

BETWEEN                      TE HAU  
   Applicant

A N D                              NGATI HINE HEALTH TRUST  
   Respondent

Member of Authority:      Eleanor Robinson

Representatives:            Applicant in Person  
   Bryce Quarrie, Counsel for the Respondent

Investigation Meeting:     25 and 26 August 2015 at Whangarei

Submissions Received:    26 August 2015 from the Applicant and  
   from the Respondent

Date of Determination:    21 September 2015

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DETERMINATION OF THE AUTHORITY

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**Employment relationship problem**

[1]     The Applicant, Te Hau, claims that he was unjustifiably dismissed by the Respondent, Ngati Hine Health Trust (the Trust) on 16 December 2013.

[2]     The Trust is a charitable trust and has offices in Kawakawa and Whangarei. It has been in existence for over 20 years and is the largest Maori health provider in the Te Tai Tokerau. The services provided include GP services, primary nursing, disability support, mental health/addiction programmes and health promotion and education/training. The Trust employs in excess of 350 people.

[3]     The Trust denies that Te Hau was unjustifiably dismissed and claims that his dismissal was justified on the basis that it had serious concerns about a number of aspects of his performance and conduct. The concerns were raised with Te Hau and discussed with him. Following a meeting on 16 December 2013, Te Hau was dismissed.

**Issues**

[4]     The issue for determination is whether or not Te Hau was unjustifiably dismissed by the Trust.

## **Background facts**

[5] Te Hau applied for and was offered a position as a 0.6 FTE clinician, AOD/ Mental Health Services with the Trust. The offer letter dated 26 January 2013 signed by Ms Queenie Mahanga, General Manager, stressed that Te Hau was entitled to discuss the offer and seek advice on the attached proposed agreement with his family, a union official, a lawyer or someone else he could trust.

[6] The individual employment agreement (the Employment Agreement) stated that Te Hau was employed as a part time 0.6 FTE clinician, on a salary of \$33,000 per year (pro rata \$55,000 per annum), and that his working hours would be 24 per week.

[7] The primary purpose of the 0.6 FTE clinician role as described in the job description was to support the Service Manager/Kaiarahi, Tupuna Wairoa AOD and mental health services. The job description stated comprehensive clinical treatment assessments and therapeutic interventions for whanau with mental health and/or addiction issues were essential features of the role. Key accountabilities of the role included:

- (a) To undertake and complete comprehensive client assessments, including appropriate treatment plans that maximise client and whanau wellness;
- (b) To provide high quality clinical care;
- (c) To monitor, evaluate and review client progress as required; and
- (d) To provide integrate services coordination.

The principal duties and responsibilities also included:

- (e) To ensure all administrative reports and records were completed regularly and within specified timeframes in order to meet all organisational and DHB requirements;
- ...
- (f) To ensure that all client records, treatment regimes, outcome results and progress reports are readily accessible for analysis;
- (g) To ensure that all reports required by the funders are prepared for perusal by the Service Manager – Kaiarahi Tapuna Wairoa before they were transmitted to the DHB;

- (k) To perform other duties as directed by the Service Manager – Kaiarahi Tapuna Wairoa.

[8] On 25 March 2013, Te Hau wrote to Ms Mahanga stating that he had been asked by his direct manager, Ms Segina Te Ahuahu, to run a combined men's and women's' group on Monday afternoons and a men's only group on Tuesday mornings. In the letter, Te Hau stated:

*However, I think that I could serve Ngati Hine Health Trust in a far better capacity using clinical hypnotherapy.*

[9] He further proposed spending two days with the men and two days with the women stating this would amount to four days per week:

*In addition I would like to run a staff clinic one or two days per month and spend one day per month with Tommy (to stop smoking).*

[10] On 15 April 2013, Te Hau wrote to Ms Maxine Shortland, Chief Operations Officer of the Trust, stating that he was grateful for the 0.6 FTE position and saying:

*However, due to my financial position, I must now seek additional employment. I simply don't earn enough money to cover my debts. With this in mind, I wish to offer my services as a clinical hypnotherapist to Ngati Hine Health Services.*

[11] Ms Shortland responded to this letter on 19 April 2013 advising Te Hau that there were no vacancies for a clinical hypnotherapist.

#### *1 May 2013 meeting*

[12] Ms Te Ahuahu said that in a relatively short time after the commencement of Te Hau's employment, she had started to have concern about his performance. As a result, she met with Te Hau on 1 May 2013 to discuss her concerns. Present at the meeting was Ms Jacqui Hessell, Senior Clinician in the mental and health addiction services of the Trust.

[13] Following the meeting, Ms Te Ahuahu wrote to Te Hau itemising the issues discussed during the meeting namely:

- (a) Completion of a work plan;
- (b) Completion of the programme descriptor and weekly overview for Te Hau's relaxation programme;
- (c) Completion of the ABC smoking cessation training modules;
- (d) Completion of his portfolio; and

(e) Updating and maintaining the client files at Te Hurihanga.

[14] In the letter, Ms Te Ahuahu stated that she:

- required Te Hau to review and highlight in the Trust induction checklist the areas in which he considered he still required support and guidance, to be completed and returned by 8 May 2013;
- would provide Te Hau with a detailed schedule allocating his time while he was at work, the schedule being attached to the letter;
- required Te Hau to provide her with an update of the tasks he had achieved on a daily basis by email at the end of each working day.

[15] The letter concluded with the expectation that they would meet in four weeks' time to discuss Te Hau's progress in dealing with the concerns raised.

[16] Ms Te Ahuahu provided the agreed detailed schedule to Te Hau, and said that he had initially provided her with an update of his daily tasks but had ceased to do so after an initial period.

#### *Letter to Ombudsman*

[17] On 26 July 2013, Te Hau wrote to the Ombudsman raising his concern that Ms Te Ahuahu was bringing her infant son into the workplace, specifically the male residential drug and alcohol programme. He noted that he had brought the concerns to Ms Te Ahuahu's attention and her response had been that she had special permission from the CEO to have her infant son present in the workplace.

[18] Te Hau stated in the letter that he felt there was an abuse of power occurring and that at the very least he thought that ACC should be informed.

[19] On 12 September 2013, the Ombudsman responded to Te Hau pointing out that the Trust was a charitable trust and not listed in the Ombudsman Act and therefore he did not have authority to investigate a complaint made against it.

[20] On 29 July 2013, Te Hau applied for a vacancy as a full time clinician in the Kaupapa Maori Mental Health and Addiction Services.

*Meeting 5 August 2013*

[21] Ms Te Ahuahu said that she had ongoing concerns about Te Hau's performance during the period from June to August 2013, in particular the completion of necessary paperwork and she and Ms Hessel met with Te Hau on 5 August 2013. The issues raised at that meeting were:

- (a) Completion of service documentation/case management notes, monthly reports, house reports etc;
- (b) Completion of data entry relevant for his case work;
- (c) Updating and maintaining the client files at Te Hurihanga;
- (d) Triage responsibilities;
- (e) Group facilitation tasks.

[22] In the letter confirming the outcome of the meeting dated 8 August 2013, Ms Te Ahuahu pointed out that she had already introduced a variety of strategies including:

- (a) To appoint support work staff at Te Hurihanga to 'keywork' one of the residential clients each;
- (b) To have Te Hau's fellow clinician to take a lead in Terms of triage duties for the residential service; and
- (c) To have Te Hau facilitate one group session one day per month.

[23] In the letter Ms Te Ahuahu said:

*At this time, I want you to direct your attention back to our earlier meeting of 1 May 2013. As part of that process you were given a daily schedule allocating your time for the 3 days you are at work. I think it would be useful for you to review and update the schedule (as part of the plan) so we are clear about how you will structure your time.*

[24] Ms Te Ahuahu also instructed Te Hau that he was to cease all one-on-one counselling work with the tane. He was requested to submit a proposal of an intention to meet weekly with support staff to review the preparation of case management notes. This was to be submitted to Ms Te Ahuahu by 12 August 2013.

[25] Ms Te Ahuahu concluded the letter saying that she would like to meet in two weeks' time to discuss Te Hau's progress in dealing with the concerns.

*Letter to the CEO of NDHB 11 August 2013*

[26] Te Hau wrote to the Chief Executive Officer (CEO) of the Northland District Health Board on 11 August 2013. In the letter, he stated his concern that the manager of the service, Ms Te Ahuahu, was abusing her powers. He noted that she was bringing her infant son into the workplace and noted that whilst he had brought the matter to the attention of the Ombudsman he had been advised that the Trust was not a government-administered body. He said that the Office of the Ombudsman had advised him to contact the Northland District Health Board.

[27] On 11 August 2013, Te Hau also wrote to Ms Te Ahuahu thanking her for the letter of 8 August 2013 and referred to her continued covert hostility and negative transference towards himself. He pointed out that if the harassment continued he would be taking legal action.

[28] Ms Te Ahuahu said she referred the letter to Ms Mahanga and responded to Te Hau on 14 August 2013 advising him that the matter had been referred to the Executive Management Team. In her letter of response, Ms Te Ahuahu stated that Te Hau's allegations of covert hostility and transference were unsubstantiated; she commented that his wording was personal in nature and could be considered a personal attack. She concluded that she continued to have concerns about his performance and conduct at work.

[29] Ms Mahanga responded to Te Hau's letter on 13 August 2013. Ms Mahanga stated she had discussed the contents of his letter with Ms Te Ahuahu who had informed her that the work plan which had been requested in the letter dated 8 August 2013 had not yet been submitted.

[30] Ms Mahanga said that Ms Te Ahuahu's infant son was present in the workplace for a short period of time following her (Ms Te Ahuahu's) return to work after maternity leave, and that she had no issue as regards safety.

[31] Te Hau responded to Ms Mahanga on 17 August 2013 stating that he was taking legal advice in relation to his allegations of workplace harassment. He said that in her letter of 8 August 2013 Ms Te Ahuahu had requested a proposal for time management, not a work plan and that a work plan had been submitted some months earlier.

[32] He referred to Ms Te Ahuahu's poor management skills and set out in some details his complaints about Ms Te Ahuahu. Included in the complaints was that Ms Te Ahuahu had

cancelled the hypnotherapy/psychotherapy group programme he had organised, on the basis that she had received complaints about the programme: “*However, no Ngatihine complaints process was followed.*”

[33] Te Hau concluded that:

*It is my professional opinion that Segina is deliberately sabotaging my efforts within the workplace, dissatisfied and angry/hurt ego state which she is harbouring.*

*Letter from Ms Shortland 21 August 2013*

[34] On 21 August 2013, Ms Shortland wrote to Te Hau requesting that he attend a meeting on 26 August 2013 and pointing out that he was encouraged to bring a support person or people to the meeting. Ms Shortland referred to the letter which had been sent to Ms Mahanga on 17 August 2013 and stated that she did not believe he had been subjected to workplace harassment.

[35] In the letter Ms Shortland outlined serious concerns about the performance issues which had been reported to her and which she wished to discuss with Te Hau at the meeting on 26 August 2013. These concerns were:

- (a) Case notes of Tangata had not been kept up to date;
- (b) He did not report to work on 24 April 2013 or contact his manager as required to do if he was to be absent from work for any reason;
- (c) Reports and paperwork consistently not being completed;
- (d) Timekeeping, i.e. leaving work early without permission on occasions;
- (e) He complete the required work plan daily schedule as requested.

[36] The letter concluded:

*I ask that you consider carefully your approach to your relationship with Segina and show her the respect she is due as your manager. Complying with her lawful requests is part of your role. Any failure to do this may result in disciplinary action.*

*Meeting held on 26 August 2013*

[37] The meeting held on 26 August 2013 was attended by Ms Shortland, Ms Mahanga, Te Hau and two whanau members and minutes were taken by Ms Lianne Tamou.

[38] During the meeting, Te Hau stated that the manner in which Ms Te Ahuahu had structured his time was inadequate and that he had noticed that she was hostile towards him. He confirmed that she had highlighted to him that paperwork was a priority. The minutes of the meeting noted the agreement with Te Hau that he would:

- (a) Review and rewrite a work plan as per the template which had been given to him and this would be discussed by Ms Mahanga and/or Ms Te Ahuahu;
- (b) As part of the work plan he would include reports of paperwork, case notes and daily schedules to discuss with managers;
- (c) He would inform either Ms Mahanga, Ms Te Ahuahu or Ms Hessel when he would be absent and would keep them informed of his whereabouts during working hours.

[39] Action agreed on other issues included Ms Shortland following up Te Hau's payment for the detox programme, staff lateness which impacted on Te Hau having to stay late or work extra time, Te Hau acknowledging that he had not done the paperwork, and finally the issue of Ms Te Ahuahu's infant son being present in the workplace.

[40] Te Hau wrote to Ms Shortland on 23 September 2013 outlining complaints including:

- (a) Inappropriate behaviour of Ms Te Ahuahu towards him;
- (b) Concerns over an infant son being present at a Wednesday clinical meeting which had been referred to the DAPAANZ secretariat;
- (c) The cancellation of the hypnotherapy/psychotherapy groups due to complaints allegedly received by Ms Te Ahuahu, and which had not been addressed according to the Trust complaints procedure manual;
- (d) No written acknowledgment of his application for full time employment;
- (e) On the Monday, 16 September 2013 the day of the review meeting Ms Te Ahuahu's proposed work plan required him to be present however he had been engaged in attending to residents' needs;
- (f) The proposed work plan requiring him to be available for two hours on Wednesday afternoons to attend triage referrals from Ngawha Correctional Services increased his paperwork;

- (g) No resolution in the matter of Ms Te Ahuahu allegedly humiliating him in front of other staff; and
- (h) He was being paid for additional hours of work, however, this was not continuing.

[41] Ms Shortland wrote to Ms Mahanga on 9 October outlining the complaints raised by Te Hau and outlining her responses. Ms Mahanga responded on 9 October 2013. In that letter she pointed out that Ms Te Ahuahu was Te Hau's manager and in that role she had given him directions and made requests of him which had been completely within the scope of her role. She pointed out that:

- (a) She did not believe that there had been any inappropriate behaviour by Ms Te Ahuahu;
- (b) She confirmed that if Ms Te Ahuahu's infant son was present at a clinical meeting it would not happen again;
- (c) Te Hau's application for a full time role was to be reviewed after his progress in coping with the new work plan over a period of three weeks had been monitored. If the recommendation on that basis was that the application was unsuccessful and that she would write to Te Hau to that effect;
- (d) Te Hau's work plan required him to be present in the Kawakawa office on Mondays from 10.30am to 2.30pm, however, he was not doing so and had remained at the residential home and engaged in attending to client needs without consulting Ms Te Ahuahu;
- (e) Ms Te Ahuahu had raised a concern over Te Hau's time management skills; and
- (f) His complaints were being investigated

[42] Ms Mahanga also responded to the remaining concerns about Te Hau's interaction with Ms Te Ahuahu and additional hours being paid to him.

[43] On 16 October 2013, Ms Shortland wrote to Te Hau requesting a meeting to be held on 29 October 2013 to which Te Hau was encouraged to bring a support person or people to the meeting.

[44] In the letter, Ms Shortland responded to the concerns raised by Te Hau in some detail and said she hoped that they had addressed his concerns regarding his complaint and asked

that he consider carefully his approach to his relationship with Ms Te Ahuahu and show her the respect due to her as his manager. Ms Shortland stated:

*Complying with her reasonable requests is part of your role. Any failure to do this may result in disciplinary action.*

*Meeting held on 30 October 2013*

[45] The meeting held on 30 October 2013 was attended by Ms Mahanga and Ms Marianeno Kapa on behalf of the Trust. Ms Shortland was unable to attend.

[46] Ms Shortland said that following the meeting on 30 October 2013, issues continued to be reported to her. Accordingly she sent Te Hau a further letter dated 5 December 2013 setting out the concerns she continued to have and requesting a further meeting. Matters of concern which were set out in full detail in the letter included:

- (a) Non-completion of requested paperwork;
- (b) Client files being incomplete;
- (c) Client files being left sitting in a washing basket rather than in a locked file or medication cabinet when Te Hau left for the day;
- (d) Te Hau smoking in front of clients in breach of the non-smoking policy in NHHT.

[47] In the letter, Ms Shortland stated that serious matters of concern were Te Hau having difficulty accepting decisions of management. Ms Shortland stated:

*After you have made some complaints about Segina and various other matters, management investigated and responded to your complaints. It seems that you did not accept those responses and made outside complaints to the NDHB and to Drug & Alcohol Practitioners' Association Aotearoa New Zealand (DAPAANZ). Your refusal to accept management decisions on these matters shows a serious problem in your attitude to management and therefore your relationship with management.*

[48] Ms Shortland continued:

*Your complaint to the NDHB is a major concern to me. NDHB is the primary organisation with whom NHHT has contractual relationships providing significant income to NHHT. The very existence of NHHT depends on those contracts and sustaining a good relationship with NDHB.*

*Your action in approaching the NDHB was inappropriate for an employee of NHHT and had (and has) the potential to damage the relationship between NHHT and NDHB.*

[49] A further serious concern was the complaint made by Te Hau to the DAPAANZ about Ms Te Ahuahu. Ms Shortland noted that it had had a very seriously damaging effect on Ms Te Ahuahu's ability to work with him.

[50] Ms Shortland pointed out that if he believed that the Trust had in any way breached his employment agreement, his appropriate course of action would have been through the problem-solving process set out in the employment agreement.

[51] Ms Shortland concluded that all the issues had had a serious impact on the relationship between Te Hau and the Trust and that the required trust and confidence had been seriously eroded by these issues to the extent that she was concerned that the relationship may have broken down to the extent that it was irretrievable.

[52] The letter concluded with an invitation for Te Hau to attend a meeting on 9 December 2013 to which he was welcome to bring a support person. Ms Shortland pointed out that she would be supported at the meeting by a legal adviser, Mr Quarrie.

*Meeting held on 16 December 2013*

[53] During the meeting on 16 December 2013, Te Hau was represented by a legal representative, Mr David Bryce, and was provided with a full opportunity to provide explanations in response to the concerns raised with him.

[54] Ms Shortland said she considered Te Hau's responses to the concerns very carefully and took into account all of his comments, responses and statements. She considered whether or not his responses indicated a willingness on his part to make changes to performance and outcome.

[55] Ms Shortland considered that Te Hau's attitude to the Trust was relevant and that he had not accepted its investigation into the complaints he had raised. As a result, he had proceeded and potentially damaged the Trust's relationship with one of its primary contracting parties, the Northland District Health Board

[56] Ms Shortland said she had no confidence that Te Hau understood the inappropriate nature of his actions and the possible damage that such conduct could create for the Trust. Ms Shortland said she was concerned at Te Hau's reluctance to take directions and follow instructions.

[57] Ms Shortland concluded that her preliminary decision was that his employment should be terminated, following which the meeting was adjourned for Ms Shortland to consider Te Hau's responses to the preliminary decision.

[58] Further consideration was given but her conclusion was that Te Hau's employment should not continue.

[59] Ms Shortland said she had given consideration to whether or not some outcome other than dismissal such as a warning or continued monitoring and supervision would be appropriate, but her conclusion was that Te Hau had already been given significant training, direction, resources and that he had been given clear expectations. All these were reasonable expectations but he did not fulfil them.

[60] In conclusion, Ms Shortland decided there was no other option but to terminate Te Hau's employment.

[61] Ms Shortland set out the reasons for the dismissal in a letter to Te Hau dated 14 January 2014. The letter stated:

*The reason for your dismissal was that I lost confidence in your ability or willingness to complete the work that the Trust required you to complete as part of the 0.6 clinician role that you held.*

*In coming to this decision I considered the support that you had been given through the time that you had been employed by the Trust, the discussions in the meetings that you had had with Segina and the attempts to put together work plans and that you had been offered good opportunities to have input to these. ....*

*I was concerned that you had raised issues with the Northland District Health Board (NDHB) relating to children in the workplace. Management of Ngati Hine Health Trust (NHHT) had considered the issues that you raised in the first instance and made a decision in relation to the issues as it was entitled to do. It seems that this was an outcome that you were not willing to accept and you decided to take the action you did without further reference or discussion with us.*

...

*The NDHB is one of the main contracting parties to NHHT and this had the strong potential to cause embarrassment to Ngati Hine Health Trust. ...*

*All of these matters resulted in my loss of trust and confidence in you and for that reason your employment was terminated.*

[62] On 12 March 2014 Te Hau raised a personal grievance. The parties attended mediation but this did not resolve the issues between the parties.

### **Determination**

[63] Te Hau was dismissed on 16 December 2013. The test of justification in s103A Employment Relations Act 2000 (the Act) states:

#### ***S103A Test of Justification***

- i. For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*
- ii. The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

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

[65] In accordance with s 103A (3) of the Act the Authority must also consider whether:

- (a) ... the employer sufficiently investigated the allegations against the employee ...*
- (b) ... the employer raised the concerns that the employer had with the employee ...*
- (c) ...the employer gave the employee a reasonable opportunity to respond to the employer's concerns ...*
- (d) ... the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee ...*

[66] Completion of the patient documentation was a significant part of the role to which Te Hau had been appointed as set out in the job description. Te Hau acknowledged during the Investigation Meeting that the requisite paperwork was very important as it constituted a measuring tool by which the Trust funders could establish whether or not the Trust was achieving the goals to which it had committed.

[67] From the commencement of his employment there had been issues with Te Hau's failure to complete the requisite patient documentation. The issue had been addressed by the Trust in the meetings held on 1 May, 8 August and 21 August 2013.

[68] Te Hau had been offered assistance by Ms Te Ahuahu in the structuring of his working day in order that he could address the paperwork issue on 1 May 2013, and support had been offered subsequently, however he had consistently not completed the required documentation despite his recognition of the importance of this task.

[69] His concern about Ms Te Ahuahu bringing her infant son into the workplace had been addressed by the management team; however he had not accepted the management decision, and had instead taken it upon himself to contact outside organisations, including the main contracting body to the Trust, the NDHB.

[70] Employers and employees are under a duty pursuant to s 4 of the Act to act in good faith to each other, in particular they are required pursuant to s 4(1A)(b) to be: "*responsive and communicative*".

[71] Te Hau had not considered the implications for the Trust as regards funding prior to contacting the external parties, nor did he inform the Trust of his intended actions. I do not consider this to have been acting in good faith.

[72] Given that Te Hau had not been carrying out a key component of his job, namely completion of patient paperwork, despite the assistance and support offered by the Trust; and also as a result of his non-acceptance of a management decision which resulted in his contacting external organisations with the potential to discredit the Trust and impact on its funding, I find that Ms Shortland had substantive justification for having lost trust and confidence in Te Hau's ability to perform the duties of a 0.6 clinician.

[73] I find that this had been a conclusion that a fair and reasonable employer could have reached in all the circumstances at the relevant time.

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

[75] I find that Ms Shortland had carried out a fair process in respect of the concerns about Te Hau's performance, in particular she had carried out a full investigation and she had given full consideration to those explanations provided by Te Hau before reaching a decision.

[76] Having taken full consideration of all the information and explanations provided, Ms Shortland reached the decision that the Trust could no longer have the requisite trust and confidence in Te Hau to perform the role for which he was employed.

[77] I find Ms Shortland's conclusion to have been one that might have been applied by a fair and reasonable employer in the circumstances.

[78] I find that Te Hau was not unjustifiably dismissed by the Trust.

### **Breach of good faith**

[79] The duty of good faith binds both employers and employees. The Trust was required in accordance with the duty of good faith to be responsive and communicative to Te Hau.

[80] Ms Te Ahuahu advised Te Hau that the hypnotherapy/psychotherapy sessions he had organised had been cancelled due to complaints; however she had not discussed the nature of these complaints with him.

[81] It is clear from the letters he wrote to Ms Mahanga on 17 August 2013 and subsequently to Ms Shortland on 23 September 2013, that Te Hau was concerned about the complaints and the lack of any explanation as to their nature; however his concerns in this respect were never addressed.

[82] Ms Shortland explained at the Investigation Meeting that the complaints issue had not proceeded due to the Trust have received no formal complaint which was a requirement under its complaint procedure before it could take action on the matter.

[83] However the issue having been raised with Te Hau and cited as the reason for the cancellation of the hypnotherapy/psychotherapy sessions which had given him understandable and expressed concern, I find that the fair and reasonable employer would have responded in good faith by providing some form of explanation to him. Instead neither Ms Mahanga nor Ms Shortland provided any response at all to his concerns at any stage.

[84] I find that the failure of the Trust to respond to Te Hau on this issue breached the good faith duty it owed him to be responsive and communicative pursuant to s 4(1A)(b) of the Act

## **Costs**

[85] Costs are reserved. The parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination with any reply submissions by the Applicant to be lodged within 14 days of receipt. I will not consider any application outside that timeframe.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**