while it was regrettable, I do not consider that the failure to respond amounts to a breach of good faith or an unjustified action on its part.

## **Remedies**

### *Lost wages*

[109] YFR seeks compensation for lost wages of \$105,000 arising from not being able to work for 18 months after termination.<sup>16</sup>

[110] However, she did not suffer any lost wages in relation to her employment with the bank as she was paid until the end of her fixed term. There is no suggestion that her employment was not properly terminated at that time. There is no claim for unjustified dismissal.

[111] Mr Halse submits that the loss of income arose from the provision of the reference and the loss of the PBX role. However, as noted above,<sup>17</sup> there is no claim before the Court in relation to the reference and no cause of action or personal grievance arises from the circumstances in any case. This cannot support a claim for lost wages.

[112] Linked to the concern about the reference, Mr Halse also suggested that YFR may have been blacklisted in the banking industry, which accounted for her having to move to Australia to find work. However, there was no evidence to support this submission, and again it was not a claim that was before the Court.

[113] Mr Halse had the opportunity to make further written submissions in support of the claim for lost wages. However, while he filed submissions, they did not address the point. Mr Halse appeared to suggest that YFR's inability to work arose from the bank's alleged breaches of the Health and Safety at Work Act 2015 (HSWA), specifically its failure to eliminate the risk of causing YFR's mental health to

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<sup>16</sup> YFR's evidence was that she had obtained temporary casual work but had been unable to find permanent employment until she moved to Australia.

<sup>17</sup> See above at [26].

deteriorate and triggering her subsequent mental health episodes. Mr Halse did not refer to any authority for the basis of a claim for lost wages arising from an unjustified disadvantage, particularly where the disadvantage alleged is a breach of the HSWA.

[114] YFR did not lose wages as a result of her grievance. The purpose of s 123(1)(b) of the Act is to compensate the employee for wages they would have earned from the employer but for the grievance.<sup>18</sup> YFR was not unjustifiably dismissed; she had no expectation of employment beyond 31 August 2023.

[115] The claim for lost wages cannot succeed.

*Compensation for humiliation, loss of dignity and injury to feelings*

[116] YFR seeks \$50,000 as compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act. Her claim for compensation in relation to the impact on her stretches over a period of approximately 18 months.

[117] The Court has adopted a banding approach to the quantification of awards under s 123(1)(c) of the Act.<sup>19</sup> The three bands were recently updated in *GF v Comptroller, New Zealand Customs Service*:<sup>20</sup>

- (a) band 1 – low-range loss: \$0–\$12,000;
- (b) band 2 – mid-range loss: \$12,000–\$50,000;
- (c) band 3 – high-range loss: \$50,000 or more.

[118] The scope of YFR’s claim is limited to the humiliation, loss of dignity, and injury to feelings she suffered as a result of the grievances that have been upheld – that is, the events of 3 and 4 August 2023.

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<sup>18</sup> See *Sam’s Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608, [2011] ERNZ 482 at [33] and [37].

<sup>19</sup> *Richora Group Ltd v Cheng* [2018] NZEmpC 113, [2018] ERNZ 337 at [67]; and *Waikato District Health Board v Archibald* [2017] NZEmpC 132, [2017] ERNZ 791 at [62].

<sup>20</sup> *GF v Comptroller, New Zealand Customs Service* [2023] NZEmpC 101, [2023] ERNZ 409 at [162].

[119] While the bank suggests that this is minimal, I do not agree.

[120] YFR described feeling anxious, traumatised and helpless in the days following the events. On 8 August 2023, she consulted her general practitioner who recorded, in a letter dated 9 August 2023, that she had presented as being very distressed. He confirmed that her symptoms were consistent with acute stress reaction.

[121] YFR's father gave evidence that YFR had been extremely stressed and upset following the events. He said that they had a tradition of going out for dinner when they were in each other's town and that this was important to them. He said that while they had planned to go out for dinner on the weekend of 5 and 6 August 2023, YFR was unwell, did not get out of bed and had to sleep. He said he was very worried about her at the time.

[122] YFR's evidence was that the impact of the meeting and the manner in which she was required to leave the bank caused her significant stress. She said she was distressed and humiliated by being excluded from the workplace and unable to say goodbye to her colleagues. She talked about losing confidence and feeling depressed and anxious. She said she still feels traumatised by the events. This evidence was supported by her partner. I agree with the bank that care needs to be taken to identify the extent to which the above impacts are attributable to its unjustified actions, and not distress caused by other factors, such as the withdrawal of the offer from PBX, her employment ending in accordance with the terms of the fixed term, and the challenges she has faced finding employment. It is important not to conflate these responses with those associated with the normal stress associated with having to find alternative employment. As already noted above, the termination of YFR's employment was lawful.

[123] I do not agree that YFR has provided limited evidence of her claim. The visit to her doctor was within a week of the events, she has set out the impact on her in her evidence, and her partner and father have also provided evidence. None of this evidence was challenged in cross-examination. I also do not agree that her pre-existing mental health challenges are irrelevant.

[124] As stated by the Court in *Wiles v Vance-Chancellor of the University of Auckland*:<sup>21</sup>

An award of damages is not punitive; it is to reflect the damage caused to the wronged party by the breach. To that extent, the same actions may result in different levels of damages for different people depending on the impact on them. It is an individual assessment.

[125] In awarding compensation, the Court may take into account the pre-existing vulnerability of the wronged party.<sup>22</sup> Further, in this case there is no unfairness. The bank was on notice of YFR’s mental health issues.

[126] It is apparent that the impact on YFR was significant. I consider it is below the midpoint of band two. The sum of \$15,000 is appropriate in the circumstances.

### **Contribution**

[127] Where the Court has determined that an employee has a grievance, it must determine the extent to which the actions of the employee contributed to the situation that gave rise to the grievance and, if those actions require, reduce the remedies accordingly.<sup>23</sup>

[128] When determining whether a particular action should result in a reduction for contribution, the primary considerations are causation and proportionality.<sup>24</sup>

[129] The leading authority on s 124 of the Act is the Court of Appeal’s judgment in *Salt v Fell*, where it was observed that:<sup>25</sup>

... [it] is clear that s 124 is intended to operate like a “contributory negligence” provision: if the employee, by his or her own behaviour, is partly the cause of the employer’s hasty or ill-judged action (here, in dismissing the employee), then the employee should have the remedies to which he or she would otherwise have been entitled reduced.

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<sup>21</sup> *Wiles v Vance-Chancellor of the University of Auckland* [2024] NZEmpC 123, [2024] ERNZ 488 at [133].

<sup>22</sup> See *Richora Group Ltd v Cheng*, above n 19, at [53]

<sup>23</sup> Employment Relations Act 2000, s 124; *Paykel Ltd v Ahlfeld* [1993] 1 ERNZ 334 (EmpC); and *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136, [2016] ERNZ 628 at [179].

<sup>24</sup> *Macadam v Port Nelson (No 2)* [1993] 1 ERNZ 300 (EmpC) at 304–306.

<sup>25</sup> *Salt v Fell* [2008] NZCA 128, [2008] 3 NZLR 193, [2008] ERNZ 155 at [79].

[130] Accordingly, there is a need to pinpoint the proven wrongdoing before concluding that a reduction for contribution is a proportionate response.

[131] The bank submits that YFR contributed to the facts giving rise to her grievance and that remedies should be reduced accordingly. In particular, it says that:

- (a) YFR accepts that she behaved poorly by sending confrontational messages to Ms Comis, in which she had lost her self-control;
- (b) even after Ms Taylor-Burt and Ms Tamapeau met with YFR and expressed concerns about her behaviour, she persisted;
- (c) YFR chose not to attend a meeting to discuss the bank's concerns and its proposal to temporarily suspend her access to its systems; and
- (d) when she did write about returning to work, YFR did not engage with the bank's concerns.

[132] The only wrongdoing relevant to this exercise is (a) in the above list.

[133] I have found that YFR has grievances in relation to the setup and conduct of the meetings and telephone call on 3 August 2023. The only blameworthy conduct that contributed to her grievance were the initial messages to Ms Comis about the reference. It was those messages that started the process and gave rise to the concerns that prompted the meeting. YFR's later messages resulted in her access being removed but I have found that no grievance arises in relation to that removal. There are no grounds on which to reduce remedies on that basis. The other factors raised by the bank do not amount to culpable behaviours or a product of the bank's own process failures.

[134] YFR has accepted that the messages to Ms Comis were confronting. She said she was distressed and overwhelmed at the time. In considering proportionality, it is appropriate to take into account the fact that she apologised the following day, and the impact of her conditions on her behaviour.

[135] In all the circumstances, I consider that a reduction of 15 per cent is warranted.

[136] This means that the award of \$15,000 will be reduced by \$2,250.

## **Outcome**

[137] I have made the following findings:

- (a) The bank's actions were unjustified in relation to the 3 August 2023 meeting and YFR was disadvantaged as a result – specifically:
  - (i) breaching its obligations of good faith – the invitation to the meeting was misleading and the failure to suggest a support person, unfair and unreasonable in the circumstances;<sup>26</sup> and
  - (ii) breaching its obligations of good faith and failing to observe the principles of natural justice during the meeting and the subsequent phone call.<sup>27</sup>
- (b) The bank's actions in removing YFR's access to its systems on 4 August 2023 were not unjustified.
- (c) The bank's failure to respond to YFR's representative's email seeking her return to the workplace was not an unjustified action.

[138] Accordingly, I make the following orders:

- (a) The publication of YFR's name or other particulars that would identify her are prohibited.
- (b) YFR was unjustifiably disadvantaged in her employment with the defendant.

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<sup>26</sup> See above at [53]–[54].

<sup>27</sup> See above at [83]–[84].

- (c) The defendant is ordered to pay YFR the sum of \$12,750 by way of compensation pursuant to s 123(1)(c)(i) of the Act, being \$15,000, reduced by \$2,250 for contribution under s 124, within 28 days of the date of this judgment.

[139] Costs are reserved. In the event the parties are unable to agree on costs, the plaintiff will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with the defendant having a further 14 days within which to respond. Any reply should be filed within a further seven days.

Kathryn Beck  
Judge

Judgment signed at 1 pm on 18 December 2025