



- (iv) cease and desist from holding herself out to be an employee or representative of TWoA including but not limited to TWoA, tauria, kaimahi (staff) and suppliers.

[2] TWoA seeks costs in respect of this application.

[3] Ms Ropiha has not filed a statement in reply. She has corresponded with the Authority on this matter and the issues she raises have been considered in investigating and determining this employment relationship. It is understood Ms Ropiha opposes the compliance orders sought because she does not recognise TWoA's representative, the Authority's jurisdiction to investigate and determine this employment relationship problem is 'null and void' on a range of grounds including Authority members and staff have not paid fines based on fine demands issued by her to them under a fee schedule she has issued and she does not accept her employment relationship with TWoA has ended because she has not consented to such.

[4] This determination follows two earlier determinations issued by the Authority concerning matters between these parties. On 9 March 2023 the Authority issued a determination which dismissed an application lodged by Ms Ropiha on 5 July 2022 on grounds that it had such little prospect of success as to meet the frivolous test.<sup>1</sup> On 18 April 2023 the Authority issued a determination in which an order for costs was made against Ms Ropiha in favour of TWoA.<sup>2</sup>

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

[5] TWoA's compliance application was lodged on 1 December 2022 seeking orders described at [1] (i) above.

[6] On 3 April 2023 the Authority proposed to the parties the matter was suitable for determination on the papers and a timetable for the parties to file supporting affidavit evidence and submissions. Comments on the proposal were sought by 13 April 2023.

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<sup>1</sup> *Katrina Raukura Ropiha v Te Wānanga O Aotearoa* [2023] NZERA 124.

<sup>2</sup> *Katrina Raukura Ropiha v Te Wānanga O Aotearoa* [2023] NZERA 191.

[7] On 12 April TWoA confirmed the timetabling order proposed by the Authority and lodged an amended application enlarging it to include the compliance order as described at [1] (ii), (iii) and (iv) above.

[8] The amended statement of problem was served on Ms Ropiha.<sup>3</sup> Directions for Ms Ropiha to lodge a statement in reply and for the parties to file relevant information were made. The parties were provided an opportunity to comment on timetabling directions which were confirmed.

[9] In accordance with the confirmed timetable TWoA filed and served submissions and an affidavit of Leon Takimoana sworn on 27 April 2023 in support of the compliance orders sought. Ms Ropiha did not file a statement in reply or file information in accordance with the confirmed timetable.

[10] On 19 July the Authority advised the parties it understood all information had been filed and it would move to determine the application. Ms Ropiha has not filed a statement in reply in the statutory form. She has provided information in relation to this matter including:

- (i) an email sent on 12 April to the Authority, TWoA's representative and some 40 other addressees challenging the jurisdiction of the Authority on a range of grounds including she did not consent to the investigation proceeding; and
- (ii) an email to the Authority, persons associated with TWoA and a range of addressees dated 27 June including she had made direct contact with persons associated with TWoA requesting wage arrears, the reactivation of her TWoA provided petrol card and the reactivation of her TWoA email address so she is able to access emails sent to that address.

[11] Ms Ropiha has had a fair opportunity to respond to the compliance orders sought and provide to the Authority information she believes is relevant to investigate and determine this employment relationship problem.

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<sup>3</sup> Due to an administrative oversight service of the amended statement of problem did not occur until 9 June 2023. Directions relating to service of the amendment statement of problem and associated documents are set out in a notice of direction dated 6 June 2023 which I am satisfied was served on Ms Ropiha on 9 June 2023.

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

### **Issues**

[13] Following are the issues for consideration:

- should the compliance orders sought be granted?
- is either party entitled to an award of costs?

### **The compliance orders sought by TWoA**

[14] The grounds of and evidence in support of the compliance orders sought are set out in Mr Takimoana's affidavit.

[15] Mr Takimoana is the deputy chief executive of TWoA. In his affidavit he describes how and why the employment relationship between TWoA and Ms Ropiha ended on 27 May 2022. For completeness, the investigation of Ms Ropiha's personal grievance for unjustified dismissal (application number 3189080) is on hold awaiting advice of her intentions.<sup>4</sup> This determination does not resolve that matter.

(i) *Authority directions 11 November 2022*

[16] Mr Takimoana avers Ms Ropiha has not complied with the Authority direction that she not contact TWoA directly including employees, board members of trustees while it is represented by its authorised representative Simpson Grierson in respect of this matter or any related matter.<sup>5</sup> Annexures to his affidavit include correspondence from Ms Ropiha to the Authority dated 11, 30 November and 31 December 2022, 28 February, 27, 28 March and 20 April 2023 regarding file number 3177127 which includes as addressees parties other than TWoA's authorised representative.

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<sup>4</sup> *Katrina Raukura Ropiha - Te Wānanga O Aotearoa* Directions of the Authority in respect of application number 3189080, 16 March 2023.

<sup>5</sup> *Katrina Raukura Ropiha - Te Wānanga O Aotearoa* Directions of the Authority in respect of application number 3177127, 4 November 2023.

[17] Mr Takimona avers the compliance order sought is necessary because Ms Ropiha's continued communications with parties other than the authorised representative is causing considerable stress to himself and other recipients of the communications and is likely to cause reputational damage to TWoA. He avers it is likely Mr Ropiha will continue to breach the direction because Ms Ropiha's communications have increased since the 11 November direction, including since 23 September 2022 when the Authority first asked her to restrict her communications with the Authority about this matter to TWoA's authorised representative.

(ii) *Return of TWoA property*

[18] In his affidavit Mr Takimoana refers to the parties' employment agreement and in particular the clause concerning the obligation on an employee to return property of TWoA in their possession (clause 3.5).<sup>6</sup>

[19] He avers Ms Ropiha has the following property of TWoA which she has refused to return:

- (i) Laptop – HP Elitebook Folio 1040 G3 Laptop, Serial number: 5CD8182XHQ;
- (ii) Laptop – HP Elitebook Folio 1040 G3 Laptop, Serial number: 5CD8136BKF;
- (iii) Samsung Galaxy X Cover 4 (SM-G390Y) Smartphone;
- (iv) Samsung Galaxy Tab A6 with S Pen (SM-P585Y) Tablet; and
- (v) Vehicle – Silver, Toyota Corolla, registration number: JFU124.

[20] In his affidavit he describes the steps TWoA have taken to draw to Ms Ropiha's attention to its request that she return the property and to repossess the property including corresponding with Ms Ropiha on the matter and engaging an investigator.

[21] Mr Takimoana avers the investigator spoke to Mr Ropiha who advised them the property was not owned by TWoA and it was her property because she was still employed by TWoA. The investigator then refused to repossess the property because

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<sup>6</sup> Collective Employment Agreement Te Wānanga O Aotearoa – Tertiary Education Union 1 January 2019 – 31 December 2020.

of the employment dispute. These matters are set out in the investigator's report dated 23 July 2022 annexed to Mr Takimoana's affidavit.

[22] Further, Mr Takimoana avers, TWoA have laid a complaint with the police that the property has been stolen and listed the vehicle as stolen. The police have advised TWoA they do not wish to become involved while the employment dispute is ongoing. On 8 March 2023 Ms Ropiha laid a complaint with the Independent Police Conduct Authority in relation to TWoA's police complaint.

[23] Mr Takimoana avers the compliance order is necessary because without it TWoA will not be able to repossess its property currently in the possession of Ms Ropiha.

*(iii) Ms Ropiha's conduct with respect to TWoA and its students and holding herself out as an employee of TWoA*

[24] The collective agreement includes TWoA former employees are obliged not to use or disclose its confidential information including staff, student and client details (clause 3.8). Mr Takimoana avers the compliance orders sought are necessary because since Ms Ropiha's employment ended with TWoA she has continued to hold herself out as acting on behalf of TWoA and/or her former students at TWoA and has contacted TWoA employees purportedly attempting to request they carry out work on her behalf. He has annexed emails which evidence this. Mr Takimoana avers this conduct is unacceptable and highly disruptive and has caused TWoA to spend significant time and resources to manage the situation which has impacted on students and overall delivery of services.

### **Should the compliance orders sought be ordered?**

[25] Under s 137 of the Employment Relations Act 2000 the Authority has a broad discretion to order compliance with a range of matters including employment agreements and directions of the Authority:

#### **137 Power of Authority to order compliance**

(1) This section applies where any person has not observed or complied with—

(a) any provision of –

- (i) any employment agreement;
  - ...
  - (b) any order, determination, direction, or requirement made or given under this Act by the Authority or a member or officer of the Authority.
- (2) Where this section applies, the Authority may, in addition to any other power it may exercise, by order require, in or in conjunction with any matter before the Authority under this Act to which that person is a party or in respect of which that person is a witness, that person to do any specified thing or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement.
- (3) The Authority must specify a time within which the order is to be obeyed.
- (4) The following persons may take action against another person by applying to the Authority for an order of the kind described in subsection (2):
- (a) any person (being an employee, employer, union, or employer organisation) who alleges that that person has been affected by non-observance or non-compliance of the kind described in subsection (1).

[26] TWoA has provided compelling evidence that Ms Ropiha has breached and continues to breach the direction of the Authority dated 11 November 2022 by directing correspondence to parties other than TWoA's authorised representative in this and the related employment matters, has continued to contact students and staff of TWoA whilst holding herself out as an employee in the face of TWoA's request that such conduct cease and continued to retain its property in the face of its request for its return.

[27] TWoA is entitled to be represented in any matter before the Authority including by a barrister or solicitor.<sup>7</sup> TWoA is represented by Simpson Grierson, a firm of barristers and solicitors. This has been established in the initiating documents in this and the related matters and reinforced in all correspondence on matters with the Authority and the affidavit of Mr Takimoana. Ms Ropiha's actions, as evidenced by the email correspondence to the Authority, in copying in persons associated with TWoA in that correspondence, undermines and appears to be an attempt to circumvent TWoA's representative.

[28] Ms Ropiha's assertion that her employment with TWoA cannot end without her consent is not determinative of the issue. Even if it could be said her employment was

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<sup>7</sup> Employment Relations Act 2000, Schedule 2, clause 2.

ongoing there could be little doubt, under the terms of the parties' employment agreement that TWoA could direct Ms Ropiha with respect to use of its confidential information and property. On the information before the Authority however, there is sufficient to find with certainty that the parties' employment relationship ended when Ms Ropiha was dismissed on 27 May 2022. The obligations the parties agreed in the collective employment agreement would survive the end of the employment agreement are enforceable and where they have been breached, compliance is able to be sought and ordered.

### **Compliance orders**

[29] The claimed breaches of obligation have been established to the requisite standard and, on the information before the Authority those breaches are ongoing or likely to be ongoing. Accordingly, it is appropriate to exercise my discretion under s 137 of the Act and make the following compliance orders.

[30] With immediate effect and by no later than 14 days following the date of issue of this determination, Katrina Raukura Ropina is ordered to:

- (i) comply with the Employment Relations Authority direction made on 11 November 2022 (which remains in effect) directing her not to contact TWoA (or its employees, board members or trustees) while TWoA is represented by Simpson Grierson in respect of this matter or any related issue;
- (ii) comply with clause 3.5 of the collective agreement and return all property belonging to TWoA including but not limited to the property listed at [21] above;
- (iii) comply with clause 3.8 of the collective agreement and not use or disclose TWoA's confidential information including tauria (student) lists and details; and
- (iv) cease and desist from holding herself out to be an employee or representative of TWoA (including, but not limited to TWoA tauria (students), kaimahi (employees) and TWoA suppliers).

## **Costs**

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

[32] If they are not able to do so and an Authority determination on costs is needed TWoA may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Ropiha would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[33] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>8</sup>

Marija Urlich  
Member of the Employment Relations Authority

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<sup>8</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).