

**Attention is drawn to an order prohibiting publication of certain information in this determination.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 99  
3283519

BETWEEN	QN Applicant
AND	FT LIMITED Respondent

Member of Authority:	David G Beck
Representatives:	Barabara Buckett and Lucy Fisher, counsel for the Applicant Rosemary Wooders, counsel for the Respondent
Investigation Meeting:	6 and 7 August 2024 in Blenheim and 21 November, 17 December 2024 in Christchurch
Submissions Received:	17 December 2024 from the Applicant 17 December 2024 from the Respondent
Date of Determination:	21 February 2025

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**DETERMINATION OF THE AUTHORITY**

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**Prohibition from publication**

[1] The Applicant has pursuant to s 10 (1) Schedule 2 of the Employment Relations Act 2000 (the Act), applied for an order that a non-publication order preventing publication of the

parties' identities and identifying details be made. The Respondent opposes the non-publication order.

[2] In order to consider the application for non-publication I need to be satisfied a sound basis for the exercise of the discretion exists as it is apparent non-publication departs from the important principle of open justice.

[3] The full Employment Court in *MW v Spiga Ltd*<sup>1</sup> is a decision where the majority held that the existing presumption of open justice should only be departed from where sound reasons exist. This affirms the existing authority of the Supreme Court in *Erceg v Erceg*.<sup>2</sup> The majority in *Spiga* set out a twofold test:

- (1) Firstly, there must be “reason to believe that the specific adverse consequences could reasonably be expected to occur.”
- (2) Secondly, 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.” The Court said this part is a weighing exercise and that equity and good conscience may be involved.<sup>3</sup>

[4] The court also suggested the following “example” matters may be relevant balancing factors:

- (a) the circumstances of the case;
- (b) the interests of the person or entity applying for a non-publication order;
- (c) the interests of the other party or parties to the litigation;
- (d) the interests of any third party;
- (e) the public interest, including the rights of media;
- (f) any further issues of equity and good conscience; and
- (g) tikanga and its principles, values, or concepts.<sup>4</sup>

[5] The Applicant's counsel sought non-publication citing a belief that an order was necessary to protect their reputation regardless of the outcome of this determination and that such orders are becoming more commonplace where it is not in the public interest to name an applicant. Overall, the harm associated with publication was seen as likely to be exacerbated due to the nature of the former employer's business that was described as being situated in a

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<sup>1</sup> *MW v Spiga Ltd* [2024] NZEmpC 147.

<sup>2</sup> *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [13].

<sup>3</sup> Above n 1 at [88] and [89].

<sup>4</sup> At [94].

small locality where the Applicant was well known in the community and associated with the business. Curiously, and heedless of the likelihood it would identify them anyway, the Applicant asked that their former employer be named.

[6] Further, the Applicant cited the harm publication could cause on future job prospects already exacerbated by the stigma of being summarily dismissed. The lack of public interest in disclosing the details of the dispute was cited as a factor favouring non-publication.

[7] In contrast, the Respondent's counsel, opposed the order being made suggesting granting non-publication of the parties' identity would offend against the principles of open justice. The Respondent suggested that allied to reputational harm, the general concern the Applicant would be disadvantaged in seeking alternative employment if the determination detailed the circumstances of the summary dismissal (regardless of the grievance outcome) was overstated as it was more likely in seeking comparable positions that the Applicant would be obliged to disclose the circumstances of leaving employment. The Respondent's counsel suggested the harm was no more than embarrassment. Counsel also sought to contextualise and distinguish *Spiga* as suggesting potential damage to reputation was only one factor to favour nonpublication and that the circumstances in *Spiga* (a dispute about breaching confidentiality of a settlement agreement) was of significantly more important principle to that applying here. Further, it was noted no specialist evidence had been advanced to suggest the Applicant's health would be impacted by publication.

### **Assessment**

[8] In my view, the circumstances of the employment relationship breakdown and the factual matrix did not involve any significant contextual matters (applying the balancing factors identified in *Spiga*) or sensitive details that point to the need to protect the Applicant from undue publicity. I also note that the Applicant's evidence is they have secured alternative employment albeit not in comparable position. As such, I am not convinced that the suggested adverse consequences highlighted, could reasonably be expected.

[9] I decline to order non-publication of the parties' identities. However, I am convinced that certain matters in contention and parts of the factual matrix, relate to matters that I will not specifically highlight in the following determination.

### **Finding on application for non-publication**

[10] I decline to order non-publication. However, given the Applicant has a right to challenge this decision and has signalled they contemplate such a challenge, I order continued interim non-publication of the Applicant and Respondent; not doing so would render any challenge moot. So, pursuant to Clause 10 of schedule 2 of the Act, I grant an interim non-publication order prohibiting the publication of the identity of both the parties to this employment relationship problem and use randomly identified letters to denote the parties.

[11] The terms of the continuing interim order are:

- (a) This interim order is to stay in place for 28 days commencing from the day after the date of this determination, to allow the applicant to file a challenge to this aspect of my determination if he wishes.
- (b) If the Applicant files a challenge, this interim non-publication order will be extended to remain in place until the Employment Court makes any order that renders it unnecessary.
- (c) If the Applicant does not file a challenge to the non-publication order in this determination, then the interim order will lapse.
- (d) In the interim the parties are identified by randomly generated letters. The Applicant as QN and the Respondent as FT Ltd.

### **Employment Relationship Problem**

[12] QN was employed by FT Ltd as a branch manager from June 2017 until being summarily dismissed on 4 March 2024. QN claims they were unjustifiably dismissed and is seeking reinstatement and compensatory remedies. Prior to the dismissal QN was issued a “letter of expectations” covering issues unrelated to the dismissal and they are challenging the justifiability of this letter as a separate disadvantage personal grievance.

[13] FT Ltd contend QN’s dismissal was a fair and reasonable decision after they had undertaken an investigation into an allegation that QN had failed to adequately disclose the

existence of a conflict-of-interest situation involving the engagement of a close family member's company. FT Ltd assert that their finding QN engaged in serious misconduct was in all the circumstances, fair and reasonable and it justified the penalty of summary dismissal.

[14] FT Ltd contend the letter of expectation issued was not a disciplinary sanction and otherwise justified in the circumstances.

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

[15] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence and submissions.

[16] I will refer to witnesses by the positions held and involvement in the decision making. QN, their partner and two ex-co-workers attended the investigation meeting as did, FT Ltd's national operations manager, regional manager, the head of people experience, the people experience business partner and an ex-regional manager. All provided written briefs of evidence and answered questions.

[17] At the end of the investigation meetings on 17 December 2024, counsel were provided an opportunity to speak to their written submissions.

### **Issues**

[18] The issues the Authority must determine are:

- (a) Was the issuing of a letter of expectations to QN an unjustified disadvantage action?
- (b) Was the decision that serious misconduct had been established warranting summary dismissal, the action of a fair and reasonable employer as measured against the standard set by s 103A of the Act and consideration of s 4 of the Act's good faith requirements and:
- (c) If QN's personal grievances are established what remedies should be awarded considering the claims for:

- i. Reinstatement.
- ii. Lost wages.
- iii. Compensation under s 123(1)(c)(i) of the Act.

(d) If QN is successful in all or any element of their personal grievance claims should the Authority reduce any remedies granted because of any contributory conduct?

(e) An assessment of the level of costs to be awarded to the successful party.

### **What caused the employment relationship problem?**

[19] FT Ltd and those witnesses who gave evidence in their support, described QN as an established and well-regarded local manager.

[20] FT Ltd operates throughout New Zealand and is a well-resourced multi-national company with developed policies and access to 'in house' human resources support and external legal advice. FT Ltd acquired the business in June 2017 and QN who had been employed by the previous company since 2006, was offered and accepted continuity of employment.

### **Performance concerns – letter of expectations**

[21] QN reported to a regional manager from September 2022 who was located in the North Island. The then regional manager's evidence was they had concerns about QN's leadership of their team in early 2023.

[22] In advance of a meeting on 6 September 2023, the regional manager says they prepared various discussion points for QN and in being questioned during the investigation meeting QN says they recalled the bullet points and before the meeting did not consider the matters being unusual as they normally got an advance agenda from the regional manager for 'catch up' meetings.

[23] At the 6 September meeting the regional manager says they outlined their concerns and QN responded with various explanations but was told to expect a letter setting out the expectations discussed.

[24] In a letter of 15 September, the regional manager set out a precis of the discussion and topics traversed. The letter ended with an exhortation to QN to broadly have regard to Company values going forward. The letter made it clear that if the concerns identified were “raised again” then a formal disciplinary or misconduct process may be necessary. In addition, the regional manager stated:

Should you ever have any doubts as to what is expected of you, what behaviour is acceptable or unacceptable, any concerns about Company rules or procedures, then you should ask me for clarification or assistance

If you have any questions relating to this letter. Or any other concerns, please feel free to discuss them with me.

[25] QN’s evidence was they were aware of the purpose of a letter of expectations (having used one themselves) but unhappy with the letter’s content and conclusions. QN says they chose not to challenge it until they became the subject of a separate disciplinary process (discussed below). In the interim, QN says the regional manager did nothing to follow up on the concerns discussed and documented.

[26] As evidence of affirmation of QN’s otherwise ongoing satisfactory performance, QN produced a 19 September 2023 letter from FT Ltd’s New Zealand managing director and general manager, in which QN was thanked for their contribution to the organisation’s performance in the past year and was granted a financial bonus.

[27] The regional manager disclosed that they got HR to draft the letter of expectations and it was placed on QN’s personal file. The regional manager recalled reporting its existence to the national operations manager and discussing the reasons for it. The regional manager says any follow up was “only if needed” and QN did not repeat any of the negative behaviours identified and they had no cause to make any further reference to the letter. I observe that the matters traversed in the letter although critical of QN, were of a reasonably subjective nature relating to their style of communication and a perception that QN was too close to their local team.

[28] It is QN's view that the letter of expectations was unjustified and that it placed them in disadvantageous position. As such, QN considers it was a disciplinary measure without adequate procedure being adhered to. In contrast, FT Ltd consider no sanctions were applied and no follow up occurred as the regional manager had no cause to revisit matters.

[29] I observe that while the latter may have been the case, it is more likely than not, that the following issues subsumed the content of the letter of expectations. I do note however, that the above quote from the letter of expectations has some significance to the later dismissal in that it is evidence that QN was put on specific notice to contact the regional manager for clarification or assistance over any concerns about company rules or procedures.

### **Finding**

[30] I find in of itself, the letter of expectations was not a formal disciplinary sanction that caused QN any identified detriment. As such it is my view that QN was 'counselled' about their approach to some managerial tasks and the nature of the counselling was recorded in a follow up letter. It was not a formal written warning and was an informal process. Whether the observations made were warranted is a moot point and I record QN provided a plausible alternative perspective to the Authority.

[31] I am however, not convinced that the action of issuing a letter of expectations in the circumstances was not one available to an employer acting reasonably in the prevailing circumstances. I do not find QN has made out an unjustified disadvantage claim.

### **Events leading up to disciplinary process.**

[32] On 14 November 2023, QN underwent a pre-planned medical procedure.

[33] While on sick leave on 25 May 2023, QN contacted FT Ltd's accounts payable manager (located in the North Island) the subject line in their email was "New Creditor Form [company named including QN's surname]" and the text read:

Hi Kylie

My son owns his own Engineering company has been doing work for [Location] Branch as a favour to me, mainly after hours. As the frequency of these jobs is increasing, I think we should be paying him so work can be on charged to customers.

Can we set up this business up as a new creditor please ? Attached is the completed Creditor form and his details from a bank statement as there are no deposit slips.

**Note:** the attached bank details identified the son's company.

[34] In giving evidence QN disclosed the son's company was owner operated and had no other employees.

[35] In a response of 31 May, the accounts payable manager queried the likely annual spend and QN responded with "approx. \$5K". In a further 2 June email, QN provided the accounts payable manager with a vendor application form completed by their son and supporting documentation.

[36] In an email of 9 June (c.c.d to QN) the accounts payable manager requested that FT Ltd's procurement team set up QN son's company as a vendor. By email later in the same day, the procurement team confirmed to QN that the son's company was approved for onboarding as a vendor.

[37] The Authority was provided with four tax invoices that QN son's company completed work for in the period 23 June to 10 October 2023 – the total amount invoiced in this period was \$4,154.56. In this period one of the jobs (installation of an office bench counter) was detailed in an email of 27 June from QN to his regional manager explaining why the bench had been replaced but QN failed to specify (in the letter) that their son's company did the work.

[38] On 20 November, FT Ltd's Head of people experience says that the procurement team manager contacted them about a potential breach of the company's Code of Business Conduct that was discovered when they had been advised QN was chasing up payments of invoices for their son's company. The procurement team manager had been alerted that the payment terms were not standard and when checking the system for the vendor's onboarding origin, had uncovered QN's email exchanges of May 2023 to the accounts payable team (AP).

[39] The national operations manager on 20 November, says they became aware of the situation described that QN had opened a vendor account for a company owned by their son and in doing so, had been in contact with the AP team. The head of people experience indicated that the initial emails viewed raised concerns as QN had in summary:

- (a) Only disclosed the relationship with their son's company to AP at a point when the son's company wanted to receive paid work.
- (b) Not disclosed the conflict of interest to their regional manager or national operations manager.
- (c) Before what they described as an informal disclosure to AP – QN had not told anyone of the conflict and neither did their managers' know of the son carrying out paid or unpaid work.

[40] The head of people experience says on 20 November they alerted both the national operations manager and the people experience business partner responsible for Human Resource matters, to the potential conflict of interest.

[41] Documentation provided to the Authority shows that the procurement manager emailed the national operations manager on the evening of 20 November, suggesting that: "Neither Procurement nor HR have seen a Conflict of Interest (COI) Disclosure Form" or evidence that "approval had been sought" and noted no conclusion could be reached on the matter until an investigation had been completed.

[42] The email exchanges then show the national operations manager was of the initial view that QN's disclosure to AP was sufficient or at "the very least" it demonstrated QN "did not intend to hide it". They also had confirmed that QN had recently completed training on the company's Code of Business Conduct.

[43] The national operations manager also suggested in an email exchange that: "Asking procurement should suffice" and that procurement should have directed QN to the process but there "is no process documented" and no conflict-of-interest form was available. The national operations manager further suggested procurement were the subject matter experts and had approved the onboarding. In a further passage in the email exchange, the national operations manager indicated:

There is no requirement for manager approval of a vendor. I do suggest it would be good business practice for [QN] to have advised [the regional manager] of the connection, and the nature of the work – again not a requirement. [The regional Manager] only became aware of it when one of the jobs was above [MS] LOA. [The Regional Manager].

[44] Despite expressed misgivings, the national operations manager says after reviewing the code of business conduct and the vendors obligations, they decided on the morning of 23 November to commence a preliminary disciplinary process. The email exchanges evidence HR input in this decision and suggest the national operations manager's initial view shifted to an assessment that QN's "actions have by no means met the stated requirements."

[45] At around noon on 23 November, the national operations manager had a brief telephone conversation with QN and says they alerted QN that they were looking into the matter of QN son's company invoices and a potential conflict of interest and, while the current invoices would be paid, the engagement with the son's company was to cease. The national operations manager's notes of the conversation disclose QN being open about chasing up the invoices with AP and suggesting AP had told them it was alright to engage their son provided all the forms were completed. The conversation is recorded as closing with advice that the national operations manager was looking into the matter and further questions may be asked of QN. It was common ground that during the call, no mention was made that a decision had already been made to commence a disciplinary process.

[46] QN had a slightly different recollection of the call on 23 November, saying they were informed the invoices to the son's company would not be paid due to a conflict of interest and when QN responded there was no conflict and in any event they had already advised of the son's involvement in May 2023 (to AP), they recalled being told this made no difference and the national operations manager said they would be in touch. QN says a further call followed in which the national operations manager said the extant invoices would be paid.

[47] In a related issue not discussed during the 23 November call, the national operations manager also resolved to ask the regional manager to check that QN was undertaking contractors' health and safety inductions in their workplace.

[48] QN returned to the office on 27 November and met with the regional manager to discuss a return-to-work plan. At this meeting, the regional manager says they asked how the branch was handling contractors' health and safety inductions and what records were being kept evidencing this activity. The regional manager was not satisfied that QN had properly overseen the inductions or could produce documentation to evidence that had been completed.

[49] The regional manager also followed up with a suggestion the following day that QN work from home that week and the following week, and then obtain a medical assessment to clarify what duties they could undertake. QN then supplied a medical certificate saying they were unfit for work from 14 November until 14 January 2024 and QN requested leave. While this caused some confusion, QN was absent on sick leave from 29 November to 14 January.

[50] The preliminary investigation prompted the national operations manager in consultation with HR, to write to QN on 8 December. The delay in addressing the conflict situation was accepted by the national operations manager as been partly caused by the gathering of further information by the regional manager around health and safety induction concerns.

[51] The 8 December letter suggested that on 20 November, FT Ltd had been informed by their procurement manager of a conflict of interest between QN and their son's company which had prompted a "fact finding exercise". The concerns that were described as serious and related to QN's role as branch manager, were described in detail. Information "gathered to date" was then set out - being that FT Ltd was aware QN had:

- On 25 May 2023 set up their son's company with an accounts payable administrator by email and when asked to specify the potential annual spend had said \$5,000. This had then led to the information provided being forwarded to the procurement team and a vendor onboarding process being completed on 9 June 2023.
- Indicated they were setting up the son's company as a vendor as the son had been previously doing unpaid work but the frequency of the work was increasing hence vendor status was sought.
- Asked for differing payment terms from the usual 20<sup>th</sup> of each month to payment on invoices within seven days which had alerted the procurement team on 20 November to an inconsistency issue and potential conflict of interest.
- Completed a training module on the "Code of Business Conduct;" and

- Invoices from the son's company, reviewed on 23 November and the review showed some on charging to FT Ltd's customers and work undertaken on company vehicles.
- Kept no records of unpaid work; and
- it was unclear whether a H&S onboarding processes had been completed for the son's company.

[52] Seven specific allegations were put, suggesting (in summary) QN had:

1. Failed to inform their direct reporting manager (or the national operations manager) of an intent to set up the son's company as a vendor in a timely manner.
2. Failed to previously disclose to the identified managers that their son had undertaken unpaid work and the nature of what this work entailed.
3. Breached a "Code of Business" relating to the need to properly declare a conflict of interest to managers in a timely manner despite completing training on the policy on three occasions and that QN had only disclosed the conflict at issue, during a vendor onboarding process.
4. Failed to ensure their son's company disclosed their conflict when becoming a vendor and not disclosed whether any work undertaken by QN's son had been on-charged to customers.
5. Failed to ensure the son had been site inducted for health and safety reasons as a contractor.
6. Engaged in the above failure of contractor induction when the son had completed unpaid work.
7. Generally failed to ensure that any contractors had completed inductions while working at the branch site (based on a discussion with the regional manager).

[53] A further allegation was levelled relating to an invoice for an urgent stair handrail repair QN's son's company had undertaken at the branch premises.

[54] The letter then drew attention to examples of serious misconduct in QN's employment agreement and a company disciplinary and dismissal policy relating to a conflict-of-interest activity and failure to disclose. The allegations were described as calling into question QN's exercise of senior managerial judgement and the trust and confidence placed in them. It stated, the allegations generally were seen as potential serious misconduct if substantiated, with a possible disciplinary sanction "up to and including dismissal."

[55] An initial meeting with the national operations manager and head of HR NZ was proposed for 14 December by AVL to provide QN with an opportunity to respond to the allegations including: providing any relevant documents. The letter did not explicitly state the national operations manager was the ultimate decision maker as it used "we" in reference to concluding any findings.

[56] QN engaged counsel and on the same day (13 December), they advised FT Ltd of instructions to act. A personal grievance was raised challenging the fairness of the 15 September letter of expectations as procedurally and substantively unjustified and causative of distress. Withdrawal of the letter and compensation was sought. A further email of the same day advised that as QN was currently on sick leave until 11 January 2024, they could not attend the proposed disciplinary meeting.

[57] By letter of 15 December 2024, FT Ltd's counsel, advised that they rejected the personal grievance claiming the action of setting up a meeting to discuss performance concerns was not untoward and had not been escalated to a performance plan or formal warning. On this basis, FT Ltd claimed no detriment had occurred and the remedies sought were declined. The letter also impliedly suggested the personal grievance had only been identified as a retaliatory response to the 8 December disciplinary meeting invite.

[58] In a letter of 26 January, QN's counsel suggested they had not been provided with an agenda for the 6 September discussion with the regional manager and did not recall being advised a letter of expectations would follow. The point was made that QN felt they had not been afforded an adequate opportunity to prepare themselves and respond to the concerns and,

they considered the regional manager's conclusions were not fairly based. The raising of the personal grievance 89 days after the event, was described as precautionary should matters be later relied upon by FT Ltd in the extant disciplinary process. The letter concluded with a request for disclosure of all documentation relevant to the issuing of the letter of expectations.

[59] In a separate letter of 26 January, QN's counsel provided initial responses and said "more detail will be provided in the meeting" on the disciplinary allegations levelled against QN. In summary these included:

- A concern that QN had not been approached first for an explanation before an undisclosed investigation of facts had commenced.
- In response to the seven allegations in the 8 December letter QN maintained they:
  - were not responsible for the "the approval and set up" of the son's company as a vendor;
  - were of the belief that "the employer was aware" that the company owner was their son;
  - had local H&S representatives complete two separate H&S inductions for their son and the son held an appropriate welding qualification;
  - had delegated all contractor inductions to branch H&S representatives;
  - had not engaged in any breaches of the code of business conduct;
  - were not responsible for ensuring a vendor was compliant with the company's issued vendor code of business;
  - had contacted other vendors to repair the handrail but none were available and from awareness of the son's business they knew their son was capable of remedying the situation – and that their son had identified regulation compliance issues.

[60] Further, despite pleading compliance, QN questioned whether the policy on H&S inductions for contractors had been finalised. The letter concluded with further information requests that were required before QN could attend the planned disciplinary meeting. These were disclosure of:

- a. QN's Personal file.
- b. All relevant policies and procedures, including but not limited to conflict-of-interest policy, code of business, health and safety policy, payment terms.
- c. All communications (including but not limited to handwritten notes, discussion notes, letters, emails messages) between [national operations manager] and any other internal or external third person in relation to our client and this matter.
- d. Ditto the above pertaining to three other employees involved.
- e. All communication (including but not limited to handwritten notes, discussion notes, letters, emails, messages) in relation to our client and these matters.
- f. All information including but not limited to meeting notes, handwritten notes, letters, documents, in relation to our client and this matter.
- g. Any other information in which our client is entitled to.

[61] In response, the national operations manager in an email of 30 January, stated they believed FT Ltd had already provided sufficient relevant information to inform QN of the allegations levelled and their scope. The invite to the meeting on 2 February was reiterated with a requirement QN attend. The email noted the wider request for personal information was going to take some time to collate and may not be available by 2 February.

[62] In response, QN's counsel disagreed with the failure of FT Ltd to address their information request but then suggested that for QN to provide responses to the allegations they should be provided with the communications that relate to the allegations including for example:

- How the information specified to support the allegations in the 8 December letter was gathered.
- Notes of a discussion between the national operations manager and QN's regional manager.

[63] Notwithstanding the above request, counsel indicated QN would attend the 2 February meeting in good faith “however [they] may be limited in [their] responses [where] the information is not available.... ”. An Audio-Visual Link (AVL) option for the meeting was agreed by all parties.

[64] I note the initial meeting delay was caused by various mutual factors. QN did not return from sick leave until 18 January and the national operations manager was unwell; then arranging timing between representatives led to a further delay until 2 February was agreed upon.

## **2 February meeting**

[65] The meeting was conducted by AVL and the Authority was provided with a recording of the meeting and an uncontested transcript. In attendance were QN, their two counsels, the national operations manager, an HR business partner, and counsel for FT Ltd. The national operations manager led the meeting.

[66] Counsel for QN used most of the meeting (just over an hour) to firmly contest and question the legal basis for the conflict of interest allegation, vigorously suggesting this allegation had not been presented in a digestible fashion. QN did not take the opportunity offered to respond to any questions. Toward the end of the meeting after QN's counsel had “reserved” their position upon answering the questions put from the 8 December letter, QN read a prepared statement. Relevant to the allegations, QN stated that in summary:

- To their knowledge, they could find no reference in company procedures suggesting they must inform the regional manager or national operations manager of an intent to set up a new vendor.

- They were perplexed why FT Ltd had waited until December to question their actions when both the reporting managers were aware in June 2023 that the son's company had manufactured and installed a front counter for the branch.
- The son's unpaid work had been done with the aim of preserving customer loyalty and was not charged out.
- The unpaid work (undertaken on customer vehicles) had been done prior to the current reporting managers' being appointed and QN was positive the previous regional manager was aware of these activities.
- There had been no personal 'intent' to use the son for work it was just they were available at the time to meet urgent customer needs.
- Any possible conflict of interest had been identified to the AP manager in the 25 May 2023 email "when I asked if [my son's company] could be set up as a vendor" that had then been approved by the procurement team.
- Had not given the son's company preferential treatment suggesting their branch chose workers to complete jobs based on performance, qualifications, price and availability and their son had met this criterion in completing six jobs.
- The terms of payment alteration had been made at the vendor's initiative (i.e. the son) and it was not QN's job to ensure vendors declare conflicts.
- The son's company had ceased work for FT Ltd as soon as the conflict issue was raised.
- All contractor H&S inductions had been completed by the branch H&S representatives and this was a process that had been going on for years.
- Was distressed by the allegations and potential dismissal.

[67] At the end of the meeting, the national operations manager observed that a key concern over QN's son completing unpaid work on customer vehicles was any warranty claims may potentially be compromised.

[68] After the meeting, FT Ltd conducted further inquiries (contacting QN's previous manager). I note at the time QN was not provided with notes of these inquiries.

[69] In addition, in an email of 7 February, the national operations manager requested evidence of H&S inductions said to have been conducted. The records were provided on 12 February.

### **Preliminary decision**

[70] In a letter of Friday 16 February, the national operations manager set out a preliminary conclusion they had reached which was that QN's actions amounted to serious misconduct and they proposed summary dismissal as a sanction. In explaining the "Company findings" the national operations manager stated:

Having considered your responses as well as the submissions provided by your representative, and a review of all the information available to us (and shared with you) prior to, during and after our meeting, we have reached the conclusion, on the balance of probabilities, that you well knew your obligations under [the company] COBC as evidenced by your completion of the Code of Business learning module on three occasions, most recently in September 2022.

The conflicting and inconsistencies in your statements you have made around contractor induction ..... raise questions as to whether you have been truthful with us. This is called into question again when stating to us that your former managers were aware of you providing work to your son, whether paid or unpaid.

[71] It was then stated that all allegations bar one (the son's obligation to disclose the conflict), had been made out and they amounted to serious misconduct. The national operations manager noted:

All the above stated actions in themselves raise serious questions about your judgment, or lack thereof and also the trust and confidence that the Company has in you in your senior role as a [FT Ltd] Branch Manager.

[72] FT Ltd sought a written response from QN by 21 Feb. QN by this time was back at work and they had attended a two-day managers' conference. QN requested and had approved,

an extension to respond to the 16 February letter. QN responded on 26 February. QN's response through counsel, also raised a personal grievance claiming the company had ignored and misrepresented all responses of QN during the 2 February meeting and suggested QN had been disadvantaged by the process leading to the dismissal proposal and, that the sanction proposed was disproportionate. The grievance letter also posited that there was a conflation of the disciplinary investigation and sanction without an opportunity to discuss alternatives to dismissal. However, the letter of response proposed no further discussion and indicated litigation was now likely with reinstatement being sought.

### **Decision to dismiss.**

[73] In giving evidence, the people experience business partner says that together with the head of people experience (and possibly FT Ltd's legal counsel), they assisted the national operations manager in their final decision making that also included consideration of a final written warning. When pressed why the latter option was not considered appropriate, the people experience business partner says this was rejected on the basis of QN's senior position and the erosion of trust their actions had caused.

[74] By letter of 4 March 2024, FT Ltd's national operations manager confirmed their decision to dismiss QN based on their findings outlined in the 16 February letter.

[75] The national operations manager hand delivered the dismissal letter to QN at their work around 11 am on 4 March. QN says upon getting advice they packed belongings from their office and after a discussion with the national operations manager met with staff and advised of their leaving.

### **The aftermath**

[76] By way of a letter of 5 March, QN's counsel raised a personal grievance of unjustified dismissal seeking reinstatement and suggested the dismissal was "totally void of any justification both substantively and procedurally".

[77] Frustrated by no immediate response, QN's counsel filed an application in the Authority on 7 March claiming they had been unjustifiably dismissed and unjustifiably disadvantaged and reinstatement was sought.

[78] The Authority directed the parties to mediation on 26 March that occurred in mid-May but the matter remained unresolved.

### **Assessment of threshold issue**

[79] Before assessing FT Ltd's decision to dismiss QN and how it was reached, a threshold issue is: was the conduct of QN (predominantly the finding that they failed to recognise and fulfil a claimed obligation to properly disclose a conflict of interest to their immediate manager), capable of being categorised as potentially serious misconduct?

[80] The first part of this assessment is to determine what can reasonably be categorised as serious misconduct. In *Emmanual v Waikato District Health Board*, the Employment Court in applying leading authorities (references omitted) sums up an approach to determining what may constitute behaviour that deeply impairs or is destructive of confidence or trust as follows:

[58] When considering whether an employee's conduct amounts to serious misconduct, justifying summary dismissal, the Court must stand back and consider the factual findings and evaluate whether a fair and reasonable employer could characterise that conduct as deeply impairing or destructive of, the basic confidence or trust essential to the employment relationship, justifying dismissal. What must be evaluated are the nature of the obligations imposed on the employee by the employment contract, the nature of the breach that has occurred, and the circumstances of the breach.

[59] This evaluation requires a two-step approach. The first step is to consider whether the conduct is capable of amounting to serious misconduct; if it is, then the second step is to consider whether dismissal is warranted in all the circumstances.

[60] It is essential to the maintenance of the necessary trust and confidence in the employment relationship that employees are honest and open with their employers. It will be a serious breach of an employee's obligations to his or her employer to mislead the employer in response to specific inquiries based on the employer's concerns. The duty of good faith also includes that parties to an employment relationship must not, whether directly or indirectly, do anything to mislead or deceive each other; or that is likely to mislead or deceive each other. Where an employee provides misleading information to his or her employer on a matter that the employee knows is important to the employer that usually will deeply impair or be destructive of the basic confidence or trust that is an essential of the employment relationship. It will almost inevitably amount to serious misconduct.

[61] When the Court then considers whether summary dismissal is warranted in the circumstances, it does not stand in the shoes of the employer. Rather it

considers whether the decision to dismiss was one a fair and reasonable employer could have reached in all the circumstances at the time the decision was made. The employment history and an assessment of the employee's future reliability and trustworthiness may be relevant in this context.

[62] If the employer reasonably finds serious misconduct, and believes it can no longer trust the employee, it will be open to the employer to determine that dismissal is appropriate.<sup>5</sup>

[81] The above guidance on approaching a summary dismissal without notice, involves applying the justification test in s103A of the Act but the seriousness of the conduct has to be so destructive of the employer's trust in the worker or substantial in its level of seriousness that no notice is warranted of a dismissal. The sanction of summary dismissal is reserved for the most serious cases of misconduct.

[82] On the facts, I am convinced that FT Ltd's decision maker did turn their mind to the threshold issue of whether QN had engaged in serious misconduct.

[83] On the face of it, I find that the failure to disclose a conflict of interest involving providing a financial reward to a close family member is objectively capable of being categorised as potential serious misconduct, even without recourse to any known policy adherence or guidance from an employer.

[84] I consider the nature of QN's senior role and experience would point to an exercise of 'common sense' that before engaging their son's company, QN needed to alert their immediate manager to the conflict involved and seek permission for an 'indulgence' to address the manifest, immediate and potentially ongoing difficulty of such an engagement. On the facts, I do not consider QN did enough to alert FT Ltd's management to the conflict by asking accounts payable to set the son's company up as a vendor. I, however, consider that FT Ltd's accounts team was inexplicably not alert to the conflict when QN made the vendor onboarding request. I now examine contextual issues.

### **Did QN recognise the conflict of interest?**

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<sup>5</sup> *Emmanuel v Waikato District Health Board* [2019] NZEmpC81 at [58]-[62].

[85] On hearing evidence and assessing QN's responses once the conflict of interest became an issue, I find it was understandably a concern to FT Ltd that QN not only failed to recognise the conflict of interest but sought to vigorously contest and deny its existence.

[86] In sworn written evidence and during the investigation meeting, QN initially suggested they were aware of what the employment agreement said amounted to a conflict of interest but they "complied with the provision and there was no relevant conflict of interest justifying my dismissal."

[87] QN further stated that when the national operations manager called them on 23 November, they advised them that "there is no conflict of interest". When questioned during the investigation, QN reiterated in remembering the call that they did not believe they had conceded it was a conflict-of-interest situation. Further on the call content, QN says they knew from the call they were under investigation over the conflict issue but did not know the full scope or who participated in the investigation (other than the national operations manager).

[88] QN summed their position up as there being no conflict or potential conflict, as they had no personal interest in their son's company that could interfere with their objectivity in exercising judgment. QN then suggested they had not given the son's company any preferential treatment and that they were not a competitor of FT Ltd. QN suggested the son's company had met all the price/qualifications and other suitability criterion. QN then asserted because there was no conflict: "I was not required to report."<sup>6</sup> In a further written statement replying to FT Ltd's witness statements, QN made their position clear as:

There would be no need to apologise for an action I did not commit or take responsibility for actions completed by individuals at my branch, such as the procurement team approving a vendor which they go on to report as a conflict of interest and also approved the 7-day payment.

I don't believe there to have been a conflict of interest and if there was, I had identified any potential conflict of interest in the procurement process. If there was any failure to follow any process was inadvertent and not done to mislead or create a preferential benefit for my son or deliberately flout any policies.<sup>7</sup>

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<sup>6</sup> QN's statement of evidence, 12 July 2024.

<sup>7</sup> QN's statement of evidence in reply, 5 August 2024.

[89] To ensure I was not selectively assessing QN's various stated positions above, I questioned QN first on their basic awareness of – what do you understand to be a conflict of interest? - QN responded it would be if you hired someone in a like-minded business.

[90] QN despite claiming they had not familiarised themselves with the 2018 Code of Business Conduct and did not check it because they did not believe a conflict existed, referred to a code of conduct training module they had undertaken (in 2019 and 2022) and says it contained specific guidance on recognising a conflict referred to as the six Ps and that they saw the conflict as a potential one that they had to disclose.

[91] I then pressed QN on 'perceived' conflicts and they recalled that the code of conduct training had discussed engaging family members. QN then reflected that they did see potential conflicts as needing to be discussed but says they did not check the conflict provision contained in their individual employment agreement.

[92] When pressed did they think when engaging their son's company, they better seek permission, QN responded "I believe I did" by asking the procurement people if it was ok and they thought that was enough. However, QN then says they did not see it as a conflict when it met other requirements. QN suggested at the time it was possible it had not occurred to them a conflict existed and they relied on the expertise of the procurement team to identify problems and give permission to proceed or not. In answering FT Ltd's counsel on whether they at any time acknowledged they failed to follow company policies, QN says they remained of the view they did not do anything wrong.

### **The employment agreement**

[93] QN's individual employment agreement (IEA) of 8 June 2017, relevantly stated (at cl 4.1 (h)) that they would comply with the "Employer's code of conduct as may be issued from time to time". Clause 10 of the IEA is headed "CONFLICT OF INTEREST AND SECONDARY EMPLOYMENT" and it relevantly provided:

10.1 The Employee shall not, except with the Employer's prior written consent during the course of his/her employment with the Employer, be directly or indirectly employed, engaged or concerned in, or assist financially, any other business which in the opinion of the Employer:

- (a) competes or conflicts with the business of the Employer; or

- (b) gives rise to a conflict of interest involving the Employee; or
- (c) reflects or may reflect adversely on the Employer's business or its public perception.

[94] The clause above then suggests if the employee is:

... unsure or has any doubts whether any employment engagement or other activity may be in breach of this clause, the Employee must discuss this with their manager before commencing that employment engagement or activity.

### **Code of Business Conduct**

[95] The company's comprehensive March 2018 Code of Business Conduct has a lengthy section on "Avoiding Conflicts of Interest" . Page 15 of the code has a section providing guidance on what a conflict is and how to manage it. The definition is straightforward:

A conflict of interest arises when you have a personal interest that could be seen to have the potential to interfere with your objectivity in performing duties or exercising judgement on behalf of the Group. You should avoid conflicts of interest.

[96] The code advises at page 16:

If you find yourself in a situation of conflict whether actual or potential, speak to your Head of Department so it can be managed properly. Such situation should be reported in writing as soon as practicable stating the facts, nature and extent of the conflict.

[97] Reporting procedures are then detailed using clear terms that prior discussion and approval should be sought from an immediate reporting manger when a conflict of interest is apparent.

[98] At page 17 of the code, a specific heading: "Family Members and Close Personal Relationship" contains the exhortation that: "A Director or Employee must also disclose business activities in the Group which involve family members and refrain from any related decision-making process".

### **Assessment**

[99] I find from the above factors alone, that it was objectively reasonable to expect QN to recognise the actual and potential conflict of interest arising in seeking to engage their son's

company as a vendor. This should have to a lesser culpable extent, also extended to concerns around insurance cover for customer work undertaken on an unpaid basis.

[100] In looking at QN's actions and suggestion that permission had been granted by FT Ltd's procurement team, I do not consider QN adhered to the reasonable expectation in their employment agreement and code of business conduct that highlighted the need to consult beforehand and to discuss a potential conflict with their immediate manager. I find this requirement was an implied duty of fidelity and expressly provided for and objectively, given the senior position held by QN, one where they fell below known expectations.

[101] QN's action in simply referring the matter to the accounts payable team, while arguably showing no ill intent, was a major judgment failure that could have avoided their manager's scrutiny but significantly it meant the discussion about mitigating the conflict on an ongoing basis was not entered into.

[102] I find QN did not recognise that in merely seeking to place their son's company on the vendors list with accounts payable that they were doing this from a position of influence. The wording of the 5 May email was objectively viewed, not an alert to a potential conflict but more an instruction that QN had 'decided' to move the son's company onto a payment footing. I find QN's defence that the procurement team were the 'experts' on conflicts was a retrospective deflective action that did not demonstrate them accepting responsibility for the failure to recognise a fundamental conflict situation that would put QN in a position of directly allocating work to their son's company. It was either disingenuous or naïve on QN's part to suggest they had nothing to gain from this arrangement. To use a contemporary phrase the 'optics' of the set-up were clearly wrong.

[103] The situation may have been ameliorated during the disciplinary process if QN had openly demonstrated that they recognised the conflict as being real and ongoing rather than continue to challenge the basis of FT Ltd's concerns about the judgement involved.

[104] I find overall that subject to my assessment of procedural factors, that FT Ltd acted in a fair and reasonable manner in concluding QN had engaged in serious misconduct. I make this finding on the basis of the conflict-of-interest issue that QN failed to discuss with their immediate managers and once identified as an issue, failed to recognise as obvious, including

QN not putting in place any steps to remove themselves from decision-making on what work would be approved once the son's company became a vendor.

[105] I, however, do not find that FT Ltd has established that QN's managing of contractor site inductions constituted serious misconduct or misconduct of any nature. The investigation of this latter issue was poorly handled and badly timed and could not objectively conclude to a reasonable standard that QN misled their regional manager. At best it may have constituted a performance issue to ensure QN had better oversight of inductions and storage of records and more personal oversight or involvement as a branch manager.

### **The decision to dismiss – was it justified?**

[106] Although the Authority does not have unbridled licence to substitute its decision for that of the employer<sup>8</sup> it may reach a different conclusion, provided the conclusion is reached objectively and with regard to all the circumstances at the time the dismissal occurred.<sup>9</sup> The Authority is deciding “whether the decision and conduct of the employer fell within the range of what a fair and reasonable employer could have done in all the circumstances.”<sup>10</sup>

[107] Section 103A(3)(a-d) of the Act elements that the Authority must objectively measure an employer's actions against, are in summary:

- (a) Whether given the resources available to the employer, did they sufficiently investigate the allegations made against the employee.
- (b) Did the employer raise the issues of concern with the employee prior to deciding to dismiss?
- (c) Was the employee afforded a reasonable opportunity to respond to identified concerns.

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<sup>8</sup> *X v Auckland District Health Board* [2007] 1 ERNZ 66.

<sup>9</sup> *Air New Zealand v Hudson* [2006] 1 ERNZ 415.

<sup>10</sup> *Angus v Ports of Auckland* [2011] NZEmpC 160, (2011) 9 NZELR 40 at [25].

(d) Did the employer genuinely consider any explanation provided by the employee before deciding to dismiss; and in addition, any other contextual factors the Authority regards as appropriate to consider.<sup>11</sup>

[108] Applying the above elements broadly requires the Authority to look at whether FT Ltd's actions and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred and, I must also have regard to the Act's good faith provisions, the relevant employment agreement, and any company policies.

[109] In summary, I have to consider various contextual factors, including broadly whether concerns were sufficiently raised by the employer with the employee, whether a full, fair, and thorough investigation was completed and whether a reasonable opportunity to respond to those concerns was given and, whether the employer genuinely considered the employee's explanations before the decision to dismiss was made including consideration of alternatives to dismissal.

[110] This is a dismissal that can neatly be divided into process and substantive elements.

### **Process**

[111] I find that FT Ltd given its ample resources and recourse to legal advice at an early stage, should be held to a reasonably high standard.

[112] I, however, find given the clear-cut nature of the predominate concern FT Ltd had about the conflict-of-interest issue that it did not require a complex investigation that should be the subject of minute or pedantic scrutiny. The essence of it was to seek an explanation from QN as to their action of setting their son up as a vendor to FT Ltd.

[113] The communication between parties was well documented and the only background factual issue to establish was whether the regional manager had been apprised of the conflict situation prior to the setting up of vendor status by QN. The latter was easily discovered (they say they had not been apprised) and this was not contested by QN other than to suggest,

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<sup>11</sup> Employment Relations Act 2000, s 103A(4).

managers current and previous, were aware of the unpaid work previously undertaken by their son (a premise denied in evidence by FT Ltd's witnesses).

[114] Turning to procedural factors contained in s 103A of the Act, it is apparent from correspondence that FT Ltd set out specific concerns for QN to answer and the decision-making process was well documented and not rushed. QN was represented by experienced counsel throughout the process and had an ample opportunity to address the decision-maker and an ability to comment on the preliminary decision.

[115] The investigation was clumsily managed at the outset, as the national operations manager in giving QN a courtesy call on 23 November, did not alert QN to the seriousness of what was 'in train' as the decision to proceed to a disciplinary investigation had already been made. There were also deficiencies in the investigation of facts around the contractor health and safety inductions matter with the national manager inappropriately using the regional manager to approach QN without them knowing they were actually being investigated and some poor documentation of exchanges. Although there was a peripheral link to the conflict issue in the sense that it was legitimate to inquire if QN had inducted their son as a contractor, the widening of the issue added little to FT Ltd's predominant concern around QN's conflict appreciation and reporting obligations.

[116] It was also questionable that FT Ltd appoint the national operations manager to investigate the matter given they were the regional manager's direct report and had involved the regional manager in the initial investigation. QN also provided evidence of previous tension between themselves and the national operations manager.

[117] In assessing this though, I am convinced that this was not an investigation that required an independent investigator to ascertain contested facts and interview a range of people involved. This was a straightforward matter involving QN's own actions and they had to justify their actions to a decision-maker who was fully aware of the prevailing operational context.

[118] From the disclosed correspondence and listening to the audio recording of the 3 February meeting, it is evident that the decision-making national operations manager took an open approach and was initially not determined to pre-judge QN's actions until hearing from them. On the contrary, the initial reluctance to follow HR/legal advice was unusually exposed

in email exchanges but showed the decision maker considered mitigating factors including the lack of a conflict-of-interest declaration form and a fair consideration of QN's intent.

[119] I observe that upon hearing from QN and seeking an explanation of their understanding on the importance of recognising conflicting issues, the decision-maker was entitled on a fair and reasonable basis, to conclude that apart from inadequate flagging of the conflict at an early stage, QN did not appreciate the conflict they imposed upon themselves and the critical need to analyse the potential for ongoing conflict and negative perception of engaging a close family member without any safeguards in place. This lack of appreciation of the importance their employer placed on transparency around contractual relationships was a compelling factor that led to the finding by FT Ltd that their ongoing trust and confidence in QN could not be maintained or restored given the senior position QN occupied. On the facts, this was in my view, an objectively reasonable conclusion to reach.

[120] I could criticise the national operations manager for not suggesting QN meet with them in their 16 February letter setting out the proposal to dismiss, (the letter only referred to a written submission) but QN who was represented by experienced counsel, did not seek to meet. By the tenor of QN counsel's response of 26 February, it was apparent QN forwent an opportunity to better explain their conduct and any mitigating factors.

[121] It was also clear from listening to the recording of the 3 February meeting, that QN chose to be evasive and objectively their suggestion that they did not understand the allegations put to them was an unsustainable stance.

[122] I was also not convinced that the disputed information disclosure issues if complied with, would have assisted QN in providing an explanation for their conduct of the conflict which was the predominant issue. QN suggested that documentation from the initial investigation had not been properly disclosed but I fail to see the relevance of this suggestion as this was not an investigation where the decision-maker relied on the contested evidence of others – the issue was simply QN having to justify to their employer why they onboarded their son's company as a vendor without sufficient prior discussion with management or any appreciation of the implications of their actions.

[123] As discussed above, I find the investigation FT Ltd undertook was just sufficient in the prevailing circumstances and context but by no means perfect. In applying s 103A(5) of the Act and considering imposed good faith obligations, I do not find the defects in process resulted in QN being treated unfairly.

[124] Considering the totality of the evidence, the decision maker was reasonably entitled to conclude from QN's responses that QN did not appreciate or understand why the actions they undertook, irrevocably destroyed the trust and confidence their employer was entitled to place in them. Sadly, QN brought about their own demise.

[125] I find that FT Ltd has satisfied the requirements of fairness and reasonableness as set out in s 103A(3)(a) – (d) of the Act.

[126] Section 103A(4) of the Act allows the Authority to look at additional factors that may play upon the overall fairness of the process and ultimate decision. In this regard I have considered QN's counsel's submission that the involvement of the national operations manager in the decision-making process was inappropriate but found that not to be the case.

[127] I have also carefully considered QN's belief that in alerting the accounts/procurement team to their decision to onboard their son that this was sufficient to comply with imposed obligations. I do not find this to be so. The primary obligation that QN should have easily appreciated, was to first assess the nature of the conflict and then once that was appreciated, seek to discuss with their reporting manager how it could or could not, be mitigated. By simply alerting the accounts payable manager, QN missed these vital obligations and during the investigation meeting QN did not convince the Authority that they sufficiently understood these obligations or the magnitude of ignoring them, despite their view that no ill intent was involved.

### **The substantive decision**

[128] The key issue is whether after hearing from QN at the 3 February meeting and subsequent correspondence received, could FT Ltd conclude that serious misconduct was established, sufficient to destroy the ongoing relationship of trust and confidence they were entitled to place in QN and, was this a fair and reasonable conclusion that they could have reached in all the circumstances.

[129] Other than suggesting a belief that they had sufficiently sought and obtained permission to set up their son as a vendor and that the previous unpaid work of their son was known to management, QN disclosed no compelling mitigating circumstances as to why they had not sought a prior discussion about the implications of seeking vendor status for their son's company.

[130] While I observe some concern about how the national operations manager initially approached their investigation and decision making, they took legal advice throughout the process including on the parameters of the decision-making and articulated the matters they considered. There is not a specifically defined 'obligation' to exhaustively consider alternatives to dismissal in s 103A of the Act. In the event, I am satisfied that in making the decision a measured and careful approach was taken by FT Ltd and objectively as above, I have assessed that the finding of serious misconduct in all the circumstances including QN's responses, was an available option.

[131] This is not a case where the Authority having concluded that FT Ltd's categorisation of the matter being capable in the circumstances, of constituting serious misconduct, could substitute a different conclusion to the one reached by the employer. I find this, having regard to an available perception that the decision may have appeared harsh given QN's otherwise unblemished period of service. What marked this out as different from an excusable lapse in judgment, was QN's abject failure to recognise or accept, that engaging a close family member when you are in a position of influence, is an indulgence that needs informed prior approval and safeguards in place. FT Ltd's conflict policies made this clear and as a company they are entitled to expect their senior managers to objectively appreciate the need for adherence.

### **Finding**

[132] I find the decision to summarily dismiss QN was one that a fair and reasonable employer could have reached in all the prevailing circumstances.

[133] I find that the decision to issue a 'letter of expectations' to QN did not in all the circumstances, disadvantage QN or cause any detriment.

[134] QN was justifiably dismissed and not unjustifiably disadvantaged by FT Limited and is not entitled to consideration of remedies they sought.

### **Costs**

[135] Costs are reserved.

[136] The parties are encouraged to resolve any issue of costs between themselves.

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

[138] The parties can expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>12</sup>

David G Beck  
Member of the Employment Relations Authority

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<sup>12</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)