

**NOTE: This determination  
contains an order prohibiting  
publication of certain  
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 9  
3344120

BETWEEN FZT  
Applicant  
  
AND BHN  
Respondent

Member of Authority: Claire English  
  
Representatives: Warick Reid, advocate for the Applicant  
Jen Jermy, counsel for the Respondent  
  
Investigation Meeting: 16 September 2025 in Tauranga  
  
Submissions received: 1 and 20 October 2025 from Applicant  
15 October 2025 from Respondent  
  
Determination: 7 January 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant FZT, was employed by the respondent BHN as legal executive. In August 2023, the directors of BHN, TJQ and GCK became concerned that FZT had been working on their own conveyancing matters and sending out binding correspondence without the authority of the directors, that they had sent emails to another firm under the name of another staff member, and that they had breached confidentiality by discussing client files.

[2] The directors of BHN wrote formally to FZT setting out their concerns and inviting FZT to a disciplinary meeting. FZT became very distressed and took paid special leave. FZT then sought support from an advocate, Mr Reid, who wrote to BHN on their behalf. Written statements from the directors were provided setting out the concerns in more detail.

[3] At the end of September 2023, FZT's medical certificate expired. BHN invited FZT to return to work and attempted to set a date for the disciplinary meeting. FZT then resigned by way of email, stating that they felt unable to continue working and the outcome of the disciplinary process was "prejudged".

[4] FZT now raises claims of unjustified constructive dismissal, and/or unjustified disadvantage arising from the conduct of the disciplinary process.

[5] BHN says there was no unjustified action by it, and that it was entitled to raise its concerns with FZT including in a disciplinary process. BHN states that FZT resigned before the parties were even able to meet to discuss matters.

### **The Authority's investigation**

[6] For the Authority's investigation written witness statements were lodged from FZT; their medical practitioner; and their mother. For the respondent, witness statements were lodged by TJQ and GCK. All witnesses answered questions under oath or affirmation from me and the parties' representatives, with the exception of FZT's mother whose evidence was taken as read. The representatives also gave closing submissions.

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

### **Non-publication orders**

[8] BHN has made an application for a non-publication order. This is made on the basis of likely reputational damage in the profession, that it has obligations of confidentiality to its clients, that details of named individuals' mental and physical health should not be in the public domain, and in relation to various inaccurate and what

I will call disparaging comments apparently made by FZT's partner about several named individuals.

[9] In all the circumstances, I consider that non-publication orders should be made. Personal details relating to various individuals' health or legal affairs should not be in the public domain and nor are they necessary for a proper understanding of the employment problems between the parties. In addition, I consider that this also applies to the applicant, and that non-publication orders should be extended to them on the same basis and because identification of them would tend to identify other individuals.

[10] Accordingly, this determination has been written so as to refer to various individuals by randomly-generated 3-letter acronyms.

### **The issues**

[11] The issues requiring investigation and determination were:

- (a) Was FZT unjustifiably constructively dismissed by the raising of disciplinary allegations against them and the way that process occurred?
- (b) In the alternative, did they suffer an unjustified disadvantage?
- (c) If BHN's actions were not justified (in respect of disadvantage and/or dismissal), what remedies should be awarded, considering:
  - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
  - Compensation under s123(1)(c)(i) of the Act?
- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by FZT that contributed to the situation giving rise to their grievance?
- (e) Should either party contribute to the costs of representation of the other party?

### **Background**

[12] FZT first worked for BHN starting in 2020 as an assistant to TJQ. By all accounts, the employment relationship was a positive one, with FZT being a valued employee who enjoyed positive relationships with TJQ and GCK. This extended to socialisation with them and others in the firm, and FZT's partner would on occasion attend these social events.

[13] FZT separated from their partner, and in 2023, the firm acted for FZT in the Family Court, obtaining a protection order in FZT's favour against their former partner, among other orders. The former partner breached the protection order, and I am advised has twice been convicted of this.

[14] FZT owned a residential property, which was put up for sale, as FZT needed to sell this property before being able to buy a new home.

[15] On 6 July 2023, FZT entered into an agreement to purchase a new property, conditional upon FZT also entering into an unconditional sale agreement for the sale of the existing property. Settlement date for this new property was 22 September 2023.

[16] FZT originally made arrangements with a law firm for the conveyancing. On 4 August 2023, FZT spoke with GCK, and it was agreed that BHN would act for FZT on the sale of the original property and the purchase of the new property. GCK is clear that FZT was at that point authorised to open and set up two conveyancing files, one for the sale and one for the purchase, with FZT as the client.

[17] GCK says that FZT was given instructions to set up the two files, and expected that FZT would then come back in due course with physical files, correspondence and documents uplifted from the other firm, and key dates could be discussed and entered into the system.

[18] It is clear from FZT's in-person evidence and responses to questions from me, that this task was only partly completed. It appears that FZT set up a client number (or at least file numbers) for themselves, but FZT acknowledges that neither physical file was ever created, relevant correspondence was never printed and placed on the files, and FZT never sought an uplift of existing documents from the previous firm or clearly told them that BHN was now acting, although FZT did stop giving instructions to the previous firm.

[19] On 4 and 7 August 2023, FZT spoke with another staff member of the firm, and asked them to send an email to the firm acting regarding the purchase of the new property, and seeking to change settlement dates. There were also difficulties with obtaining finance, and FZT corresponded with their mortgage broker from their work account.

[20] GCK and TJQ take the position that neither of them had approved the emails sent by FZT, or by the other staff member at FZT's request and on one occasion, by FZT themselves using the email signature of the other staff member instead of their own. FZT takes the position that they did this as they thought it might look strange to send emails on their own transactions.

[21] On 4 August 2023, TJQ was about to have a scheduled operation. GCK met with FZT and other staff, and directed them to take steps on how to manage files in TJQ's absence. GCK directed that staff were to reduce email traffic to TJQ while they were on sick leave. FZT says that they were told not to talk to TJQ and this was one of the reasons they discussed sending emails on the conveyancing matter with the other staff member rather than GCK or TJQ.

[22] GCK then contracted Covid-19 and was working from home. On 21 August 2023, GCK was contacted by FZT's mortgage broker, advising that finance had not been approved, one day before the contract was due to become unconditional. In the end, it was agreed between GCK, TJQ and FZT, that they would revert back to the previous firm used for conveyancing, as all documents remained with this firm and no uplift request had ever been made. GCK instructed FZT not to send out any more correspondence on their own conveyancing matters.

[23] GCK then called the responsible lawyer at that firm to discuss matters. While GCK was on the phone to that lawyer, FZT emailed that lawyer using the name of the other staff member. GCK had not approved the sending of that email, or the use of the other staff member's details.

[24] On 22 August 2023, TJQ wrote formally to FZT inviting them to a disciplinary meeting. TJQ, on behalf of BHN, raised concerns that FZT had worked on their own property transactions without authority using the firm's name, that FZT had sent emails from the firm using another employee's name; and that FZT had breached client confidentiality by discussing three named clients of the firm with others outside the firm.

[25] The allegation as to breach of confidentiality stemmed from comments that were made to both TJQ and GCK from the clients themselves and another staff member of the firm. It is reasonably clear that FZT's former partner had been making disparaging comments about persons connected with the firm and FZT. Although further details

were provided at the investigation meeting, I decline to reproduce the allegations such as they were, as I take the view that any such comments as were in fact made were inaccurate and designed by FZT's former partner to cause controversy and distress. The important point from the perspective of FZT's employment is that TJQ and GCK were concerned that there was a sufficient level of detail contained in public comments to suggest that FZT had disclosed personal and legal details of three clients of the firm to their former partner. FZT denies this and takes the perspective that any such detail as existed was of a sufficiently general level that their former partner could have known such things by virtue of their previous social dealings with the persons concerned.

[26] Upon receiving this disciplinary letter, FZT was stressed and distressed. FZT provided a medical certificate to BHN certifying they were unable to attend work, which was accepted by BHN. FZT was placed on paid special leave. TJQ emailed FZT advising they were "welcome to take sick leave" until they were well, and the investigation would be "put on hold until you are well enough".

[27] On 7 September 2023, Mr Reid wrote to BHN on behalf of FZT. He provided substantial detail in response to the 22 August letter, and asked for more information. TJQ inquired as to whether this was a formal response to the concerns, with a decision to be made without a meeting. Mr Reid replied that this was not intended as a comprehensive response, particulars were required, and at least two formal meetings were anticipated prior to any decision being made.

[28] On 14 September 2023, BHN wrote to Mr Reid again. The allegation as to breach of confidentiality was formally withdrawn, and written statements from TJQ, GCK, and the other staff member whose email signature was used were provided as requested.

[29] FZT remained on sick leave. On 20 September 2023, when FZT's medical certificate expired, BHN wrote to FZT about returning to work and seeking to re-schedule the disciplinary meeting for 25 September.

[30] On 25 September 2023, FZT emailed TJQ, stating that it was with deep regret that they had made a decision to resign. FZT stated they felt unable to continue working for BHN, they believed that allegations of misconduct had only been made because there was potential liability to BHN, and the outcome of the disciplinary process was "prejudged".

### **The parties' submissions**

[31] FZT, in submissions filed on their behalf after the investigation meeting, makes the following submissions:

- a. That BHN had reached a firm conclusion that FZT had breached client confidentiality by disclosing client information to their former partner, and that this was a breach of good faith and/or an unjustified disadvantage because it made FZT's employment less secure. This is described as "unarguable" and as "fundamental failures".
- b. That the concerns raised around the conveyancing files were commenced with an ulterior motive, namely to "distance" the firm from potential adverse financial consequences relating to its involvement with the purchase of FZT's new property. In support of this submission, FZT relies on a statement from GCK that the firm's professional indemnity insurance would potentially need to be called on "as FZT was acting outside the scope of their role and without direction from a managing partner"<sup>1</sup>.
- c. A reminder to FZT not to send out emails without a partner's prior approval would have been an appropriate response instead of a disciplinary process.

[32] BHN's position is that the concerns it had about FZT acting on their own conveyancing files without proper partner authorisation and what appeared to be a breach of client confidentiality were sufficiently serious that it was entitled to commence a disciplinary process.

[33] It states that no breach of duty occurred by it commencing a disciplinary process about concerns that were serious on their face, and seeking to meet with FZT to discuss the concerns. However, no discussion ever occurred as FZT declined to meet, went on

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<sup>1</sup> Noting of course that FZT denies wrongdoing, and takes a different view.

sick leave and then resigned. As a result, BHN say that there was no unjustified action by BHN, and no disadvantage or loss to FZT occurred.

[34] BHN points out that it was responsive, and after consideration and receipt of FZT's initial response, the allegation as to breach of client confidentiality was withdrawn, on the basis that this had been discussed between FZT and TJQ and informally resolved.

[35] BHN further points out that it supported FZT in practical ways, including by providing paid special leave when requested, and by continuing BHN's support for FZT in the on-going legal matters with their former partner, and in relation to the breaches of the protection order. TJQ and GCK continued to support FZT including by giving evidence in a criminal proceeding for breach of the protection order even after FZT had left BHN's employment and had raised a personal grievance claim.

### **Analysis**

[36] I must now consider whether the commencing of disciplinary action in all the circumstances was a sufficient breach of duty that it amounts to a constructive dismissal by the employer.

[37] In order for FZT to succeed in their claim of constructive dismissal, there must be both a breach of duty by the employer BHN, and the breach must be of sufficient seriousness to make FZT's resignation reasonably foreseeable<sup>2</sup>. Not every breach will amount to a constructive dismissal.

[38] FZT's claim can be summarised as being that BHN should never have raised disciplinary concerns with FZT at all, or that the disciplinary concerns should have been fully withdrawn after receiving FZT's initial written response on 7 September.

[39] I have considered the two issues that were initially of concern to BHN. The first was a concern about client confidentiality. This concern was withdrawn and was not further raised once FZT provided their initial response on 7 September. The withdrawal of this concern in full was communicated formally and in writing. I therefore do not accept that the initial raising of this concern "unarguably" made FZT's employment

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<sup>2</sup> See for example [Weston v Advkit Para Legal Services Ltd \[2010\] NZEmpC 140, \(2011\) 8 NZELR 604](#).

less secure as is submitted, thus amounting to a breach of good faith and/or a disadvantage.

[40] There is no evidence that BHN continued to pursue this concern after it considered FZT's response and advised that it was being withdrawn.

[41] However, I find that on its face, the concern was a serious one, being a concern that FZT had shared deeply personal and/or sensitive details of certain clients' legal affairs with a third person, who then publicised that information. On its face, this is a potentially serious concern, of the type that (if upheld) could have amounted to some form of misconduct, and there was sufficient information available that would warrant it being raised with FZT formally. However, in the end, the concern was withdrawn once more information was provided and BHN had had the opportunity to consider the matter – this is in my view precisely what FZT suggests should have occurred. The claim that the raising of the matter and subsequent withdrawal of it at FZT's own request, cannot then be the foundation for an unjustified disadvantage grievance, or a breach of good faith, as BHN's response was communicative and constructive.

[42] The second concern was (in short summary) that FZT had been undertaking work on their own conveyancing matter/s without proper partner authority, and on a related note, that FZT had sent emails on this conveyancing matter to another firm using the name of another staff member. Again, this was a legitimate matter for the directors to be concerned about, and (if upheld) could have amounted to a type of misconduct or even poor performance.

[43] There was a considerable difference of opinion between the parties that became very apparent at the investigation meeting, with FZT explaining that they did not consider the emails sent from their own email address at BHN and from the email address of another staff member to amount to working on their own conveyancing matter. It was also apparent that FZT did not consider when or how GCK should have been involved, or seek GCK's advice or authorisation before sending these emails. FZT could not explain why they did not create hard copy files for their two conveyancing matters, or why they did not uplift the documents from the previous firm, apart from a general comment that this was not usually something they had to do.

[44] While FZT may have believed that the emails they were sending were low-level and did not require authorisation from a partner of the firm, the facts suggest that FZT

was issuing legally binding correspondence in the name of the firm without partner authorisation, and did not appreciate the seriousness of what they were doing. This on its face is a serious concern, especially as FZT was also using the name and details of another staff member to do so, also without partner knowledge or authorisation.

[45] While FZT may have had meaningful responses and explanations for what occurred (which of course were never fully discussed with BHN as FZT chose to resign rather than attend a disciplinary meeting), this does not detract from the fact that on its face, these matters were potentially serious and were of the nature that could potentially have disciplinary consequences, as well as significant adverse financial consequences for FZT themselves. FZT disputes that this could have been so, but I find that this stems, at best, from a fundamental misunderstanding about the importance and legal consequences of the correspondence they were sending.

[46] I consider that BHN was entitled to raise its concerns with FZT about these matters and in a disciplinary context.

[47] In considering whether BHN's actions in commencing a disciplinary process in these circumstances amounted to a breach of duty sufficient to justify the ending of the employment relationship, I find that they were not. BHN had sufficient reason to commence disciplinary action in all the circumstances, as the matters were sufficiently serious to support this, and adequate information was to hand. Doing so did not amount to a breach of duty. It follows that I do not find that FZT's resignation amounted to an (unjustified) constructive dismissal, as no breach of duty occurred that would have made FZT's resignation reasonably foreseeable.

[48] I have also considered whether BHN's actions amounted to an unjustified disadvantage, in the alternative.

[49] For there to be an unjustified disadvantage, there must first be an unjustified action on the part of the employer, and that action must have resulted in one or more of the conditions of FZT's employment being affected to FZT's disadvantage.

[50] As will be apparent from the above, I find that BHN was justified in raising its concerns in a disciplinary manner but FZT chose to resign before this process could be concluded. Indeed, a disciplinary meeting never took place. No unjustified

disadvantage therefore occurred. In addition, it is not clear to me what terms or conditions of employment FZT says were affected to their disadvantage.

[51] I have also considered the submission on FZT's behalf that BHN was only raising disciplinary concerns with FZT about the conveyancing matters in order to "distance" BHN from adverse financial consequences.

[52] I am not persuaded by this submission. First, as I have set out above, it underestimates the seriousness of FZT's actions and does not fully appreciate the potential impact their correspondence could have had. Second, this submission is made in reliance on an early statement by GCK, that that BHN's professional indemnity insurance would potentially need to be called on.

[53] I was advised at the hearing that this had not in fact eventuated, and that in the end, the conveyancing had been completed shortly before FZT's resignation. A reference to professional indemnity insurance does not create the "ulterior motive" suggested, however it does suggest that GCK was trying to convey to FZT the potential serious consequences of what FZT saw as mere correspondence. Accordingly, I find this submission is not made out on the facts.

[54] Finally I consider the submission that BHN should have acted differently such that a reminder to FZT not to send out emails without a partner's prior approval would have been an appropriate response instead of a disciplinary process. Insofar as this is a different way of saying that the disciplinary process itself could not have been properly commenced, I have already set out my findings on this above that BHN was entitled to take the steps it did take. Insofar as this relates to the eventual outcome of the disciplinary process itself, this submission is in part speculative because the disciplinary process was never concluded, although the initial concern as to breach of confidentiality was withdrawn in full.

[55] The concern as to acting without proper authorisation on conveyancing matters remained unresolved as FZT resigned at an early stage in the process. FZT cannot have resigned on the basis that the consequences of the disciplinary process were inappropriately harsh, or had been pre-judged, as FZT's resignation occurred before any resolution occurred. Insofar as I need to make a further finding on this point, this claim is also not made out.

[56] In conclusion, FZT's personal grievance claim of constructive dismissal, or in the alternative, unjustified disadvantage, arising from the commencement of a disciplinary process is not made out. Accordingly, no orders are made.

### **Costs**

[57] Costs are reserved, and I note that the investigation meeting took place over one full day. The parties are encouraged to resolve any issue of costs between themselves.

[58] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the applicant will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[59] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>3</sup>

Claire English  
Member of the Employment Relations Authority

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<sup>3</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)