

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 124  
5394644

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| BETWEEN | Maui Solomon<br>Applicant                  |
| AND     | Hokotehi Moriori Trust<br>First Respondent |
| AND     | Lin Entwistle<br>Second Respondent         |
| AND     | Amanda King<br>Third Respondent            |
| AND     | Brian Solomon<br>Fourth Respondent         |
| AND     | Dennis Solomon<br>Fifth Respondent         |
| AND     | Shirley King<br>Sixth Respondent           |

|                        |   |
|------------------------|---|
| Member of Authority:   | Trish MacKinnon   |
| Representatives:       | Susan Hornsby-Geluk, Counsel for Applicant<br>Amy Shakespeare, Counsel for Respondent |
| Investigation Meeting: | 27 & 28 September 2012  |
| Submissions received:  | 28 September 2012 from Applicant<br>28 September 2012 from Respondent                 |
| Determination:         | 12 October 2012   |

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Maui Solomon was suspended from his position as General Manager of the Hokotehi Moriori Trust (“the Trust”) on 31 August 2012. The suspension was effected by a letter which was signed by Shirley King as Executive Chair of the Trust.

[2] Mr Solomon challenges the validity and lawfulness of his suspension and has refused to acknowledge it. His reasons relate to the recent trust elections which were cancelled by Ms King, who would otherwise have lost her place on the Trust Board. She was supported in her action by a majority of the Trust Board, consisting of her sister, daughter, and two cousins. Mr Solomon's view was that Ms King was no longer a trustee or Executive Chair and therefore had no right to instigate disciplinary proceedings against him, or to suspend him. He is continuing to perform duties as General Manager although, at the date of the investigation meeting, he was not being remunerated.

[3] Proceedings were filed initially seeking interim orders to preserve the position of Mr Solomon. However, following a telephone conference with the Authority, it was agreed that an investigation meeting into the substantive matter would be held on an urgent basis.

[4] The Second to Sixth Respondents, acting as the employer, maintain that Mr Solomon's suspension followed a fair process, and that it was substantively justified. They say that his suspension was initially intended to be in place for a short period but that it is now appropriate for it to remain in force until 24 November 2012, at which time the Trust will hold an Annual General Meeting ("AGM").

[5] They are confident that any issues relating to the recent trustee elections will be determined by Hokotehi Moriori Trust members at the AGM or, failing that, by recourse to the High Court. In their view it is unacceptable for Mr Solomon to remain in the position of General Manager until that time and they have concerns for both the assets of the Trust, which are significant, and for the Trust staff who report to Mr Solomon.

## **Background**

[6] The protagonists in this matter are Moriori and the scene of the events giving rise to the proceedings is their ancestral home, the Chatham Islands. All those who gave evidence before the Authority spoke with passion about their Moriori identity and heritage, and its central importance in their lives. Some referred to deep seated

family rifts and tensions underlying the current matters before the Authority. The evidence from both parties highlighted cultural factors which they believed should be considered as part of the context within which the events occurred.

[7] Maui Solomon has long been associated with the revival of Moriori culture and identity. He gave uncontested evidence that he has dedicated his life for the past 30 years to matters concerning Moriori. In that time he has filled many roles including as trustee and, more latterly, General Manager of the Hokotehi Moriori Trust, an organisation formed in 2001. Mr Solomon was a founding trustee and remained a trustee until he stepped down in 2009.

[8] The Hokotehi Moriori Trust is a registered charitable trust which owns and manages significant assets on the Chathams including fishing quota, farms, and a tourist lodge. In 2005 it built Kopinga Marae where its office is housed. The Trust Board comprises trustees from Rekohu (the main island of the Chathams) and from mainland New Zealand, elected by the membership in accordance with the provisions of the organisation's Trust Deed.

[9] Mr Solomon, as General Manager of the Trust, was charged with managing the recent (August 2012) elections in which two trustee positions in the South Island, and one on Rekohu, were available. His suspension was directly related to issues concerning his management of the elections, and to actions he took both before and after the elections.

[10] At the heart of this situation is a Trust Board which currently consists of two factions. One faction, involving the majority of the Board, cancelled the recent trustee election on Rekohu minutes before its close. The election would have resulted in Shirley King losing her trustee position.

[11] The other faction of the Trust Board, comprising a minority of trustees, does not recognise the validity of either the cancellation of the election or Maui Solomon's suspension.

## **Issues**

[12] Some of the matters forming the background to this employment relationship problem involve issues relating to the interpretation of trust deeds and the powers of trustees. These matters are outside the jurisdiction of the Authority to determine. However, in their actions relating to Maui Solomon, the Second to Sixth Respondents, rightly or wrongly, acted at all times as the employer. Accordingly the employment issues are relatively straightforward and include:

- i. Was the commencement of a disciplinary investigation lawful?
- ii. Was Mr Solomon's suspension lawful?
- iii. Is the employer entitled to continue the disciplinary investigation?
- iv. What remedies, if any, are due to Mr Solomon?

## **The Facts**

### *Events of 18 to 31 August 2012*

[13] On 18 August Mr Solomon emailed trustees to inform them of the Rekohu election result, in which Shirley King had lost her place on the Trust Board to Tom Lanauze. The following day the Vice Chair of the Hokotehi Moriori Trust, Aaron Donaldson, emailed trustees and Mr Solomon, thanking Shirley King for her years of dedicated service as a trustee and informing trustees (and Mr Solomon) that he would assume the role of Acting Chair until the South Island elections had been completed and there was a full complement of trustees to vote for a new Chairperson.

[14] Email correspondence ensued over the following 2 days among trustees, and between trustees and Mr Solomon, with the participants disagreeing over the date from which Shirley King would lose her position as trustee and Executive Chair.

[15] On 20 August, Aaron Donaldson circulated legal advice he had obtained that day from the Trust's solicitors, Buddle Findlay. He sent that advice to trustees, Shirley King and Mr Solomon. Part of the advice was that 21 August was the earliest date that the final election result could be announced, and that Shirley King remained a trustee and Chair for the time being.

[16] The legal advice further noted that *"given the high number of votes received ...and Tom Lanauze's winning margin, it seems very unlikely that the outcome will change. Convention in those circumstances would support Shirley taking no active steps as a trustee or as chair, unless that was essential for the Trust's day to day business and mandated by the Board"*.

[17] On 21 August Ms King, after having met or had telephone or email contact with other trustees, emailed advice to all trustees, in the minutes before the elections closed, that there would be 4 trustees from Rekohu and 4 from New Zealand, and that new elections would be held. She also notified a special trustee meeting to take place in 7 days time with the agenda item being "Re- election". Ms King subsequently informed Mr Solomon of that decision, describing the election process as *"flawed"*.

[18] A further flurry of email activity ensued in following days regarding the legality of the action taken by the Second to Sixth Respondents, and the consequences of that action. Mr Solomon made his view known that he would be seeking urgent legal advice on the matter and that it was not up to trustees to cancel elections because they did not like the results. He issued a Public Notice advising the election result and including the information that Shirley King had not been re-elected as a trustee and was therefore no longer Chair of Hokotehi Moriori Trust.

[19] Aaron Donaldson circulated further legal advice from the Trust's solicitor to Shirley King and the trustees. That advice was that Rekohu had only 3 trustee representatives in accordance with a change to the Trust Deed agreed by members in 2010; that the election results would stand; that Shirley King was no longer a trustee and therefore no longer Executive Chair. Mr Donaldson concluded by advising that the Special Meeting called by Shirley King for 28 August was no longer valid.

[20] Mr Solomon wrote to Trust stakeholders advising that Shirley King was no longer the Chair of the Trust or a member of the Board. He also wrote to Shirley King requesting the return of various Trust items, including a vehicle and laptop.

[21] In her response the same day, Shirley King stated that she would return the items “*when the majority of Trustees are satisfied the recent HMT election has been held without prejudice, interference and conducted fairly*”, noting that she answered to the Board and not to the General Manager.

[22] On 28 August a “*Special TeleCon Meeting*” was held by the Second to Sixth Respondents. The agenda was recorded in the minutes as “*Elections / Authority*” and it was also recorded that Aaron Donaldson and James Matenga had been notified but did not attend.

[23] The telephone conference lasted almost 3 hours and, in addition to the election, discussed matters relating to the conduct of Maui Solomon in relation to the recent elections.

[24] On 30 August Shirley King wrote to Mr Solomon raising serious concerns that he had been “*working to undermine the Hokotehi Moriori Trust in a manner that may amount to serious misconduct and/or destroy the trust and confidence necessary in any employment relationship and particularly in such a senior appointment as (his)*”. It informed him that dismissal was a likely consequence if the trustees concluded that trust and confidence could not be repaired and it “*strongly suggested that (he) seek legal advice for the process that follows*”.

[25] The letter set out the trustees’ proposal to suspend Mr Solomon on pay for the duration of the investigation because of the seriousness of the allegations, stating that:

*“We believe that suspension is necessary because:*

- 1. The allegations below include allegations that you have contacted Trust members in an attempt to undermine the Trustees*
- 2. The allegations below include allegations that you have deliberately disregarded the Trustees’ directions to you; and*
- 3. We are concerned that your own personal agendas may interfere with your observation of your duties of fidelity and loyalty during this investigation process*

[26] The allegations were itemised under five separate headings, which were noted as all having stemmed from Mr Solomon's conduct in the recent Trustee elections. The headings were:

1. Mismanaging the trustee election process;
2. Electioneering;
3. Disregarding the board's directives and acting outside your jurisdiction;
4. Premature publication of election outcomes; and
5. Interference with HMT Hokopapa

[27] The letter's closing paragraphs noted that the trustees seriously doubted Mr Solomon's commitment to serve the Trust and act in its best interests, "*as opposed to your personal interests*". It stated their belief that his actions had brought Moriori people into conflict and the Trust into disrepute. It also referred to the process that the trustees intended to follow, and notified him of a meeting at the Young Hunter law office in Christchurch the following Tuesday (4 September) at which he could respond to the allegations.

[28] Mr Solomon was invited to respond to the proposal to suspend him no later than 4.00 pm that day. The letter was hand delivered to him by Shirley King, Amanda King and Brian Solomon, at approximately 11.30 - 11.45 am. The letter noted that the trustees' decision would be made, and advised to him, by 5.00 pm the same day.

[29] Following a request for an extension of time to 5.00 pm the following day, Shirley King extended the time frame to midday the following day, 31 August.

[30] The Applicant was suspended from his employment as General Manager shortly after midday on 31 August.

### **Was the commencement of a disciplinary investigation lawful?**

[31] An employer is entitled to commence an investigation into the conduct or performance of an employee where matters of concern have arisen in relation to the employee.

[32] In this instance the Second to Sixth Respondents (acting as the employer) decided in the course of a meeting held by teleconference on 28 August 2012 to instigate a disciplinary process into their General Manager's conduct and actions. Their reasons, according to the letter proposing suspension, were their serious concerns that Mr Solomon, the Trust's most senior employee, had been working to undermine the Trust. All the allegations specified in the letter related to the way in which he had managed the recent trustee elections and his conduct before, during and after the elections.

[33] I find that, on the face of it at least, these were issues that the employer was entitled to investigate. At the point that they made the decision to investigate, they needed only to have concerns of possible misconduct to justify commencing an investigation to determine whether those concerns had any validity.

### **Was the suspension lawful?**

#### *Employment Agreement*

[34] For a suspension to be justifiable there must normally be an express provision in the employment agreement sanctioning suspension. There was some disagreement between the parties as to whether there was an employment agreement in place between Mr Solomon and the Trust. An employment agreement had been drafted by the Trust's lawyer but not signed by either party. Mr Solomon had provided trustees with a letter setting out his expectations in 2010 and the parties had reached agreement on annual remuneration, travel and some other matters.

[35] In the course of the investigation meeting Mr Solomon agreed that the draft document did govern the employment relationship, although final details of the agreement, particularly in relation to the position description, were still to be negotiated. He noted that he had not considered the minutiae of the document but noted that the suspension clause seemed standard and that it was "*probably fair and reasonable.*" The clause provided (in part) that, if the employer decided to investigate a matter involving possible misconduct, it "*may, after consulting you, suspend you until we decide what action to take.*"

[36] There was no dispute that the Applicant was receiving the agreed remuneration and financial benefits of the unexecuted employment agreement. The parties had operated for more than 2 years without finalising the document, while apparently not being in active disagreement over any specific terms.

[37] This situation can be distinguished from that referred to by Colgan CJ in *Smith v Stokes Valley Pharmacy (2009) Ltd*<sup>1</sup> where the employee had been in receipt of the proposed employment agreement for only 4 days and had worked for the employer for less than 2 days.

[38] It can also be distinguished from that of Mr Edwards in the recent *Two Degrees* case<sup>2</sup>, where the Applicant had refused, over a considerable period, to sign an employment agreement despite the repeated requests of his employer to do so. In that case the Authority found that, viewed objectively, there was no assent given by Mr Edwards to the employment agreement he had been presented.

[39] In Mr Solomon's situation the evidence supports a finding that the unsigned employment agreement did govern the employment relationship between him and the Trust, and therefore that suspension was a contractual provision available to the employer.

#### *Justification for Suspension*

[40] Whether the suspension was justified must be determined on an objective basis by considering 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 action occurred.<sup>3</sup>

[41] In reaching a decision I am required to consider, and have considered, the following factors specified in section 103A(3)(a) to (d) of the Employment Relations Act 2000:

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<sup>1</sup> [2010] NZEmpC 111, at para 101 and 102

<sup>2</sup> *Simon Maxwell Edwards v Two Degrees Mobile Limited* [2012] NZERA Auckland 342

<sup>3</sup> Section 103A Employment Relations Act 2000

- (a) *whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and*
- (b) *whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and*
- (c) *whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and*
- (d) *whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*

[42] The Authority is constrained from determining a dismissal or an action to be unjustifiable solely because of defects in the process followed by the employer if the defects were—

- (a) minor; and
- (b) did not result in the employee being treated unfairly.

[43] It is not the role of the Authority to substitute its assessment for that of the employer, but to determine whether a fair and reasonable employer could, in all the circumstances, have suspended Mr Solomon around midday on 31 August 2012.

#### (A) Time Frame

[44] Shirley King acknowledged, in an emailed response to Mr Solomon's lawyers on 30 August 2012, that suspension is a drastic step. That is also how the Court of Appeal described suspension in the Birss case<sup>4</sup> noting that suspension "*if more than*

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<sup>4</sup> *Birss v Secretary for Justice* [1984] 1 NZLR , 513 at 521

*momentary must have a devastating effect on the officer concerned” and that “The prejudice occasioned the officer by a suspension can never be assuaged even if he is ultimately vindicated at the disciplinary hearing and is then restored to the office and paid his arrears of salary.”*

[45] The Court made it clear that suspension, whether paid or unpaid, was an action which merited the application of the principles of natural justice. Mulholland J stated, in referring to the application of those principles to dismissals, that *“I see no reason in principle why the rules of natural justice should not also apply to a suspension which may be almost as devastating in its effect”*.<sup>5</sup>

[46] The Respondents initially gave Mr Solomon approximately 4 hours within which to respond to the proposal to suspend him. In that initial timeframe he made contact with a Wellington-based employment lawyer (there being none on the Chatham Islands) who agreed to represent him. The lawyer was in mediation and out of town at that time and unable to take full instructions. An associate in her office wrote a brief response regarding the proposed suspension, noting that they were seeking further information from Mr Solomon and that they would be in a position to provide a substantive response by 5.00 pm the following day, 31 August 2012.

[47] The associate’s brief response noted that, on the face of it, the issues referred to in Ms King’s letter did not seem to warrant suspension as the allegations all related to a discrete matter which had already occurred (the election) and did not indicate any ongoing or future potential for wrongdoing. The letter conveyed their understanding that Mr Solomon did not have a written employment agreement allowing him to be suspended, noting that in those circumstances suspension would not be appropriate or lawful.

[48] On receipt of that letter Ms King extended the time frame for a response to midday the following day. In declining to extend the time frame beyond 12.00 pm Shirley King referred to *“other matters”* being the reason for not allowing an extension beyond that time. She did not specify what those other matters were and, in evidence before the Authority, admitted that she could not think of any disadvantage the Trust would have suffered from the additional time being granted. Lin Entwistle

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<sup>5</sup> Ibid, p522

similarly acknowledged that there was no reason for not allowing the additional time, other than that the matter needed to be resolved as soon as possible.

[49] Mr Solomon said that it was important to him that he meet his lawyer in person to discuss the matter rather than converse by telephone as he had never previously met her. The earliest time he could take a flight to Wellington to meet with his lawyer was 31 August 2012, arriving at or around midday.

[50] The employer's decision not to allow the additional time for Mr Solomon to make submissions on the proposal to suspend him is puzzling in the absence of any good reason. The trustees were aware of the constraints of travel from the Chathams, and had strongly recommended to Mr Solomon that he take legal advice "*for the process that follows*" in the letter proposing suspension.

[51] Moreover, evidence before the Authority showed that Shirley King, in a not dissimilar situation in February 2012, after fellow trustees had required a formal response from her to concerns about an aspect of her personal conduct, had informed the trustees that she intended to take legal advice before responding. When trustees followed up with her 3 weeks later, Ms King responded that she had contacted a solicitor in Christchurch and that :

*"...your letter is of such importance to my reputation and position of Executive Chair that I have made a decision to meet with my solicitor in person and not conduct business via the internet or any other means"*.

Ms King noted that, because March was a busy period for her, she would not be able to go to Christchurch until April and that she would inform the trustees when she was "*able to go to NZ to consult with my solicitor*".

[52] Given the importance that Ms King attributed to the opportunity to meet with her solicitor in person when her own reputation and position were at stake, and the latitude extended to her by the Trust Board in that instance, it was unreasonable to deny an additional 5 hours to Mr Solomon when that was requested, and when his position and reputation were on the line.

[53] Witnesses for both parties referred during the investigation meeting to conducting business *kanohi ki te kanohi*, or face to face, giving the impression that this was a matter of considerable importance to them.

[54] Mr Solomon had only recently arrived in Wellington shortly before his early afternoon meeting with his lawyer, when he received the letter of suspension. The decision had been made without his having the time he required to provide a considered response to the proposal to suspend him.

[55] In *Tawhiwhirangi v Attorney General*<sup>6</sup> Goddard CJ, in a matter relating to the opportunity of an employee to be heard prior to being suspended from employment, held that “*..the matter must be looked at in a sensible, flexible, and reasonable way to ascertain what are the requirements of fairness on the particular occasion in the particular surrounding circumstances*”.

[56] Applied to Mr Solomon’s situation, the employer’s refusal to allow him the additional few hours he required to meet his lawyer, and to provide a substantive response to the proposal to suspend him, appears capricious rather than fair or reasonable.

#### (B) Predetermination of Disciplinary Action

[57] Detailed minutes were taken of the Special TelCon meeting of trustees on 28 August 2012, which was attended by the Second to Sixth Respondents. When reading those minutes it is difficult to avoid the conclusion that there was predetermination on the part of all but one attendee concerning the actions and conduct of Mr Solomon and the disciplinary action that should follow.

[58] The exception was the Second Respondent, Lin Entwistle, who commented during the telephone meeting on the need for a fair and transparent process. Brian and Dennis Solomon both vigorously expressed the view that the General Manager had committed misconduct and that they should be looking at dismissal. Brian noted that he had compiled “*2/3 pages of things that have been done wrong – a total breach*”

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<sup>6</sup> [1993] 2ERNZ 546, 559

and reiterated that *“it’s misconduct”*. Dennis stated that *“To say the least it is misconduct”* and *“He has run amuck and we cannot afford to let it go”*.

[59] Amanda King’s view was that *“I am for instant dismissal because you stand him down, he is going to get all nasty and this is going to drag on”*.

[60] Shirley King requested a resolution, noting that *“it seems to be unanimous that we dismiss Maui”*. Lin Entwistle was the sole advocate for at least the appearance of fairness noting that *“We have to show we are following a fair and transparent process. We can’t sack people just like that. We know he has done wrong. We still have to allow him to respond to it”*.

[61] The trustees agreed that they would seek legal advice before acting. However, the tenor of their discussions and two of the resolutions passed unanimously make it clear that the intention was merely to pay lip service to procedure in order to reach an outcome they had already determined.

[62] The first of those two resolutions included the words *“Amy Shakespeare will confirm there are grounds to act on the misconduct for an instant dismissal”*, while the final resolution was *“to remove Maui and Aaron as signatories”* from bank accounts and other stakeholders.

[63] During the investigation meeting Shirley King admitted that she had already decided that Mr Solomon should be suspended. Her answer to the question whether there was anything he could have said to persuade her that he should not be suspended was that she *“would like to say yes”*. That answer was not convincing. Ms King also admitted that some matters had been taken into account in deciding to suspend Mr Solomon that had not been included in the letter of 30 August 2012 to him. In itself, that admission undermines the fairness of the process which resulted in his suspension.

[64] It was apparent from her evidence that Ms King held strong feelings of anger towards Mr Solomon, with whom she agreed that she had formerly enjoyed a good working relationship, until she *“became aware of his machinations”*. She was referring to issues raised in the latter part of 2011 by Mr Solomon with some trustees

regarding her conduct and performance. Ms King agreed that she had stopped Mr Solomon attending Trust Board meetings in January 2012 and that she had changed the note taker at the meetings from Maui Solomon's partner to another person.

[65] In relation to more recent events, Shirley King stated that Mr Solomon had "*trampled on (her) mana*". He had told people, including the Trust's bank, "*disrespectfully*" that she was no longer a Trustee or Executive Chair.

[66] Brian and Dennis Solomon both referred to long standing family issues between them and Maui Solomon, and Brian admitted to feeling resentment towards Maui. Dennis agreed that what was happening to Maui Solomon could be perceived as vindictiveness.

[67] The conclusion I have reached from all the evidence is that the decision to suspend Maui Solomon was predetermined and that the opportunity he was given to comment on the proposal to suspend him was no more than an acknowledgement of the need to appear to have followed a fair procedure.

[68] Taking that, and the fact that Mr Solomon was denied, for no apparent good reason, the additional five hours he required in order to respond fully to the proposal to suspend him, I find that suspension was not a decision that a fair and reasonable employer could have made in all the circumstances. Nor was it a situation where minor procedural defects applied. In reaching that conclusion I have also considered the resources available to the employer and have noted the employer's ready access to legal advice. I find that Mr Solomon is entitled to resume the full duties of his position with no loss of remuneration from the date of his suspension.

### **Is the employer entitled to pursue disciplinary action?**

[69] The Authority is loathe to intervene in a disciplinary process instigated by an employer in order to prevent the employer from continuing that process. Such investigations are within the management prerogative of an employer and should not be interfered with lightly. Maui Solomon has urged me to issue an injunction to prevent his employer from progressing a disciplinary investigation or from taking any

disciplinary action against him related to the allegations which formed the basis of his suspension.

[70] I have already found that the employer was entitled to commence a disciplinary investigation. It is possible that there are grounds for at least some of its concerns as evidenced, for example, by Mr Solomon acknowledging during the investigation meeting that he was premature in releasing the election results to trust members on 18 August. That being so, it is also possible that, if the employer followed a proper and fairly conducted investigation into Mr Solomon's actions relating to the elections, the outcome could be that some form of disciplinary action was appropriate. For that reason I decline to issue an injunction.

[71] I note, however, that the information obtained during the Authority's investigation makes it unlikely, at least at present, that he would be afforded a fairly conducted investigation. I also note that the Trust Board appears currently to be dysfunctional, as it is split into two factions which fundamentally disagree over the actions taken by one faction in relation to the recent elections and over the suspension of their General Manager.

[72] I have already noted that it is not within my jurisdiction to determine whether the Second to Sixth Respondents had the necessary authority to undertake the actions they did in relation to the trustee elections, and to determine that Ms King would remain as a trustee and Executive Chair. Those are matters for a different forum. It is clear, however, that the Trust Board needs to resolve its internal conflict in order to function effectively, and to act fairly and reasonably as an employer.

[73] The Trust has publically notified that it will hold an Annual General Meeting on 24 November 2012 at which time its members will have the opportunity to have their say on these matters. Both parties appeared to welcome that opportunity. In light of the imminence of the AGM, I strongly note my view that it would be inappropriate for any disciplinary investigation to be instigated or progressed prior to that meeting taking place. If there are issues to be resolved following the AGM, the Trust Board, acting in compliance with its Trust Deed, should consider those matters fairly, and in accordance with a proper procedure which is untainted by the predetermination which has been a feature of the process to date.

**Determination**

[74] Applying the test of justification in section 103A of the Employment Relations Act, which I have referred to earlier, I find that Mr Solomon's suspension was unlawful and that he should be reinstated to his position as General Manager with no loss of remuneration. I am satisfied that it is practicable and reasonable for reinstatement to occur.

[75] I find also that the suspension unjustifiably disadvantaged Mr Solomon in his employment and that he has a personal grievance pursuant to section 103(1)(b) of the Employment Relations Act. The withdrawal of the right to work constituted a disadvantage to Mr Solomon. He has suffered hurt and humiliation, and is likely to have sustained damage to his reputation as a result of the suspension.

**Contribution**

[76] Having found that Mr Solomon has a personal grievance, I am obliged under section 124 of the Employment Relations Act, to consider the extent, if any, to which Mr Solomon's actions contributed to the situation which gave rise to his personal grievance. I am also obliged, if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[77] The employer's act of suspending Mr Solomon was directly related to the concerns it raised in relation to the August 2012 trustee elections. The Respondents, acting as the employer, were clearly angry and frustrated over Mr Solomon's conduct before, and during the elections, and in not accepting the lawfulness of their actions in cancelling the elections at the eleventh hour. To that extent it could be argued that he had contributed to the situation which gave rise to his personal grievance. However, the predetermination with which the employer came to the investigation, and its unjustified suspension of him, outweigh any contribution that Mr Solomon may have made. Those are matters over which he had no control and to which he made no contribution and accordingly I do not find that his actions require me to reduce the remedies.

**Remedies**

[78] Mr Solomon has sought reinstatement. I have found that he is entitled to resume the full duties of his position and I order the Trust to restore him to that position.

[79] Mr Solomon seeks compensation for hurt and humiliation in the sum of \$50,000. I am satisfied from the evidence that, despite the claims of the employer that they had not publicised the fact of his suspension, they had provided sufficient information to trust members and stakeholders to fuel rumour and speculation which was hurtful to Mr Solomon as well as damaging to his reputation. Evidence of his distress over the suspension was compelling during the investigation meeting. Compensation in the sum of \$8,000 is appropriate.

[80] The employer says that the suspension was to be on pay. As noted earlier, at the time of the hearing Mr Solomon was not being remunerated. The employer is ordered to reinstate Mr Solomon's remuneration from the date of suspension.

[81] Mr Solomon also seeks an order directing each of the Second to Sixth Respondents to pay a penalty pursuant to section 134(2) of the Act for inciting, instigating, aiding, or abetting a breach of his employment agreement, and a further order directing such payments to be paid directly to him.

[82] I do not find penalties to be warranted. The Applicant has a finding that his suspension was unlawful and that he suffered disadvantage for which compensation has been awarded. That is the appropriate remedy for his personal grievance. This is an ongoing employment relationship and the awarding of penalties against individuals would not be helpful to the restoration of a good working relationship.

**Summary of Findings and Orders**

[83] The suspension of Maui Solomon's employment was unlawful and the Hokotehi Moriori Trust is ordered to restore him to the full duties of his position as General Manager.

[84] Mr Solomon has a personal grievance for unjustifiable action based on his unlawful suspension.

[85] The Hokotehi Moriori Trust is to pay Maui Solomon:

- (i) pursuant to section 123(1)(b) of the Act, all remuneration and any other financial benefits which he has lost from 31 August 2012;
- (ii) pursuant to section 123(1)(c)(i) of the Act, the sum of \$8,000 (without deduction) as compensation for his personal grievance.

**Costs**

[86] The issue of costs is reserved.

Trish MacKinnon  
Member of the Employment Relations Authority