

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 586  
3365384

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| BETWEEN | PAUL SO'O'ULA<br>Applicant                  |
| AND     | WESLEY COLLEGE TRUST<br>BOARD<br>Respondent |

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| Member of Authority:                     | Helen van Druten  |
| Representatives:                         | Leilua Pulotu (Lou) Alofa, advocate for the Applicant<br>Richard Harrison, counsel for the Respondent                         |
| Investigation Meeting:                   | 21 and 22 July 2025 at Auckland   |
| Information and<br>submissions received: | Submissions on 22 July 2025 and email 21 August 2025<br>from the Applicant<br>Submissions on 22 July 2025 from the Respondent |
| Determination:                           | 22 September 2025   |

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Paul So'o'ula claims that his dismissal by Wesley College Trust Board (the Trust Board) on 27 June 2025 was both procedurally and substantively unjustified. He further claims that the decision to suspend him on 7 March 2025 was rushed and unjustifiably disadvantaged him in his employment. He seeks reinstatement to his position.

[2] The Trust Board maintains that after a safety-related incident between students at the hostel on 13 February 2025 and during the investigation into that incident, Mr So'o'ula's conduct led the Trust Board to determine that it no longer had the trust and confidence in Mr So'o'ula to maintain his employment as hostel dormitory dean.

## **The Authority's investigation**

[3] Investigation into this matter was not straightforward so I consider it appropriate to outline the key dates and actions taken by the Authority relevant to this application.

[4] Initially Mr So'o'ula, through his representative Mr Alofa, made an application on 17 March 2025 for urgency and orders that the suspension was "invalid" (which would amount to reinstatement). Urgency and reinstatement were declined by the Duty Member in Directions issued on 19 March 2025 because Mr So'o'ula was suspended on full pay and because the Authority will rarely intervene in an employer's investigation or disciplinary process while it is underway.

[5] On 17 June 2025 the Authority received a new application for interim reinstatement following the Trust Board's decision on 29 May 2025 to dismiss Mr So'o'ula with notice with his final day of employment on 27 June 2025. The Duty Member considered this new application and referred it to me as it sought the same reinstatement as the earlier application, though Mr So'o'ula now had notice of termination of his employment.

[6] After a case management call with the parties on 24 June 2025 to clarify the intent of that application the parties agreed that the interim reinstatement matter only would be heard on 11 July 2025. Directions issued on 30 June 2025 set a very tight timeframe for filing of documents for the interim matter at Mr So'o'ula's request. The substantive matter was set down for an investigation meeting in September 2025 and timetabled accordingly.

[7] At the investigation meeting related to the interim matter on 11 July 2025, Mr Alofa expressed concern to the Authority that the volume of documents filed could not be analysed sufficiently before the meeting and this would be a significant injustice and unfairness to Mr So'o'ula. Despite these documents being lodged and served in accordance with the timetable requested by Mr Alofa, the parties agreed that the meeting on 11 July 2025 would not proceed. In its place, the parties agreed that the meeting set down for September 2025 would be vacated, Mr Alofa confirmed that the application for interim reinstatement was withdrawn and the Authority would hear the substantive matter with the claims raised in the applications received on 16 and 25 June 2025. This was recorded in Directions issued on 11 July 2025. Reinstatement remained

the primary remedy sought. A two-day investigation meeting was held on 21 and 22 July 2025.

[8] As permitted within the Act, Mr Alofa made an application to require Mr Jason Lafaele as a witness for this matter.<sup>1</sup> This was considered and declined on grounds that the information obtainable from Mr Lafaele as relevant to the issues can likely be obtained from other witnesses and investigation documentation.

[9] For the Authority's investigation written witness statements were lodged from Mr Paul So'o'ula as the Applicant, Ms Sala Uele (Dormitory Dean for Pakeke hostel), Mr Murray Cudby (House Parent), Mr Chris Field (previous Director of Boarding, now retired), Dr Brian Evans (Principal / Tumuaki of Wesley College), Dr Siasia Vaili (Head of Boarding) and Ms Denise Bellette (Director of Business Services). All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

[10] On 21 August 2025, the Authority received an email from Mr Alofa regarding an alleged incident at Wesley College in August 2025. While noted, the email is disregarded in this investigation as the Authority is required to apply the test of justification required by the Act based on the circumstances and information available at the time that the dismissal or action occurred.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[12] The issues requiring investigation and determination were:

- (i) Whether Mr So'o'ula was unjustifiably dismissed from his employment when his employment ended on 27 June 2025.
- (ii) Whether Mr So'o'ula's suspension was "unlawful" and he was unjustifiably disadvantaged by his suspension on 7 March 2025.

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<sup>1</sup> Employment Relations Act 2000, s 5, Schedule 2.

- (iii) Whether the Authority has jurisdiction to issue a Direction for the Trust Board to reinvestigate the incident of 13 February 2025 and if so, whether it should do so.
- (iv) If the Trust Board's actions were not justified (by disadvantaging and/or dismissing Mr So'o'ula), what remedies (if any) should be awarded, considering:
  - (a) Permanent reinstatement into his position as Dormitory Dean; and
  - (b) Compensation under s123(1)(c)(i) of the Act.
- (v) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr So'o'ula that contributed to the situation giving rise to his grievance?
- (vi) Whether either party should contribute to the costs of representation of the other party.

### **Relevant Background**

[13] Wesley College is an integrated secondary school in south Auckland with a roll of approximately 350 students run under the auspices of the Methodist Church of New Zealand for over 100 years.

[14] Unlike the college, the hostel is not integrated and is run as a private boarding establishment by the Trust Board. Approximately two-thirds of the school students attending Wesley College board in the hostels. As well as being principal / tumuaki of the College, Dr Evans has delegated authority from the Trust Board for management and operation of the hostels.

[15] In this capacity the Trust Board hostel employees all report to Dr Evans and he has delegated Trust Board authority to take disciplinary action against students or employees of the hostels.

[16] Until his dismissal on 29 May 2025, Mr So'o'ula was the dormitory dean of Maia hostel and employed by the Trust Board for over 10 years. At Maia hostel, Mr So'o'ula and two house parents, including Mr Lafaele, provided additional onsite and pastoral support and there was additional security and medical support shared across the hostels.

*Mr So'o'ula's duties, responsibilities and obligations*

[17] Three main documents guided Mr So'o'ula's duties, responsibilities and obligations in his role as dormitory dean – his terms and conditions outlined in his employment agreement, the Wesley College code of conduct and his job description. Mr So'o'ula signed the code of conduct in June 2012 and was familiar with all three documents.

[18] Mr So'o'ula was employed on an individual employment agreement under the terms and conditions contained in the Wesley College Trust Board and Etu collective employment agreement 2022 to 2025.

[19] There are several clauses in those documents particularly relevant to the issues to be determined by the Authority. The employment agreement contained the usual clauses relating to dismissal for serious misconduct and a stepped warning and counselling process for other performance or conduct concerns.

[20] The relevant job description outlines the purpose of the role of hostel staff as follows:

“Hostel staff are responsible for ensuring students in their care are supported in their well-being and in reaching their full potential. In accordance with their professional responsibilities, including our child safeguarding and protection conduct requirements, hostel staff are responsible for providing safe physical and online student environments...”.

Other than a general section at the end, all five key tasks within the job description refer to the safeguarding and protection aspect of the role. Included within this under boarding house management, it specifies that this position is required to “supervise, monitor and support the College in actively evaluating student's activities, well-being, safety and security”.

[21] The employee code of conduct echoes similar principle-based expectations of its employees. In particular, it references the disciplinary process and that “if the offence is sufficiently serious, an employee will be placed on suspension pending investigation”.

### *Incident of 13 February 2025*

[22] Both parties agree that after roll call on 13 February 2025 Mr So'o'ula and Mr Lafaele were on duty in Maia hostel as dormitory dean and house parent respectively. Mr Field was present briefly but was not on duty. Two other employees were in the equivalent roles in Taina hostel. That evening, approximately 31 senior Year 12 students from Taina hostel entered Maia hostel without permission following roll call and devotion. A number of these senior students threatened and carried out harassment, intimidation and physical violence on the younger Year 10 students who were practicing haka on the balcony of the hostel. These incidents were not detected by hostel staff who were on duty at the time.

[23] It is unnecessary to go into detail of what happened that night other than as it is materially relevant to the issues for determination. At the investigation meeting, the layout of the relevant areas of the two hostels was presented visually and distances established.

[24] The incident reports from Mr So'o'ula and Mr Lafaele are consistent about what occurred that evening. Both men were in the office when "a steady stream" of Year 12 students from the other hostel walked past the office and said 'hi' to Mr So'o'ula as they passed. Mr Lafaele left the office and went to the lounge where the Year 9 students were singing. The Year 10 students were outside on the deck (where the incidents occurred). Mr Lafaele was unable to see outside onto the balcony area. Mr So'o'ula said that he initially thought the senior students were there to see Mr Lafaele. He remained in the office and spoke to a couple of the senior students from Taina hostel who said they had sneaked out. Mr So'o'ula tried to phone the other hostel in case there was an emergency there and when there was no answer, he informed Mr Field and they checked the cameras.

[25] The following day, a parent brought the incident to the attention of Dr Vaili as Head of Boarding and an investigation into the incident was initiated.

### *Allegation about speaking with a student*

[26] During a witness investigation into the 13 February 2025 incident, a concern was raised that Mr So'o'ula was observed speaking to a student about the investigation

in breach of strict confidentiality instructions from the Trust Board. This meant that a second investigation began in relation to Mr So'o'ula's alleged conversation.

[27] For ease of reference in this determination, I refer to them as the Primary Incident / Investigation (relating to the 13 February 2025) and the Secondary Incident / Investigation (relating to the student interaction).

*Timeline of events for Mr So'o'ula*

[28] On 24 February 2025 Mr So'o'ula received a letter about the Primary Incident that said "Wesley College is taking the matter extremely serious[ly] and are conducting a full investigation into the events. Once the investigation process has been completed Wesley College will decide on the implementation of disciplinary process[es] and will contact you at that time". The letter outlined the investigation process and added:

You are required to keep all information related to the events of the evening of 13 February 2025 strictly private and confidential. You should not discuss anything related to this matter during the investigation process with anyone. During the investigation you will continue working as usual, unless directed otherwise. If you have any queries about this matter or about the performance of your duties, please contact me directly....you shall restrict your communications to me only....you must take this as lawful and reasonable instructions given to you by your employer.

[29] On 28 February 2025 Mr So'o'ula was identified as a potential witness and invited to a formal interview as part of its investigation. The emphasis on confidentiality as quoted above was repeated in the letter.

[30] On the morning of 7 March 2025 Mr So'o'ula received a hand-delivered letter from Ms Bellette also emailed to his representative, Mr Alofa, titled "Notice of Proposed Suspension – Disciplinary Meeting". The letter raised concerns about a "separate but related matter" (the Secondary Incident), proposed suspension and sought Mr So'o'ula's feedback on that proposal. Ms Bellette wrote that:

in view of the seriousness of this allegation and potential breach, I am giving consideration to suspension on the grounds that there is a possible risk to the integrity of any investigation process...we ask that [Paul] not attend duties until we have resolved his suspension should you require more time to respond....

[31] The letter was vague about the process for feedback on the proposed suspension. For one part, it gave Mr Alofa the opportunity to "make representations" about the proposal by 2.30pm that same day. For the second part, it said "we ask that [Mr

So'o'ula] not attend duties until we have resolved this suspension issue". In the third part, Mr Alofa was given until "end of business" on 7 March 2025 to respond to the proposal to suspend Mr So'o'ula.

[32] In the same letter, Mr So'o'ula was also invited to attend a disciplinary meeting to discuss the allegations on 12 March 2025 or at a suitable agreed time. The Authority understands that the letter was delivered to Mr So'o'ula on the morning of 7 March 2025, read by Mr Alofa on 8 March 2025, and no communication about the proposed suspension occurred between the parties until 12 March 2025.

[33] On 12 March 2025 Mr Alofa attended the disciplinary meeting to raise his concerns about the legality of the suspension of Mr So'o'ula. Mr So'o'ula chose not to attend.

[34] On 13 March 2025 Mr Alofa, as Mr So'o'ula's representative, was sent a letter from Mr Harrison (as counsel for the Trust Board). The letter summarised the Primary Investigation progress to date and outlined the next steps in that investigation. It also summarised the meeting on 12 March 2025 noting that "you attended the scheduled meeting on 12 March 2025 without Mr So'o'ula and while you took issue with your client's suspension, no response has been provided on behalf of Mr So'o'ula to the concerns set out in the letter...dated 7 March 2025". Lastly, Mr So'o'ula was advised that the investigations would not be delayed by his decisions:

- (a) not to be interviewed in relation to the Primary Incident; or
- (b) not to discuss the alleged Secondary Incident.

[35] In that letter, the Trust Board offered Mr So'o'ula an opportunity to view the video footage of the Primary Incident and sent him a link to investigation incident reports and interview notes to date. I understand there were some difficulties opening the link but the Authority was not presented with evidence that this was raised as a concern at the time.

[36] Mr So'o'ula was provided with a further opportunity to respond to the information collated and any gaps in the information for both the Primary and Secondary incidents, either in writing, by AVL link, and/or in person on 19 March 2025. He was advised for the Secondary Incident that "if Mr So'o'ula elects not to participate

or provide a response then Dr Siasoi Vaili will complete his report based on the information received to date, which in respect of these concerns is the interview that has taken place with Jason Lafaele”.

[37] Mr So’o’ula’s representative lodged a statement of problem in the Authority relating to the suspension on 17 March 2025.

[38] Mr So’o’ula did not attend further meetings with the Trust Board or provide any written responses directly after that date.

[39] On 25 March 2025 the draft Primary Investigation report was circulated to relevant house parents and Mr So’o’ula, inviting a response to the draft report by 1 April 2025.

[40] On 13 May 2025 Mr So’o’ula was invited in writing to a disciplinary meeting scheduled on 15 May 2025 in relation to both incidents. A copy of the final Primary Investigation report was attached and sent to Mr Alofa along with a supplementary report outlining the Trust Board findings regarding the Secondary Incident. The letter outlined the purpose of the meeting, that summary dismissal was a potential outcome, support or representation was welcome and Mr So’o’ula was directed to particular sections of the report where the Trust Board was particularly keen to hear Mr So’o’ula’s responses.

[41] On 17 May 2025, Mr Alofa sent Dr Evans a list of concerns about the investigation process including concerns about bias, impartiality, Dr Vaili as decision maker and ageism in the decision making.

### **Was Mr So’o’ula unjustifiably disadvantaged by his suspension?**

[42] Mr So’o’ula claims his suspension was unjustified and disadvantaged him in his employment as there was no time to respond to the proposal and there was a lack of justification for suspension as the allegation was minor and unsubstantiated.

[43] Mr So’o’ula was not suspended because of the 13 February 2025 incident. The Trust Board made the decision to suspend him because they instructed him, twice and in writing, not to discuss the Primary Investigation or Incident with anyone else. The

Trust Board was concerned that in the context of the investigation and directions given to Mr So'o'ula, the allegation that he spoke to a student about the investigation had the potential to undermine the investigation, was in breach of a clear instruction and risked discouraging student disclosure in the investigation.

[44] There are obligations on an employer before they make the decision to suspend. In principle, suspension from employment is well established as a disadvantage to the employee as it usually deprives that employee of their ability to work.<sup>2</sup> The onus falls on the employer to establish that the suspension was justified.

[45] I accept that the Trust Board had good reason to suspend Mr So'o'ula based on the information it received and decline Mr Alofa's suggestion this allegation was "minor", "spurious" or "vexatious". The Trust Board was clear from the start of the investigation that it treated this matter very seriously. The Trust Board gave evidence that this was particularly salient in Mr So'o'ula's case as, by virtue of his position, he carries considerable authority particularly with the Pasifika students who would not want to do anything that goes against him or other house parents. Particularly for the Trust Board and Dr Evans, they also did not want to risk reversing the work done to encourage reporting of such incidents. Historical evidence affirmed the special predisposition of the school to that risk. Twice, it gave a clear and reasonable instruction to Mr So'o'ula about the importance of confidentiality and that no discussion was to occur. If the allegation was correct, the only way to eliminate further risk was to prevent Mr So'o'ula's interactions with students and others potentially involved in the investigation.

[46] I agree with Mr Alofa that at the time suspension was proposed the allegation was unsubstantiated. That is the reason suspension is sometimes considered, because the allegation is serious but unsubstantiated and the employer needs time to investigate and determine the facts. The Trust Board received a report from a reliable source that Mr So'o'ula talked to a student about the investigation. Based on the substance of that allegation, I consider that proposing suspension was justified. While not known at that time, Mr So'o'ula later acknowledged that he had a conversation with a student but says it was misconstrued.

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<sup>2</sup> *Lenaghan v Hydrovac* [2016] NZERA 230 at [9].

[47] That leaves me to consider the way that the decision to suspend was made and Mr Alofa's concerns about the timeframe for Mr So'o'ula to provide a response to the proposal. The duty of good faith includes affording an employee natural justice by providing an opportunity to respond to a proposal to suspend prior to it occurring unless there is an immediate risk that justifies an alternative action.

[48] Practically, I accept that there are circumstances where a person is asked not to work until a suspension issue can be sorted and on occasion time is of the essence to prevent any further risk in the particular circumstances. Given the seriousness of the investigation and allegation, that may well be applied here.

[49] The alleged Secondary Incident came to the attention of the Trust Board on 6 March 2025. It was not until the morning of 7 March 2025 that Mr So'o'ula became aware of the allegation and the proposed suspension. It falls on the Authority to determine whether the process of suspending Mr So'o'ula, particularly the time he was given to respond to the proposal, was justified or not. I considered both perspectives – the allegation was serious and a risk to the integrity of the investigation but equally if the Trust Board were sufficiently concerned about that risk, should they have advised Mr So'o'ula or his representative immediately on 6 March 2025 giving more time to respond to the proposal.

[50] As the onus falls on the employer to justify the disadvantage to Mr So'o'ula, I tested this evidence with Ms Bellette in particular. In the investigation meeting, Ms Bellette said that once the allegation was brought to their attention by Dr Vaili on 6 March 2025, the senior management team discussed it and decided that proposing suspension was the best approach. Ms Bellette drafted a letter, delivered it to Mr So'o'ula at his home and emailed a copy to Mr Alofa. In her written and oral evidence, Ms Bellette said that she put the proposal in writing rather than ringing Mr So'o'ula so there was no risk of misinterpretation and it meant she could send it to his representative as well. Ms Bellette admitted that she did not think about the fact that it was a Friday afternoon as Mr So'o'ula was due to work that afternoon and it was important to act quickly. The requirement for Mr So'o'ula not to work on the afternoon of 7 March 2025 (and over the weekend) was a temporary measure until the parties could discuss "the suspension issue".

[51] Despite the confusing range of options provided in the 7 March 2025 letter, the overall intent of the letter was clear and I am satisfied that if Mr So'o'ula asked for more time to consider his response to the proposed suspension, that would have been accommodated. Ms Bellette affirmed this in her oral evidence. "If he wanted more time then Mr So'o'ula could not attend duties but remain on pay while he and Mr Alofa prepared a response on the suspension issue". I have no reason to doubt the credibility of her evidence.

[52] Given the Friday afternoon timing, Mr So'o'ula had Friday and through the weekend to consider his response. Ms Bellette said in evidence that they got no response from Mr So'o'ula or Mr Alofa nor any request for an extension of time for feedback.

[53] Procedurally the suspension process was an untidy one. The 7 March 2025 letter was confusing with different timeframes for feedback, putting the proposal in writing meant delays in the letter being received and Dr Evans did not try to contact Mr So'o'ula which would have assisted the process. There was also no evidence presented by the Trust Board that alternatives to suspension were considered. I accept that the letter was written by Ms Bellette with the intention to give Mr So'o'ula time to give feedback on the letter. Equally, it was received by Mr So'o'ula as a letter proposing suspension by the end of the day. I conclude that the letter was a key catalyst for a breakdown in the lines of communication. From then onwards, communication between the parties was in writing and through representatives only.

[54] With any consideration of unjustified disadvantage, I must also remain mindful of s 103A(5) of the Act, where an action must not be determined to be unjustifiable solely because of defects in the process if those defects were minor and did not result in the employee being treated unfairly.

[55] I conclude that Mr So'o'ula was disadvantaged by the Trust Board's decision to suspend him, but given the substantive reasons for doing so, the procedural failings of that suspension as part of the whole process were not unjust. Mr Alofa met with Dr Evans on the following Wednesday morning and discussed the suspension in detail with him. Dr Evans had an opportunity to reconsider and still found that suspension was justified in the circumstances.

[56] Looking at the circumstances as a whole, the suspension was not well managed but it was not unfair. Only the 7 March 2025 letter failed to meet procedural expectations. Other than that letter, the evidence shows a thorough and fair process was undertaken by the Trust Board in relation to Mr So'o'ula's suspension.<sup>3</sup> With an employment advocate already in place, Mr So'o'ula had an opportunity to seek clarification on the letter (whether directly or through his representative) and engage with the Trust Board before any suspension was confirmed.

[57] Mr So'o'ula's claim for unjustified disadvantage is unsuccessful.

### **Was Mr So'o'ula unjustifiably dismissed?**

[58] Mr So'o'ula claims that his dismissal was both procedurally and substantively unjustified and he seeks reinstatement. He raised several arguments to support his claim and each are considered. Mr So'o'ula was dismissed on 29 May 2025 and this was confirmed in writing to him the same day.

[59] As Mr So'o'ula's dismissal is established, the onus then falls upon the Trust Board to justify that its decision to dismiss Mr So'o'ula was a decision that a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.<sup>4</sup> The Trust Board dismissed Mr So'o'ula because it no longer had the trust and confidence necessary for him to continue in his role or have responsibility for the supervision and care of students.

[60] As established, there were two incidents and two investigations running concurrently and the party's substantive and procedural concerns and considerations were similar for both incidents. The procedural considerations required by s 103A(3) of the Act include whether the Trust Board:

- (a) having regard to the resources available, sufficiently investigated the allegations before making the decision to dismiss Mr So'o'ula;
- (b) raised the concerns with Mr So'o'ula before dismissing him;
- (c) gave him a reasonable opportunity to respond to the concerns; and

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<sup>3</sup> As permitted by s 103(5) of the Act.

<sup>4</sup> Employment Relations Act 2000, s 103A(2).

(d) genuinely considered his explanation prior to taking action.<sup>5</sup>

[61] Each of Mr Alofa's concerns about the processes and my findings are addressed under these headings. Separately, I outline the substantive considerations raised by the Trust Board in relation to their decision to dismiss Mr So'o'ula and my overall findings on that decision.

*Having regard to the resources available, did the Trust Board sufficiently investigate the allegations before making the decision to dismiss?*

[62] As Dr Evans submitted, the Trust Board provides boarding facilities to fill a valuable need for the students who attend Wesley College. Being able to board assists the boys with an opportunity for a good education and the intention of the hostels is to provide a safe, family like environment – hence the title house parents in the hostels. The Trust Board itself employs less than 50 employees across the four operating hostels. It is not a large employer and Dr Evans spoke of the work and resources put into prioritising culture change at the school in the interests of safety and education. It does not have an in-house human resources team or in-house counsel. Ms Bellette is director of business services and has a multi-faceted role with responsibility for finance, property and human resources at Wesley College. Given the breadth of her role, it was appropriate that the Trust Board engaged an external consultant to advise Dr Vaili with the initial investigation into the Primary Incident. Dr Vaili also conducted the Secondary Incident investigation.

[63] Both parties had external representatives so were provided the benefit of legal advice as required.

[64] When considering the steps taken by the Trust Board, consistent evidence was provided to show the Trust Board sufficiently investigated the allegations against Mr So'o'ula in both investigations. It acted promptly to clarify the basis of the concerns raised, determined an investigator, outlined the process of the investigation to Mr So'o'ula and interviewed relevant witnesses. The process was not perfect but I consider

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<sup>5</sup> Employment Relations Act 2000, s 103A(3).

that it met the requirements for a full and fair investigation process into the incidents of that evening.

[65] The evidence of Ms Uele was concerning as it related to the conduct of the external investigator brought in to advise Dr Vaili with the investigation interviews. Had that individual continued as an investigator, I may have had concerns about the investigation process. As it was, he attended the first witness interviews then Dr Vaili continued as investigator, said that he took responsibility for the investigation and his name was on the final report.

[66] I do not agree with Mr So'o'ula or Mr Field that Dr Vaili was biased and not an appropriate investigator. This evidence was tested in the investigation meeting with several witnesses and no substantive evidence supported that allegation. On the contrary, my questions led me to conclude that there was a lot of misinformation being spread around within the hostel staff. Mr So'o'ula relied on examples of differential treatment in previous disciplinary matters with other hostel employees. When explored, these showed that Mr So'o'ula and others reached their conclusions without all the facts. For each example, there was additional information provided by either Dr Evans or Dr Vaili that satisfied my doubts about differential treatment.

[67] Mr So'o'ula also raised concerns about a conflict of interest between Dr Vaili and other staff being interviewed as witnesses, based on conflict between Dr Vaili and some hostel employees. For him and others, they felt that this impacted Dr Vaili's ability to take an objective view of the two incidents. Again, when questioned, witnesses including Mr So'o'ula were unable to provide specific first-hand examples. One witness referred to a decision made by Dr Vaili that they felt was unfair. Based on the information before the Authority, the examples given in evidence by witnesses suggested that he made decisions appropriately within the scope of his role as Head of Boarding, but they were not popular decisions. That in itself is not a reason to consider a conflict of interest exists. When pressed, Mr Cudby also acknowledged that he thought the same way initially but changed that view once he and Dr Vaili talked.

[68] Mr So'o'ula also claimed that it was inappropriate for the investigator to be the decision maker. This was factually inaccurate. In both reports, Dr Vaili only made recommendations for action stating "it is my recommendation that the serious breaches

on the part of Mr So'o'ula be the subject of disciplinary procedures under his employment agreement" in relation to the Primary Incident. He also made recommendations relating to other employees. In relation to the Secondary Incident, he wrote "it is my recommendation that this finding and concern be addressed in a disciplinary process and that Mr So'o'ula's suspension continue until there is a resolution". Dr Evans was questioned about this and confirmed in his evidence that he was the decision maker and made the decision to suspend and subsequently dismiss Mr So'o'ula.

[69] Having read the Primary Investigation report in detail through the 'fair and reasonable' lens required by s 103A of the Act, Dr Vaili presented a balanced and considered report to Dr Evans for his consideration. The investigation report identified failings on the parts of several employees on 13 February 2025. Objectively, I do not accept the various assertions made by Mr So'o'ula including that the report was biased, lacked impartiality and was unreasonable and unfair. This was not borne out in evidence presented to the Authority or in the report.

*Were the concerns raised with Mr So'o'ula before any decision?*

[70] Mr So'o'ula was advised in writing of the Trust Board's concerns for both the Primary and Secondary Incidents and I am satisfied this meets the requirements of s 103A(3)(b) of the Act. For the Primary Incident, the first reference to the "serious events...students who were under your charge ship" was contained in the letter of 24 February 2025. At that stage he was advised to "continue working as usual unless directed otherwise". In an email from counsel for the Trust Board on 25 March 2025, Mr Alofa was sent a copy of the draft report for the Primary Incident prepared by Dr Vaili. He was invited to make any responses to the draft, including any factual inaccuracies or issues with tentative findings. He was provided with copies of the interview notes and relevant other information and a link to the investigation information.

[71] The letter of 13 March 2025 contained a section headed "Employment concerns arising from [the Secondary Incident]". It outlined the concerns set out in the letter of 7 March 2025. Mr So'o'ula was invited to respond in writing or in person on 19 March 2025.

*Was Mr So'o'ula given a reasonable opportunity to respond?*

[72] Mr So'o'ula given an opportunity to comment on both reports. He elected not do so until late in the investigation to his own detriment. He was provided three opportunities to comment on the first investigation report and multiple ways to respond. In the 25 March 2025 email, Mr Alofa was advised of the investigation into the Secondary Incident and the tentative view reached. Mr So'o'ula was invited to provide any additional responses or information relevant to the "tentative assessment".

[73] The Trust Board was clear that if Mr So'o'ula chose not to comment on the secondary (supplementary) report the Trust Board would be relying only on Mr Lafaele's account of the facts.

[74] It is unfortunate for both parties that Dr Evans was required to decide on Mr So'o'ula's employment without the benefit of discussing this with him directly. However, Dr Evans is not obliged to meet with Mr So'o'ula before making a decision and nor is Mr So'o'ula required to provide feedback. Procedural fairness requires that he was aware of the concerns and allegations made against him, provided with the relevant information the Trust Board was considering and given the opportunity to respond to those concerns and allegations made. The Trust Board did so and therefore met the requirements of s103A(3)(c) of the Act.

*Consideration of Mr So'o'ula's feedback before a decision was made*

[75] There is evidence to show Dr Vaili's consideration of Mr So'o'ula's feedback in the final report by comparing the draft and final report versions. These show Mr So'o'ula's feedback was considered, though not accepted. I also accept Dr Evans' definitive response to my questions in the investigation meeting. He said that as decision maker, he reviewed the final report and feedback before making his decision to terminate Mr So'o'ula's employment.

[76] As made clear to Mr So'o'ula for the Secondary incident, the Trust Board relied on Mr Lafaele's report. They may have reached a different conclusion if it had the benefit of Mr So'o'ula's feedback earlier. It was not given that opportunity.

### *Substantive considerations*

[77] Mr So'o'ula was a longstanding employee with no record of disciplinary issues in the past. He was experienced as a house parent and spoke passionately about the students under his care. I did not doubt the care and passion he showed when talking about the students. In evidence, Mr So'o'ula said he was very aware that Wesley College and the Trust Board placed a priority on safety of its students, was familiar with the recent ERO reviews and investigations into hostel activity and knew what was expected of him.

[78] In evidence, Dr Evans was asked if he would make the same decision in the same circumstances if this happened in another school. He replied that he would. As an experienced principal, it is his responsibility to lead the required changes and it is understandable that he must have trust and confidence in his hostel leaders.

[79] The Trust Board had recently and repeatedly emphasised its focus on hostel safety to all its hostel employees, including Mr So'o'ula. Mr So'o'ula was a senior hostel employee and expected to lead that focus on safety and safe disclosure.

### *Expectations and priorities for Mr So'o'ula*

[80] I am satisfied that the expectations placed on Mr So'o'ula relating to the safety of Maia hostel students were reasonable and the priority on safeguarding was made clear to Mr So'o'ula and others. These were reinforced on multiple occasions by the Trust Board in different formats including employment documentation, Trust Board management plans, employee code of conduct, policy and procedure, meetings and emails. These documents comprehensively reinforced the priority placed on safety and safeguarding practices. Specific examples presented in evidence included:

- (a) the hostel supervision policy, updated in 2022, showing the Trust Board commitments to safety and management plan including appropriately trained personnel, ratios to ensure safety, and a requirement that “the whereabouts of boarders shall be known at all times”;
- (b) an email sent to all hostels from the principal at the start of the school year on 9 February 2025. It said:

As we start back it is very important that expectations, standards and safeguarding is paramount in all dorms...key to our safeguarding is active

duty, roaming and looking for cues, following up on anything at all and making sure that all students have no misunderstanding of the dorm rules. There is to be absolutely no one in the wrong place at the wrong time – we are all experienced and we know the signs to look for...as a dorm parent it starts with you on your watch... There is no grey now...”

- (c) Hostel dean meeting minutes from February 2025. Mr So’o’ula attended this meeting and attendees were reminded about the email Mr Evans sent.

The minutes of that meeting show reminders that:

- i. active duties are very important;
- ii. always walking around the hostel so that the students know you are around;
- iii. need to come out of your office and interact with the students,
- iv. no one should be out after devotion at 8.30 pm;
- v. senior students cannot enter junior hostels unless they are organised and supervised by adults; and
- vi. always have your safeguarding hat on.

#### *Special circumstances of Wesley College*

[81] The test of justification in the Act requires the Authority to consider “all the circumstances” and I also reference s 103A(4) of the Act enabling the Authority to consider any other factors it considers appropriate. The Trust Board is in a unique position. It has reason to be even more sensitive than other schools about the safety of its students, particularly in the hostels.

[82] Dr Evans, Ms Bellette and Dr Vaili all spoke of the scrutiny the Wesley College hostels have faced in recent years. As publicly available information, in 2022, the Trust Board and Wesley College were required to appear before the Royal Commission of Inquiry into Abuse and present information in response to a range of complaints of historical abuse, possible causes and initiatives to address abuse.

[83] Soon after his appointment as principal, Dr Evans said that he commissioned ‘current state’ reviews into the safety and operation of the dorms. In November 2022, Wesley College was the subject of a special review by the Education Review Office (ERO) and the Ministry of Education and concerns over supervision and reporting led to the suspension of the hostel license in December 2022. This suspension was lifted in February 2023 with assurances of a strong plan and commitment to change by the Trust

Board. In March 2023, ERO continued to express concerns about the pace of change and the Trust Board continued to put considerable resources into prioritising the health, safety and wellbeing of its students.

[84] This meant that Wesley College hostels were under scrutiny from multiple angles. ERO, the Wesley College Trust Board, the community, general public and parents of existing and prospective boarding students were all interested in the College's plans for change. As Dr Evans put it, there needed to be a complete cultural change from a negative 'Wesley Way' to a new safe inclusive culture. He considered shutting down the hostels as the work was substantial but recognised a need in the community so the Trust Board decided to put resources, time and effort into making the required changes. This resulted in updates of all policies and procedures and a multitude of other changes within Wesley College, including appointment of Dr Vaili.

[85] Particularly relevant to the investigation, the various reports identified two particular concerns – a hierarchy of bullying by senior students towards younger students and an unwritten code of silence discouraging incident reporting.

[86] Both the Primary and Secondary Incident investigation reports concluded that Mr So'o'ula failed to intervene and prevent the very concerns that were identified in the ERO report. Mr Alofa submitted that because of the incidents of the past at Wesley College, this decision was made as "an attempt to mitigate the wrongs of the past" rather than objectively based on the facts of what Mr So'o'ula had done. I agree with Mr Alofa that the Trust Board took a firm approach by terminating Mr So'o'ula for his actions that evening. However, given the nature of the harm that occurred to the junior students and its similarity to the very concerns raised by ERO and the Crown Inquiry, it was reasonable that the Trust Board would have regard to those concerns. Its decision to dismiss Mr So'o'ula was a reasonable one open to it in all the circumstances.

#### *Differential treatment*

[87] Mr Alofa maintained that Mr So'o'ula was targeted and there was disparity of treatment for those employees involved. He is correct that there were different outcomes for different employees following this event. There were five hostel employees involved in the incident that evening – the Dean and house parent at Taina hostel, the Dean and house parent at Maia hostel and Mr Field. Mr Alofa's claim was

explored by me during the investigation and the Trust Board confirmed that employees were treated the same initially though did have different outcomes. Two of the individuals remain employed. There were several comments and findings in the report supporting Dr Evans' reasoning for the differences in disciplinary action taken:

- (a) Both the individuals who retained their positions took responsibility for their "failings" and took proactive steps to try and prevent recurrence. As the report noted "It is of concern that Mr So'o'ula has not accepted any responsibility for the situation and in his replies endeavoured to apportion blame to Mr Lafaele..."
- (b) One employee was new to the role but did accept responsibility and undertook further training.
- (c) "There were sufficient flags to warrant immediate intervention and action. This was primarily the responsibility of Mr So'o'ula as the Hostel Dean on duty".
- (d) "Mr Lafaele could have done more and accepts that..." Mr So'o'ula remained in his office.

[88] One of the factors that stood out for Dr Evans in his written and oral evidence was that Mr So'o'ula did not take responsibility for his failings and continued to blame others. This was a large part of Dr Evans' consideration on the trust and confidence of his employee. I tested this with Dr Evans and Mr So'o'ula as he was Dormitory Dean that night and the most senior person present. I asked Mr So'o'ula if he would take the same actions if it happened again. He said that he would.

[89] In the letter outlining the allegation and considerations on the Secondary incident, Mr So'o'ula said that the comments he made to the student as alleged by the other house parent were taken out of context. He was well-intentioned and when he said the student "should not have said that" he meant that the student did not need to stick up for the house parents. Mr So'o'ula chose to breach the instruction of his employer and justify the breach in his own mind. When speaking with Mr So'o'ula, his response and lack of ownership of his error was evident and demonstrated sufficient justification for the differentiation in disciplinary outcomes for Mr So'o'ula compared with other employees.

## *Findings*

[90] Based on the above and including information contained in both investigation reports, the historical context of concerns raised, the cultural change challenge facing Wesley College in particular, the feedback provided by Mr So'o'ula to Dr Evans and Dr Evans evidence of his considerations before making his final decision, the Authority accepts that the Trust Board was justified taking the action to dismiss Mr So'o'ula. It was a decision that a fair and reasonable employer could have made in all the circumstances as required by s 103A of the Act. Mr So'o'ula's grievance claim for unjustified dismissal is unsuccessful.

## **Reinvestigation**

[91] Mr Alofa sought a direction from the Authority for the Trust Board to reinvestigate the incident of 13 February 2025. This request was declined. It is not for the Authority to determine whether the Trust Board made the right decision or not. The Authority's role is to resolve the employment relationship problem and determine whether the actions taken by the Trust Board in relation to Mr So'o'ula were the actions of a fair and reasonable employer and justified as required by the Act.

## **Remedies**

[92] Mr So'o'ula's unjustified disadvantage grievance is unsuccessful.

[93] The dismissal of Mr So'o'ula was both substantively and procedurally justified so remedies are not considered in relation to this personal grievance. Mr So'o'ula's application for remedies, including reinstatement, is declined.

## **Costs**

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

[95] If there is an issue as to costs, and the parties are unable to resolve costs, and an Authority determination on costs is needed, Wesley College Trust Board may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr So'o'ula will then have 14 days to lodge any reply memorandum. On request by either party, an extension

of time for the parties to continue to negotiate costs between themselves may be granted.

[96] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis on the basis of a half day unless circumstances or factors, require an adjustment upwards or downwards.<sup>6</sup>

Helen van Druten  
Member of the Employment Relations Authority

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<sup>6</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).