



the district. Constable Davis says Police supervisors and managers have penalised him rather than fairly dealing with his concerns about his treatment by Constable Robinson.

[4] Police deny Constable Davis has been unjustifiably disadvantaged and say a thorough investigation of his complaints found he was not harassed by Constable Robinson and there was no evidence to support his two allegations of Constable Robinson mistreating people in custody. Police also say the subsequent transfer of Constable Davis to a nearby station was a reasonable decision, fairly made after discussing options with him and having made arrangements to minimise inconvenience to him.

### **Issues**

[5] The central issue for investigation by the Authority was whether the Police did what a fair and reasonable employer would have done in all the circumstances at the time in dealing with the concerns of Constable Davis over:

- (i) operation of rural response provisions in the Police Constables' collective employment agreement (CEA) and their application to the Mangonui officers; and
- (ii) his interactions with Constable Robinson.

[6] Issues for determination include whether:

- (i) Constable Davis was unfairly treated over his view how the CEA provisions were to operate; and
- (ii) Police supervisors and managers properly investigated the concerns of Constable Davis; and
- (iii) Constable Robinson's conduct amounted to harassment of Constable Davis; and
- (iv) it was fair to transfer Constable Davis to another station rather than Constable Robinson.

### **The investigation**

[7] For the purposes of the Authority investigation, written witness statements

were lodged by Constable Davis; Constable Jim Smith; Senior Sergeant Geoff Ryan; Senior Sergeant Justin Rogers; Police human resources manager Linda Craig; Police employee practices manager Korina Pascoe; Police general manager human resources Wayne Annan; and Inspector Tony Wakelin of Police National Headquarters Professional Standards. Affidavits were also lodged by Police Far North Area Commander Inspector Chris Scahill and Police Association field officer Stewart Mills.

[8] I did not require the attendance at the investigation meeting of Inspector Scahill, Stewart Mills or Senior Sergeant Rogers as the evidence they could give was either not controversial or was adequately covered by other witnesses. Constable Smith had left the Police and was no longer available to attend.

[9] Constable Davis, Senior Sergeant Ryan, Ms Craig, Ms Pascoe, Inspector Wakelin and Mr Annan answered questions, under oath or affirmation, from the Authority member. Constable Davis and Ms Catran, counsel for the Police, each had the opportunity to ask additional questions of the witnesses and provided oral closing submissions speaking to a written synopsis.

[10] I did not take account of written statements provided by Constable Davis's wife, Simone Davis, and a Kerikeri woman whom I need not identify. The former concerned Mrs Davis' recall of two social conversations with Constable Robinson and a comment about him not talking to her at a Police social function. The latter was from a member of the public commenting on her experience of dealing with Constable Robinson. Neither prospective witness, I considered, could assist the Authority's investigation with information directly relevant to the employment relationship issues. Similarly I did not seek to hear directly from Constable Robinson as the real problem for resolution was not his actions but whether the Police supervisors and managers had dealt fairly with the complaints of Constable Davis about what alleged was unacceptable conduct by Constable Robinson.

[11] As emphasised to the parties on several occasions, the Authority's investigation was about employment relationship problems and not a general inquiry into Police operations out of a particular station or within an area of a district. For that reason I did not agree to Constable Davis seeking to canvas members of the

public for witness statements which he expected to be to the effect that he was a better-liked officer locally than Constable Robinson. Even if that were true, it would not assist with what the Authority needed to investigate and determine. It would have required extensive review of the files and circumstances for any example given to understand the context of whatever views members of the public locally may have formed of police officers with whom they dealt – and was likely to be of marginal relevance, if any.

[12] Constable Davis also made repeated references to the prospect of raising his various concerns through the media and with the Minister of Police and the Independent Police Complaints Authority. Again, even if those avenues of complaint and inquiry were or are legitimately open to him, they are of no relevance to what the Authority must consider and determine now in relation to Constable Davis' personal grievance application.

[13] I note that prior to the Authority's investigation, the parties met on at least two occasions with the assistance of a mediator but were not able to resolve the issues between them. During the investigation meeting – at the request of the Police and after the evidence was heard but before closing submissions were made – I gave the parties a further opportunity to discuss privately whether they might be able to resolve matters without the need for a determination by the Authority. They could not.

[14] In preparing this determination I have reviewed the parties' oral and written closing submissions, the witness statements, witnesses' answers to questions, and the many relevant background documents provided. As allowed for under s174 of the Act I have not recorded here all evidence and submissions received but state findings of facts and issues of law and express conclusions on the issues for determination.

### **How the problems arose**

[15] The CEA ratified in September 2008 included provision for a "*rural response allowance*" for officers serving in the rural or small town stations with three or fewer staff. Those stations were referred to as "*1-2-3 stations*". This included the three-member Mangonui station.

[16] These rural response provisions recognised officers serving in rural areas were more available to the community. This “*genuine requirement ... to be contactable and available to respond*” meant more intrusions into their personal life and restrictions on rest and recreation than normally required of constables.

[17] Rural response was described as applying to any situation where Police operational effectiveness required “*the certainty of one member of a 1-2-3 station being responsible for responding or arranging cover for the rural response outside normal working hours for that station*”. The CEA recognised rural response obligations could be delivered through “*a number of means*” with the appropriate response for each occasion being “*determined by the member and/or their supervisor*”.

[18] Rural response was identified as “*an on-going after-hours arrangement that forms part of the regular routine duties of the 1-2-3-person station*” and “*an obligation for members on rural response to be the after-hours contact person for an area*”. This meant being available to be contacted to respond to an incident or directing Police to someone who could respond. If not available to be contacted, the officer had to arrange cover and inform Police communications centre of the contact arrangements.

[19] An after-hours roster was to ensure rural response did not place excess demands on any one individual with an expectation that a member in a 3-member station would “*ideally*” not be on that roster for more than 15 weeks at a time. Excessive use of ‘rural response’ was recognised as a health and safety risk.

[20] The Mangonui officers qualified for an annual allowance of \$6167 for these rural response duties as well as an allowance of \$11.05 a day paid in lieu of accumulating time off in lieu (TOIL). The latter allowance recognised the difficulty of managing a TOIL regime for staff working around their individual community needs with minimal supervision. They were also paid on band H of Police pay scales, higher than general duties constables.

[21] In February 2009 Senior Sergeant Steve Harris, who had some administrative responsibilities for the Mangonui station, asked for an explanation of entries on a time

sheet provided by Constable Davis. This resulted in some debate via email between them over how the new rural response provisions should work in practice.

[22] Constable Davis was annoyed that one email from Senior Sergeant Harris, which he considered had a “*negative tone*” about him, was copied to his senior sergeant and the two other constables at Mangonui. He sent Inspector Hodson (and copied to Inspector Scahill) an email criticising supervisors for causing “*unnecessary friction*” and asked that they be brought “*up to speed*” with some training about how CEA provisions for 1-2-3 stations were meant to work.

[23] In the following months three meetings between Mangonui constables and their supervisors or managers discussed operation of the rural response roster and requirements – referred to by Constable Davis as “*flexi hours*”: 13 May (attended by Inspector Scahill, Senior Sergeant Harris and Police Association field officer Stewart Mills); 31 July (attended by Senior Sergeants Harris and Ryan); and 20 August (attended by Senior Sergeant Ryan and Police Association representative Steve Hawkins).

[24] In the 20 August meeting there was a robust debate between Constables Davis and Robinson. Constable Robinson criticised Constable Davis for using flexi hours in a way which affected other staff at the station who then had to work extra hours to cover him.

[25] The following day Constable Davis sent Constable Robinson an email about what he now describes as “*the excess force concern*”. It bore the subject heading: “*Mangonui holding cell activity*”. The text read:

*Hi Steve,*

*I thought I'd bring something to your attention.*

*On Wednesday afternoon (19/9) one of the volunteers mentioned that there had been a person in the cell (that day or recently, I'm unsure) that had been playing up, that you had gone down there, and next the person in the cell could be heard crying.*

*It brought to mind a similar incident involving you over the last year; in that I was in the watch house/office area, there was a person in the cell that had been found committing wilful damage, you went down there, came back and the person was crying.*

*I didn't mention it the 1st time because I didn't hear/see what*

*actually happened but this is now the second time I'm aware of and can only think of 1 'old school way' that these situations could have come about by.*

*This is the first chance since learning of it on Wednesday that I've had to mention it to you.*

*What's the story Steve?*

[26] Constable Robinson saw the email when he returned to the station and then spoke to Constable Davis. He had already rung Senior Sergeant Ryan and later sent him a copy of Constable Davis' email.

[27] Constable Davis' evidence was that Constable Robinson was visibly angry and asked why these accusations were being made now. Constable Robinson believed it was done because Constable Davis was upset about the argument over flexi hours in the meeting on the previous day.

[28] In the following days Constable Davis advised Senior Sergeant Ryan of what he called "*ongoing developments*" at the station. This included having found the vehicle key drawer in the officer-in-charge office was locked and the office itself was locked. Senior Sergeant Ryan visited the station and spoke to both officers separately. He confirmed that Constable Davis wanted the excess force allegations investigated and made arrangements to do so.

[29] During the following week Senior Sergeant Ryan met with the volunteer who had told Constable Davis about one incident in the cell. His evidence was that the volunteer recalled Constable Robinson speaking sternly to a person in custody about screaming and swearing. The volunteer thought Constable Robinson had spoken through the door of the cell without opening it. He had no problem with Constable Robinson's manner or language.

[30] Senior Sergeant Ryan then spoke to the third officer at Mangonui, Constable Murdoch who was present at the time of an earlier cell incident referred to in Constable Davis' complaint. Constable Murdoch recalled finding a prisoner scratching graffiti into the cell door with a rock and that Constable Robinson had gone into the cell to take the rock but did not assault the prisoner.

[31] Senior Sergeant Ryan also spoke with Constable Robinson who confirmed

details of both incidents. Constable Robinson said Constable Davis had discussed neither matter with him before sending the email of 21 August and that he would have been happy to tell Constable Davis what had happened.

[32] Senior Sergeant Ryan said Constable Robinson also expressed concern about whether he could trust Constable Davis. In Constable Robinson's view it was no coincidence the allegations were made the day after a meeting at which no one had agreed with the way Constable Davis was managing his overtime.

[33] Senior Sergeant Ryan then reported his enquiries to Inspector Scahill who, after discussing the matter with the District Commander, decided no further investigation was required.

[34] On 3 September Senior Sergeant Ryan again met with Constable Davis and advised him of this decision. Constable Davis complained that the matter was being swept under the carpet. Senior Sergeant Ryan offered to arrange a meeting to discuss the issue with the District Commander and Inspector Scahill. He asked Constable Davis to get back to him about such a meeting. Constable Davis had not done so subsequently.

[35] At Senior Sergeant Ryan's suggestion Constable Davis and Constable Robinson had a one-to-one conversation at Mangonui Station later that day but this failed to resolve any issues between the two officers. Constable Davis again complained to Senior Sergeant Ryan about being threatened by Constable Robinson. He asked for an independent review of events to date. Senior Sergeant Ryan referred this request to Inspector Scahill who arranged for Ms Pascoe to review Constable Davis's complaint and how it had been dealt with so far.

[36] On 23 October Ms Pascoe and Ms Craig met with Constable Davis to hear from him. This was one of a series of meetings in which they also interviewed Senior Sergeant Ryan and Constable Robinson. Ms Craig met again with Constable Davis on 16 November to discuss the review. She advised him that she and Ms Pascoe had concluded that Police supervisors' decisions to date were correct. She also told him steps needed to be taken to rebuild the working relationship with Constable Robinson or the two officers would need to be separated. She described the situation between

the two officers as being one of “*equal culpability*” but, if the working relationship was not restored, then Constable Robinson would most likely stay at Mangonui as he was the officer in charge and lived, with his family, at the Police house. Constable Davis was given an opportunity to comment on that prospect and arrangements were made for what was called a “*facilitated meeting*” between the two officers on 26 November. That meeting was to establish whether they could rebuild a working relationship.

[37] Ms Pascoe acted as facilitator of the 26 November meeting. Her evidence was that the meeting got heated. She said neither constable would listen to the other and:

*“after about an hour ... it became apparent that the issues, and in particular, the issue regarding the allegation that Constable Robinson assaulted a prisoner, were not going to be resolved as Constable Davis would not accept that the investigation had concluded that the allegation was unfounded.”*

[38] Constable Robinson walked out of the meeting.

[39] After receiving a report on the meeting through Ms Craig, Inspector Scahill decided to temporarily second Constable Davis to another station until the issues between him and Constable Robinson could be resolved.

[40] Constable Davis was notified of four options for stations and roles to which he could be seconded and given an opportunity to comment on those options. He then raised a personal grievance alleging unjustified disadvantage.

[41] The secondment was deferred and Constable Davis, with his agreement, was placed on leave until the end of January 2010 while arrangements were made for mediation to be held about the grievance.

[42] Mediation, with the assistance of a Department of Labour mediator, was held on 11 January but did not resolve the matter.

[43] On 1 February 2010 Constable Davis returned to work under a secondment to the Kaeo Police Station, about 30 kilometres away down State Highway 10. He subsequently complained that arrangements for use of a Police vehicle to travel between Kaeo and his home in Mangonui were unsatisfactory. A district policy was

later varied to allow him to keep a police vehicle at home.

[44] Meanwhile Constable Robinson had made a formal complaint of harassment by Constable Davis. In light of that complaint, and Constable Davis' application to the Authority, arrangements were made through Mr Annan for further investigation by Police national headquarters. Inspector Wakelin was provided with terms of reference for an employment investigation. He spent five days in Northland from 8 February 2010 interviewing Constables Davis and Robinson and 11 other Police staff, supervisors and managers.

[45] A copy of his 23-page report – with background documents including statements taken from all staff interviewed – was made available to Constable Davis and the Authority. His key conclusions were that:

- (i) Constable Davis' "*rigid interpretation*" of the CEA on-call provisions was not within the spirit of the agreement and had "*an impact on the workload of his colleagues*".
- (ii) The District inquiry into the assault allegations made by Constable Davis was the appropriate course of action and Inspector Scahill was correct in his finding that there was no evidence to support the allegations and in his decision that any further investigation was not warranted.
- (iii) There was a clear personality clash between Constables Davis and Robinson but there was no foundation for Constable Davis' belief that he was at risk of physical harm from Constable Robinson, and that Constable Robinson's complaint could be dealt with by a directive requiring Constable Davis not to enter the Mangonui station or have any email or personal contact with Constable Robinson.
- (iv) Northland Police human resources staff had worked hard to resolve the issues at Mangonui.

[46] Further mediation with the assistance of a Department of Labour mediator was held on 12 March and did not resolve the issues.

### **Determination**

[47] From the information and evidence available to the Authority's investigation I

have concluded Constable Davis has not been subjected to any disadvantage which was unjustified. Put another way, in terms of s103A of the Employment Relations Act 2000, I am satisfied that the actions of the Police in dealing with Constable Davis, and considering his complaints and concerns, were well within the standard of what a fair and reasonable employer would have done in all the circumstances at the time.

[48] As part of reaching this conclusion I re-read the report of Inspector Wakelin written after his own investigation of the issues and interviews of Police staff (including seven who did not give evidence in the Authority investigation). The background documents available to him were also available to the Authority. In reviewing his report, along with all the evidence available to the Authority, I found no reason to differ in any significant way from its analysis and findings.

[49] The reasons for my conclusion are as follows.

*The collective agreement and flexi-time*

[50] Constable Davis alleged he was subject to “*continual harassment*” over how he believed the on-call ‘rural response’ provisions of the CEA should operate. He says this included “*ambush meetings*” and secret monitoring of his hours and work.

[51] I find no actions of his Police supervisors and managers that fit the description of harassment. It was not unreasonable for Senior Sergeant Harris to seek an explanation from Constable Davis about how he was recording and working his hours, even if (as it arguably was) based on a misconception of how the relatively new provisions should operate. It was Constable Davis who continued to press the issue at subsequent meetings with supervisors.

[52] This determination need not provide a definitive or detailed interpretation of how the rural response provisions of the CEA should operate. In part to do so would be to compound the problem that Constable Davis had – which was to read the provisions as a narrow set of rules. Rather, as is clear from reading the wording of the clauses and from the evidence of other witnesses (including Mr Annan who was involved in the CEA negotiations), the provisions are intended to allow staff in each such station, in consultation with their Police supervisors and managers, to work out

how best to ensure cover is maintained within parameters guarding against extended periods of excessive demands on their personal time. This is not a ‘one-size-fits-all’ approach. Instead members in those stations (and possibly also between stations within an area) are meant to make arrangements that work best for them in meeting their responsibilities. Significantly this is clearly meant to be a collaborative process but Constable Davis believed he could individually determine when and how compensatory hours could be taken. And it was this that then led to tension with other staff, including Constable Robinson and Senior Sergeant Harris.

[53] Once the problem was evident, supervisors reasonably sought to ‘keep an eye’ on how Constable Davis operated his working hours during periods on which he was rostered to provide rural response. This was not an unjustified action by his employer.

[54] There were no “*ambush*” meetings on the topic – rather as apparent from Senior Sergeant Ryan’s evidence – it was Constable Davis who repeatedly brought the matter up, even when not germane to a particular discussion.

[55] At no stage did Police take the view that Constable Davis had acted wrongly in his approach to operation of the rural response provisions. What has been highlighted was the impact of his “*very strict interpretation*” as described in Inspector Wakelin’s report:

*An example of this is that Constable Davis may work his Sat[urday] on call, and then take Sunday off or part thereof. This is a day in which he is supposed to be ‘on call’ and covering operational needs. It is not acceptable to just take the ‘on call’ day off (or part thereof) and expect Kaitaia staff to cover, unless he had supervisor approval. Staff I have interviewed state that all that does is build the jobs up for them when they start their shift.*

#### *Investigating the concerns of Constable Davis*

[56] Constable Davis has criticised each level of the Police response to his complaints and allegations as being inadequate and failing to consider the evidence carefully.

[57] I find Senior Sergeant Ryan responded promptly and thoroughly to Constable Davis’ allegations against Constable Robinson, interviewing relevant people and

coming to a reasonable conclusion that there was no factual foundation for further inquiries. Inspector Scahill's decision to do nothing further, in the absence of further information, was fairly based on that conclusion.

[58] Senior Sergeant Ryan also went to reasonable efforts to address the resulting tense relationship between Constables Davis and Robinson. When Constable Davis considered this was inadequate the matter was referred to the Police human resources advisors – Ms Pascoe and Ms Craig – who undertook extensive steps to address both the immediate concerns of Constable Davis and the dysfunctional working relationship which had resulted. The meetings and endeavours they organised were, I find, what a reasonable and fair employer would have done in all the circumstances at the time.

[59] In the face of Constable Davis' further criticism and scepticism, the full review of local Police actions then undertaken by Inspector Wakelin was also fairly done. It was thorough and sufficiently independent of district management.

[60] I do not accept Constable Davis' submission that the report was flawed because of "*management selection*" in who was interviewed. Constable Smith, who had also worked with Constable Robinson and was critical of him, was interviewed. Constable Davis has identified three other people whom he says Inspector Wakelin should have spoken to – Mrs Davis, a Kerikeri woman whom I have already referred to, and Mr Mills of the Police Association. Interviews with those three people, in my view, would not have altered the essential content or outcome of Inspector Wakelin's report. The first two I also considered unnecessary for the Authority investigation and Mr Mills' view, as expressed in an affidavit to the Authority, is consistent with the analysis and conclusions of Inspector Wakelin.

[61] I find that, at each level of supervision or management, the Police personnel involved in considering Constable Davis' complaints were fair and thorough. He was provided with adequate information and given the opportunity to comment on it.

*Was Constable Davis harassed by Constable Robinson?*

[62] Constable Davis accuses Police management of ignoring and minimising his

complaints of being threatened, bullied and harassed by Constable Robinson. It is not a view I consider the evidence supports. It is flawed at two levels – firstly, whether Constable Robinson’s behaviour constituted threats or harassment of the type alleged by Constable Davis and secondly, whether the complaints were taken seriously and examined.

[63] There were two one-on-one conversations between the two officers (21 August and 3 September 2009) where Constable Davis says Constable Robinson used threatening language. They allegedly included phrases such as: “*you better be careful*”, “*I’ll be watching you closely*”, “*you’d better make sure you are squeaky clean*” and “*I don’t trust you. You’re naïve and selfish. You’ve got lots to learn*”.

[64] I do not accept those words amount to threatening behaviour or harassment, properly viewed in the context of Constable Davis’ accusation that Constable Robinson had used excessive force against people in custody. They were, even if expressed angrily, words which were an understandable reaction. An acceptable explanation for them was put this way in a statement by Constable Robinson to Inspector Wakelin:

*I wasn’t saying it in a threatening way. I basically was saying if you are going to throw stones (or in this case false accusations) that the flip side of that is that his actions could come under the spotlight as much as anyone else’s.*

*When I said I was going to be paying him close attention I was meaning the flexi time issue.*

*I wasn’t attempting to intimidate him but it was a reaction to what was completely false accusations, a slight on my character and the manner in which he brought it up.*

[65] Constable Davis had no evidence of any excessive force being used. There were no complaints from those people in custody. After making such provocative allegations with so little foundation, it is quite unsurprising Constable Robinson told Constable Davis he longer trusted him.

[66] There were a series of minor events during this period which Constable Davis also catalogued as amounting to harassment by Constable Robinson. These included locking a drawer with keys in it, locking the OC office door, locking the exhibits store, leaving papers for him on the seat of his Police vehicle, and sitting through part of a local court hearing which Constable Davis was attending on a Police matter.

[67] I am satisfied Senior Sergeant Ryan, Ms Pascoe, Ms Craig and Inspector Wakelin carefully checked the various instances of alleged harassment and found a satisfactory explanation for Constable Robinson's actions.

[68] The door of the OC office, in which confidential Police documents were kept, was left locked so other constables did not use it as an interview room. The exhibits store was locked as part of an improvement to procedures which Constable Robinson had been directed to undertake. He had left some work papers in Constable Davis vehicle as a matter of convenience and to avoid awkwardness. Constable Robinson was present at court because he also had to attend on a Police matter that day.

[69] These are just some of the examples from Constable Davis' detailed analysis of his interactions with Constable Robinson and circumstances at work. I find, whether taken individually or looked at as a whole, they do not amount to instances or a pattern of conduct amounting to harassment or bullying as alleged.

[70] Neither is it correct to say Police management ignored and minimised Constable Davis' complaints. As already discussed, the extensive inquiries and meetings arranged by Senior Sergeant Ryan, Inspector Scahill, Ms Pascoe, Ms Craig and Inspector Wakelin are testimony to that.

*Was transferring Constable Davis to another station a fair decision?*

[71] Constable Davis considers it unfair that he and not Constable Robinson was moved to another station as a result of the deterioration of their working relationship.

[72] However I find the decision was what a fair and reasonable employer would have done in those circumstances. The Police had obligations to treat both officers fairly in a situation where it had not only Constable Davis' complaint, but also by January 2010 had to consider a formal complaint from Constable Robinson about harassment by Constable Davis.

[73] Inspector Scahill began consideration of the options by treating each officer as equally culpable for the situation. Two distinguishing factors were considered –

Constable Robinson was the officer in charge at the station and lived with his family in the Police house at Mangonui. Given that the question was approached on equal culpability basis, those were reasonable factors on which to make the decision.

[74] In doing so Inspector Scahill also arranged for a number of options as to stations and roles to which Constable Davis could move and he was consulted on those options. Constable Davis chose the Kaeo station.

[75] Constable Davis' concerns about use of a Police vehicle for travel to Kaeo, while taking several weeks to work through, were satisfactorily addressed.

[76] Accordingly while Constable Davis may have been disadvantaged by having a further distance to travel for work each day, I cannot say that outcome was unjustified in all the circumstances.

[77] I note too that throughout these events Police management had ensured that both officers had additional support through access to a Police welfare officer. On the recommendation of Inspector Wakelin, a proposal was also made that each meet with a psychologist to discuss whether they could work together and what assistance the Police could provide to enable that to happen. Constable Davis rejected that proposal as a form of entrapment. Constable Robinson had agreed to participate.

[78] By the time of the Authority investigation, the Police had reached the conclusion that there was no prospect of successfully restoring a working relationship between the two officers. Instead the Police have developed options for Constable Davis' long term placement elsewhere in the District. It is an approach that, I find, is justified in the circumstances.

[79] For the reasons given I find Constable Davis does not have a personal grievance. His application is dismissed.

### **Costs**

[80] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are unable to do so, the Police may lodge and serve a

memorandum on costs within 28 days of the date of this determination. Constable Davis would then have 14 days to lodge a memorandum in reply before the Authority determines costs. No application will be considered outside this timetable without prior leave.

Robin Arthur  
Member of the Employment Relations Authority