

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 263  
3308580 & 3313440

BETWEEN                      TINA HOUKAMAU  
   Applicant  
  
AND                                WASTE MANAGEMENT  
   LIMITED  
   Respondent

Member of Authority:        Davinnia Tan  
  
Representatives:                Simon Greening, counsel for the Applicant  
   Daniel Erickson and Fred Hills, counsel for the  
   Respondent  
  
Investigation Meeting:        11 March 2025 in Wellington  
  
Submissions received:        At the investigation meeting from the Applicant  
   17 March 2025 from the Respondent  
  
Determination:                 13 May 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Claims*

[1] Tina Houkamau was summarily dismissed by her employer, Waste Management Limited (WML), on 3 October 2023, alleging serious misconduct. Ms Houkamau disputes the dismissal and contends it was unjustified.

[2] WML is a recycling, materials recovery and waste management provider.

[3] The allegation is that Ms Houkamau had put an arrangement in place where a commercial customer was allowed to dump material at the site for free in exchange for alcohol supplied to her and other employees in her team. WML has counterclaimed that

Ms Houkamau breached her individual employment agreement and good faith obligations, which resulted in damages. WML also seeks penalties for these alleged breaches.

### *Background*

[4] Ms Houkamau had been employed by WML since 27 August 2009 and, from 27 June 2022, held the position of Team Leader at the Seaview Refuse Transfer Station (“the site”), where she was responsible for coordinating site operators and ensuring compliance with operational requirements in the presence or absence of the site supervisor. She reported to an operations manager, Paul Elliott, who in turn reported to the branch manager, Tracy Reuben. For reasons that will become relevant below, Ms Houkamau was the only Team Leader at the site.

[5] Her employment agreement described her role as team leader as follows:

The Team Leader -Transfer Station is responsible for coordinating Operators in the RTS [Refuse Transfer Station] operations ensuring all work is carried out in accordance with Company and client requirements with and in the absence of the Supervisor.

[6] The employment relationship problem arose from a series of incidents discovered following a complaint made on 7 August 2023 by Mr Elliott about a separate employee. The complaint concerned an employee under Ms Houkamau’s supervision who had been attending the site on Saturdays when not rostered. In response to Mr Elliott’s complaint, Ms Reuben reviewed WML’s CCTV footage.

[7] The footage revealed several apparent breaches of company policy:

- a. The employee in question was observed scavenging by removing scrap metal from waste and taking it off-site.
- b. The same employee allowed a van belonging to “Junk and Dump” (JND), a commercial customer using WML’s site, to unload without paying the required fees.
- c. Another employee was seen dumping personal waste and other employees vaping on site—both actions prohibited by WML.

[8] Further CCTV footage from 4 and 11 August 2023 revealed matters of significant concern to Ms Reuben which implicated Ms Houkamau. On both occasions, a JND van stopped in front of where Ms Houkamau’s car was parked, and a person was

seen transferring items from the van into or beside her vehicle. Footage from later in the day on 4 August 2023 showed a WML employee retrieving what appeared to be cartons of Corona beer<sup>1</sup> from Ms Houkamau's car and loading them into his vehicle, parked close to the CCTV camera. On 11 August 2023, a similar pattern occurred, including visible interaction between Ms Houkamau and the same employee as he again removed beer boxes from or near her vehicle and loaded them into his vehicle.

[9] These findings were escalated by Ms Reuben to the Wellington Regional Manager, Sarah Whiteman, who advised Ms Reuben to consult and seek advice from their Business Partner, Clare Arneson.

[10] Following advice, an investigation then commenced which included interviewing four other employees potentially involved. At the time of the investigation, Ms Houkamau was on leave in Australia.

*WML's investigation of four employees and Ms Houkamau*

[11] Ms Arneson drafted individual letters (dated 22 August 2023) on behalf of Ms Reuben to the four employees requesting each of them to a "preliminary investigation meeting" on 24 August 2023. These letters were all delivered by hand and set out WML's concerns that each of them "may have been involved in several incidents of concern, including failure to charge customers for dumping rubbish..." and included a description of "potential incidents" seen from CCTV footage with reference to dates, and what WML says it observed the employee in question doing.

[12] The letters stated that the CCTV footage would be made available for viewing at the meeting and asked that the employee come prepared with relevant information to help WML understand what happened, how and why. The letters also stated that it was important to understand that "a disciplinary process may follow at a later date, if warranted" and if it escalated into a "formal disciplinary process" then what was discussed at the meeting could be used for that process. The letter also reminded the employee of their right to seek legal advice or have a representative/support person attend the meeting with them, and included information about getting confidential support through WML's Employee Assistance Programme.

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<sup>1</sup> The distinctive trademarked logo was clearly visible on CCTV footage which was undisputed at the investigation meeting.

### *Statements by WML employees*

[13] Following all interviews with the four employees, they separately admitted guilt with regard to scavenging, vaping, and dumping personal waste without payment. With regard to the dumping of personal waste, two employees stated that Ms Houkamau had approved this.

[14] With regard to JND dumping waste without making payment, one employee, Mary<sup>2</sup>, who was also dating Ms Houkamau's son, stated during the interview that Ms Houkamau and another employee arranged an agreement with JND for the provision of alcohol in return for JND not having to pay levies at WML's site ("the arrangement"). Another employee interviewed also admitted that the arrangement was in place but would not reveal who was responsible for it. A third employee stated that he was aware of the arrangement and stated that when the alcohol was delivered on site, it was placed in Ms Houkamau's car.

### *Meeting with JND*

[15] On 29 August 2023, Ms Reuben and Ms Whiteman met with one of JND's directors Manuel (Manny) Pereira who confirmed that the arrangement had been in place since July 2022 and that the "team leader" at the site was responsible. Following the discussion, a separate process followed for the recovery of levies from JND which included Ms Reuben calculating that JND had failed to pay for 71 of its 74 visits to its site between 1 to 22 August 2023. Ms Reuben stated that she also ascertained the average weight of waste deposited by JND since July 2022 by basing it on its inwards and outwards product, taking into account other unauthorised dumping, and based on the August CCTV footage. Ms Reuben acknowledged it was not a clear-cut number but an average. She calculated an amount of \$111,091.54 (GST inclusive) as a result of the steps she took above. Ms Reuben considered that this amount was lower than WML's actual loss. In WML's attempt to recover its levies from JND, WML was only able to recover \$10,000.00 from JND following a statutory demand under section 289 of the Companies Act 1993. It is noteworthy that an affidavit by Mr Pereira's wife (and director of JND)<sup>3</sup> relied on for that purpose confirmed that WML's "team leader" was responsible for the arrangement that allowed JND to dump material for free in exchange of boxes of alcohol.

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<sup>2</sup> Mary was an unwilling witness who now resides in Australia.

<sup>3</sup> The affidavit was affirmed by the Deputy Registrar of the Porirua District Court on 8 December 2023.

*Concerns raised with Ms Houkamau*

[16] As a consequence of its investigation and meeting with Mr Pereira, WML had two primary concerns relating to Ms Houkamau; namely that she was a party to the arrangement and she knew or ought to have known about other employees' failure to comply with WML's policies relating to dumping of personal waste, scavenging, and vaping in the workplace.

[17] On 1 September 2023, Ms Reuben sent a letter to Ms Houkamau setting out her concerns and allegations. The letter was three pages long and included the following:

- a. That the meeting with Mr Pereira of 29 August 2023 confirmed that the unauthorised arrangement had been made in July 2022 and that Ms Houkamau was his point of contact;
- b. That Ms Reuben believed Ms Houkamau was on duty for 48 of 73 visits by JND and only 3 of which loads were charged for;
- c. CCTV footage showed boxes of alcohol being placed in her vehicle and another employee of WML removing alcohol from her vehicle, and that other WML staff confirmed that "payment" for not charging JND was seven boxes of alcohol per week. Stills of the footage were attached.
- d. A photo of alcohol found in the staff fridge in contradiction to WML's Drug & Alcohol Policy;
- e. That Ms Reuben believed Ms Houkamau was aware or ought to be aware of other employees scavenging and failing to follow various company policies. Ms Reuben included the accounts provided by the four employees as a result of WML's preliminary investigation.

[18] The letter stated that the information available indicated that Ms Houkamau was in breach of her employment obligations and requested that she attend an investigation disciplinary meeting. It also stated that the purpose of the meeting was to provide her an opportunity to respond to the following allegations before Ms Reuben decided if any further action was necessary. The letter advised who would be in attendance at the meeting, enclosed Ms Houkamau's IEA, position description, WML's corporate code of conduct, drug and alcohol policy, and CCTV footage stills.

[19] The letter alleged that Ms Houkamau had breached sections 3 and 23 of her IEA; and set out the following alleged breaches of WML's Corporate Code of Conduct:

- a. Section 8 - failure to take reasonable steps to prevent theft, damage, or misuse of company property;
- b. Section 4 – failing to make decisions that are in the best interests of WML and not for personal gain
- c. Section 5 – failure to ensure financial records are recorded in an accurate and timely fashion. Failure to abide by WML’s policy that “off the books” transactions must not be undertaken in any circumstances;

[20] The letter stated that another alleged breach was of section 5.2 of her IEA by failing to perform duties assigned to her in a diligent, honest, and conscientious manner, and breach of her position description by failing to comply with statutory obligations such as ensuring proper payment and administration of the government’s waste disposal levy (regulation contained in the Waste Minimisation Regulations 2009), failing to maintain a professional image of WML and failing to complete all paperwork and records accurately.

[21] The letter also stated that these breaches may be considered serious misconduct with reference to the examples listed in section 23 of Ms Houkamau’s IEA and stated:

It is important you understand that if I find you have breached your employment obligations, disciplinary action may result up to a maximum possible outcome of up to and including summary dismissal. However, I need to hear your side of these allegations before making any decision.

You are reminded of your right to seek advice including specialist legal advice and have a representative and/or support person attend the meeting with you. If you intend to have others attend with you, please advise me as soon as possible so that hosting arrangements can be made.

I appreciate this situation may be uncomfortable for you and look forward to resolving this matter as soon as possible. Free and confidential support through our Employee Assistance Programme remains accessible... on Ph 0800 ...

[22] Ms Houkamau emailed Ms Reuben on 4 September 2023 requesting to postpone the meeting so she could seek legal advice. By reply email Ms Reuben agreed to postpone the meeting until 8 September 2023 and proposed placing Ms Houkamau on paid suspension due to the nature of the concerns.

*Unsolicited communications from Mary to WML*

[23] On 6 September 2023, Ms Reuben received a text message from Mary<sup>4</sup> (no longer an employee of WML at that time) who stated she had further information to add to her statement given in her interview. Ms Reuben emailed Mary later that morning advising her she could add anything further via email. Mary then stated that she “lied about a lot of things because [she] was looking out for [herself] and was hiding a lot from [her] team about a lot too.” Ms Reuben replied asking for specificity and asked why Mary was reaching out now that she was no longer employed by WML. Mary replied stating that although she initially “blamed” Ms Houkamau for the arrangement, it was actually her (Mary) who “did the deals”, that Ms Houkamau did not know what was going on and that if there “were any consequences it should be to [her] because [she] was the one to blame”.

*Information held by WML provided to Ms Houkamau*

[24] Following contact by Ms Houkamau’s lawyers, WML provided Ms Houkamau’s lawyers with copies of CCTV footage, supporting evidence for the allegations (including statements, emails, text messages, and call logs from Mr Pereira and other WML employees).

*Ms Houkamau’s response to WML*

[25] On 20 September 2023, WML received Ms Houkamau’s written response to WML’s allegations via her lawyer in which she denied all allegations, specifically:

- a. That the documents and footage provided failed to establish the “validity of the allegations” and there was “no evidence of any ‘off the books’ transactions being made, but people walking to and from vehicles.”
- b. WML assumed the alcohol found in the staff fridge belonged to Ms Houkamau.
- c. WML failed to present evidence to suggest sections 8, 4, and 5 of the Code of Conduct had been breached.
- d. The footage did not show employees vaping. There was no evidence Ms Houkamau had knowledge of this, or scavenging or dumping personal waste without payment.

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<sup>4</sup> Mary was dating Ms Houkamau’s son at the time.

- e. WML failed to present evidence Ms Houkamau breached her position description.

[26] Ms Houkamau included a personal reply to the allegations and CCTV footage which included the following responses:

- a. That she was “never a point of contact” for JND, “never met or spoken to ... Manny Pereira” and knew of no arrangement.
- b. The CCTV footage showed her car reversing into the car park at 0727AM, but then at 1200PM, she does not see her car there at the time the van is parked in front of the blue ute, and that she has “no idea when contents were placed inside refrigerator.”
- c. That she was not aware of staff breaching the policies and that she has never been around when scavenging took place and had no knowledge of other staff vaping, and that she “[denies] all allegations, being a Team Leader does not mean you know everything that your staff get up to.”
- d. With regard to the video footage, she denies seeing anyone “physically putting anything inside” her car; she denies “evidence of anyone entering my vehicle” or knowledge of what was being deposited; she claimed that in the footage where the corona beer is visible, that she had questioned that employee about it who told her a “mate left them” for him to pick up and that as it was “nearing the end of day” that employee was taking the alcohol home without consuming it on the premises.

*Phone record of call from Ms Houkamau to JND*

[27] On 21 September 2023, WML obtained a phone record from its communications provider of Ms Houkamau’s work phone, setting out that on 22 August 2023 there was a “dialled number” from Ms Houkamau’s work phone from Australia, indicating that there was an outgoing call, made at 4:51PM to a New Zealand mobile number. The duration of that call was two minutes long. That number is identical to Mr Pereira’s mobile number and is undisputed evidence.<sup>5</sup>

[28] WML responded in writing on 22 September 2023 to Ms Houkamau’s letter, acknowledging her denial to all the allegations, but that it had been provided with phone

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<sup>5</sup> During questioning by WML’s counsel, Ms Houkamau acknowledged the number was identical to the number Ms Reuben exchanged communications on with Mr Pereira as part of WML’s investigations, which was also presented and sighted in the documentary evidence.

records from Ms Houkamau's work phone which indicated she spoke to Mr Pereira on 22 August 2023. WML stated that the date and time of the call corresponded with the date the other four employees were provided letters requesting a preliminary investigation meeting. WML stated that the phone record eroded the credibility of Ms Houkamau's responses and requested a "final opportunity to address the enclosed phone record" by 25 September 2023, "after which time [it] will be making a preliminary decision on the outcome with all information available.."

[29] Ms Houkamau responded to WML on 22 September 2023 and her position of the alleged outgoing call was that she "received a call from a lady asking me if Mary was ok... I would bet that the woman was probably Manny's wife. This was an incoming call and not me calling out. I was in Australia and had no idea what was going on back home..."

*WML's preliminary decision letter*

[30] On 28 September 2023, WML issued its preliminary decision letter proposing summary dismissal and invited Ms Houkamau to an "opportunity to provide..any further information..." by 29 September 2023. In its letter, WML included the following:

- a. That it weighed up Ms Houkamau's explanations against the facts and evidence available and believed it was more likely than not that Ms Houkamau engaged in the arrangement which was confirmed by Mr Pereira, Mary and another employee in which JND were allowed to dispose free of charge in exchange for alcohol delivered on a Friday and that WML believed this "scheme resulted in around \$100,000 of unpaid disposal fees."
- b. That WML believed she had breached sections 3 and 5.2 of her IEA;
- c. That Ms Houkamau breached sections 8 and 4 of the company policies (failure to take reasonable steps to prevent theft, and failure to make decisions in best interests of WML and not for personal gain);
- d. Her actions amounted to serious misconduct with reference to examples in section 23.10 of her IEA (acts considered by WML to be dishonest or unethical, breach of company policies and procedures, and dishonesty, theft or falsification of...evidence.)
- e. That the conclusion was formed after consideration of all the relevant evidence, including:

- i. The outcome of employee interviews that Ms Houkamau was responsible for the arrangement;
- ii. Mr Pereira's admission of the arrangement, his statement that the team leader was the main contact and liaison since July 2022, and the phone record which contradicted Ms Houkamau's earlier response that she had never spoken to him and did not know of him;
- iii. The CCTV footage;
- iv. Ms Houkamau's responses to the footage and WML's view that her responses were not genuine or truthful;
- v. That Ms Houkamau's responses about not being "present on site" when JND entered the site did not assure WML that she was not involved in the arrangement;
- vi. That WML considered Ms Houkamau attempted to "divert responsibility" for the arrangement to Mary by stating "Mary has admitted her lies and states she had made arrangements...that's on her not me", and that it found Ms Houkamau's explanation "unbelievable given the close family relationship you have with Mary, so much so that you arrive and leave work together in the same car."
- vii. That there was "a lack of evidence put forth" to WML by Ms Houkamau despite her assertions that she was not involved in the arrangement (other than Mary's emails attempting to recant her initial statement to WML).

[31] On 29 September 2023, Ms Houkamau's legal representatives advised WML it was putting WML on notice that Ms Houkamau would raise a personal grievance for unjustified dismissal if it proceeded to terminate her employment.

*WML's outcome letter*

[32] On 3 October 2023 WML issued its outcome letter to Ms Houkamau advising that it was proceeding with a summary dismissal after consideration of her response to its preliminary decision letter. This letter also set out further responses to Ms Houkamau which included WML's view that Ms Houkamau lied and could no longer be trusted. WML considered Ms Houkamau lied to them about never meeting and not knowing Mr Pereira despite a record of an outgoing call to his mobile number from her work phone,

and then later claiming that it was an inbound call from a woman asking about Mary. WML stated that Ms Houkamau's explanations did not align with the phone record obtained from One New Zealand (WML's telecommunications provider) and viewed that as evidence she was being dishonest about the issue and therefore removed any trust and confidence WML had in Ms Houkamau. WML also noted the lack of any new information or evidence to support Ms Houkamau's version of events. WML stated that it considered alternatives to dismissal but given the significance of the lost revenue caused by the arrangement and Ms Houkamau's actions in the matter, WML felt the employment relationship was "irretrievably broken" and it was "impossible to continue" and after weighing up Ms Houkamau's explanations and evidence, it decided to terminate her employment effective from 3 October 2023 and that a final pay would be made to her at the next pay cycle.

[33] Ms Houkamau raised a personal grievance with WML on 17 October 2023.

[34] On 30 October 2023, WML advised it had grounds for a counter claim for a breach of her IEA and that it suffered damages in the form of lost revenue (approximately \$100,000.00) and that it would also seek penalties under section 4A for a breach of good faith.

[35] The parties attended mediation but failed to resolve matters.

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

[36] For the Authority's investigation the following written witness statements were provided:

- a. Ms Houkamau
- b. For WML:
  - i. Tracy Reuben (Branch Manager)
  - ii. Sarah Whiteman (Regional Manager)
  - iii. Clare Arneson (Business Partner)

[37] All witnesses answered questions under oath or affirmation from me and the parties' representatives.

[38] All material from the parties was fully considered. However as permitted by s 174E the Act, this determination has not recorded all evidence and submissions received.

## **The issues**

[39] The issues requiring investigation and determination were:

- (a) Whether Ms Houkamau was unjustifiably dismissed from her employment;
- (b) If WML's actions were not justified, what remedies should be awarded considering:
  - (i) Compensation for humiliation, loss of dignity and injury to feelings and/or
  - (ii) Lost wages
  - (iii) Is Ms Houkamau entitled to payment for notice or other arrears of wages?
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Houkamau that contributed to the situation giving rise to her personal grievance?
- (d) Has Ms Houkamau breached her IEA and good faith obligations; if so, is WML entitled to damages and penalties?
- (e) Should either party contribute to the costs of representation of the other party.

## **Was Ms Houkamau unjustifiably dismissed?**

[40] To determine the justification of a dismissal by the employer complained of under s 103(1)(a) of the Act the Authority applies the test in s 103A of the Act on an objective basis.

[41] When considering whether Ms Houkamau's dismissal was justified, I must apply the test of justification set out at s 103A of the Act. I must consider whether:

- (a) WML sufficiently investigated the allegations against Houkamau before dismissing her;
- (b) WML raised the concerns that they had with Ms Houkamau before dismissing her;
- (c) WML gave Ms Houkamau a reasonable opportunity to respond to those concerns before dismissing her; and
- (d) WML genuinely considered her explanations before dismissing her.

[42] I may also take into account any other factors I think are relevant.

## **Analysis**

[43] In determining whether WML was justified in summarily dismissing the applicant for serious misconduct, I have considered the totality of the evidence presented, the credibility of the parties and witnesses, and the fairness and reasonableness of the process undertaken by the respondent.

[44] I am satisfied that WML was justified in summarily dismissing Ms Houkamau for serious misconduct. My reasons follow.

[45] During the investigation meeting, counsel for WML played the CCTV footage. Before doing so, Ms Houkamau confirmed that the footage was made available to her as part of WML's investigation.

[46] The footage showed the following:

- (a) Mary and Ms Houkamau arrived at work in the morning together in Ms Houkamau's silver Volkswagen beetle car on 4 and 11 August 2023;
- (b) On 4 August 2023 around midday, a vehicle (confirmed as belonging to JND) entered the site and parked by Ms Houkamau's car. A person then got out from the vehicle and removed several items from the vehicle and placed them either in or where Ms Houkamau's car was parked. Later that afternoon just before the site was closed to the public, an employee is seen walking from the direction of the pit area towards and then between Ms Houkamau's car and the blue ute. The employee is not visible for a few moments, but then emerges quickly and returns towards the direction of the pit area where his car is parked while carrying a box of Corona beer (bearing the distinctive trademark) in each hand.
- (c) On 11 August 2023, a vehicle (confirmed as belonging to JND) entered the site and parked by Ms Houkamau's car. A person then removed some boxes out of the JND vehicle and placed them in or near Ms Houkamau's car. The vehicle then reversed into the pit area without stopping at the weigh station. Separate footage from the pit area then showed that the vehicle reversed into the pit area depositing rubbish into the pit.

- (d) Later in the day on 11 August 2023 Ms Houkamau is seen walking towards her car or where it is parked, until she is no longer within the frame of the screen. Soon after, an employee then walks towards the weigh station then towards where Ms Houkamau's car is parked. Then after a few moments, a small silver image/spot at about forehead height of the employee standing at the back of Ms Houkamau's car appears. During the investigation meeting, counsel for WML suggested that the silver spot was most likely the boot of Ms Houkamau's car being opened by the employee. The employee's head is also visible for a moment and then his head is not visible, suggesting he may have been bending over. Within seconds, the employee's head and body is then visible again but the silver spot or image disappears. Counsel for WML stated his belief that it was because the boot was then closed.
- (e) Immediately afterwards, that employee is seen walking towards his car parked near the pit area, carrying two boxes of corona beer (bearing the distinctive trademark). Ms Houkamau can then be seen again on the footage emerging from where she went out of screen, walking from her car towards that employee while he is placing the boxes of beer in his car. One of the boxes of Corona beer was clearly visible as it was placed on the bonnet of his car while placing one of the other boxes into his car. The footage shows there is a brief exchange between Ms Houkamau and the employee walking into the pit area together, having what appears to be a friendly conversation.

[47] The CCTV footage presented a strong case against Ms Houkamau for the allegation that she was responsible, or at least had knowledge of the arrangement with JND, to allow free disposal of commercial waste, in exchange for boxes of free alcohol given to her and the team at the site. Based on the footage alone, I considered it was more likely than not that Ms Houkamau was aware of JND arriving and depositing alcohol on site in her car, and employees removing alcohol from her car for their personal use/consumption. When this footage was put to Ms Houkamau, she was unable to credibly refute what was shown to WML. Her explanation lacked substance and could not be supported by evidence, and failed to address the reality of what was captured on camera.

[48] During the investigation meeting, in response to opposing counsel's questions, Ms Houkamau acknowledged that WML's "customers give them alcohol and food",

she also accepted that the CCTV showed she had seen an employee taking boxes of Corona beer from or near her car to his own and had not questioned him.

[49] The case against Ms Houkamau was also compounded by the phone record evidence and the statements given to WML by the other employees.

[50] The phone record demonstrated that Ms Houkamau made an outgoing call from Australia to Mr Pereira's mobile number, which lasted two minutes. When WML brought this to Ms Houkamau's attention during its investigation, her response was that it was an incoming call from an unknown caller.

[51] When I asked Ms Houkamau to explain her side of the story in relation to the phone record which indicated she made an outgoing call to Mr Pereira's mobile phone, Ms Houkamau maintained that she received an incoming call when she was on holiday in Australia from a lady who had asked her about Mary. Ms Houkamau said she told the lady on the phone that she was in Australia on holiday and she said the woman then said "sorry Tina enjoy your holiday." Ms Houkamau stated that WML did not produce information to show the incoming call. When asked for comment as to the phone record that indicated the call was an outgoing call to Mr Pereira's mobile number, Ms Houkamau then said "maybe I had rung straight back to find out who it was...I don't know... not sure." Ms Houkamau then added, "when I did call back there was no reply."

[52] However she accepted that the phone record indicated an outgoing call, with a duration of two minutes, was made from her work phone in Australia to a New Zealand number that was identical to Mr Pereira's mobile number. No explanation was offered for this outgoing call. As such, I was not persuaded by her evidence.

[53] When reviewed against the evidence Ms Houkamau gave at the investigation meeting, I found that the explanation that she offered WML for this outgoing call was inconsistent with her oral evidence that she had no answer after returning the incoming call she received. Consequently, Ms Houkamau's contradictory explanation undermined her credibility, particularly in the face of unambiguous evidence.

[54] I did not find Ms Houkamau's position or her responses to the allegations to be credible. There was a consistent lack of plausible explanation for the evidence that was put to her. As noted by Ms Reuben, Ms Houkamau could have substantiated her claim about the alleged incoming call by producing a screenshot from her work phone, which

she had access to during the investigation. She failed to do so and provided no evidence in support of her assertions.

[55] The context is also relevant. Ms Houkamau managed a small team within a small premises, which further supports the inference that the arrangement in question could not have occurred without her knowledge or involvement. The actions of the other employees took place openly in her presence, making it implausible that she was unaware or uninvolved.

[56] When I asked Ms Houkamau why Mary and another employee held Ms Houkamau responsible for the arrangement, Ms Houkamau said she could not explain why she had been blamed for the arrangement by them. Ms Houkamau stated that Mary would have probably become her daughter-in-law and was not sure why she would “throw [her] under the bus.” Ms Houkamau said she was “shocked Mary chose to save herself”.

[57] Although Mary subsequently changed her version of events to Ms Reuben, Ms Reuben stated at the investigation meeting that it was her belief that Mary’s first account was the most accurate. This was because Mary’s first account was the most contemporaneous following WML initiating its preliminary investigation meeting and Ms Reuben believed her personal relationship with Ms Houkamau’s son led to the changes in her story.

[58] Having reviewed the different written accounts provided by Mary to WML, I find that her first statement to Ms Reuben was most contemporaneous and find her later emails to Ms Reuben unpersuasive. However, this also undermined the credibility of the information Mary provided WML and as she was an unwilling witness, I place little weight on Mary’s statements to WML.

[59] I considered Mr Pereira’s statements to WML significant. Mr Pereira had no apparent motive to fabricate or misattribute responsibility. His evidence was clear that the arrangement had been in place since July 2022 and that it was the “team leader” at the time, who was responsible. I find this compelling for two reasons: Ms Houkamau was the only team leader at the site and secondly the previous team leader left the role in June 2022 and Ms Houkamau began the team leader role on 27 June 2022. It would be illogical to suggest that the previous team leader would have put an arrangement in place for a role and workplace they no longer occupied. Ms Houkamau’s only response

to this piece of evidence was that Mr Pereira had not named her and simply used her title. I found her explanation unconvincing.

[60] Having reviewed the process and evidence relied on to reach its decision, I consider that WML conducted a thorough and comprehensive investigation into the matters giving rise to the dismissal, communicating every step of the process through written correspondence via Ms Houkamau's lawyers (at her request). The process was detailed, careful, and included multiple opportunities for Ms Houkamau to respond to the allegations which she did. In providing these opportunities, WML provided a full set of relevant material, including raw notes from its meetings, CCTV footage, and summaries of evidence gathered to Ms Houkamau's lawyers.

[61] During the process, Ms Reuben also ensured she consulted her manager Ms Whiteman and WML's HR advisor Ms Arneson. Each of them viewed the CCTV footage as part of the investigation and considered Ms Houkamau's responses. Both Ms Whiteman and Ms Reuben met with Mr Pereira.

[62] I accept Ms Reuben's evidence that the decision to summarily dismiss Ms Houkamau was not taken lightly. Careful steps were taken, including considering Ms Houkamau's responses and responding to her responses with reference to the evidence on hand, before WML reached the decision to summarily dismiss Ms Houkamau.

[63] WML's decision was based on careful consideration of clear evidence and followed a process that was fair and robust, which included taking into account of Ms Houkamau's written responses and also responding to them in a very comprehensive manner. Ms Houkamau's responses, on the other hand, failed to meet the threshold of credibility and did not provide any satisfactory explanations for the evidence presented. As such, WML had lost all trust and confidence in Ms Houkamau as an employee. I accept that WML had a genuine and reasonable basis to conclude that serious misconduct had occurred and that summary dismissal was the appropriate outcome.

[64] Having reviewed the evidence and the steps taken by WML, including its consideration of and responses to Ms Houkamau's responses, I reached the conclusion that WML's decision to summarily dismiss Ms Houkamau was procedurally fair and consistent with the obligations under the Act.

### **Has Ms Houkamau breached her IEA?**

[65] I now consider WML's counter claim that Ms Houkamau breached her IEA, WML's Code of Conduct, and that she failed to comply with her duty of good faith. WML claims that Ms Houkamau's failure was deliberate, serious, and sustained. It seeks damages and penalties.

[66] Ms Houkamau's IEA required her to:

- Comply with company policies, including the Code of Conduct;
- Follow directions such as the weighing of waste, collection of payment
- Comply with applicable laws, such as the Waste Minimisation Regulations 2009 (i.e. to ensure waste is weighed and ensure accurate levy calculation and payment);
- Work diligently, honestly, and conscientiously;
- Maintain accurate records and a professional image for WML;
- Comply with her duties of good faith and fidelity.

[67] Ms Houkamau's IEA required her to comply with the following obligations of the Code of Conduct:

- Section 4 which included a requirement not to accept gifts or favours, or kickbacks, bribes, or other illegal consideration;
- Section 5 required employees ensure the financial integrity of financial and other information, and to report on known inaccuracies;
- Section 8 which included taking reasonable steps to prevent theft.

[68] WML submitted that the breaches occurred when Ms Houkamau accepted alcohol, and knowingly allowed the free dumping of waste by not recording or weighing its waste, and therefore depriving WML of revenue which constituted theft of company property. WML submitted that through her actions, Ms Houkamau could not be said to act honestly or diligently, or in good faith; and that she engaged in conduct that was dishonest, misleading and damaged WML's interests, leading to a total loss of \$111,091.54.

[69] WML further submitted that the evidence established serious and sustained breaches of good faith and seeks penalties.

## Remedies

### *Unjustified dismissal claim*

[70] As Ms Houkamau's claim for unjustified dismissal has not been made out, there are no orders made with respect to her claim.

### **Should damages be awarded against Ms Houkamau?**

[71] As for WML's counterclaim for damages, WML's position is that had Ms Houkamau complied with her IEA, WML would not have sustained the loss that it did, and that Ms Houkamau should not now benefit from the fact her breaches prevent WML from precisely quantifying its loss.

[72] WML submitted that while it recovered \$10,000 from JND, it still has a loss of \$101,091.54. WML considered that it was unable to precisely quantify its loss due to Ms Houkamau's actions but submitted that this was not a reason not to award damages.

[73] The legal elements an employer must show to claim damages for losses arising from a breach of contract are (see *Attorney-General v Gilbert*<sup>6</sup> and *Masonry Design Solutions Ltd v Bettany*<sup>7</sup>):

- (1) The employee breached his employment agreement.
- (2) The employer suffered financial loss.
- (3) The loss was attributable to the breaches ("sufficiently linked to the breach ... to merit recovery in all the circumstances").
- (4) It was reasonably foreseeable that the breach would result in the loss.

[74] When considering whether to award damages, I must also consider the following legal principles:

- Damages are to compensate the injured party for the loss it has sustained.
- Any compensation should place the applicant back in the position it would have been in had the respondent not breached the employment agreement.
- The injured party is not entitled to a windfall.
- The respondent can only be held liable for consequences which can convincingly be said to have been a result of the respondent's conduct.

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<sup>6</sup> *Attorney-General v Gilbert* [2002] 2 NZLR 342.

<sup>7</sup> *Masonry Design Solutions Ltd v Bettany* (2009) 6 NZELR 834.

- The onus is on the applicant to prove the extent of the loss on the balance of probabilities.
- The applicant must take all reasonable steps to mitigate the loss.

[75] In ascertaining its financial loss, WML was only able to ascertain an average weight of waste deposited by JND which resulted in an amount of \$111,091.54 (GST inclusive). Ms Reuben believed this amount was lower than WML's actual loss. However, little evidence was provided to explain how WML had quantified this amount. WML attributed its challenges in quantifying its loss to the nature of the breaches (given JND's waste was not weighed). WML has, to an extent sought to mitigate its losses by recovering \$10,000.00 from JND.

[76] In these circumstances, although Ms Houkamau breached her IEA which I accept contributed to a financial loss for WML which was reasonably foreseeable, I am not persuaded that, having only recovered \$10,000.00 of \$111,091.54 from JND, that the quantum of damages sought is an accurate quantum or can realistically be sought or indeed payable by Ms Houkamau who holds a part-time job. Ms Houkamau may have benefited personally through receipt of free alcohol by facilitating non-payment by JND to WML, but as an Authority acting in equity and good conscience<sup>8</sup>, I am not convinced that it is appropriate to hold Ms Houkamau responsible, in the form of special damages, for levies JND owed and should have paid WML.

[77] Accordingly, I declined to award special damages for the reasons above.

### **Should a penalty be awarded against Ms Houkamau?**

[78] Section 4A of the Act sets out that a party who fails to comply with the duty of good faith in s4(1) of the Act is liable to a penalty in certain circumstances. WML has submitted that the circumstances as set out in s4A(a) apply because Ms Houkamau's failure to comply with her duty of good faith was deliberate, serious, and sustained.

[79] Section 135 of the Act sets out that an action for the recovery may be brought in the case of a breach of an employment agreement and provides that an individual in breach is liable to a penalty not exceeding \$10,000.00.

[80] While cases awarding a penalty against employees are relatively rare, there have been instances where employees have been penalised for breaches of good faith or

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<sup>8</sup> Employment Relations Act 2000, s157.

contractual obligations. In its submissions, WML made reference to prior Authority decisions it considered applied in these circumstances:

- a. *Panel Holdings Ltd v Paki*<sup>9</sup> (*Paki*): \$5,000 per breach category for unauthorised personal benefit and document tampering;
- b. *Cook Executive Recruitment (2005) Ltd v Lewis*<sup>10</sup>: \$5,000 total penalty under the totality principle for personal work done during work hours;
- c. *Darroch Ltd v Chisnall*<sup>11</sup> destruction of property: \$3,000 penalty.

[81] WML submitted that the *Paki* case is most analogous, supporting differentiated penalties for each breach and highlighted a need for deterrence. It also relied on *Borsboom v Preet PTV Ltd*<sup>12</sup>'s four step framework in determining claims for penalties as part of its submissions.

[82] WML submitted that the nature of the breaches were that Ms Houkamau breached both express and implied terms of her Individual Employment Agreement (IEA) and her statutory duty of good faith.

[83] Ms Houkamau, as team leader of the site, participated in a fraudulent and dishonest arrangement at the expense of WML, in terms of revenue, but also compromised WML's compliance with regulatory laws.

[84] The breaches were described as deliberate and calculated by WML:

- Ms Houkamau personally benefited from the fraudulent arrangement to WMNZ's detriment.
- She made no effort to mitigate the adverse effects or prevent further loss or misuse of company property.
- The deception affected financial reporting and concealed significant financial loss.
- The misconduct continued throughout the investigation and disciplinary process.

[85] WML submitted that Ms Houkamau had not provided any evidence of her ability to pay penalties or damages and so there were no mitigating factors against her breaches.

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<sup>9</sup> *Panel Holdings Ltd v Paki* AA 232A/07.

<sup>10</sup> *Cook Executive Recruitment (2005) Ltd v Lewis* AA 32/10.

<sup>11</sup> *Darroch Ltd v Chisnall* [2012] NZERA Christchurch 174 at [33].

<sup>12</sup> *Borsboom v Preet PTV Ltd* [2016] NZEmpC 143.

[86] WML submitted that part of any penalties should be paid to WML, given:

- The serious nature of the breaches;
- The financial losses incurred by WML; and
- The significant legal costs borne by WML in defending against Ms Houkamau's claims and in pursuing its counterclaim.

[87] I consider that Ms Houkamau breached her obligations under her IEA, including the Code of Conduct, and that she did not act in good faith. Ms Houkamau was responsible for instigating the arrangement with JND, in her capacity as the only team leader at the site in which she also knowingly involved other employees who reported to her.

[88] Having assessed the severity of the breaches, I find that Ms Houkamau acted deliberately and dishonestly. I also find that the nature of the breaches were serious given the level of dishonesty involved, especially being placed in a leadership role which should have gone hand to hand with trust and confidence. A factor compounding the severity was the flow on effect it had on WML's regulatory compliance. I find that the breaches were sustained given the length of time the arrangement had been in place (a month after being promoted to team leader). As the sole team leader at the site, Ms Houkamau abused her leadership position for her benefit and lacked accountability in the face of unequivocal evidence.

[89] For these reasons, I consider it appropriate to award a penalty of \$6,000.00. Of that \$6,000.00, \$2,000.00 shall be paid to the Crown, and \$4,000.00 to WML. In making this award, I have factored in the need for future deterrence, accountability, compliance, and the object of the Act to promote good faith obligations.

### **Orders**

[90] Ms Tina Houkamau is to pay, within 28 days, as a penalty for breaches of her IEA and good faith obligations under the Act:

- a. \$4,000.00 to Waste Management Limited; and
- b. \$2,000.00 to the Crown

### **Costs**

[91] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[92] If the parties are unable to resolve costs, and an Authority determination on costs is needed, WML 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 Ms Houkamau 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.

[93] 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>13</sup>

Davinnia Tan  
Member of the Employment Relations Authority

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<sup>13</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)