NOTE: This determination contains orders prohibiting publication of certain information at paragraphs [9] and [99]

IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 571
3328680

	BETWEEN	KASSIDY PARKER-JONES Applicant
	AND	GPC ASIA PACIFIC LIMITED Respondent

Member of Authority:	Shane Kinley
Representatives:	Emma Brankin, advocate for the applicant Daniel Erikson and Tom Jarman, counsel for the respondent
Investigation Meeting:	30 July 2025 in Nelson 1 August 2025 by AVL
Submissions:	On 14 August 2025
Determination:	16 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kassidy Parker-Jones was employed as a Sales Team Member at Repco, a division of GPC Asia Pacific Limited (GPC), in its Nelson branch from March 2023 until her employment was terminated on 2 September 2024 for abandonment of employment. Ms Parker-Jones raises claims she was unjustifiably disadvantaged in her employment with GPC and unjustifiably dismissed by GPC in relation to its claim she had abandoned her employment.

[2] GPC denies unjustifiably disadvantaging Ms Parker-Jones and says her dismissal was justified on the grounds that she had abandoned her employment.

Non-publication orders

[3] Following the investigation meeting by AVL on 1 August 2025, the Authority Officer at my direction, invited the representatives to make submissions on whether non-publication orders were appropriate under cl 10(1) of sch 2 of the Employment Relations Act 2000 (the Act). Submissions were invited to focus particularly on sensitive medical information which there may not be a public interest in being disclosed.

[4] I have considered these submissions in light of the Court's judgment in *MW v Spiga Ltd*, particularly observations that:[1]

> Open justice is of fundamental importance. Open justice may be departed from, but only to the extent necessary to serve the ends of justice. This means there must be sound reasons for the making of an order of non-publication such that a departure is justified.
>
> In most cases, there first must be reason to believe that the specific adverse consequences could reasonably be expected to occur. The necessary evaluation will focus on such evidence as has been submitted and/or is available. Inferences may be required by the Authority or the Court. But these must be reasonable inferences …
>
> Second, the Authority or Court must consider whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case. This is a weighing exercise. Equity and good conscience may play a part. …

[5] Ms Parker-Jones sought non-publication orders in relation to the majority of health matters raised during the investigation of this matter but was comfortable with non-publication orders excluding her arthritis diagnosis and the anxiety and stress she was under in relation to the matters being investigated.

[6] GPC indicated it expected persons who were not witnesses at the investigation should not be identified in this determination. If this approach were not to be followed, GPC indicated it sought non-publication orders in relation to other Repco staff members, and an individual referred to in evidence and identifying information about that individual. GPC said there was no need for information about those individuals to be in the public domain. GPC also advised it did not oppose non-publication orders in relation to Ms Parker-Jones medical information.

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[1] *MW v Spiga Ltd* [2024] NZEmpC 147 at [87] to [89] (citation omitted).

[7] I do not identify the individuals referred to by GPC and agree there is no need for information about those individuals to be in the public domain. Where reference is made to those individuals it is in general terms only, which should mean they are not able to be directly identified. Non-publication orders are not required in relation to these individuals.

[8] I am satisfied based on the nature of medical information disclosed during the investigation process and referred to in evidence, that the non-publication orders sought by Ms Parker-Jones are appropriate.

[9] A permanent non-publication order is made under cl 10(1) of sch 2 of the Act in relation to all medical information disclosed during the investigation of this matter or referred to in evidence, but excluding Ms Parker-Jones' arthritis diagnosis and the anxiety and stress she was under in relation to the matters being investigated.

The Authority's investigation

[10] This matter was initially considered by another Member of the Authority, who held a case management conference and issued Directions in May 2025. Under cl 16 of sch 2 of the Act I assumed responsibility for investigating this matter.

[11] For the Authority's investigation written witness statements were lodged by Ms Parker-Jones and her partner Ezra Gordon. For GPC, written witness statements were lodged by Shiree Taylor, Repco Branch Manager, and Ryan Marriott, GPC's People, Culture & Wellbeing Business Partner.

[12] In the week prior to the investigation meeting, I requested GPC provide any policies which may be relevant to the matters to be investigated. Counsel for GPC provided relevant policies as requested prior to the investigation meeting.

[13] During the course of the investigation meeting I became aware that Louise Sixton, General Manager Sales and Operations for Repco NZ, was present and had been involved in decision-making about Ms Parker-Jones employment, which I considered could be relevant to my investigation of this matter. Ms Parker-Jones, Mr Gordon, Mr Marriott, Ms Sixton and Mrs Taylor (on the second day of the investigation meeting) answered questions under affirmation from me and the representatives.

[14] At the conclusion of the investigation meeting by AVL I timetabled for submissions and evidence discussed during the investigation meeting to be provided.

Following the investigation meeting by AVL on 1 August 2025, the Authority Officer at my direction, advised the representatives of points I considered it would be helpful for submissions to address. The representatives provided written submissions and further information in accordance with timetable directions made at the conclusion of the investigation meeting.

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

The issues

[16] The issues requiring investigation and determination are:

(a) Was Ms Parker-Jones unjustifiably disadvantaged in her employment by GPC, including consideration of:

(i) GPC's response to concerns Ms Parker-Jones raised over her treatment at work; and

(ii) failure to fully investigate Ms Parker-Jones' concerns?

(b) Was Ms Parker-Jones unjustifiably dismissed by GPC, in relation to abandonment of employment?

(c) If GPC's actions were not justified (in respect of disadvantage or dismissal), what remedies should be awarded, considering:

(i) compensation under ss 123(1)(c)(i) of the Act; and

(ii) reimbursement of lost wages under ss 123(1)(b) and 128(2) of the Act?

(d) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Ms Parker-Jones that contributed to the situation giving rise to her grievances?

(e) Should either party contribute to the costs of representation of the other party, including filing fees?

[17] An unjustified disadvantage claim related to an alleged performance improvement plan was withdrawn by Ms Parker-Jones at the investigation meeting on 30 July 2025.

Was Ms Parker-Jones unjustifiably disadvantaged in her employment by GPC?

Test of justification

[18] For Ms Parker-Jones' unjustified disadvantage claims under s 103(1)(b) of the Act to be successful requires:

a. her employment, or one or more conditions of her employment, to have been affected to her disadvantage; and
b. this was due to some unjustifiable action by GPC.

[19] In assessing this, I must apply the test of justification under s 103A of the Act, being whether GPC's actions, and how GPC acted, were objectively what a fair and reasonable employer could have done in all the circumstances at the time the actions occurred.

[20] In reaching my conclusions about Ms Parker-Jones' claims, s 103A(3) of the Act requires that I consider:

a. having regard to the resources available to it, did GPC sufficiently investigate before taking action;
b. did GPC raise concerns that it had with Ms Parker-Jones before taking action;
c. did Ms Parker-Jones have a reasonable opportunity to respond; and
d. did GPC genuinely consider Ms Parker-Jones' explanation or comments.

[21] The Court indicated in *Angus v Ports of Auckland Ltd (No 2)*[2] that in unjustified disadvantage matters "the Authority and the Court should try to give a sensible interpretation to subs (3)".

[22] I may also take into account any other factors I think are appropriate (s 103A(4) of the Act). I must not determine an action to be unjustifiable where there were defects in GPC's process that were minor and did not result in Ms Parker-Jones being treated unfairly (s 103A(5) of the Act).

[23] A fair and reasonable employer is expected to comply with its statutory obligations which include good faith obligations and particularly the requirement for both parties to be active and constructive in establishing and maintaining a productive

[2] *Angus v Ports of Auckland Ltd (No 2)* [2011] NZEmpC 160 at [52].

employment relationship in which the parties are responsive and communicative.[3] When an employer is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of one or more employees, the employer is required to provide the affected employees with access to relevant information and an opportunity to comment on the information before the decision is made.[4] Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action because "a fair and reasonable employer will comply with the law".[5]

Background and actions claimed to give rise to disadvantage

[24] Throughout Ms Parker-Jones' employment with GPC she had a significant number of absences due to medical reasons or was late to start work on numerous occasions. In late July 2024 Ms Parker-Jones was in communication with Mrs Taylor about concerns Ms Parker-Jones had at work, while Mrs Taylor was raising concerns about Ms Parker-Jones' communication about non-attendance at work. This culminated in a message exchange on or about 29 July 2024, which led to a meeting being arranged between Ms Parker-Jones and Mrs Taylor on the afternoon of 29 July 2024 at an off-site café.

[25] Ms Parker-Jones acknowledged she was absent from work frequently and could not say, when asked by me at the investigation meeting, how many days she worked in June or July 2024. She claimed to have worked on one shift on a Sunday after 29 July 2024. GPC's records of Ms Parker-Jones' leave and absences shows she worked a short-shift on Sunday 28 July 2024, with one hour recorded as unpaid. GPC's records do not show Ms Parker-Jones working after that date.

[26] Ms Parker-Jones' former representative raised a personal grievance on her behalf on 29 July 2024 in relation to concerns she had over her treatment at work. When initially raising her grievance Ms Parker-Jones referred in general and non-date specific ways to behaviours she was concerned about. These included claims she was undermined and treated unfairly, harassed and bullied by coworkers, constantly criticised at work and discriminated against based on her medical condition, which involved an arthritis diagnosis. Ms Parker-Jones claimed her treatment at work was

[3] Section 4(1A)(b) of the Act.
[4] Section 4(1A)(c) of the Act.
[5] *Simpsons Farms Ltd v Aberhart* [2006] 1 ERNZ at [65].

impacting on her mental health. She said Mr Gordon had unsuccessfully attempted to discuss the situation with Mrs Taylor.

[27] The correspondence from Ms Parker-Jones' former representative resulted in Mrs Taylor cancelling the meeting scheduled with Ms Parker-Jones for that afternoon. Mrs Taylor was not involved in subsequent correspondence with Ms Parker-Jones or her representatives about Ms Parker-Jones' personal grievances.

[28] Mr Marriott responded on 30 July 2024 confirming a full investigation would be conducted and requesting further specifics so the matter could be investigated thoroughly. This and all correspondence following occurred between Mr Marriott and Ms Parker-Jones' former representative, predominantly by email and letters, which provides a clear documentary record of what occurred. Mr Marriott was responsible for the investigation of Ms Parker-Jones' concerns.

[29] On 31 July 2024 Ms Parker-Jones provided further details as requested by Mr Marriott, including:

a. Some details of items she had ordered which she claimed were sold by other employees, including two Milwaukee hoodies and a fuel pump. While specific dates were not provided, specific employees involved were named and there was a reference to the pump having been intended as a Christmas present, which provided a reasonably clear timeframe for the alleged actions;
b. Specific allegations were made in relation to Mrs Taylor's treatment of Ms Parker-Jones as well as interactions with five co-workers. The allegations included an incident where one co-worker was said to have called Ms Parker-Jones an imbecile and claims another co-worker "on numerous occasions has told me that I should leave and that I'm not part of their "work family" in those exact words". Again, while specific dates were not provided, specific employees involved were named.

[30] On 1 August 2024 Mr Marriott acknowledged the information provided would be helpful for the investigation and made an offer of an alternative location for Ms Parker-Jones to work at, for at least the duration of the investigation process. Another alternative location was proposed by Ms Parker-Jones' former representative on 2 August 2024 and accepted by Mr Marriott on the same day. Between 5 and 8 August 2024 there were email communications about Ms Parker-Jones' non-attendance at the

agreed branch, with her former representative advising he would reiterate work arrangements with her on 5 August 2024.

[31] Mr Marriott's investigation involved him interviewing seven of Ms Parker-Jones' co-workers and Mrs Taylor between 2 and 9 August 2024, including the five co-workers whom Ms Parker-Jones had made allegations about. Mr Marriott described this process as interviewing the team members, based on the concerns raised on Ms Parker-Jones' behalf.

[32] Mr Marriott concluded his investigation on 9 August 2024 and advised Ms Parker-Jones' former representative by letter on that date, with copies of the statements from interviewed co-workers and Mrs Taylor appended. The outcome advised was:

> Based on the investigation and the above findings, we have been unable to substantiate any behaviours or incidents that would amount to disadvantage. In fact, form [sic] speaking with employees, I have found all accounts of the culture and branch management to be extremely positive, complementary and in line with how we would expect a store to be managed.
>
> As a result of these findings, [GPC] is closing [Ms Parker-Jones'] complaint. [Ms Parker-Jones] is welcome to return to work in the Nelson branch or if she would prefer to work at an alternate location, we are open to discussing options.

[33] The investigation acknowledged Ms Parker-Jones had likely been yelled at by one of her co-workers. While not condoned this was considered to have been "handled appropriately at the time … without the knowledge of [Mrs Taylor] as the manager". Mr Marriott raised in his letter the extent of Ms Parker-Jones' absences over the previous 12 months and her failure during the investigation period to attend "5 shifts in a row without any communication which under normal circumstances could be considered abandonment of employment".

[34] In relation to Ms Parker-Jones' claims that two Milwaukee hoodies and a fuel pump had been sold without her knowledge, Mr Marriott referenced Mrs Taylor having confirmed the jackets were ordered by Ms Parker-Jones and "remain in the branch awaiting payment and collection by [Ms Parker-Jones]". Mr Marriott also said no record had been found of "any fuel pump on her staff purchasing in December or January".

[35] In response to Mr Marriott's letter, on 13 August 2024 Ms Parker-Jones' former representative advised that mediation had been sought, and that she wished to use annual leave in the meantime. Mr Marriott responded on 20 August 2024 declining the

request to mediate, on the basis GPC considered its actions had been fair and reasonable, and advising Ms Parker-Jones did not have any annual leave available.

[36] Mr Marriott also advised that Ms Parker-Jones had by then failed to attend 14 rostered shifts without communication, concluding:

> It is important that [Ms Parker-Jones] updates and informs us of her intended return to work date, as soon as possible. If we do not hear from you prior to 10am on Monday, 26 August, then we will take the action of terminating [Ms Parker-Jones'] employment on the grounds of abandonment, in line with her IEA.

[37] Correspondence between Mr Marriott and Ms Parker-Jones' former representative between 23 and 29 August 2024 involved:

(a) An additional personal grievance being raised in relation to the adequacy of GPC's investigation of Ms Parker-Jones' concerns;

(b) Advice that Ms Parker-Jones was unwilling to travel to the previously agreed alternative location and felt unsafe returning to the branch she had been working at, meaning she may resign as a result; and

(c) Multiple attempts to ascertain whether Ms Parker-Jones would return to work and advising her employment would be terminated on the grounds of abandonment, with the deadline for reply on this point extended until 30 August 2024.

[38] On 2 September 2024 Mr Marriott advised Ms Parker-Jones' employment had been terminated on the basis of abandonment of employment. Later that day Ms Parker-Jones' current representative advised she was looking after this matter, denied that Ms Parker-Jones had abandoned her employment, raised a further personal grievance of unjustified dismissal and again sought agreement to attend mediation. Mr Marriott responded the following day declining to attend mediation.

Submissions of the parties

[39] Ms Parker-Jones says GPC has failed to follow its own policies in both Mrs Taylor's response to her originally raising concerns and Mr Marriott's investigation. She says GPC failed to refer to the policies it was following and did not provide her with those policies as part of its investigation. Rather she claims "[t]hey simply chose to do an informal survey/peer review about workplace culture and investigated none of her specific concerns".

[40] Ms Parker-Jones says GPC failed to speak to her as part of the survey it undertook, failed to put specific allegations to co-workers, particularly those complained about and did not adequately respond to the co-worker who GPC found had yelled at her saying they had not witnessed any yelling. She said GPC's conclusions on the investigation, quoted at paragraph [32] above were not open to it, due to failings in the investigation process and a failure to take into account GPC's Complaints Resolution Procedure (the Procedure) or Equal Opportunity, Harassment & Bullying Policy (the Policy), which Mr Marriott had said at the investigation meeting was the most important policy.

[41] Ms Parker-Jones also says she was not told who the decision maker was in relation to her complaint and that this was unclear with Mr Marriott saying he was not the decision-maker, rather that was Ms Sixton and other senior managers. Ms Parker-Jones claims Ms Sixton did not appear to know she was a decision maker, rather thought she was in a governance role and had endorsed Mr Marriott's findings. Ms Parker-Jones says she was given no opportunity to comment on Mr Marriott's findings, and he was not an impartial investigator of matters as he had advised Mrs Taylor on how to respond to Ms Parker-Jones' absences from work and a potential process to respond to those.

[42] GPC says it provided Ms Parker-Jones with significant support in her role, including induction, training and general support, with there being no evidence it had unreasonable expectations of her level of knowledge. GPC says her regular absences for medical reasons were handled reasonably, including Mrs Taylor issuing a record of discussion on 24 May 2024. GPC says Ms Parker-Jones' issues with other staff were dealt with appropriately, including Mrs Taylor investigating the allegation a co-worker had called Ms Parker-Jones an imbecile and taking appropriate action in relation to the co-workers acknowledged reference to GPC not hiring invalids. GPC says not all the actions Ms Parker-Jones now complains about were raised with Mrs Taylor, so she was unable to investigate some matters earlier, however, this did not amount to an unjustified disadvantage.

[43] GPC maintains its position in relation to the two Milwaukee hoodies and fuel pump which it reached during Mr Marriott's investigation, as discussed at paragraph [34] above. GPC also says Ms Parker-Jones had previously ordered and worn a Milwaukee hoodie without paying for it and when Mrs Taylor raised this Ms Parker-Jones placed it on hold, but then did not purchase it. GPC says this hoodie was

purchased by a customer but "returned because it was covered in Ms Parker-Jones' hair and makeup, had rubbish in the pockets, and smelt of her perfume".

[44] GPC says Ms Parker-Jones was not bullied in the workplace and referred to the Policy's definition of bullying as:

> … repeated, unreasonable behaviour directed towards a worker, or group of workers, which creates a risk to a worker's mental or physical safety.

[45] GPC also referred to WorkSafe's definition of workplace bullying, which states "[u]nreasonable behaviour means actions that a reasonable person in the same circumstances would see as unreasonable."[6] GPC says the actions Ms Parker-Jones complained about were not repeated, unreasonable behaviour, rather "were one-off instances of [co-workers] losing their cool through frustration". GPC says Mrs Taylor dealt with one issue at the time, being the imbecile / invalids comment, and was unaware of the other instance, as Ms Parker-Jones did not raise it at the time. GPC also says Mrs Taylor's actions in relation to Ms Parker-Jones fell within it's Policy's definition of actions which were not bullying, which states "[r]easonable management action carried out in a reasonable manner does not amount to workplace bullying".

[46] GPC says it was reasonable for it to decline to attend mediation as it was initially still investigating Ms Parker-Jones' concerns and then had reached the view she did not have a "valid personal grievance, many of the concerns were raised outside the 90-day notification period". GPC says its preference was to arrange for Ms Parker-Jones to return to work.

[47] GPC says its investigation was consistent with the Procedure which required compliance with "the principles of natural justice and procedural fairness when handling complaints". The Procedure involves both informal and formal processes, with a specified investigation process for a "Formal Complaint Resolution Procedure". GPC says it followed this process with a complaint in writing from Ms Parker-Jones and she was interviewed through her responses to written questions put by Mr Marriott.

[48] GPC then says:

> The Procedure required [GPC] to put the allegations to the respondents. The allegations included various allegations about several members of the team. It was not appropriate for all the allegations to be put to each of the respondents. The allegations did not include specific details to respond to. Some of the allegations had already been addressed through [GPC's] informal procedure,

[6] WorkSafe New Zealand, "Preventing and responding to bullying at work – Good Practice Guidelines", March 2017, page 8, section 1.1.

> so it was appropriate for Mrs Taylor to answer them rather than each individual respondent. These included the allegations of criticism about Ms Parker-Jones's work, the "invalid" comment, the issue of parts being sold, and the resignation discussions.
>
> Each member of staff at the [specific location] Branch was interviewed using targeted interview questions which established the culture at the branch. These questions would have elicited responses in support of Ms Parker-Jones's allegations had such conduct occurred.
>
> Mrs Taylor was asked questions more directly related to Ms Parker-Jones's allegations. She provided responses to Ms Parker-Jones's allegations about [a range of concerns raised with GPC].

[49] GPC then says it substantiated one of Ms Parker-Jones' allegations, but overall did not accept there were any instances of unjustified disadvantage. Mr Marriott's conclusions were reviewed and agreed with by GPC senior managers, including Ms Sixton.

[50] GPC also says as Ms Parker-Jones' concerns related to the culture and environment in the branch and her co-workers were "extremely positive about their experiences working in the branch under Mrs Taylor's management". In these circumstances GPC says it was entitled to accept the position put forward by the other seven co-workers interviewed, over Ms Parker-Jones' account.

[51] GPC says:

> Even if there were any breaches of the Procedure, [GPC] says s 103A(5) [of the Act] is engaged. Any failure to comply with the technical requirements of the Procedure was minor and did not result in Ms Parker-Jones being treated unfairly. Based on the content of the information gathered (the accuracy of which has not been challenged), technical compliance with all aspects of the Procedure would not have resulted in a different outcome.

[52] GPC also says Mr Marriott was an independent investigator, removed from the operation of the Branch and experienced in conducting investigations. It says no external investigator was required and Ms Parker-Jones' dissatisfaction with the outcome of the investigation does not establish a personal grievance.

[53] Finally, GPC says the failure to disclose the involvement of other senior managers in the decision-making process:

> does not of itself constitute an unjustified disadvantage. There is no suggestion in her case before the Authority that Ms Parker-Jones would have engaged in any different manner had she been aware other managers were involved. This is another respect in which s 103A(5) [of the Act] is engaged.

Discussion

[54] During the investigation meeting Ms Parker-Jones' advocate accepted her unjustified disadvantage claim should be limited to the concerns she had over her treatment at work, raised on Ms Parker-Jones' behalf in the email from her former representative on 29 July 2024, as discussed at paragraph [26] above. I have also taken into account other concerns raised in the correspondence which followed, as discussed in paragraphs [27] to [38] above.

[55] Mr Marriott described the process he adopted for the investigation, including being satisfied he could proceed based on the information provided in response to questions he asked and written answers provided on Ms Parker-Jones' behalf on 31 July 2024, as discussed at paragraph [29] above. He said at the investigation meeting if he considered he needed more information he could have asked for it. He stood by his approach in interviewing Ms Parker-Jones' co-workers in general terms and expected this would have uncovered any evidence of the co-workers having either witnessed or participated in behaviour complained of by Ms Parker-Jones. He said he "uncovered one instance [of a co-worker] yelling at Ms Parker-Jones once and was unable to confirm other allegations, so didn't see as necessary to discuss with Ms Parker-Jones further".

[56] Mr Marriott accepted the Procedure was relevant, notwithstanding it being headed "GPC Asia Pacific (AU) Policy and Procedure", which was explained as meaning it was an Australian policy rather than a New Zealand one. As the policy was provided to me in response to a request for "any policies which are relevant to an employee complaint or internal investigations" and I was advised there was no New Zealand specific GPC policy, I consider the Procedure to be relevant to whether GPC's actions in investigating Ms Parker-Jones' complaint were those of a fair and reasonable employer.

[57] Mr Marriott also said the Policy was the most important of the relevant policies.

[58] Ms Parker-Jones' employment agreement provides:

> **Completeness**
>
> This agreement, together with any policies or procedures you are advised of from time to time, form the terms and conditions of your employment.

[59] While Ms Parker-Jones' training records are clear she completed training on the Policy (and associated policy statement) it is not clear whether she was provided or

advised specifically of the Procedure at any point in time. During Mr Marriott's investigation process there was no evidence of the Policy or the Procedure being specifically referred to as guiding the process of his investigation. While I do not treat the Procedure as having contractual effect, consistent with comments from the Court in *Stimpson v Auckland Health Care Services Ltd (t/a Auckland Health Care)*[7] I consider I can take into account the Procedure in determining whether GPC's actions were those of a fair and reasonable employer, without necessarily holding GPC to absolute adherence to the Procedure so long as I am satisfied it has been substantially followed.

[60] I have also taken into account the Court of Appeal's observations in *A Ltd v H*:[8]

> … there may be a variety of ways of achieving a fair and reasonable result in a particular case. As the Court in *Angus* observed, the requirement is for an assessment of substantive fairness and reasonableness rather than "minute and pedantic scrutiny" to identify any failings".

[61] I am not satisfied that Mr Marriott on behalf of GPC adequately investigated Ms Parker-Jones' complaint in line with the Procedure or the requirements of s 103A of the Act for the following reasons:

(a) Mr Marriott did not refer to either the Policy or the Procedure in deciding what process to follow, although he said at the investigation meeting in response to questions from me that he thought he had "in principle" followed the required processes. Given he did not refer to these documents, it was not surprising he did not provide them to Ms Parker-Jones or her former representative and did not draw the documents to their attention. I consider this constrained Ms Parker-Jones' ability to engage with Mr Marriott's investigation.

(b) I do not consider the interviews of Ms Parker-Jones' co-workers were sufficient given the information Ms Parker-Jones had provided on 31 July 2024, as discussed at paragraph [29] above, which Mr Marriott said was sufficient for him to progress his investigation meeting. I consider Mr Marriott was sufficiently aware of specific allegations, albeit with some lack of specifics on dates, that he should have put those allegations to the named co-workers. Once allegations have been documented, then the Procedure required:

> The allegations are conveyed in full to the Respondent.

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[7] *Stimpson v Auckland Health Care Services Ltd (t/a Auckland Health Care)* [1993] 2 ERNZ 614 at 628.
[8] *A Ltd v H* [2016] NZCA 419 at [46]

> The Respondent is given the opportunity to respond and defend themselves against the allegations.

This did not occur, which I consider undermines Mr Marriott's conclusions on which incidents did and did not occur, and whether Ms Parker-Jones' complaints were substantiated or not.

(c) Mr Marriott concluded based on Mrs Taylor's evidence that the two Milwaukee hoodies had been ordered by Ms Parker-Jones for herself and that there was no evidence of her personally ordering a fuel pump. While specific allegations were made of which co-workers had sold those items, these allegations were not put to those co-workers. Neither does Mr Marriott appear to have considered whether different orders could be in question. While Ms Parker-Jones had not provided the details of who the customers were, she had said she could not remember all of the details of the customers. I consider in these circumstances Mr Marriott should have put the issue of whether these items were for customers or Ms Parker-Jones herself squarely to her.

(d) Mr Marriott's findings were made without there being any meaningful or reasonable opportunity for Ms Parker-Jones to respond to the information which has been gathered, before decisions were made. While the Procedure does not explicitly oblige GPC to give Ms Parker-Jones an opportunity to comment, it does require:

> If there is a dispute over the facts, statements from any witnesses and other relevant evidence are gathered.
>
> A finding is made as to whether the complaint has substance.

I consider a fair and reasonable employer would have taken further steps to investigate the clear differences between Ms Parker-Jones' account and the limited evidence Mr Marriott had gathered from co-workers and Mrs Taylor; and

(e) I consider a fair and reasonable employer would have asked Ms Parker-Jones for more specifics about what aspects of the investigation were inadequate when her former representative raised concerns on 23 August 2024 that the investigation had been concluded without any input from her and requested on 26 August 2024 "an independent investigation into her complaints so that they are actually investigated". This last communication had specifically called into question the adequacy of questions asked of Mrs

Taylor during Mr Marriott's interview of her, which should have given GPC cause to consider if its investigation had been adequate.

[62] I also consider GPC has not acted as a fair and reasonable employer by failing to disclose that while Mr Marriott was investigating Ms Parker-Jones' complaint, he would then make recommendations to senior managers including Ms Sixton. This was a requirement of the Procedure. When questioned by me at the investigation meeting, Mr Marriott said he made recommendations by sending his outcome letter of 9 August 2024 to the senior managers including Ms Sixton before it was sent to Ms Parker-Jones' former representative. Mr Marriott's witness statement had not disclosed this step occurring and I do not consider Mr Marriott's letter clearly indicated this had occurred, although this could arguably be read into the use of the collective "we" language in his letter.

[63] Ms Sixton acknowledged being a decision-maker in relation to Ms Parker-Jones' complaints and said she had, with the other senior managers, adopted Mr Marriott's findings, as communicated in the letter of 9 August 2024.

[64] The Court in *E Tū v Singh*[9] said "An employee is entitled to know who is making decisions impacting on them, and to have a full opportunity to engage with them". This opportunity was not provided to Ms Parker-Jones. No explanation has been provided by GPC of why the decision-makers were not advised to Ms Parker-Jones.

[65] Combined, I consider the shortcomings in Mr Marriott's investigation process and the failure to disclose the decision-makers to Ms Parker-Jones, led to her being disadvantaged as the complaints she had raised were not adequately addressed. I am satisfied this negatively impacted on her employment with GPC and do not consider the short-comings in GPC's process to have been minor and or to have not resulted in Ms Parker-Jones being treated unfairly, in terms of s 103A(5) of the Act.

Outcome

[66] For the reasons set out above, I find Ms Parker-Jones has established that she was unjustifiably disadvantaged in her employment by GPC, in relation to GPC's response to concerns Ms Parker-Jones raised over her treatment at work, how those

[9] *E Tū v Singh* [2024] NZEmpC 84 at [85].

concerns were investigated and the failure to disclose the decision-makers to Ms Parker-Jones.

Was Ms Parker-Jones unjustifiably dismissed by GPC, in relation to abandonment of employment?

Relevant law

[67] In considering Ms Parker-Jones' unjustified dismissal claim, in relation to abandonment of employment, the test for justification set out at s 103A of the Act also applies, as discussed at paragraphs [19], [20], [22] and [23] above.

[68] As there is no dispute Ms Parker-Jones was dismissed, the focus of this claim is whether GPC's actions, and how GPC acted, were objectively what a fair and reasonable employer could have done in all the circumstances at the time it dismissed Ms Parker-Jones.

Timeline associated with Ms Parker-Jones' dismissal

[69] Ms Parker-Jones' dismissal followed the exchange of correspondence between her former representative and Mr Marriot between 1 August and 2 September 2024, as outlined in paragraphs [30] and [36] to [38] above. The first notice that GPC was considering termination of employment on the basis of abandonment of employment occurred on 20 August 2024, with Mr Marriott then requesting advice on multiple occasions of when and where Ms Parker-Jones would return to work, as GPC was open to her returning to a different branch than the one she had been working at.

[70] Mr Marriott extended the timeframe for a response on behalf of Ms Parker-Jones until 30 August 2024, before eventually advising her employment had been terminated on 2 September 2024. Ms Parker-Jones' current advocate raised a personal grievance that she had been unjustifiably dismissed later that day.

Submissions of the parties

[71] Ms Parker-Jones says she was engaging with GPC's proposal to terminate her employment, with her former representative advising on 23 August 2024 she had not abandoned her employment, when also raising concerns with GPC's investigation process, and advising she was not willing to travel to an alternative store and did not feel safe returning to the Nelson branch.

[72] She raises concerns that GPC's communications after this were unclear, as Mr Marriott offered on 26 August 2024 to consider another alternative location if Ms Parker-Jones would prefer that, but did not specify a timeframe for her to respond. She says while the next communication on 29 August 2024 specified a timeframe to respond of (just) under 24 hours, it was also unclear as it said GPC "may be left with no choice but to terminate [Ms Parker-Jones'] employment on the grounds of abandonment".

[73] Ms Parker-Jones says GPC then terminated her employment "despite GPC being fully aware of the reasons [she] had not returned to work, as conveyed by her representatives and repeated assurances she had not abandoned her employment". Ms Parker-Jones says GPC has not met the high threshold the Court of Appeal said in *E N Ramsbottom Ltd v Chambers*[10] is required to contend employment has ended at the employee's initiative in that way.

[74] Ms Parker-Jones says if her termination is found not to have been unjustified, then she was unjustifiably disadvantaged by GPC's non-disclosure of the decision makers identity. Ms Parker-Jones says GPC was unclear who the decision maker was and Ms Sixton had stated she had not been involved in this decision, leading to a disadvantage to her.

[75] GPC says the starting point for an employer to justify termination for abandonment was "what the particular employment agreement provides for".[11] GPC refer to cl 6.8 of Ms Parker-Jones employment agreement which states:

> Where you are absent from work for a continuous period of three or more consecutive working days without **our consent and without good reason**, we may terminate your employment, and if we do so, this agreement will be deemed to have been terminated at the end of the third working day on which you were absent. [emphasis added in GPC submissions]

[76] GPC says Ms Parker-Jones was absent for 23 consecutive shifts without consent or good reason, and having given her opportunity to explain why she was absent, it was able as a fair and reasonable employer to consider whether the reason satisfactorily explained her absence. GPC base its view on the totality of events from when Ms Parker-Jones' concerns were initially raised on 29 July 2024, through to when it terminated her employment for reason of abandonment on 2 September 2024.

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[10] *E N Ramsbottom Ltd v Chambers* [2000] 2 ERNZ 97 at [26].
[11] Citing a determination of the Authority in *Brown v Five Star Pork (NZ) Ltd* ERA Auckland AA216/08, 23 June 2008, at [28].

[77] GPC says Mr Marriott engaged with Ms Parker-Jones' former representative on three occasions between 6 and 9 August 2024 without response. GPC says responses on behalf of Ms Parker-Jones on 26 August 2024 and then on 2 September 2024, after employment had been terminated, did not sufficiently engage with GPC's proposal to terminate her employment or satisfactorily explain her absences. GPC suggests her lack of engagement was because she had no intention of returning to work. It also says she initially failed to attend work at an agreed alternative location, failed initially to provide a good reason why she could not return to work there after the investigation was completed, and failed to explain her non-attendance at either of the alternative branches it offered. As a consequence, GPC says it was entitled to dismiss Ms Parker-Jones under the abandonment clause in her employment agreement.

Discussion

[78] Ms Parker-Jones clearly was not present at work for a considerable period of time, both while her complaints were being investigated and following GPC advising it did not uphold those complaints. I have some sympathy for GPC's view that Ms Parker-Jones had not provided reasons it accepted for her ongoing absence, given she had failed to attend work at the alternative location she had agreed to. It was clear however that she was raising concerns with the adequacy of GPC's investigation of her complaints, had belatedly advised why she did not want to travel to the alternative location and had raised concerns about whether it was safe for her to return to the Nelson branch. GPC recognised this and indicated it was willing to consider a further alternative location.

[79] On balance, I consider GPC did not act as a fair and reasonable employer when it actually terminated Ms Parker-Jones' employment. This is because it was aware of why Ms Parker-Jones was absent, even if it did not accept its investigation had been deficient. GPC was also aware she was progressing personal grievances in relation to her original concerns and the adequacy of its investigation, and wished to attend mediation about her concerns. GPC indicated on 26 August 2024 that it was open to discussing an alternative location for her to work, although did not explicitly provide a timeframe for a discussion about that alternative location. Rather its next step was to require a response within slightly less than 24 hours on 29 August 2024.

[80] GPC was also clearly aware Ms Parker-Jones was considering resigning although she did not actually resign her employment. In these circumstances, I find GPC's actions therefore amounted to an unjustified dismissal.

[81] In addition, Mr Marriott advised at the investigation meeting he was not the decision maker in relation to whether Ms Parker-Jones had abandoned her employment, rather all his findings were referred to senior managers including Ms Sixton. Ms Sixton acknowledged she had approved the decision to terminate Ms Parker-Jones' employment for reason of abandonment. I consider GPC's failure to advise the process for decision-making added to its actions not being those of a fair and reasonable employer.

[82] For completeness, while Mr Marriott used different language in different emails about whether GPC would or was considering terminating Ms Parker-Jones' employment, I do not consider the differences in language itself means that GPC's actions were unjustified. In terms of s 130A(5) of the Act, I would have considered this to be a minor defect in GPC's process of communications, which did not result in Ms Parker-Jones being treated unfairly, had it been the only defect in GPC's process.

Outcome

[83] For the reasons set out above, I find Ms Parker-Jones was unjustifiably dismissed when GPC terminated her employment on the basis it considered she had abandoned her employment without its consent and without good reason.

What remedies should be awarded to Ms Parker-Jones in relation to unjustified disadvantage and unjustified dismissal?

[84] Having determined Ms Parker-Jones was unjustifiably disadvantaged and unjustifiably dismissed, I need to consider what remedies should follow. Ms Parker-Jones sought lost wages under s 123(1)(b) of the Act from the date of her employment being terminated until the date of this determination. She also sought compensation of $20,000 for hurt and humiliation under s 123(1)(c)(i) of the Act for her unjustified dismissal claim and $5,000 for each of her unjustified disadvantage claims.

[85] Ms Parker-Jones has not obtained new employment since being dismissed by GPC but is not currently seeking employment, for reasons which do not need to be discussed further. She says she suffered deep distress due to how she was treated at work, including suffering anxiety and stress, and her hurt and humiliation was significant. She has sought counselling to address the impacts on her.

[86] GPC says the evidence of harm of its actions on Ms Parker-Jones was limited and there are questions about whether all of the stress and anxiety impacts were caused by its actions or whether Ms Parker-Jones' health issues had contributed.

[87] GPC also says Ms Parker-Jones has not demonstrated she had mitigated her loss and had not provided "detailed evidence of the steps taken to find work" citing the Court's comments in *Allen v Transpacific Industries Group Ltd (t/a "Medismart Ltd")*[12] as requiring this. GPC said Ms Parker-Jones therefore is not entitled to claim under s 128(2) of the Act. GPC referred to medical evidence provided by Ms Parker-Jones which assessed her in July 2024 as having to work "regularly fewer than 15 hours of work per week" due to both anxiety and her arthritis diagnosis, with the arthritis diagnosis being the primary reason for her reduced capacity to work. GPC said Ms Parker-Jones' incapacity caused her loss, as well as her failure to mitigate her loss.

[88] Under ss 123(1)(b) and 128 of the Act I am required to consider Ms Parker-Jones' actual loss resulting from his personal grievance.[13] Subsection 128(2) of the Act requires, where a grievance has been established, that I "order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration". I am also required to consider whether I should exercise my discretion to order a greater amount and whether the employee has contributed to the situation giving rise to his grievance.[14]

[89] In this case Ms Parker-Jones has not obtained new employment and claimed for lost wages for considerably more than three months.

[90] I decline to reduce remedies based on GPC's submission Ms Parker-Jones had not provided evidence of mitigation of loss. The Court said in *Pact Group v Robinson* that cases such as *Allen v Transpacific Industries* "now need to be read in light of more recent judgments of the Court, and do not (in my view) reflect the law as it presently stands".[15] The Court cited *Maddigan v Director-General of Conservation* which said:[16]

> It is well established that in ordinary breach of contract cases a plaintiff is under no duty to mitigate their losses. And no positive duty emerges from the wording of the Act. The key question is not whether a legal duty exists but

[12] *Allen v Transpacific Industries Group Ltd (t/a "Medismart Ltd")* (2009) 6 NZELR 530 at [78].
[13] See also *Telecom New Zealand Ltd v Nutter* [2004] 1 ERNZ 315 at [81] and *Board of Trustees of Southland Boys High School v Jackson* [2022] NZEmpC 136 at [51] and [52].
[14] Sections 128(3) and 124 of the Act.
[15] *Pact Group v Robinson* [2023] NZEmpC 173 at [55].
[16] *Maddigan v Director-General of Conservation* [2019] NZEmpC 190 at [62]

> what the prerequisites for reimbursement are. The asserted duty on employees to mitigate their losses, which has become a well-engrained mantra in this jurisdiction, tends to be used as an unhelpful shorthand which focusses the inquiry on steps taken, or not taken, by an employee rather than what—if anything—might reasonably have been expected in the particular circumstances.

[91] In these circumstances I consider there are no reasons to reduce Ms Parker-Jones lost wages claim below the three-month period. I am not satisfied however I should exercise my discretion under s 128(3) of the Act to award more than three months' lost wages, as I consider Ms Parker-Jones has provided insufficient evidence of efforts to obtain further employment after this period of time. I further consider the medical evidence Ms Parker-Jones has provided supports her being able to work only limited hours during this three-month period, due primarily to her arthritis, which limits her lost wages claim to three-months, calculated at 15 hours per week, subject to consideration of contribution.

[92] The impacts of GPC's actions on Ms Parker-Jones overlapped in relation to her unjustified disadvantage and unjustified dismissal claims, as did her evidence of anxiety and stress, loss of trust. I consider in these circumstances a global award of compensation is appropriate. Based on Ms Parker-Jones' evidence of the impacts of BPD's actions on her, taking into account comparable cases, I consider an award of compensation of $18,000 under s 123(1)(c)(i) of the Act is appropriate, before considering contribution.

Should remedies be reduced (under s 124 of the Act) for blameworthy conduct by Ms Parker-Jones that contributed to the situation giving rise to her grievances?

[93] I am required to consider if remedies should be reduced (under s 124 of the Act) for blameworthy conduct by Ms Parker-Jones that contributed to the situation giving rise to her grievances.

[94] I consider Ms Parker-Jones contributed to the situations giving rise to both her unjustified disadvantage and unjustified dismissal claims. She was not as communicative as she could have been in relation to the response to questions from Mr Marriott when he was investigating her complaints and did not draw his attention to specific aspects of the conclusions of his investigation which she did not agree with. I consider she could have raised more specific concerns, for example, in relation to the lack of questions asked of co-workers about specific allegations she had made or the adequacy of conclusions reached about the ordering of the two Milwaukee hoodies and

the fuel pump. If Ms Parker-Jones had raised more specific concerns, I consider GPC would then have needed to assess further whether its investigation had been sufficient. I consider this aspect of how she contributed to the situation giving rise to her unjustified disadvantage grievances was comparatively limited and would have warranted a small reduction only to remedies.

[95] I consider, however, Ms Parker-Jones' contribution to have been more significant in relation to her initial lack of engagement over non-attendance at the agreed alternative location between at least 2 August 2024, when it was first agreed she could work from there, and 26 August 2024, when her former representative advised she was unwilling to travel to that location. The reasons for her unwillingness were not elaborated on and I consider she could have been more "active and constructive" and "responsive and communicative" in relation to both her reasons for not attending the agreed alternative location or whether she would be willing to attend another alternative location, as required under her duty of good faith under s 4(1A)(b) of the Act. I consider Ms Parker-Jones' lack of communication contributed to a reasonably significant extent to GPC's frustrations which led to it terminating her employment for abandonment. This needs to be weighed, however, against the fact it was GPC's decision to terminate her employment, when her former representative had advised she did not consider she had abandoned her employment.

[96] The Court in *Maddigan*, with reference to *Xtreme Dining Ltd, (T/A Think Steel) v Dewar*[17], said:[18]

> … a reduction of 50 per cent is to be reserved for exceptional cases, and that care should be taken before imposing a reduction of 25 per cent. That is because even a 25 per cent reduction is of "particular significance."

[97] In this case, where I have made a global award of compensation of $18,000 under s 123(1)(c)(i) of the Act, and I consider Ms Parker-Jones' contribution has been of mixed significance, I consider a reduction to $15,000 to be appropriate. This is the same proportion as the 16.67 per cent reduction made in *Xtreme Dining Ltd*.[19]

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[17] *Xtreme Dining Ltd, (T/A Think Steel) v Dewar* [2016] NZEmpC 136.
[18] Above n 16 at [75].
[19] Above n 17 at [223] to [227].

Orders

[98] For the above reasons I order GPC Asia Pacific Limited to pay Kassidy Parker-Jones within 28 days of the date of this determination:

a. Three months' lost wages, based on 15 hours per week at Ms Parker-Jones hourly rate at the time her employment ended, under ss 123(1)(b) and 128 of the Employment Relations Act (the Act); and
b. $15,000 in compensation under s 123(1)(c)(i) of the Act (being $18,000 reduced by 16.67 per cent to reflect contribution).

[99] A permanent non-publication order is made under cl 10(1) of sch 2 of the Act in relation to all medical information disclosed during the investigation of this matter or referred to in evidence, but excluding Ms Parker-Jones' arthritis diagnosis and the anxiety and stress she was under in relation to the matters being investigated.

Costs

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

[101] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Parker-Jones 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 GPC 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.

[102] 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.[20]

[20] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

[103] Following the investigation meeting by AVL on 1 August 2025, the Authority Officer at my direction, recorded that it had been agreed for the purposes of costs to treat the investigation meeting in person on 30 July 2025 and by AVL on 1 August 2025 as one full day of hearing. My preliminary view is the notional daily rate for one day remains the appropriate starting point for a determination of costs.

Shane Kinley
Member of the Employment Relations Authority