

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 81B/10  
5302515

BETWEEN ALANA ADAMS  
Applicant

AND WELLINGTON FREE  
AMBULANCE SERVICE  
INCORPORATED  
Respondent

Member of Authority: G J Wood

Representatives: Tim Blake for the Applicant  
Paul McBride and Tina Mitchell for the Respondent

Investigation Meeting: 15, 17, 21, 24 and 30 June 2010 at Wellington

Submissions Received: By 21 July 2010

Determination: 23 July 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Adams claims that she was unjustifiably dismissed by the respondent, the Wellington Free Ambulance Service Incorporated (WFAS/Wellington Free). WFAS claims that Ms Adams was justifiably dismissed following a full and fair investigation that led it to conclude that she should be summarily dismissed for serious misconduct, following incidents with a co-worker on shift and subsequently on the Facebook social networking site. It also opposes reinstatement on the basis that a large number of co-workers do not want her back working at WFAS, and because the pressures of the job require a stable and focused workplace environment.

[2] The issues for determination are whether Ms Adams was unjustifiably dismissed and, if so, what remedies should flow to her, including reinstatement.

[3] As this matter has already been dealt with by the Authority and the Employment Court in relation to Ms Adams' earlier claim for interim reinstatement, I have utilised parts of that determination and that judgement without full attribution, for the ease of the parties.

### **The Facts**

[4] WFAS's Central Emergency Communication Centre is one of three ambulance and emergency medical communication centres in New Zealand. It provides road and air responses for emergency and non-urgent work in the lower North Island. It employs emergency medical dispatchers (EMDs) on shift work of two days and two nights on, followed by four days off. Morning start and finish times are staggered between 0600 and 0800 and, with few exceptions, EMDs have assigned covered shift patterns so that they work within a familiar and generally predictable team environment.

[5] As a result, there is some overlap between shifts, e.g. of around 30 minutes per day at each end. Fifteen EMDs work as dispatchers and the majority are call takers. There are four team managers responsible for shifts, together with a centre manager and ancillary staff. Unsurprisingly, the centre operates following strict procedures and protocols, with an emphasis on avoiding failure.

[6] At the time of her dismissal, Ms Adams had been an employee of WFAS for almost three years, in the emergency communications centre in Wellington. For around the last 15 months of her employment, Ms Adams had also acted as a volunteer ambulance paramedic, supporting Wellington Free's professional ambulance paramedics. She was studying towards a diploma in ambulance studies (then administered by WFAS), as well as a degree in health sciences through Whitireia Polytechnic, in order to become a qualified paramedic. She is committed wholeheartedly to an emergency paramedic career, illustrated by much of her social life and other networks being built around the WFAS community, such as her close links to WFAS sports teams. Ms Adams is 22 years old and most of her time has been geared around the paramedic industry and WFAS in particular.

[7] While there had been a number of issues through the course of Ms Adams' employment relating to the way she interacted with other staff, she had never been subject to a disciplinary warning.

[8] On 4 February 2010, a co-worker of Ms Adams, who normally worked on another shift (a Mr Braden Robinson), made a formal complaint about Ms Adams' treatment of him on a shift on 30/31 January 2010, and by way of abuse on Facebook later that day. The first complaint was about the way Ms Adams had spoken to him when he refused to accede to her request to take a break when he had been working for longer and therefore felt entitled to take his break first. The second complaint was being spoken down to over a discussion over whether he had properly coded a job. His third complaint was that the next afternoon he received abusive messages from Ms Adams (including calling him a *prick* and a *dick*, that he needed to learn his place, and that if he spoke to her again the way he did the previous night she would tell him where to go) and that these comments were made without any provocation by him.

[9] The complaint was dealt with by Ms Jacqui Eades, the Communications Centre manager. On 8 February Ms Eades wrote to Ms Adams giving her notice of a disciplinary meeting, attaching the written complaint from Mr Robinson. The seriousness with which WFAS was treating the matter was made very clear to Ms Adams.

[10] At the meeting Ms Adams claimed that her friendship with Mr Robinson had broken down over a private matter, that his attitude towards her had changed since then, and that they no longer socialised like they used to. Ms Adams denied making any comments in the nature of talking down to Mr Robinson, except for making a sarcastic comment after her second break that she was pleased she had his permission to take it. Ms Adams commented that the issue of coding was resolved by the manager in Mr Robinson's favour. She also believed that Mr Robinson had removed some of the swear words and negative comments he had made in the Facebook exchange and therefore it was not as one sided as Mr Robinson had made it appear. Ms Adams stated that she regretted the matter having fallen over into work, even though she did not believe Facebook conversations fell within the province of her employer, but she did not deny that she made the particular comments on Facebook.

[11] As a result of the meeting, Ms Eades stated that WFAS may need to extend its investigation because of the conflicting stories. Wellington Free management then went on to speak to all those who had been present on shift that night, as well as a supporter of Mr Robinson, who had assisted him in formulating his complaint. Of those on shift, one member supported Ms Adams's view of what had occurred and

three, including Ms Abi Payne, the watch manager, did not notice anything in particular of concern. Three members on shift did, however, agree in substance with Mr Robinson's concerns. Together with Mr Robinson and his supporter, those three staff members made very negative comments about Ms Adams, which went well beyond what had happened that evening on shift. In essence, they claimed that this was nothing new for Ms Adams, but rather part of an ongoing pattern of behaviour involving a number of staff members, most of whom were new or seen as less confident people. A number of examples were provided.

[12] In his interview Mr Robinson denied being responsible for a breakdown in his relationship with Ms Adams, or that he had doctored the Facebook exchanges, which was accepted by Wellington Free.

[13] Some of these co-workers expressed a fear of their comments getting back to Ms Adams, but clearly accepted in the course of their interviews that if the matter went further the issues they had raised could not be kept confidential. Subsequently, contact was made with the Department of Labour and two human resources advisers, who, on the information provided to them, informed WFAS that these comments need not be disclosed to Ms Adams.

[14] Ms Eades stated, in a letter dated 9 March to Ms Adams setting up a further disciplinary meeting, that:

*...the manner in which you spoke made him feel extremely uncomfortable and upset I believe on the balance of probabilities that he could have reasonably felt this way. From what I have been told I think it is fair to conclude that you were upset with him over him taking a meal break which prevented you from sharing yours with [name deleted] and that your unhappiness with him over this continued over the shift. Subsequently there was a dispute over the coding of a call which became another focus of agitation which also appears to have been reflected in your treatment of Braden over the rest of the shift.*

*Of particular concern to me is your subsequent decision to enter into the exchange with Braden on his Facebook page. This was some time after the 31 January shift had ended and suggests a level of anger that you still felt about what had happened over the shift. I find the language and tone of your comments to be entirely unacceptable and they could be reasonably interpreted as amounting to being threatening, and at the very least counterproductive to maintaining a professional working relationship.*

*Overall, I believe that Braden could reasonably feel unsafe in the workplace as a result of your behaviour towards him, which I think*

*can be described as workplace bullying. Moreover, I am very concerned that behaviour of this kind might also amount to a risk to the safe management of operations due to an operator becoming upset and stressed due to the actions of another employee. On my assessment, and of concern to me, is that I believe there is an unacceptable risk that behaviour of this kind might occur again.*

[15] No specific reference to the way WFAS came to its preliminary findings was provided, except to say they followed the further enquiries.

[16] At the next disciplinary meeting, held on 12 March, it was noted on Ms Adams' behalf by her union officials that if her behaviour was so bad then surely Ms Payne would have intervened, and that given the length of time since the matter arose it could not have been serious misconduct. It was also stated that her behaviour was not condoned by the union and that while Mr Robinson should be treated with dignity and respect, he gave as good as he got. Furthermore, it was suggested that while the incident should not have happened, it was out of character for Ms Adams and that there were two parties who needed to be reminded about unprofessional behaviour. Ms Adams assured WFAS that it would not happen again. When asked what she would do if it did happen again, she said that she would talk to the watch manager or Ms Eades. The union stated that it would accept a first warning, but no stronger penalty, as Ms Adams had been under attack as well. Ms Adams also noted that she had worked on shift with Mr Robinson subsequently and there had been no issues.

[17] Management then adjourned to consider their decision. While there had been talk of a warning for Ms Adams, at least until WFAS got the further information from other shift members, discussion in the adjournment focused on dismissal. Such a remedy was concurred with by a senior manager involved in emergency communication centres, but I accept that the decision-maker was Ms Eades, although she acted by way of consensus with Mr John Dorey (Executive Manager Human Resources) and Ms Hana Zawodny (Human Resources Advisor). The evidence of Ms Eades did not exactly tally with that of Mr Storey over what matters were taken into account by WFAS and how the decision to dismiss was reached. These factors also applied to Ms Zawodny's evidence. Furthermore, while Ms Zawodny claimed, as the others did, that the additional material never put to Ms Adams was taken into account in determining credibility between Ms Adams and Mr Robinson, her evidence differed from the other two, who claimed that this evidence was put out of the decision-maker's mind when it came to concluding that Ms Adams had committed

serious misconduct and that such conduct warranted dismissal. Ms Zawodny also accepted that but for the additional matters not raised with Ms Adams, the matter may well have been dealt with by a warning.

[18] I prefer Ms Zawodny's evidence on these points. Furthermore, I find that the panel relied on material discovered through interviews with others that touched on matters outside the complaint, showing a pattern of problems with co-workers, that then led management to conclude that it would be unsafe to return Ms Adams to the workplace and thus that dismissal was necessary, as well as to the view that she had committed serious misconduct by her treatment of Mr Robinson at the relevant times. Such a conclusion on the evidence best accords with common sense. To claim, on the one hand, that WFAS was seriously disturbed about the revelations made in its subsequent interviews, yet on the other hand, claim that it did not take those revelations into account when deciding to dismiss is, on the balance of probabilities, not accepted. In its letter of dismissal, WFAS stated:

*In summary I do not agree with the view that a low level of warning was justified and was not persuaded that I could have sufficient confidence that similar issues would not arise again.*

[19] It was entirely appropriate for WFAS, in deciding to dismiss, to determine whether or not it could have confidence that such an incident would not happen again, but entirely artificial (and not accepted by the Authority) to suggest that in doing so it had no regard to the revelations made about Ms Adams but not disclosed to her.

[20] In its statement in reply, Wellington Free relied on many of the comments made in the course of its further enquiries, in order to support its conclusion that Mr Robinson's claims did stand up. I conclude that WFAS did indeed rely on the information not put to Ms Adams, not only for determining credibility but also for determining penalty, despite WFAS's denials. No employer could be expected to exclude such prejudicial material in its deliberations on penalty, at least.

[21] Similarly, it was not just the incidents on that evening which led Ms Eades to the last quoted assessment in her letter of 9 March about the risk of such events occurring again. It must have included the other material that she had recently received, which she accepted was very concerning.

[22] Furthermore, in Ms Eades' original affidavit in opposition to interim reinstatement, she stated:

*The sort of things I was told during the interviews reflected to me that it was probable that the complaint by Braden Robinson had substance and it was likely that the problem was widespread and that others had suffered similar treatment [emphasis added].*

*In this circumstance I believe that the effectiveness of the communications centre was at risk if Alana Adams remained an employee. I was fearful that the dysfunction created by workplace conflict presented a real risk that distressed staff might make poor decisions when dealing with emergency responses and that communication breakdowns could occur resulting in dreadful outcomes for patients.*

[23] She then referred to even more concerns that staff had previously raised with her, but which again had also never been raised with Ms Adams. All of these comments made much closer to the time of the dismissal clearly demonstrate, on the balance of probabilities, that Ms Eades did take into account, at the very least when deciding on penalty, a large amount of negative opinion about Ms Adams that WFAS never disclosed to her.

[24] There was no evidence, other than speculation by Ms Adams and the union officials, that ancillary matters such as WFAS' difficulties with the union and/or various issues to do with alleged inadequacy of Wellington Free's mapping system had anything to do with her dismissal and I find against such claims.

[25] After her employment ended, Ms Adams had an unpleasant exchange concerning a former co-worker, where she told someone else in no uncertain terms that the former would not be welcomed into *her* sports team, a team associated with WFAS. This was not a wise response by Ms Adams.

[26] Subsequent to Ms Adams' dismissal, more than ten employees, few of whom worked on the same watch as Ms Adams, raised concerns about the prospect of Ms Adams gaining reinstatement, and provided affidavits to the Authority and Court opposing such an order. The issues raised involved aggressive behaviour by Ms Adams, which made other staff feel uncomfortable, intimidated and feeling inferior. Added to this were several other points of documented concerns with Ms Adams' behaviour, covered below. Furthermore, for the first time, and unknown to WFAS until days beforehand, evidence of similar behaviour by Ms Adams towards a worker of an employer associated with WFAS was given at the Authority's

substantive investigation meeting. There were, by contrast, a number of people who had worked with Ms Adams who supported her reinstatement.

[27] I refer to the matters raised directly with Ms Adams below. Other complaints made did not appear to have been followed through by the complainants and are not referred to here, although they have been taken into account when setting remedies.

[28] In February 2008, WFAS investigated a complaint about Ms Adams making inappropriate comments about one of her colleagues in an emergency services internet forum. While these comments were deemed to be unprofessional and unfair, no disciplinary action was taken because the site was not readily accessible to the public. However, the person referred to in derogatory terms on that internet forum had made a complaint about her overall treatment by Ms Adams at work (she was said to be immature and domineering amongst other things), but this complaint did not seem to have been furthered by WFAS, for reasons that no witness could explain and for which there appears no rational explanation, given its seriousness.

[29] In January 2009, Ms Adams was told by her manager at the time that she needed to prove to WFAS that she could participate in the communications centre in a professional manner, after concerns had been raised by staff about her attitude and inappropriate comments about other staff.

[30] In August 2009, Ms Adams was involved in a heated argument with her supervisor, which was overheard by a number of other staff. Ms Eades told the pair of them that their arguing was unacceptable, and that they needed to come to an agreement on the way forward, which did occur. Both were counselled informally by Ms Eades. That Ms Adams knew her behaviour had been unacceptable is clear from an email she sent in October 2009 (after being given a more senior position, i.e. becoming a dispatcher, rather than a call taker), when she stated:

*... I'd like to apologise for the things I've said and the way I've behaved during this process. It was totally unprofessional and there will not be a repeat. I was hoping everything could be water under the bridge?*

[31] Almost all of this material was available to the Authority when it made its decision to grant interim reinstatement on the basis that the overall justice favoured interim reinstatement, given WFAS's reliance on information not given to Ms Adams and whether dismissal was the appropriate sanction for her misconduct, i.e. that

Ms Adams had a good case not only for unjustifiable dismissal but also permanent reinstatement.

[32] In the substantive investigation, however, new evidence was provided by an emergency medical dispatcher in another communications centre, who felt put down and made to feel inadequate in his job by actions taken by Ms Adams, this time by text message, some many hours after the events in question. This incident in April 2009 related to the death of a family friend of Ms Adams, who had died after twice refusing an ambulance sent by the witness. Ms Adams had been involved in the process because of the family connection. The witness, who had been on friendly terms with Ms Adams, had emailed her stating that the *job is nothing*, a comment he immediately regretted.

[33] The text messages Ms Adams later sent in reply (and not denied by her) are instructive because of their similarities with the later Facebook exchange. They start by saying *he died you bastard*, to which the witness responded *and that's my fault how? good on ya*. Ms Adams then responded *fuck u. Ur a dick*, to which the reply was *yes ms Mr Professional The one who sends abusive txts*, to which Ms Adams replied *Coz ur a fuckhead. And ths is personal. Professional wud b if I emaild u abuse*.

[34] The witness felt devastated because, by implication, he was blamed for the death, although later he was formally absolved from any responsibility.

[35] Ms Adams promptly sought interim reinstatement, which was dealt with both by the Authority and the Court. The matter was also set down for an urgent substantive investigation meeting, which unfortunately meant that, in addition to all the witnesses both parties called to oppose or support reinstatement, the matter took far too many days to investigate. This would not have occurred had a more measured approach of written evidence and evidence in reply been formulated in advance.

[36] The parties have also attended mediation, and made attempts to resolve the matter on their own terms, but have been unable to do so. It therefore falls to the Authority to make a determination.

## **Determination**

[37] The Authority must decide the question of whether the dismissal was justified by determining, on an objective basis, whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time.

## **How WFAS Acted**

[38] WFAS quite properly sought additional information when it found there were major discrepancies between Ms Adams' and Mr Robinson's accounts of what occurred on both days. Other than indicate to Ms Adams that it believed these new accounts supported Mr Robinson's claims (which was not entirely correct, because one staff member supported Ms Adams and others saw and heard nothing, which tended to support Ms Adams rather than the other way around), Wellington Free never told her any of the detail of that information, which she may have been able to positively respond to.

[39] More importantly, however, there was additional material received, not relating to the events on the night, which, for the reasons given above, I conclude that WFAS did take into account, at least in determining penalty. Again, Ms Adams was entitled to know this information, as it was highly prejudicial to her, in order to be able to effectively give a plea in mitigation to try and retain her job.

[40] Whatever the Department of Labour or the two advocates may have said, and their responses would have been dependent on the information received from WFAS, this is not a case for secret witnesses. First, the witnesses did not insist on secrecy. They had given permission for their names to be utilised if necessary. Second, details of the allegations were required in order for Ms Adams to be able to respond, which would have necessitated their names being given. Third, the people giving the information were not at a great power disadvantage to Ms Adams in the workplace, and nor were they particularly vulnerable individuals.

[41] The Employment Court noted that if substantial and significant information sought and obtained by WFAS in the course of its inquiry was never disclosed to Ms Adams, it is difficult to see how a fair and reasonable employer would have conducted an inquiry into serious allegations and relied on such information in

dismissing Ms Adams. So it is clear that how WFAS acted was not how a fair and reasonable employer would have acted in all the circumstances at the time.

### **WFAS's Actions**

[42] This factor, often referred to as the substance of the matter as opposed to the procedure adopted, is intimately intertwined with the issues of how the employer acted. I conclude that because in making the decision to dismiss WFAS relied on other incidents to show a pattern, or to satisfy itself that this misconduct may well be repeated, it can not be determined what may or may not have been the appropriate penalty if that material had been disclosed and Ms Adams given an opportunity to respond to it, or alternatively if WFAS had achieved the near-impossible task of putting the material completely to one side. WFAS could have properly considered this as a one-off incident in the workplace, and considered penalty only in conjunction with those concerns it had raised properly with Ms Adams before about her interactions with other people, namely making inappropriate comments about another staff member, being told off for arguing with her boss and her actions in relation to using another website. It did not do so and it is thus impossible to put the clock back and determine that it was open on to WFAS, on substantive grounds, to dismiss Ms Adams for what were clearly inappropriate behaviours, particularly given that the Facebook exchange occurred well after the working shift was over.

[43] I therefore conclude that Ms Adams' dismissal was unjustified, as WFAS did not act as a fair and reasonable employer would have in all the circumstances at the time. I turn now to look at remedies.

### **Reinstatement**

[44] Reinstatement is the primary remedy for an employee who brings a successful personal grievance and the Authority must provide for reinstatement wherever practicable. The concept of practicability requires the Authority to determine whether or not it is satisfied that Ms Adams would be a harmonious and effective member of the emergency communications workforce in Wellington if reinstated.

[45] As can be seen from the evidence, a large number of employees (many of whom do not, however, apart from a short period of overlap, work at the same times as Ms Adams did at the time of her dismissal) oppose her reinstatement, although a

number of others supported it. Reinstatement is not, however, a popularity contest, although I accept that there were significant concerns raised in evidence.

[46] As noted above, the Authority would not have awarded interim reinstatement to Ms Adams had it not considered at that stage that the overall justice favoured interim reinstatement, because she had a good chance of permanent reinstatement. Furthermore, Ms Adams gave evidence of her undergoing counselling to help her improve her communication skills and interactive behaviour with others at work. This is a laudable initiative on her behalf.

[47] Of interest in evidence was the clear immaturity of a number of the witnesses, including the principal protagonists, Ms Adams and Mr Robinson. Mr Robinson's evidence that he could not be in the same room as Ms Adams even for one minute is a clear example of such. Interestingly, by contrast, the majority of older employees had, for instance, a far more forgiving attitude towards Ms Adams, even though many of them still opposed her reinstatement. With its self-admitted focus on socialising in and outside of work, WFAS can not be surprised that some of the younger staff do, from time to time, not get on well with each other and sometimes behave inappropriately. WFAS must therefore take some responsibility for its hiring practices, in that it allows people such as Ms Adams and Mr Robinson to be employed as teenagers in an environment which it emphasises is so inherently stressful. Ms Adams' behaviour, however, went beyond what could be reasonably expected in or out of the workplace.

[48] Much of the evidence given in the Authority's substantive investigation was available at the interim stage, by way of affidavit evidence. I would have awarded Ms Adams reinstatement were it not for the additional information that came out in the later substantive investigation, where evidence was given and tested on oath.

[49] While I accept that Ms Adams is genuine in her claim for reinstatement, I am not satisfied that she would be a harmonious and effective member of staff (and particularly the former), because of her past history. In particular, there is the serious nature of the attacks on Facebook, which I accept (as there was no evidence other than Ms Adams' to disprove it) Mr Robinson did not respond to, and which took place many hours after the incidents in issue had taken place, whoever was at fault. I agree with the Court that the comments by Ms Adams display a degree of intolerant and overbearing behaviour, even if stupid and arrogant rather than threatening and

deliberately destabilising. This latter point implies that Ms Adams' behaviour may well have been relatively straight forward to remedy. Certainly Ms Adams has been shocked by the negative perception of her held by many of her co-workers and is undergoing counselling to improve her interactions with others.

[50] However, while such previously known comments about others were serious in themselves, the Facebook comments must be taken as even more serious given the similarities to how the witness from another communications centre was treated less than a year earlier. In particular, they both involved strong and abusive language, which took place not in the immediate aftermath of an incident, but some time later. This lends substantial credence to WFAS' argument that these are inbuilt negative characteristics of Ms Adams.

[51] Also new and significant was Ms Adams own evidence that she would still question the decisions of, and have difficulty relating to and receiving training from, WFAS' training co-ordinator, Ms Julie Bain. I find that Ms Adams has failed to understand that while it is acceptable to question Ms Bain in her role as training co-ordinator, such questioning is subject to limits and it is part of her duty as an employee to follow the direction of Ms Bain over training matters. She could give no proper assurance to the Authority that she would do so if reinstated.

[52] Also significant is Ms Adams' failure to understand that her interactions on Facebook were legitimate areas of concern for her employer. In many ways her actions outside of work (via text with the non-WFAS employee witness and by Facebook with Mr Robinson) were more serious because they showed that her reactions to work incidents were not left at work, but rather she decided to continue the issues in what she believed to be a private forum. An employer is entitled (and indeed obliged if the issue relates to workers' health and safety) to investigate problems between co-workers, even if the problems occur outside of work, especially if the genesis of those problems is the workplace. This is because such problems can clearly affect relationships in the workplace, which the employer is in control of and responsible for. Ms Adams' failure to appreciate that is another reason why reinstatement is not practicable.

[53] It is these factors which put the matter outside the sort of behaviours that the employer could reasonably expect an employee to modify once on formal warning of

its concerns. Furthermore, this is a stressful position and there are therefore serious risks inherent in Ms Adams' reinstatement.

[54] Overall, therefore, I conclude that while Ms Adams is genuine in her claim for reinstatement and has undertaken a number of initiatives to assist her with reinstatement, she has not demonstrated to the Authority, for the reasons given above, that she would be a harmonious and effective employee of WFAS in its emergency communications centre. I therefore conclude that her reinstatement is not practicable.

### **Lost Remuneration and Compensation**

[55] Ms Adams worked variable hours and was paid at a rate set under the parties' collective employment agreement. She is entitled to claim remuneration on the basis of an average of her last three months' total earnings, given the regular working of overtime. Leave is granted to the parties to revert to the Authority should they be unable to agree on the calculation of that figure.

[56] Ms Adams' employment was terminated summarily on 12 March 2010, but she was paid two weeks pay in addition by mistake. Ms Adams has therefore lost pay for 17 weeks to date. No claim has been made for ongoing loss of remuneration. Given the circumstances I accept that Ms Adams has lost more than three months ordinary time remuneration as a result of the personal grievance and that remuneration should be reimbursed to the extent set out below.

[57] I accept that Ms Adams has sought to mitigate her loss over that period. She was entitled to wait for her claim for interim reinstatement to be heard, it having been brought promptly, and to rely on the Authority's determination in her favour until overturned by the Employment Court. Since then I am satisfied that she has looked for alternative work to mitigate her loss. Any earnings she has received, however, must be taken off the remuneration lost in the 17 weeks at issue, before any deductions due to her own behaviour are considered.

[58] Ms Adams has lost the opportunity to develop a career which, while in its infancy, she was extremely devoted. The loss of her job has at the very least made the attainment of her paramedic-related qualifications much harder to achieve. She has been forced to go onto anti-depressants and she has been denied reinstatement to a job that she loved. The depth of her feelings has been corroborated by her Father. In all the circumstances, I consider that compensation in the sum of \$10,000 is appropriate.

### **Subsequently Discovered Misconduct**

[59] Subsequently discovered misconduct is relevant to remedies. Except for the matter dealt with below, I find that other misconduct complained of by co-workers was either known by and not dealt with formally by WFAS, or could reasonably have discovered by it, and is therefore not taken into account in this section.

[60] I do consider, however, that had WFAS been aware of Ms Adams' conduct towards the other communications supervisor, her employment may have taken an altogether different course. Whether that was by way of a wake up call, meaning that the Robinson incident would never have occurred, as Ms Adams claims, or by way of justification for the dismissal of Ms Adams, given the Robinson incident was another serious breach of the same ilk, is impossible to know. What is clear, however, is that Ms Adams' misconduct was of a similar sort as that she engaged in later with Mr Robinson. It therefore warrants a reduction in remedies under s.124, as the Court of Appeal held in *Salt v. Fell* [2008] ERNZ 155 (CA). Because of the seriousness of the subsequently discovered misconduct, I order a reduction in remedies for loss of remuneration and compensation by one third.

### **Contribution**

[61] Ms Adams' contribution to the situation which gave rise to her grievance is significant. Most of the factors concerning her behaviour were addressed in the issue of her reinstatement. Assessment of contribution is not, however, about other employees' attitudes towards her reinstatement, but rather her ongoing poor behaviour known to WFAS at the time. While all have been considered, of most importance was her behaviour during the Robinson incident. Despite any provocation by Mr Robinson, where on the night I accept they both behaved cattily towards each other, Ms Adams' behaviour in attacking him on Facebook was unprofessional in the extreme. The fact that she was prepared to pursue Mr Robinson outside the work environment makes this matter worse, and not less serious as Ms Adams would claim. Her attack was premeditated and designed to intimidate or upset Mr Robinson, which it did. It was something that could well have been remedied by an immediate and fulsome statement of regret to WFAS and apology to Mr Robinson, but Ms Adams failed to do that. Ms Adams' unprofessional conduct appeared to be acknowledged by the union on her behalf, but only much later and therefore too late to be effective. These were additional misjudgements on her part which contributed to her dismissal.

On the other hand, she can not be held responsible for WFAS' failings in taking into account matters of which she had no forewarning and thus no opportunity to respond to.

[62] Looking at all the evidence I conclude that, in the round, an appropriate deduction for contribution is 40%.

### **Conclusion**

[63] Ms Adams has been unjustifiably dismissed by WFAS. However, because of subsequently discovered misconduct and her serious contribution to the situation that gave rise to her personal grievance for unjustified dismissal, I have declined reinstatement and reduced substantially her remedies, in effect by 60%. I therefore order the respondent, Wellington Free Ambulance Service Incorporated, to pay to the applicant, Ms Alana Adams, the sum of \$4,000 under s.123(1)(c)(i) and 40% of lost remuneration.

### **Costs**

[64] Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**