

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Puti Hauraki (Applicant)
AND Te Awa o Te Ora Trust (Respondent)
REPRESENTATIVES Jeff Goldstein, Counsel for Applicant
Ian Thompson, Advocate for Respondent
MEMBER OF AUTHORITY Helen Doyle
INVESTIGATION MEETING 7 June 2005
8 June 2005
9 June 2005
DATE OF DETERMINATION 14 September 2005

DETERMINATION OF THE AUTHORITY

The background to the employment relationship problems

[1] The applicant, Puti Hauraki, was employed by the respondent as a manager from 14 January 2002 until she was dismissed on 1 December 2004.

[2] Ms Hauraki was party to an individual employment agreement with the respondent and was responsible for the performance of her duties to the Board of Trustees through the chairperson. At the material time the chairperson of the Board was Matiu Te Huki.

[3] The respondent, Te Awa O Te Ora Trust (“the Trust”) supports people with mental health illnesses within a kaupapa Maori environment. The main source of funding for the Trust is through the Ministry of Health and contracts with the Canterbury District Health Board for provision of services.

[4] Ms Hauraki came to the attention of the Board in September 2004 following issues that arose during a trip to Brisbane undertaken by Ms Hauraki and the Trust administrator, Jillian Greig accompanied by four clients of the Trust. The Board heard some rumours about the Brisbane trip. Concerns were raised with the Board about Ms Hauraki’s interactions with a consumer who was also employed by the Trust. There was also a concern that a client was deported from Brisbane airport and that there were some issues between Ms Hauraki and Ms Greig both during and following the Brisbane trip.

[5] The Board decided to meet with Ms Hauraki and talk about these issues with her. A meeting took place on 24 September 2004 at 1pm. The outcomes from the meeting were recorded in minute form as strategies that the Board put in place. The strategies included:

- Ms Hauraki putting together a contract for the person who replaced her whilst she was away at the Brisbane conference.
- Ms Hauraki organising a team building session for all staff members within two months.
- Ms Hauraki attending supervision twice a month.
- Te Awa O Te Ora writing a letter to the necessary authorities re the treatment of the person who was deported.

[6] On 13 October 2004 the Board met again. Ms Hauraki did not attend the meeting but was asked to present a manager's report for the meeting which she did. Ms Hauraki waited outside the meeting room as she understood the Board required her to do if they had any questions of her. She had been waiting for some time before a Board member came out from the meeting and apologised for Ms Hauraki's wait. Ms Hauraki then went home. The Board had also received a complaint from the psychiatric consumers' advisory service about Ms Hauraki although this was not discussed with her.

[7] Ms Hauraki put into her report with respect to the strategy of writing a letter to the necessary authorities:

I spoke to the person who was refused entry into Australia and his treatment on return to NZ about writing a formal complaint, and he is welcome to have input into the writing, the whanau member wants to let it go and move on I respect this.

The manager's report was accepted by the Board during its meeting on 13 October and signed by the chairperson Mr Te Huki and Board member Gary McKay.

[8] The Board discussed on 13 October 2004 that Ms Hauraki had not followed through with the strategies agreed on 24 September 2004. The Board decided to undertake a further investigation. It was not until after 13 October 2004 that the minutes of the 24 September meeting were typed up and given to Ms Hauraki.

[9] On 15 October 2004 as a result of the Board's instructions Robert Thompson a partner in the company I.R. Thompson Limited wrote to Ms Hauraki. Mr Thompson asked Ms Hauraki to attend a meeting on 20 October 2004 to provide an explanation with respect to the following allegations:

- *The board has received reports that other members of staff are fearful of your behaviour. We are currently carrying out an investigation into these allegations. You will be advised at your meeting the outcome of this investigation.*
- *Sustained incompatibility.*
- *Failure to take the steps to ensure a safe and healthy work place for yourself and others.*
- *Aggressive management style.*

[10] On 18 October 2004 Ms Hauraki emailed Mr Te Huki and said that she had no idea what the letter from Mr Thompson was about. She said in her email that she needed to talk to Mr Te Huki or another Board member. Mr Te Huki responded the same day and encouraged her to take it seriously and said the investigation was in the hands of the lawyer.

[11] On 20 October 2004 Mr Goldstein advised Mr Thompson that he was representing Ms Hauraki. The meeting was arranged for 29 October 2004. Mr Goldstein requested and was supplied with statements from Ms Greig and Dean Rangihuna about their relationship with Ms Hauraki. Ms Hauraki's husband Pita Hauraki had spoken to Mr Rangihuna prior to the meeting and after that Mr Rangihuna was not prepared to be involved any further. I conclude that

Mr Rangihuna was placed in a very difficult position and that became quite evident during the investigation meeting.

[12] I was provided with two sets of handwritten notes from the meeting on 29 October 2004. The contents are not different in any material way. Mr Thompson attended the meeting with Mr Te Huki and Mr McKay. Ms Hauraki attended with her husband Pita Hauraki and Mr Goldstein.

[13] It was clarified that the meeting was an investigation into the concerns raised. Ms Hauraki talked to a timeline of events that she had prepared concerning her interactions with Ms Greig over the period 15 September to 18 October 2004. Mr Goldstein raised the lack of detail with respect to the allegations. It appears from the handwritten notes that the discussion largely focussed on the relationship between Ms Hauraki and the administrator of the Trust, Ms Greig. Ms Greig had told Mr Thompson that she was *concerned with [Ms Hauraki's] management style* and said *She is very inconsistent. Can't be challenged and If she is challenged, she will punish.* She also said – *feels Puti is out to get her and feels Puti is commencing a campaign to get her to resign and feels bullied by her and picked on.*

[14] Looking at the evidence as a whole it is clear that the meeting on 29 October 2004 was very important if there was a chance to successfully deal with the relationship difficulties that existed at that stage between Ms Hauraki and Ms Greig. Something had gone very wrong in that relationship and needed to be addressed. Unfortunately I do not think the meeting was structured enough to identify what that was. There was no discussion as to how Ms Greig and Ms Hauraki would deal with each other in the future particularly in the circumstances where Ms Greig had openly expressed her concerns. There was some discussion about the Boards strategy that Ms Hauraki attend supervision. Ms Hauraki did then attend supervision on 5 November 2004. Ms Hauraki also thought that the fact that she had not written to the authorities in Australia was also raised. There does not appear to have been a record of that.

[15] Mr Te Huki said that there were some attempts between 29 October and 5 November to interview other staff members to see if there were other complaints.

[16] On 4 November 2004 Ms Hauraki emailed Mr Te Huki with some issues. Mr Te Huki responded to Ms Hauraki and apologised for his lack of response but did not address the issues raised.

[17] On 5 November 2004 Mr Ian Thompson wrote to Ms Hauraki by way of Mr Goldstein with three allegations:

- That Ms Hauraki misled the disciplinary meeting with untrue information.
- That Ms Hauraki sought an address from employment records to have someone call on an employee at home and give instructions to that person for her benefit.
- Ms Hauraki had not followed the instruction not to talk to staff.

He sought to arrange a suitable meeting time to discuss these matters.

[18] On 15 November 2004 Mr Goldstein wrote to Mr Thompson and requested copies of the notes taken at the meeting of 29 October and details of the allegations in Mr Thompson's letter of 5 November. Mr Goldstein also indicated in his letter that Ms Hauraki was about to commence an investigation into allegations against Ms Greig.

[19] On 18 November Mr Thompson sent Mr Goldstein a without prejudice letter advising that Ms Hauraki would be placed on paid garden leave until 29 November 2004 on the basis that the situation had become untenable in the employment environment with disruptive action and issue of incompatibility.

[20] On 19 November 2004 Mr Goldstein requested details about the allegation of incompatibility and disruptive actions and also noted that he had not received a response to the request for information in his letter dated 15 November 2004. He expressed concern about the unilateral decision to place Ms Hauraki on garden leave and requested that Ms Hauraki be allowed to return to work.

[21] On 24 November 2004 mediation between the parties took place.

[22] Garden leave was extended to 5pm 30 November 2004 for discussions between the parties to take place.

[23] On 1 December 2004 Ms Hauraki was handed a letter of dismissal terminating her employment from 1 December with the Trust.

[24] On 25 January 2005 the Authority made an order that Ms Hauraki be reinstated on an interim basis pending determination of the substantive matter from 27 January 2005.

[25] Mediation took place prior to reinstatement and Ms Hauraki returned to work at the Trust on 1 February 2005. After approximately two hours Ms Hauraki resigned. She was paid two weeks salary in lieu of notice.

The Employment Relationship Problems

[26] Ms Hauraki has four employment relationship problems which arise from her employment with the respondent as a manager.

[27] The first problem Ms Hauraki says is that she was unjustifiably suspended by being placed on garden leave and removed from the workplace on 18 November 2004.

[28] The second problem Ms Hauraki says is that her summary dismissal by letter dated 1 December 2004 was unjustified.

[29] The third problem Ms Hauraki says is that the Trust breached clause 20.3 of her individual employment agreement with the respondent which provides:

20.3 Summary Dismissal: The provision of clause 19.2 shall not prevent the employer from dismissing the employee for serious misconduct without notice and without payment in lieu of notice. Before making any decision to dismiss the employee summarily, the employer will allow the employee reasonable opportunity to respond to the allegations of serious misconduct.

[30] The fourth problem concerns the order the Authority made on 25 January 2005 that Ms Hauraki be reinstated on an interim basis to her position with the Trust from 27 January 2005 (CA 7/05). Pending reinstatement it was agreed that the parties would attend mediation. In order to accommodate that Ms Hauraki was paid wages from 27 January but did not actually attend work until 1 February 2005. Ms Hauraki says that when she attended at work on 1 February 2004 she felt her job had been taken away from her in that she was not provided with her pre-dismissal duties and

that she was bullied and harassed. Ms Hauraki says that she had no option but to resign on 1 February 2005 and duly did so at approximately 10.35am.

[31] Ms Hauraki says that she was either unjustifiably constructively dismissed or there was a breach of the Authority's order.

[32] Ms Hauraki seeks by way of remedy the following:

- Lost wages from 1 December 2004 to 27 January 2005 and from 14 February 2005 to the date of investigation meeting.
- Compensation for unjustified suspension and dismissal on 1 December 2005 in the sum of \$35,000.00.
- Compensation for unjustified constructive dismissal or damages for breach of the Authority's order on 1 February 2005 in the sum of \$35,000.00.
- Damages for breach of contract in the sum of \$20,000.00.

[33] The Trust does not accept that Ms Hauraki was unjustifiably disadvantaged or dismissed or that it breached the terms and conditions of the individual employment agreement it had with Ms Hauraki. It does not accept that within the short time that Ms Hauraki was employed on 1 February 2005 following the order for interim reinstatement there was any reason for her to resign or that it breached the order of the Authority.

[34] The Board of Trustees has changed since Ms Hauraki was dismissed on 1 December 2004 and reinstated on an interim basis by order of the Authority dated 25 February 2005. Mr Te Huti and three of the Board members at that time, Gary McKay, Lydia Jacobs-Hoare and Whiu Carroll made the decision on 1 December 2004 to dismiss Ms Hauraki. I heard evidence from all four. The Board is made up of a mixture of people and there is a requirement that there be two representatives on the Board who have used the services of the Trust.

[35] The following matters require determination in this case.

- Was Ms Hauraki unjustifiably suspended on 18 September 2004?
- Was Ms Hauraki unjustifiably dismissed on 1 December 2004?
- Was there a breach of clause 20.3 of Ms Hauraki's individual employment agreement which should be separately remedied?
- Was there a breach of the Authority's order on 1 February 2005 by the Trust or was Ms Hauraki unjustifiably constructively dismissed on that date?
- If it is necessary to consider remedies, did Ms Hauraki's behaviour contribute to the situation that gave rise to the grievance in a way that would require a reduction in remedies.

Was Ms Hauraki unjustifiably suspended on 18 September 2004?

[36] My questioning of the Board members and in particular Mr McKay established that the most likely reason for Ms Hauraki being placed on garden leave was that she refused to provide the Trust cheque books to Ms Greig on 16 November 2004. Ms Greig had arranged with Mr McKay to work off site due to the relationship difficulties with Ms Hauraki but on the understanding that she would go back to do the accounts, wages and provide a financial report for the Board meeting which was on 17 November 2004.

[37] There is no dispute that Ms Hauraki was not prepared to release the cheque books to Ms Greig. She says that this was until there was Board clarification as to when Ms Greig would be back at work and/or clarification that Ms Greig would not take the cheque books off site. This

evidence is supported by the attempt by the Board to provide Ms Hauraki with a written schedule of the days and dates Ms Greig would require access to the office (see appendix 3 to Mr McKay's affidavit dated 17 November 2004). I am not satisfied that Ms Hauraki saw that memorandum possibly because when Mr McKay went to give it to Ms Hauraki she was not on the premises.

[38] The memorandum confirmed that Ms Greig required access to the office on a number of dates, the earliest being 18 November 2004. The Board then made a formal request of Ms Hauraki by letter on 17 November 2004 for her to provide Ms Greig with all necessary reports and full access to office equipment. Ms Hauraki's response I find to that document was to say that the request should go through her lawyer. That was overtaken by the subsequent placement of Ms Hauraki on garden leave.

[39] The Board felt that the Trust needed stability and the best way to achieve that was to place Ms Hauraki on paid garden leave. There was no contractual entitlement for the Trust to suspend Ms Hauraki so it is arguable that such a suspension was in breach of Ms Hauraki's employment agreement. Mr Goldstein placed more reliance in his submissions on the unfair process. Prior to Mr Thompson sending the letter on 18 November 2004 advising Mr Goldstein that the Trust was to place Ms Hauraki on paid leave there was no fair treatment accorded to Ms Hauraki in terms of her being able to be heard with respect to the allegation or allegations that formed the basis for suspension. The specific matter in terms of the cheque books was not in the letter from Mr Thompson, rather it was expressed in a general way as an issue of incompatibility and disruptive actions.

[40] I have considered the exchanges made between the Board and Ms Hauraki at that time. Most of the Board members at that time held other jobs elsewhere and had only limited time to deal with the issues at the Trust. The Board therefore needed to have a high level of trust and confidence in Ms Hauraki to deal appropriately with the day to day matters. Ms Hauraki's refusal to accept the letter from Mr McKay on 17 November inflamed what was already a difficult situation driving a wedge between her and the Board. There should though have been a meeting to put the Board's concerns to Ms Hauraki instead of simply placing her on garden leave. Ms Hauraki was not absolutely sure why she had been suspended and was unable to tell the Board in the circumstances that the Trust had a major promotion on Sunday 21 November 2004 to which she was going to transport a group suffering from mental illness.

[41] Ms Hauraki has a personal grievance that she was disadvantaged with respect to her suspension on 18 November 2004 which was unjustified. Ms Hauraki was paid during the period of suspension. I weigh up the obvious disadvantage and shock to Ms Hauraki of being suddenly removed from the workplace given her ongoing commitments with the appearance to the Board of non-cooperation by her as manager. I conclude that a fair and appropriate level of compensation for the suspension is \$2000.00 and I order accordingly.

Was Ms Hauraki unjustifiably dismissed?

[42] For the dismissal to be justified the Trust must have had grounds to summarily dismiss Ms Hauraki and in deciding to dismiss and carrying out the dismissal the employer should have acted in a fair and reasonable way. That justification must also be considered in light of the statutory test for justification set out in section 103A of the Employment Relations Act 2000 (as amended).

[43] I find that seven of the reasons for the dismissal were contained in the letter of 1 December 2004. The evidence supported that there may have been three other motivating factors behind the dismissal. These were the fact mediation had not been successful, that the Trust was unstable and

the complaint by the Psychiatric Advisory Consumers Board in October 2004 against Ms Hauraki. The first matter with respect to mediation could not provide a justification for a dismissal. The second and third matters were not put to Ms Hauraki and are not referred to in the letter of 1 December 2004. I am not satisfied that they could be seen as matters justifying dismissal. The matters relied on in the letter of 1 December as justification for the dismissal were not put to Ms Hauraki for her explanation before the letter was given to Ms Hauraki.

[44] The grounds in the letter of 1 December 2004 for dismissal were:

You have not presented us with a contract re Chelsea whilst Chelsea was in an acting management role while you were away in Australia.

[45] Ms Hauraki said that Chelsea had a contract for services and was paid by koha. For the four days she undertook Ms Hauraki's duties and tasks she was paid \$10.00 per hour. There was a job description on the computer system for Chelsea which set out the general tasks. It did seem that this would have satisfied the Board provided there was somewhere for Chelsea or someone else to sign in the form of a contract if they had known about this. I am not satisfied that this could in those circumstances be a ground justifying dismissal.

You did not provide your staff with positive team building strategies within the two month time frame.

[46] The two month time frame ran from 24 September 2004 so was not up by the time Ms Hauraki was placed on garden leave on 18 November. If the Board suspected as some of the members of the Board said to me that Ms Hauraki would never have provided positive team building strategies within the two month time frame then they should have met with her within that time frame and advised her of their concerns and the possible consequences of not following through. This was never done. There was no evidence to the effect that the outcomes on 24 September 2004 were presented along the lines that failure to comply could result in dismissal. This could not therefore have been a ground on which to justify a dismissal.

You have not been attending supervision twice per month until further notice, as required by the Board

[47] The Chairperson and the three Board members who made the decision to dismiss Ms Hauraki accepted that they were not aware that Ms Hauraki went to supervision on 5 November 2004 before dismissing her on 1 December 2004. After 5 November Ms Hauraki was on garden leave from 18 November 2004. There was concern amongst the Board members that Ms Hauraki had not in any event prior to 5 November attended supervision twice per month. Ms Hauraki said that she was very busy with other priorities. The Board could have told Ms Hauraki that supervision was a priority and warned her of the consequences of not attending supervision. This was not done. In all these circumstances I do not find that this could have been a ground on which to justify a dismissal.

You ignored instruction given by the Board to write to the Australian Immigration authorities regarding the inappropriate treatment of the tangata whaiora deported by the Australian Immigration Authority.

[48] Mr Te Huti said that it appeared he had accepted when he had signed off Ms Hauraki's report to the Board the comment by Ms Hauraki, *the whanau member wants to let it go and move on I respect this*. The report was to the effect that no letter would be written in light of this. The Board still wanted the letter written by Ms Hauraki but could not in light of the sign off of the report rely

on this to justify a dismissal without firstly bringing that requirement again to Ms Hauraki's attention. This could not have been a ground on which dismissal could be justified.

Failing to accept a formal request from the Board of Trustees asking you to provide the Administrator with access to all necessary records and office equipment to enable her to furnish a full monthly financial report.

[49] Ms Hauraki did not accept the letter dated 17 November 2004 from Ms Jacobs-Hoare and Mr McKay asking her to provide Ms Greig with all necessary records and full access to her office. Ms Hauraki was annoyed with the Board for permitting Ms Greig to work off site and felt there had been insufficient communication to her about that decision. I am of the view that she was being awkward by asking the Board to send the letter to her lawyer. I am not satisfied though, when properly analysed, that refusal to accept the letter could be seen as a failure to follow an instruction which it is well settled can amount to serious misconduct. The letter required provision of the records to Ms Greig to enable her to prepare a full financial report by 5.15pm that evening but it is not clear that Ms Greig was actually in a position, having been sent away by Ms Hauraki, to have completed the monthly report that day. Ms Greig did not return to work until after Ms Hauraki was suspended on 18 November 2004. The document that sets out when Ms Greig required access to the office specifies Thursday 18 November 2004 as the first day. To an extent the Board dealt with this matter by suspending Ms Hauraki and there is merit in Mr Goldstein's submission that Ms Hauraki had already been penalised for this matter. I am not satisfied that in the circumstances this could have been a ground justifying summary dismissal.

Due to the above decision you crossed your professional boundaries by providing the Like Minds Like Mine team with financial assistance from your personal monies.

[50] On 18 November 2004 Ms Hauraki paid some of the employees' wages from her own money to the amount of approximately \$1000.00. She did this because she said the employees were expecting to be paid and the cheques required two signatures and there were no co-signed cheques available. Ms Hauraki paid the wages at 10.30am and left the invoices in Ms Greig's tray. The Board arrived at 11.30am and Mr McKay asked Ms Hauraki if she needed any cheques signed. Ms Hauraki told Mr McKay he was too late and she used her own money and said that *if the whanau are not paid on time this can have a detrimental effect on their well being*. Mr Te Huki accepted that he had made a comment to the effect that *I like to be paid on time*.

[51] This action of payment of wages from Ms Hauraki's personal funds was seen by the Board as unprofessional and having a potentially detrimental effect. Mr McKay felt that there was an inadequate attempt by Ms Hauraki to contact him to co-sign the cheques and he said he could have been telephoned on his mobile. Ms Hauraki said that she had asked Mr McKay to leave signed cheques when he attempted to hand her the letter the previous day on 17 November 2004. Mr McKay did not accept that this request was made. Mr McKay appeared to me to be a very cooperative and sensible person. I accept his evidence that he was not asked by Ms Hauraki on 17 November to sign cheques and I am not of the view that the very brief exchange on the day went further than Ms Hauraki referring Mr McKay and Ms Jacobs-Hoare to her lawyer.

[52] Although it was perfectly open to the Trust to disapprove of payment in this manner and see it as unprofessional I am not satisfied that it was reasonably open to the Board to conclude that Ms Hauraki made the payment for any other reason than to make sure those employees were paid, even if such action was hasty. In light of the comment from Mr Te Huki at the time he discovered such payment had been made, it is not clear that the Trust would have dismissed Ms Hauraki on this basis alone. I am not satisfied that payment of wages by Ms Hauraki from her own personal money was misconduct of the type that justifies summary dismissal. I do note though that had Ms Hauraki

allowed Ms Grieg access to the cheque books on 16 November then she would not have had to make payment personally on 18 November.

You failed to advise your Lawyer of your intentions to ask a tangata whaiora to uplift property from Te Awa O Te Ora ...

[53] The Board members did not ask the consumer who uplifted the property whether he was asked to do so by Ms Hauraki. They had suspicions but the matter was not properly investigated. Ms Hauraki denied that she asked the consumer to uplift her property in evidence. I do not find the Trust could rely on the ground that Ms Hauraki had asked a tangata whaiora to uplift property from the Trust to justify dismissal.

[54] I do not find the grounds put forward by the Trust in the letter of 1 December 2004 can be relied on as misconduct on the part of Ms Hauraki justifying dismissal.

[55] For completeness, the procedure adopted by the Trust in deciding to and carrying out the process was unfair and did not meet the minimum requirement of a proper investigation, opportunity to be heard and a consideration of Ms Hauraki's explanation.

[56] Ms Hauraki has a personal grievance that she was unjustifiably dismissed on 1 December 2005.

Was there a breach of clause 20.3 of the employment agreement?

[57] Clause 20.3 provides:

The provision of clause 19.2 shall not prevent the employer from dismissing the employee for serious misconduct without notice and without payment in lieu of notice. Before making any decision to dismiss the employee summarily, the employer will allow the employee reasonable opportunity to respond to the allegations of serious misconduct.

[58] The Trust did not give Ms Hauraki an opportunity to respond to the allegations of serious misconduct before dismissing her by letter dated 1 December 2004. Not only is this a minimum requirement of procedural fairness but it was a requirement of clause 20.3 of Ms Hauraki's agreement.

[59] There will be no separate remedy awarded for this breach of Ms Hauraki's employment agreement in addition to any remedies awarded to her for her unjustified dismissal.

Was there a breach of the Authority's order on 1 February 2005 by the Trust or was Ms Hauraki unjustifiably constructively dismissed on 1 February 2005?

[60] The Authority in its determination dated 25 January 2005 made an interim order that Ms Hauraki be reinstated to the position of manager of the Trust from 27 January 2005. In order for mediation to take place Ms Hauraki was paid from 27 January 2005 but did not physically attend at work on 1 February 2005.

[61] No Board members were present when Ms Hauraki arrived at the Trust at 8.30am on 1 February 2005. Ms Hauraki was greeted warmly by some employees but not by Ms Greig. Ms Hauraki left the Trust premises and had an 8.45 am meeting with a manager of the Canterbury District Health Board, the main fund provider for the Trust. At that meeting Ms Hauraki expressed

her concerns about the cost to the Trust of defending the case she had taken against it for interim reinstatement with particular reference to the cost of the affidavits that the Trust had had to prepare. Ms Hauraki also talked about guiding the Board through governance and management issues and about the Board not functioning as she thought it perhaps should function.

[62] Ms Hauraki then returned to the Trust at about 9.30am. Mr McKay stood and gave a mihi to Ms Hauraki. Ms Jacobs-Hoare then advised Ms Hauraki that team leaders and coordinators would be put in place who would report to her. Ms Hauraki was also told that she would be required to attend supervision and to arrange a team building workshop. Ms Hauraki was also advised that if she wanted to talk to Ms Greig an appointment would have to be made so a Board member could attend. Ms Hauraki said that she felt her job had been rearranged and she was very isolated. She said that she felt stripped of all the responsibility of her management role. Mr Carroll and Mr McKay went to get some items that Ms Hauraki requested. When they returned to Ms Hauraki's office she said that she *was handing in her resignation and that the place would never heal*. Mr Carroll asked Ms Hauraki about notice and Ms Hauraki said that she would do her two week notice period from home. I accept Mr Carroll's evidence that Ms Hauraki said to Mr Carroll and Mr McKay words to the effect that *you are not to employ a manager for a whole year as you will need the money to pay me and my legal fees*. Mr Carroll said when I asked him how he recalled this statement that it *had stuck in his mind*. Ms Hauraki left the Trust at about 10.35am. I accept that the Board members were very surprised by her departure.

[63] Mr Goldstein submits that there was a breach of the court order in that there was a failure to provide Ms Hauraki with her pre dismissal duties. He relies in this respect clause 4.2 of the employment agreement which provides:

4.2 Any of the duties, reporting relationships, or other matters which are specified in the job description may from time to time be altered by the employer following consultation with the employee provided that any substantial change in such duties, reporting relationships or other matters shall require the agreement of the employee which shall not unreasonably be withheld.

[64] Ms Hauraki was unhappy that she was asked to undertake the strategies that were the outcomes of the 24 September 2004 meeting and the advice that there would be an additional reporting line of team leaders and co-ordinators who would report to her. The Board was entitled to raise their expectations with respect to the 24 September 2004 matters. I find that the focus of the duties due to the change in the reporting relationships was to change rather than the duties themselves. The Board wanted Ms Hauraki to be more strategic and less hands on. Mr Carroll said that the changes could have been re-evaluated following Ms Hauraki's reinstatement. I am satisfied that Ms Hauraki was still to be the manager of the Trust with overall responsibility for its running for the period of interim reinstatement in accordance with the order of the Authority.

[65] I am not satisfied that the arrangements between Ms Greig and Ms Hauraki were unreasonable. I accept the respondent's submission that reinstatement was going to have some difficulties and that the Board did try to put in place strategies for reinstatement to be able to take place as smoothly as possible.

[66] I was impressed by the Board members who gave evidence. They were gentle people with some positive words to say about Ms Hauraki. Ms Jacobs-Hoare obviously took a slightly firmer stand with Ms Hauraki on 1 February 2005 but I was not satisfied that it could be described as bullying. Although strongly opposed to Ms Hauraki being reinstated I am satisfied that the Board made some sensible arrangements to overcome their reservations on 1 February 2004 and accommodate her return back to work whilst maintaining their obligations to other workers.

[67] I am not satisfied after carefully considering the evidence that the Trust was in breach of the order of the Authority that Ms Hauraki be reinstated pending final determination of her employment relationship problem to the position of manager of the Trust. I am further not satisfied that Ms Hauraki was unjustifiably constructively dismissed on 1 February 2005. The Board members were very surprised that Ms Hauraki resigned. I do not find that there was an implied or express breach of Ms Hauraki's employment agreement which would entitle Ms Hauraki to resign in circumstances that would result in liability for the Trust.

[68] I also take into account Ms Hauraki's state of mind that day. She had gone to the Trust's main fund provider after reinstatement and raised issues which could potentially have had an effect on Trust funding. This did not seem in accordance with what the Authority recorded in its determination that Ms Hauraki had deposed in her affidavits. She deposed that she would cooperate with the Board and that *I will be loyal to the Trust and diligent on all matters relating to decision making and respectful of the kaupapa*. I also heard from Dr Martin Seers who Ms Hauraki went to see on 3 February 2005. His notes record amongst other matters for that day - *got reinstated at work, has sorted something & resigned now*. It was also recorded that Ms Hauraki had recently adopted a baby. Mr Thompson submits that this was a reason for the resignation but Ms Hauraki said that it would have had no effect on her reinstatement. In any event the adoption was not mentioned in the affidavits in support of the application for interim reinstatement.

Remedies

[69] Ms Hauraki is entitled to remedies for the dismissal that I have found was unjustified on 1 December 2005. I have already made an award for unjustified suspension.

[70] Ms Hauraki was reinstated as at 27 January 2005 pending final determination of this matter by the Authority. She resigned on 1 February 2005 after a period of approximately two hours of employment about half of which was off site. I have not found there to be either an unjustified constructive dismissal or a breach of the Authority's order on that date and there are no remedies arising from resignation on that day. I do not find that Ms Hauraki is entitled to any lost wages from that date.

Contribution

[71] I must consider the extent if any to which the actions of Ms Hauraki contributed to the situation that gave rise to the grievance and if the actions require then reduce the remedies. I do not accept Mr Thompson's submission given my findings that a proper procedure would have in all likelihood resulted in dismissal.

[72] Mr Thompson has submitted that two actions discovered post dismissal are sufficiently egregious that no remedy should be available at all. He refers to the action of Ms Hauraki being reinstated and talking to the main funder and the action of her husband Pita Hauraki approaching the deponent of an affidavit, Anaru Gray, who had provided an affidavit in opposition of the application for interim reinstatement

[73] In terms of the later matter Mr Hauraki approached Mr Gray and told him that Ms Hauraki could not believe that he wrote the words in his affidavit and that *Ms Hauraki was so disappointed that he could write such derogatory words she could have topped herself (metaphorically)*. Mr Hauraki said that he visited Mr Gray a second time and that Mr Gray admitted that one paragraph of his affidavit was not written by him. Mr Gray said at the investigation meeting that

the words in his affidavit said what he wanted to portray. Mr Hauraki denied putting pressure on Mr Gray to change his affidavit and Mr Gray did not change his affidavit.

[74] I am not satisfied that there is a sufficient causative link between these two actions and the events that gave rise to the dismissal so as to reduce the remedies.

[75] I do want to record in this determination that the actions described above are not in accordance with the good faith behaviour that the Authority expects during its investigation process from the parties.

[76] Mr Goldstein submits that there is no contribution by Ms Hauraki at all and that the remedies should not be reduced. I do find one matter where there was a blameworthy action on the part of Ms Hauraki. Ms Hauraki sent Ms Greig away on 16 November 2005 without good reason when she asked for the cheque books. I accept the evidence of Ms Greig about this matter together with the evidence of Mr Gray. Mr Gray said that he heard Ms Hauraki tell Ms Greig she should not be there and to leave the premises. He said that Ms Greig asked for the books in a calm manner. Ms Hauraki was the manager of the Trust. She should not have acted in this way and should have thought about what was in the best interest of the Trust. Ms Hauraki could have asked Ms Greig not to remove the cheque books from the site. Had Ms Greig been given the cheque books then Ms Hauraki would not have had to pay the employees out of her own funds which action was subsequently a source of concern for the Trust. A reduction of 10% I find is in order for this action.

Lost Wages

[77] Ms Hauraki is entitled to lost wages for a period for eight weeks from 1 December 2004 to 27 January 2005. Ms Hauraki's salary was approximately \$45,000.00 per annum and \$865.38 per week. Eight weeks at \$865.38 is \$6923.07 gross.

[78] Taking contribution into account I order Te Awa O Te Ora Trust to pay to Puti Hauraki the sum of \$6230.77 gross under section 123 (1) (b) of the Employment Relations Act 2000.

Payment by Ms Hauraki of \$1000.00 from personal funds.

[79] It is unclear if Ms Hauraki was reimbursed for this amount. Documentation produced during the investigation meeting suggested that she had been but if there are issues about this then leave is reserved for either party to come back to the Authority.

Compensation for humiliation, loss of dignity and injury to feelings

[80] I heard from Ms Hauraki and Dr Seers about the effect of the dismissal on Ms Hauraki. Ms Hauraki had worked very hard over the years for the Trust and was committed to the consumers at the Trust. She suffered depression and anxiety as a result of the dismissal and had difficulty sleeping. She was further humiliated by an investigation undertaken by the Trust after her reinstatement into her curriculum vitae which questioned her qualifications. Ms Hauraki established at the investigation meeting that she had achieved all the qualifications. The dismissal was poorly handled. Mr Goldstein was not provided with information he asked for during the process. Although the Trust had serious concerns about Ms Hauraki they did not comprise the reasons for dismissal in the letter of 1 December and Ms Hauraki had no opportunity to answer them. I have to take into account in making an award the financial situation of the Trust. The Trust relies on funding and whilst there are some investments there is also ongoing commitments and expenses. There is still a lot of bitterness and distrust between the parties in this case. That was very clear during the meeting. The interim order made by the Authority for reinstatement I find

would have gone some way toward reducing the hurt associated with the dismissal. One of the reasons for making that order as set out in the determination for interim reinstatement was the financial situation of the Trust. In all the circumstances I am of the view that an appropriate award would be \$10,000.00.

[81] Taking contribution into account I order Te Awa O Te Ora Trust to pay to Puti Hauraki the sum of \$9,000.00 without deduction under section 123 (1)(c)(i) of the Employment Relations Act 2000.

Costs

[82] I reserve the issue of costs. I would encourage the parties to talk to each other in this respect and attempt to reach agreement, failing which the applicant may make submission to the Authority within 20 days and the respondent has a further 14 days to respond.

Summary of findings and orders

- I have found that Ms Hauraki was unjustifiably suspended from her employment on 18 November 2004 and I have ordered the Trust pay to her the sum of \$2000.00 without deduction under section 123 (c) (i) of the Employment Relations Act 2000.
- I have found that Ms Hauraki was unjustifiably dismissed on 1 December 2005 and that she has a personal grievance.
- I have found that the Trust breached clause 20.3 of the employment agreement but have not given Ms Hauraki a separate remedy for that breach in addition to remedies for the unjustified dismissal.
- I have not found that the Trust breached the Authority's order for interim reinstatement or that Ms Hauraki was unjustifiably constructively dismissed on 1 February 2005.
- I have found that Ms Hauraki contributed to the situation that gave rise to the grievance and that her remedies should be reduced by 10%.
- I have ordered the Trust pay to Ms Hauraki lost wages in the sum of \$6230.77 gross.
- I have ordered the Trust pay to Ms Hauraki the sum of \$9000.00 compensation without deduction.
- I have reserved the issue of costs.

Final comment

[83] Mr Thompson pointed out during the investigation meeting and in his final submissions that Ms Hauraki had original documents belong to the Trust. Ms Hauraki did not accept that was the situation. Obviously if there are original documents in Ms Hauraki's possession belonging to the Trust then they must be returned to the Trust. This matter was not a problem before the Authority to be addressed and in those circumstances I do not make any formal orders.

Helen Doyle
Member of Employment Relations Authority