



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2023](#) >> [2023] NZEmpC 145

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

## Robertson v Idea Services Limited [2023] NZEmpC 145 (1 September 2023)

Last Updated: 7 September 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2023\] NZEmpC 145](#)

EMPC 418/2022

IN THE MATTER OF a challenge to a determination of  
the Employment Relations  
Authority  
BETWEEN MARGARET ROBERTSON  
Plaintiff  
AND IDEA SERVICES LIMITED  
Defendant

Hearing: 18–19 July 2023  
(Heard at Tauranga)

Appearances: L Anderson, advocate for  
plaintiff G Ballara, counsel for  
defendant

Judgment: 1 September 2023

### JUDGMENT OF JUDGE K G SMITH

[1] IDEA Services Ltd is a registered charity owned by IHC New Zealand Inc. It provides support services for people with intellectual disabilities, who are sometimes known as service users.

[2] In November 2019, Margaret Robertson was employed by IDEA Services as a permanent support worker. In September 2020 it dismissed Ms Robertson for serious misconduct having concluded she verbally abused and slapped one of its service users while they were in the Tauranga Hospital Emergency Department.

[3] Ms Robertson admitted slapping the service user but denied verbally abusing him. Her case was that she was responding in self-defence to his attempt to assault

MARGARET ROBERTSON v IDEA SERVICES LIMITED [\[2023\] NZEmpC 145](#) [1 September 2023]

her and that IDEA Services failed to adequately investigate what happened, or take into account the circumstances in which the incident occurred.

### The Employment Relations Authority's determination

[4] The Employment Relations Authority dismissed Ms Robertson's personal grievance alleging unjustified dismissal.<sup>1</sup> She challenged that determination and sought a full rehearing. While the statement of claim alleged she was unjustifiably dismissed and unjustifiably disadvantaged, it was accepted that this hearing was confined to the unjustified dismissal claim.

### Non-publication

[5] In the Authority the service users name and any information that might identify him was the subject of a non-publication order. He was referred to throughout the investigation meeting only as Client A. It was common ground that the order was appropriate and an application was made to continue non-publication in this proceeding.

[6] No public interest would be served in identifying Client A. Pursuant to cl 12 of sch 3 to the [Employment Relations Act 2000](#) (the Act) there is now a permanent order that his name and any information that might identify him are not to be published.

### **The test for justification**

[7] Where a personal grievance is brought under [s 103\(1\)\(a\)](#) of the Act for unjustified dismissal, the question of whether that decision was justified must be determined, on an objective basis, by applying the test in [s 103A\(2\)](#).

[8] The test in [s 103A\(2\)](#) is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred. Applying that test is

1 *Robertson v IDEA Services Ltd* [2022] NZERA 579 (Member Gane).

assisted by the considerations in [s 103A\(3\)](#). The Court may also take into account any other factor considered appropriate.<sup>2</sup>

[9] For completeness, a dismissal is not unjustified because of defects in the employer's process if they were minor and did not result in the employee being treated unfairly.<sup>3</sup>

### **What happened**

[10] Before considering how the issues that led to Ms Robertson's dismissal came to IDEA Services' attention, it is necessary to say a little more about her employment and Client A.

[11] Ms Robertson is an experienced support worker. She holds a qualification in health and wellbeing and was previously a manager in this industry. While she was employed by IDEA Services in 2019 that was her second period of employment with it. Previously, she had worked for IDEA Services for about five years.

[12] As part of Ms Robertson's induction on returning to IDEA Services, she received training about dealing with support users who have an intellectual disability, administering medication, how to support a service user on a "day-to-day basis", and to recognise escalating behaviour and what to do about it.

[13] In July 2020, Ms Robertson successfully completed a refresher course known as "Managing Actual and Potential Aggression", or MAPA. This programme trains staff in how to deal with potentially difficult situations to "de-escalate" them, to enable support workers to keep themselves safe by learning when to exit early from a potentially compromising situation and, if required, to release themselves from a hold without causing unnecessary harm to the service user or themselves.

[14] Client A has been a service user for several years. Stephanie Parker, IDEA Services' Area Manager, had known him for about six years at the time of the incident that led to this proceeding. It was common ground that Client A has complex high

2 [Employment Relations Act 2000, s 103A\(4\)](#).

3 [Section 103A\(5\)](#).

needs because of his intellectual disability. He suffers from a post-traumatic stress disorder, and has difficulty communicating and expressing himself. He has a legacy of prior abuse while in care. He also has a degenerative condition affecting his sight by severely limiting it.

[15] Client A has the benefit of Government funding that recognises his complex needs and behaviour and that he requires a high level of daily support, effectively on a one-to-one basis. The services provided to him include sleepovers by care workers.

[16] A feature of Client A's complex needs is that when he does not feel safe he enters what was referred to by the parties as a heightened state and his behaviour deteriorates. For reasons that do not need to be described in any detail, his previous experiences have led him to associate ambulances, the presence of the police, and going to hospital with places of safety. When he feels unsafe he can insist on going in an ambulance or to hospital.

[17] IDEA Services developed a safety plan for Client A. It identified potential triggers that might cause a heightened state to develop, the stages it might progress through and the steps support workers should take to care for themselves and Client A.

[18] The safety plan listed about ten behaviours that indicated Client A was suffering from stress. Amongst the behaviour relevant to this proceeding was that he might pinch, bite himself or others, throw objects, hit objects, or “rush at you to attack”. Ms Parker explained that these actions were a compulsion, not intentional bad behaviour.

[19] Ms Robertson agreed that Client A’s behaviour could be challenging. She was aware of, and understood, those potential challenges before beginning to work with him.

[20] Despite the impression that might be gained from reading the safety plan, Client A was not considered to be a violent person. Ms Parker described him as a gentle man whose behaviour only became challenging when he was in a heightened state. That view was shared by Joanne Gates who was, at relevant times, Ms

Robertson’s manager. It was probably also shared by Ms Robertson because, even while the incident that led to her dismissal was being investigated, she expressed the desire to continue to work with him.

#### *Before the hospital*

[21] On 26 August 2020, Ms Robertson began work supporting Client A at about 1 pm, after a staff meeting. She had seen him briefly earlier in the day and noted that he was exhibiting challenging behaviour. When she began her work at his home, Client A told her almost immediately that he was waiting for an ambulance to take him to hospital.

[22] As Ms Robertson’s shift progressed Client A’s behaviour deteriorated. He made more requests to go to the hospital. As a form of distraction Ms Robertson offered to help him make his bed but he resisted that invitation and said he was waiting for an ambulance. Ms Robertson said that while she was making the bed Client A slapped her posterior and began to cry. When asked why he had done that the answer was that his tooth hurt and he wanted to go to hospital for one night.

[23] Shortly afterwards Ms Gates arrived. She explained that the challenging behaviour being exhibited by Client A was expected, because the previous day he had attended a scheduled appointment at the hospital for an assessment.

[24] Among the challenging behaviour Client A exhibited was tipping over furniture. At about 3.30 pm, Ms Robertson and Ms Gates went to the office in Client A’s home to remove his audience, hoping that would help him calm down. That strategy was unsuccessful.

[25] Just after 4 pm Ms Gates telephoned the police and two officers attended Client A’s home. Client A was not arrested and that was not the purpose in calling for assistance; it was part of an understanding between IDEA Services and the police to manage his heightened state given that he associated police officers with being safe.

[26] Eventually a decision was made to take Client A to the hospital for possible admission for a mental health assessment. The police who responded to Ms Gates’

call would not transport Client A there because he was not under arrest and, it appears, because COVID restrictions that then applied precluded them from doing that. Ms Robertson offered to transport him to the hospital in her car, provided she had help. One of the police officers accompanied her on the drive to the hospital. The journey was not incident free.

[27] Ms Robertson described the situation at Client A’s house as extremely difficult and distressing. She said that when she was outside he was coming towards her, to assault her, and that while the police officers were present he made three further attempts to do that. She said that during the drive to the hospital he made several attempts to assault her and it got to the point where she was driving with her “body hard up against the driver’s door”. She said the police officer struggled to prevent Client A from getting to her from the rear passenger seat through the centre console of the car.

[28] Despite the difficulties Ms Robertson described police assistance ended when they arrived at the hospital.

#### *At the hospital*

[29] On arrival at the hospital Ms Robertson accompanied Client A to the Emergency Department where she informed the triage nurse that they were there for the mental health crisis team to assess and review his mental health and medication. Ms Robertson told the triage nurse that she was instructed to leave him if there was any resistance to obtaining assistance; a proposition she and Ms Gates had canvassed in text messages they were able to exchange. I pause to observe that while Ms Gates accepted this was the tenor of the correspondence between them there was no real intention to abandon Client A. In fact, Ms Robertson never countenanced doing that and stayed with him until her shift ended the following morning.

[30] Ms Robertson and Client A were sent to wait in the hospital's Whānau Room. What happened next resulted in dismissal. Ms Robertson said that within a few minutes of entering the Whānau Room, Client A got up and came towards where she was standing, reaching out to grab her. She described her reaction to his approach was to "slap his hand away in self-defence". She said this episode repeated the behaviour

she was subjected to earlier in the day and during the drive to the hospital; as "rush at you to attack" behaviour.

[31] As soon as Ms Robertson slapped Client A, a nurse came into the room to remonstrate with her about what happened. She apologised immediately and acknowledged that her action was wrong, but explained that she was just trying to stop him from grabbing and hurting her. Nursing staff arranged for hospital security personnel to be present with an instruction that they were to protect both Ms Robertson and Client A.

[32] After this incident Ms Robertson reported herself to Ms Gates, by sending a text message reporting that she slapped Client A's hand and why.

[33] At this juncture it is important to comment that at the time Ms Robertson slapped Client A she did not have assistance from IDEA Services available to support her. Another support worker who initially was thought to be able to provide assistance was, as it turned out, unavailable. Ms Robertson had to wait for some time before she was supported by Ms Gates who arrived at the hospital at about 7.30 pm, approximately two hours after Ms Robertson.

[34] After Ms Gates arrived at the hospital she and Ms Robertson relieved each other throughout the evening and into the small hours of the following day until Client A was admitted to the hospital.

[35] At the end of her shift, Ms Robertson returned to IDEA Services' office and spoke briefly to Ms Parker. While she stopped short of making a full report of the incident, she showed Ms Parker a bruise on her arm.

#### *The complaint*

[36] On 28 August 2020, Ms Gates informed Ms Parker by email that a serious incident had occurred at the hospital between Ms Robertson and Client A. Her email referred to having received information to the effect that Ms Robertson was verbally abusive to Client A and to an allegation that she had slapped him; at the time this email

was sent Ms Gates knew the slap was admitted so it is not clear why it was described as an allegation.

[37] Ms Parker was advised that hospital staff had made a family violence complaint and asked the hospital's Family Violence Co-ordinator to send an incident report for Ms Gates to follow up. Ms Gates informed Ms Parker that the complaint might go to the police to be investigated and she was aware that IDEA Services had its own process to follow.

[38] A few days later, on 31 August 2020, Ms Robertson was informed by letter about the complaint in the following way:

...While you were supporting our Service User, [Client A] in the Tauranga Hospital Emergency Department on the 26th of August 2020, you verbally abused [Client A] and slapped him. The ED staff elected to have a security guard present to ensure his [Client A's] safety through the night.

[39] Ms Parker asked to hear Ms Robertson's explanation and informed her that a decision would then be made about whether further steps were appropriate. The advice provided by this correspondence was that if the explanation was satisfactory the matter would end. Otherwise, the next step would be to begin a disciplinary process and to conduct a full investigation. Ms Robertson was placed on notice that if serious misconduct was determined, disciplinary action up to and including dismissal might follow.

#### *The IDEA Services investigation*

[40] Throughout the subsequent investigation Ms Robertson was represented by her union, E tū.

[41] On 4 September 2020, Ms Parker sent to the union copies of the incident report from Tauranga Hospital. Included in that report were notes made by nurses on duty at the time of the incident in the Whānau Room.

[42] Ms Parker met Ms Robertson and her union representatives on 11 September 2020. At this meeting Ms Robertson's responses included an expression of regret about what happened. She described the slap as a reflex action and said that Client A

was difficult not calm, contrary to the impression conveyed by the hospital incident report. Ms Robertson expressed the wish that she had asked for help, and thought she would get into trouble if she left Client A alone in the Whānau Room. The incident was not, she said, as portrayed because she had only brushed him.

[43] As a result of this meeting Ms Parker concluded that a further investigation was needed and Ms Robertson was suspended on pay.

[44] On 15 September 2020, Ms Parker spoke by phone with Mary-Ann Versteynen, who is an Associate Clinical Nurse Manager in the hospital's Emergency Department. Ms Versteynen was on duty on 26 August 2020 and witnessed what happened in the Whānau Room.

[45] During this phone call Ms Versteynen described Client A as appearing to be calm, sitting quietly, saying he wanted to "stay one night" but was being yelled at by Ms Robertson who slapped his arm. Ms Versteynen told Ms Parker that the incident required intervention by her and another nurse and prompted her to arrange the presence of hospital security and to involve a social worker to investigate potential domestic violence.

[46] Ms Versteynen's description of what happened was essentially the same as the hospital's incident report to which she contributed.

[47] In response to this information, Ms Parker made a preliminary decision that Ms Robertson interacted with Client A in an unacceptable manner verbally and that when Client A was struck it was not a reflex action. She wrote to Ms Robertson on 18 September 2020 to advise her of this preliminary decision and to extend the temporary leave she was previously placed on until the end of the investigation. Ms Robertson was again informed that the allegations were serious and, if serious misconduct was established, disciplinary action up to and including dismissal might be possible.

[48] Ms Parker's letter contained advice about the ability to access the employee assistance programme and scheduled a further meeting for 22 September 2020.<sup>4</sup> The day before the meeting Ms Parker sent Ms Robertson, through her union, a timeline of events as they were understood. At the meeting Ms Robertson was represented by E tū. Ms Parker was assisted by Ms Gates, who prepared the timeline.

[49] During the meeting Ms Robertson agreed that the timeline was accurate. She reiterated her view that what happened was a slap and that Client A was "coming at" her in response to which she brushed his arm away. She denied yelling at him but acknowledged speaking in a loud voice. The previous explanation, that she would have been in trouble for leaving the Whānau Room, leaving Client A alone, was repeated.

[50] Several breaks in this meeting were taken before Ms Parker made a decision to dismiss Ms Robertson summarily for serious misconduct. That decision was relayed at the meeting's conclusion and confirmed by letter the following day, 23 September 2020.

[51] In reaching this conclusion Ms Parker rejected Ms Robertson's explanations. Findings made were that:

- (a) Ms Robertson did not follow the behaviour support plan for Client A;<sup>5</sup>
- (b) she yelled and struck Client A; and
- (c) she had not followed her training and breached IDEA Services' policy and code of conduct.

## **The issues**

[52] The issues in this case are:

4 Referred to in the letter as the employer assistance programme.

5 A reference to the safety plan.

(a) Was there a sufficiently reliable basis for IDEA Services' conclusion that Ms Robertson's action in slapping Client A was not self-defence?

(b) Was there a sufficiently reliable basis for IDEA Services' conclusion that Ms Robertson had verbally abused Client A?

(c) If there was a sufficiently reliable basis for the conclusions IDEA Services reached, was Ms Robertson's conduct serious misconduct?

(d) Viewed objectively, was IDEA Services' decision to dismiss a decision a fair and reasonable employer could reach in all the circumstances?

(e) If the answers to (a)–(d) inclusive are no, was Ms Robertson unjustifiably dismissed and entitled to remedies?

[53] The first two issues can be dealt with together. There was no disagreement that Ms Robertson struck Client A. However, Mr Anderson was critical of the quality of Ms Parker's investigation because, he submitted, there was no sufficiently reliable evidence from which she could conclude that the slap was deliberate and not an act of self-defence or that Client A was verbally abused.<sup>6</sup>

[54] Mr Anderson's submissions supporting the first limb of his argument were prefaced by an observation that a full and proper investigation required all relevant witnesses to be properly interviewed.<sup>7</sup> He said that while the information gleaned from Tauranga Hospital drew on notes by three nurses, one of whom could not be identified, IDEA Services' inquiry was confined to a phone call with Ms Versteynen which was insufficient.

[55] Part of this submission was a criticism of the clarity of Ms Parker's letter conveying her preliminary decision. It was said to be ambiguous where it relayed the

6. Relying on *Air Nelson Ltd v C* [2011] NZCA 488, (2011) 8 NZELR 453; see also *Cowan v IDEA Services Ltd* [2020] NZCA 239, [2020] ERNZ 252.

7. Relying on, for example, *Gazeley v Oceania Group (NZ) Ltd* [2013] NZEmpC 234, [2013] ERNZ 727.

content of the discussion with Ms Versteynen, reading as if the information gleaned from her was second-hand.

[56] The first limb of Mr Anderson's argument cannot succeed. Ms Versteynen had an uninterrupted view of the Whānau Room from her work area. She could see inside the room and told Ms Parker what she saw and heard.

[57] Ms Versteynen also said that there was no concerning dialogue or any stressed or aggressive behaviour from Client A on his arrival or just prior to what happened. Specifically, she described his behaviour as calm and cooperative since his arrival in the Emergency Department. That description was at odds with Ms Robertson's explanation and inconsistent with the statement that he had been involved in "rush at you to attack" behaviour of the sort described in the safety plan.

[58] At the time Ms Parker made her decision she had the hospital incident reports including the nurses' notes about what happened, Ms Robertson's statement and Ms Versteynen's unequivocal eyewitness account. That was more than sufficient material from which to conduct an adequate investigation and to reach conclusions about what happened including, if necessary, to draw inferences. That material clearly supported the conclusion that Ms Robertson's slap was not in self-defence.

[59] It was suggested to Ms Versteynen in cross-examination that the evidence she gave at the hearing was different from what she said in the Authority's investigation and might therefore be unhelpful. Mr Anderson's submission was directed towards Ms Versteynen's description of where Ms Robertson was standing that she gave at this hearing compared to what she said in the Authority. In her evidence Ms Versteynen said Ms Robertson was standing over Client A who was sitting down when he was slapped. In the Authority she did not mention Ms Robertson standing over Client A.

[60] Ms Versteynen did not accept that this difference meant she was confused about what happened and explained the alteration she made to her evidence was for clarification. Ms Versteynen reiterated the point made in the incident report previously supplied to IDEA Services, that Ms Robertson was yelling and that Client A was

slapped. I do not accept that what Ms Versteynen added for clarity amounts to a discrepancy undermining the reliability of her evidence.

[61] Completing the analysis of this aspect of Mr Anderson's submission, nothing turns on the criticism that Ms Parker's letter containing the preliminary decision was ambiguous. The essential information it conveyed was enough to inform Ms Robertson about what IDEA Services' inquiry had revealed and what she needed to address.

[62] As to the second limb of Mr Anderson's submission, he said that there was no proper basis for concluding that Ms Robertson was verbally abusive so that an adverse finding was not open to IDEA Services. The reason for this submission was that the inquiry only elicited information that Ms Robertson instructed Client A to sit down and behave, which language it was said could not properly be seen as abusive; for example, it did not involve profanity or anything else that could amount to verbal abuse.

[63] Ms Robertson denied verbally abusing Client A and did not accept that she yelled at him. She did, however, comment that she had a naturally loud voice. That explanation was not consistent with her concession in the Authority investigation that she was yelling. Putting aside attempting to distinguish between yelling and a loud voice, the critical issue is whether instructing Client A to sit down and behave could be said to be verbal abuse. The language needs to be evaluated in the context in which it was used.

[64] Ms Robertson knew from the safety plan what triggers activated or exacerbated Client A's behaviour. Part of the safety plan identified techniques designed to redirect Client A's behaviour when he was in a heightened state. Specifically, those techniques included always speaking to him in a calm reassuring manner because any other way of talking to him was known to escalate the situation.

[65] It was open to Ms Parker to conclude that Ms Robertson was yelling, and that was inconsistent with the safety plan especially bearing in mind that they were at hospital because of the heightened state he was in earlier in the day. The same conclusion could have been reached even if the finding was that she was speaking loudly.

[66] Mr Anderson made a further point about the sufficiency and reliability of the evidential basis for the decision to dismiss by concentrating on a finely-grained breakdown of Ms Parker's inquiry, especially where she discussed options available to Ms Robertson that might have removed her from proximity to Client A and therefore to have avoided the incident.

[67] This argument criticised Ms Parker's observation, made during the investigation, that it was possible for Ms Robertson to have left the Whānau Room because support was available for Client A from Ms Gates and hospital staff. This part of the inquiry invited Ms Robertson to explain why she did not adhere to her MAPA training, an aspect of which was that support workers are to leave the room as a means of de-escalating a potentially compromising situation.

[68] In this part of the inquiry Ms Parker made a mistake, because she wrongly thought Ms Gates was present at the hospital before the lead up to the incident in the Whānau Room and could, therefore, have provided assistance. That error had no material bearing on the final decision. Ms Robertson's explanation for not leaving the Whānau Room was a concern that Client A would be alone and unsupervised. Ms Parker did not accept the explanation because there was no physical barrier to leaving the room, and such an option was a standard part of MAPA training. That option had, in fact, been used earlier in the day when she and Ms Gates had left Client A before a decision was made to telephone the police.

[69] Notwithstanding the mistake Ms Parker made, the essence of her query was about why Ms Robertson elected to remain with Client A if his heightened state led to unacceptable and unsafe behaviour. Ms Parker was entitled to evaluate the response she received to that question and to form the view that the explanation was inadequate.

[70] There was sufficient and reliable evidence available to IDEA Services that Ms Robertson's slap of Client A was not in self-defence and that she had verbally abused him.

*Was this conduct serious misconduct?*

[71] Usually what is necessary to establish that serious misconduct has occurred to justify dismissal is conduct that deeply impairs or is destructive of the basic confidence or trust essential to an employment relationship.<sup>8</sup>

[72] Ms Parker's letter confirming the dismissal repeated the allegations that were investigated and, as noted earlier, identified the investigation's findings. They were that Ms Robertson did not follow the behaviour support plan in place for Client A and that she yelled at and struck him in the Emergency Department as advised by nursing staff who witnessed the incident. Having recorded those findings Ms Parker's letter contained an observation that MAPA training had been completed as recently as July 2020.

[73] The letter then turned to consider whether serious misconduct had occurred and expressed the conclusion that it had in the following way:

The findings of the investigation have led me to believe that your actions have constituted serious misconduct in breach of policy and our code of conduct. Specifically to:

1. Ensure your work is ethical and open to scrutiny.
2. Look after your own and others safety.
3. Strive to meet the expectations of your position and equip yourself with the necessary skills and knowledge to do your job.
4. Avoid any activities, work or non-work related that may harm the reputation of IHC.
5. Assaulting a person with an intellectual disability.

[74] The fifth point was a conclusion arising from the investigation. Having summarised those points the decision made was that Ms Robertson's actions had irreparably eroded the trust and confidence expected of an IDEA Services employee. Ms Parker's letter stated that she had considered whether there were any factors that might mitigate the decision before concluding that there were none that were sufficient.

<sup>8</sup> See *Northern Distribution Union v BP Oil New Zealand Ltd* [1992] NZCA 228; [1992] 3 ERNZ 483 (CA) at 487.

[75] Viewed objectively, the conclusions reached by Ms Parker showed that Ms Robertson's conduct was serious misconduct. She departed from the terms of conditions of her employment agreement, IDEA Services' policies and code of conduct. Of all of the conduct identified by Ms Parker, the assault on a person with an intellectual disability would have been sufficient in and of itself to qualify as serious misconduct.

*Was the decision one a fair and reasonable employer could reach in all the circumstances?*

[76] What has to be borne in mind is that Ms Parker was dealing with an experienced and well-trained support worker who knew and understood Client A's difficulties, what triggered his heightened state, and the steps necessary to avoid making matters worse. It is true that Ms Parker appeared to concentrate on the events described in the Whānau Room and, in some measure, discounted the difficulties Ms Robertson described earlier in the day. Ms Parker stopped short of rejecting the description of Client A's behaviour during the day as unlikely, or perhaps as overstated, although it is apparent she had some residual doubts as to whether the circumstances were as extreme as described.

[77] Nevertheless, the decision she made was open to her because, at the time Client A was struck and verbally abused, the events which had led to the request for a hospital admission were in the past. At the time Ms Robertson acted as she did, Client A was calm; something which was not surprising because he associated the hospital with a place of safety.

[78] Ms Parker was entitled to view the events in the Whānau Room as determinative. Viewed objectively, her decision was one which was open to a fair and reasonable employer in all the circumstances within the meaning of [s 103A\(2\)](#).

[79] For completeness, it is necessary to briefly address a further submission made by Mr Anderson arising from the fact that Ms Gates made a report to the police. That report was made by her before Ms Parker concluded her investigation and made the decision to dismiss.

[80] Mr Anderson's point was that Ms Parker's decision must have been adversely coloured or influenced by knowing a report was made to the police by Ms Gates, especially since she was assisted by Ms Gates at meetings with Ms Robertson. A conclusion was invited that these events showed that the decision was predetermined.

[81] I do not accept that submission. Ms Parker said, and I accept, that while she knew about the report before making her decision that action was taken by Ms Gates, as part of her responsibilities, and had no bearing on the findings that were made. Further, Ms Parker knew that there was no dispute Client A was slapped so she was focussing on what led up to the incident in the Whānau Room and measuring that conduct against IDEA Services' expectations.

[82] There is no basis to conclude that the decision to dismiss was predetermined. It would be remiss not to add that matters were taken no further by the police.

[83] IDEA Services has met the test in [s 103A\(2\)](#) of the Act.

## **Conclusion**

[84] The challenge to the Authority's determination is unsuccessful and is dismissed.

[85] Costs are reserved. The parties are encouraged to agree on costs but if that is not possible memoranda may be filed.

K G Smith Judge

Judgment signed at 4.30 pm on 1 September 2023