

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 353
3314221

BETWEEN SIMON TRAIL
 Applicant

AND VEOLIA WATER SERVICES
 LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Mary-Jane Thomas, counsel for the Applicant
 David France, counsel for the Respondent

Investigation Meeting: 11 March 2025 in Queenstown

Submissions Received: 14 March 2025 and 28 March 2025 from the Applicant
 21 March 2025 from the Respondent

Date of Determination: 18 June 2025

DETERMINATION OF THE AUTHORITY

Non-publication orders

[1] This employment relationship problem arises out of allegations of poor behaviour at work by Simon Trail as that relates to his interactions with other staff.

[2] One set of allegations arises from complaints made by Mr Trail's line manager – these complaints form part of the evidence for the investigation of this employment relationship problem. There are also two other unrelated complaints by different employees that were not part of the disciplinary process for Mr Trail but are referenced in the evidence of Jekabs

Rozitis, Business Growth and Operational Lead for Veolia Water Services (ANZ) Pty Limited.

[3] None of these three complainants provided written statements of evidence nor did they attend the investigation meeting for this employment relationship problem. This means none of these complainants was able to verify or respond to the evidence given about them and their complaints, including any criticism of the complaints or the response to the complaints by Veolia.

[4] In these circumstances I am satisfied that publishing each complainants' identity in relation to their complaints could lead to adverse impacts for them. To prevent this non-publication orders, in respect of each complainant's identity, are appropriate.

[5] Pursuant to Clause 10 of schedule 2 of the Employment Relations Act 2000 (the Act) I grant non-publication orders prohibiting the publication of the identity of any of the three complainants whose evidence has been part of the investigation of this employment relationship problem. In this written determination I will refer to Mr Trail's manager and when I do so her name will be replaced with NSB.

Employment relationship problem

[6] Mr Trail was employed by Veolia as a Network Operator in February 2017. In November 2019 Mr Trail was promoted to Spiral Wound Pipe (SWP) Team Leader.

[7] In the course of Mr Trail's employment significant changes were made to the SWP team nationally, impacting on Mr Trail's work. In early 2023 Mr Trail became frustrated with these changes, in particular relating to what he perceived as inadequacies with new management and the lack of opportunities available for him in connection with management training.

[8] These frustrations led to outbursts from Mr Trail directed at management (Mr Rozitis and NSB) which in turn gave rise to complaints about Mr Trail's behaviour. Veolia dealt with these complaints through disciplinary action with Mr Trail and he was given a written warning for the first outburst with Mr Rozitis and then subsequently dismissed for the further outbursts with NSB.

[9] In response to his dismissal Mr Trail raised a personal grievance for unjustifiable dismissal. The parties were unable to resolve this grievance and Mr Trail lodged a statement of problem in the Authority.

The Authority's investigation

[10] I investigated this employment relationship problem by receiving written evidence and documents, and by holding an investigation meeting on 11 March 2025. In my investigation meeting the witnesses answered questions about their written evidence. I also received written submissions from the parties after the investigation meeting.

[11] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Issues

[12] The issues for the unjustifiable dismissal grievance are:

- (a) Was the employee dismissed; and
- (b) If so, were the actions of the employer in deciding to dismiss the employee, justifiable?

[13] In this case it is accepted that Mr Trail was dismissed by Veolia – Veolia gave Mr Trail notice of termination on 7 September 2023, after completing a disciplinary process.

[14] The question I must answer to determine this employment relationship problem is, was Mr Trail's dismissal justified.

[15] The test for justification is set out in s 103A of the Act; the test being whether the actions of the employer were what a fair and reasonable employer could have done in all of the circumstances. Applying that test here the question is whether Veolia's actions in reaching the decision to dismiss Mr Trail were the actions a fair and reasonable employer could have

done in all the circumstances at the time. This applies to both the steps taken to reach the decision and the justification for the decision.

[16] Turning to the steps taken by Veolia, whether Veolia acted as a fair and reasonable employer could in terms of the steps it took to come to the decision to dismiss is informed by Veolia's obligation of good faith as set out in s 4(1A) of the Act and the requirements for justification as set out s 103A(3) of the Act. In this case, this breaks down as:

- (a) Did Veolia investigate what occurred in terms of the concerns it had about Mr Trail's conduct?
- (b) Did Veolia set out these concerns, provide relevant information and explain the possible implications of an adverse finding, for Mr Trail so that he could consider all of this and respond?
- (c) Did Veolia give Mr Trail a reasonable opportunity to respond to its concerns, before it made its decision on what had occurred and what sanction should be imposed?
- (d) Did Veolia consider the explanations given by Mr Trail before it made its decision on what sanction should be imposed?

[17] The justification for Veolia's decision to summarily dismiss Mr Trail is assessed by considering:

- (a) Were Veolia's conclusions as to what Mr Trail did, conclusions that a fair and reasonable employer could come to in all of the circumstances?
- (b) Based on Veolia's conclusions about what Mr Trail did, was the decision to summarily dismiss Mr Trail one that a fair and reasonable employer could come to in all of the circumstances?

Events leading up to disciplinary action

Background

[18] Mr Trail commenced work with Veolia on 20 February 2017. Mr Trail was initially employed as a network operator.

[19] On 1 November 2019 Mr Trail was promoted to SWP Team Leader.

[20] Mr Trail's employment was based out of Queenstown as part of the Queenstown SWP team which in turn was part of the South Island SWP team.

Events in April and May 2023

[21] In April 2023 Mr Trail applied to Veolia to attend an Inspiring Leaders course. This application was made in response to an email invite sent to all staff that suggested the training was aimed at current and emerging leaders. Mr Trail was not accepted to attend this course.

[22] At the start of May 2023 Jason Climo, Head of Horizontal Infrastructure for Veolia, and Mr Trail's manager, went on a period of leave and ultimately did not return to Veolia. Initially Mr Rozitis provided management for the SWP team in Mr Climo's absence.

[23] In his observation of the work by the SWP team and conversations with Mr Trail, Mr Rozitis established that the SWP team were over extended. During discussions with Mr Rozitis, Mr Trail recommended NSB (engaged at the time as labour hire staff) for a supervisory role within the team. Mr Rozitis followed up on this recommendation and NSB was appointed to the SI SWP Projects Coordinator role on 12 June 2023.

[24] During this time, in May 2023, Ash Smith, Contract Manager Queenstown for Veolia spoke to Mr Trail about the way he had spoken to another employee over the telephone. Mr Trail's conversation with this employee had left her in tears and feeling disrespected by Mr Trail. Mr Smith spoke to Mr Trail about the need to treat employees with respect, reminding him that disrespectful behaviour towards staff would not be tolerated.

Disciplinary action over the altercation with Mr Rozitis

[25] As part of the ongoing development of the national SWP Team, Mr Rozitis recruited Paul Reynolds as the NI SWP Project Coordinator on 3 July 2023. At the time of his recruitment however, Mr Reynolds was deployed in the position of interim Team Manager – that is the National Manager of Veolia’s SWP teams, effectively covering Mr Climo’s role particularly as that related to the South Island and Queenstown based work.

[26] On 6 July 2023 Mr Rozitis called Mr Trail to tell him about the appointment of Mr Reynolds. Mr Trail did not answer the call, so Mr Rozitis sent him a text message explaining the appointment. Mr Trail then called Mr Rozitis; Mr Rozitis says Mr Trail was agitated on this call and, amongst other things, told him he was dissatisfied with the text message that he had received and then hung up.

[27] Mr Trail then called Mr Rozitis back about 40 minutes later.

[28] Mr Trail says that in this second call he told Mr Rozitis that he was frustrated by multiple aspects of his role and the recent changes to the management structure, including the decision to appoint people into managerial roles who did not have any experience with SWP. Mr Trail says he also told Mr Rozitis that he felt he was being blamed for delays with SWP work when this was outside of his control. And he told Mr Rozitis that he would benefit from leadership training.

[29] Mr Rozitis says that in this call Mr Trail was not interested in talking about the management changes but was fixated on what he perceived as unfavourable reports to the New Zealand Leadership team. Mr Rozitis says Mr Trail was belligerent and aggressive, talking over him and not listening or being receptive. In the end Mr Rozitis yelled at Mr Trail telling him to get his “head out of your arse,” and that these things were happening, and he needed to deal with it.

[30] Mr Rozitis took some time to reflect on the two calls with Mr Trail on 6 July 2023 and whilst he was disappointed with his own outburst, acknowledging this was unprofessional and unhelpful, he felt that he needed to engage with Mr Trail through a formal process in an attempt to modify his behaviour.

[31] Mr Rozitis decided to hold a disciplinary meeting with Mr Trail and on 10 July 2023 he sent Mr Trail a letter regarding this. In this letter Mr Rozitis stated:

... Your behaviour during this call was profoundly unprofessional. You levelled accusations of unfavourable reports about you being circulated to the Leadership Team. When I asked you for details of this you quoted the Revenue and EBITDA variances commentary for the May P&L report. This commentary did not refer to you or your professional efforts at all in any way, but you insisted it was an attack on you. When I attempted to explain that the SWP team need a greater support to achieve its ambitious aims, you didn't listen and talked openly with a raised voice.

Simon - I remind you that Respect is one of Veolia's core values. Even when we disagree with each other, we express our disagreement respectfully. In this case, you fail to do so. You have been previously spoken to about the way you interact with your colleagues.

The formal meeting will take place at 11 am tomorrow (Tuesday 11 July) in my office. The meeting will also be attended by Sharleem Fuiono.

[32] In the meeting on 11 July 2023 there was a discussion about what occurred. Mr Trail expressed frustration as he felt he was not being supported by Veolia and was not being developed as a leader. In the end Mr Trail was told he needed to change how he talks to colleagues and that Veolia would support him with further training but in the circumstances a written warning was appropriate and that would be in place for six months.

Disciplinary action over NSB's complaints

[33] Within the first two weeks of commencing her role, NSB spoke to Mr Rozitis about the difficulties she was experiencing with Mr Trail; she found him difficult to work with as he was determined to work his own way and appeared to be resisting NSB's plans for the team.

[34] Because of this and other events Mr Rozitis held a team meeting on 3 August 2023.

[35] In this meeting Mr Rozitis discussed the new team structure including the interim arrangement whilst Mr Climo was on leave with Mr Reynolds taking on overall management. Mr Rozitis says that Mr Trail openly challenged him on the new structure and in particular Mr Reynolds experience, telling the team that Mr Climo was the only person who understood the SWP business sufficiently to manage it. Mr Rozitis reminded the team that Mr Climo was on leave and was not to be contacted under any circumstances about work matters.

[36] On 11 August 2023 NSB spoke to Mr Rozitis again about frustration arising out of working with Mr Trail; she explained that she felt undermined by his actions and belittled by how he spoke to her in front of the team. NSB told Mr Rozitis that on 7 August 2023, Mr Trail had refused to engage with NSB over a work plan telling her not to ask him any questions but to speak to Mr Climo (who was still absent from work).

[37] NSB then followed this up with an email that she sent to Mr Rozitis: In this email she stated:

As discussed in our meeting today [Mr Trail] has been even less cooperative since our meeting on Thursday, and just has taken offence to it.

Monday seventh August interaction

Called [Mr Trail] at 7:56 am to let him know the address for work, and next thing he told me not to ask any more questions until I speak to Jason Climo, which I was surprised by after our meeting clearly stated that we work for Veolia not Jason.

He has told me multiple times over the last few weeks that I need to call Jason (which I have never done)

Also some comments listed below that I can't tell you the exact date but since we one of my employment with Veolia:

"You call yourself a project manager"

"You haven't got a clue"

"You're (NSB) not head of SWP"

Calling me "project manger" by name, which is petty and disrespectful

"Jason may not have the fancy letters after his name but is a better project manager than you are"

"If you ever become my boss of hold my hands up walk out of here"

"If you become head of SWP you'll fail"

That's all I can think of for now, but as discussed I'm done listening to that from him.

[38] Mr Rozitis decided that he would deal with this by commencing further disciplinary action with Mr Trail. This decision coincided with Mr Trail being off work on sick leave so Mr Rozitis decided to wait until he returned.

[39] Then, on 21 August 2023 Mr Trail sent a letter requesting that the written warning of 11 July 2023 be withdrawn. Mr Rozitis reviewed this letter and the warning he had issued and decided that the warning would not be withdrawn.

[40] Mr Rozitis scheduled a meeting with Mr Trail for 25 August 2023, to discuss the request to withdraw the warning and to raise the complaints made by NSB.

[41] Prior to this meeting, on 24 August 2024, NSB came to speak to Mr Rozitis; she was upset and distressed. NSB explained to Mr Rozitis that Mr Trail had returned to work and declared everything on site to be a disaster and blamed NSB for it.

[42] NSB followed up this meeting with Mr Rozitis with an email to him summarising what had happened:

Today's "discussion" with [Mr Trail]

It's a disaster on site and no one knows what they're doing and it's meant to be me reporting to the team and letting them know what they're doing. I'm not following [Mr Climo's] methodology for the Capex work on site and that reports are saying how they need me and [Mr Reynolds] because [Mr Trail] is "not good enough" and that I'm not doing that and it's all on me. Today is a disaster and it's on me.

I tried to speak to him and ask how am I meant to communicate with him when all he does is put me down or get angry or not do what I ask anyway. And agreed that I should have communicated better but it's hard when you're constantly being told you're wrong.

So got that off my chest. I understand today he's frustrated with lack of communication but I'm done putting myself in the firing line due to asking a simple question, so he needs to understand the reason for lack of communication.

[43] So, on 25 August 2023 Mr Rozitis and Ms Fuiono had a meeting with Mr Trail. In the meeting they advised him they would not review the warning, that complaints had been received from NSB regarding his behaviour, and he was stood down on full pay whilst they investigated NSB's complaints.

[44] Following the 25 August 2023 meeting Ms Fuiono sent Mr Trail an email summarizing the meeting and inviting him to respond to NSB's complaints. In this email Ms Fuiono stated:

As discussed, we reviewed your request to have the written warning removed it was issued on 11 July 2023.

The warning was issued because of your behaviour and lack of respect to others. Following the written warning we have received a further complaint

regarding your behaviour from [NSB] on 11 August and yesterday 24 August 2023.

Please find attached a copy of [NSB's] emails. You are required to provide a written statement of your version of events by Tuesday 29th August, COB 5 pm, two email:

Once I have received your statement I will arrange a meeting to discuss.

Until then due to the sensitivity from both parties I have requested while we go through this process that you remain off from work. During this time you will be paid normally. You are not to return to work unless I have authorised it.

[45] Mr Trail provided his response in writing, as requested, on 29 August 2023. In this response he explained:

- (a) He did not feel supported with the difficulties he had been experiencing at work and he had told NSB this. From his perspective NSB should have been aware he was struggling with his mental health.
- (b) He has not been spoken to previously about his interactions with other employees (except the discussions and warning in 2023).
- (c) He had requested leadership/management training and had only recently been offered some online courses.
- (d) He saw a double standard between employees and management as Mr Rozitis had sworn at him and he was aware of NSB swearing at employees. There have been no consequences for either of Mr Rozitis or NSB.
- (e) He has been responsible for upskilling NSB on the requirements of her role for SWP work. He had tried to get her to speak to Mr Climo, while he was still employed by Veolia, because he believed Mr Climo was the most qualified and experienced person who could give her support.
- (f) The constant questioning from NSB was exhausting.
- (g) All this pressure at work had led to him taking time off.

[46] Mr Rozitis says he reviewed Mr Trail's response in detail and found it to be largely an exercise in Mr Trail finding people to blame for his frustrations; Mr Rozitis formed the view that Mr Trail was not taking any responsibility for his actions.

[47] On 1 September 2023 Mr Rozitis sent a letter to Mr Trail inviting him to attend a disciplinary meeting. In this letter Mr Rozitis stated:

We informed you that we had received another complaint regarding your behaviour towards other employees and that the written warning would remain on file.

The complaint was provided to you and due to your previous behaviour where you were issued a written warning for the same behaviour we deemed it necessary to place you on paid stand down to allow you sufficient time to provide your feedback.

You provided us with your feedback on Tuesday 29th August 2023. We have reviewed your feedback and this letter is to invite you to a formal meeting.

The meeting will take place on Wednesday 6th September 2023, 8am and will be attended by Dave Neru, Head of Operations – New Zealand and myself.

...

[48] The disciplinary meeting was held on 6 September 2023.

[49] Veolia's position, as expressed in the meeting, was:

- (a) Mr Trail had belittled NSB and had constantly attacked her, and generally he belittled people, and they felt psychologically unsafe. This behaviour was not consistent with Veolia's values.
- (b) Whilst Mr Trail expressed frustration at the questioning by his managers, he needed to understand this was about how he responded to his frustrations. So that, instead of acknowledging these frustrations and seeking to deal with them, Mr Trail sought to deflect, blame others and make excuses. And this approach needed to change.
- (c) There was no acceptance by Mr Trail of failing in terms of his behaviour and no willingness to change; Mr Trail was specifically asked if he was committed to staying on and being a leader.

[50] Mr Trail's position, as expressed in the meeting, was:

- (a) He denied constantly attacking NSB, but did not deny the specific allegations. Overall, he did not admit the behaviour in question but referred to it needing to be understood in context of all the circumstances.
- (b) The relevant circumstances for him included, intense questioning from NSB and others that was "doing my head in," management behaviour – referring to Mr Rozitis' outburst and NSB behaviour that appeared to be condoned by Veolia – and the whole work situation referring to lack of management support and "the wheels falling off" the SWP work.
- (c) He had been denied leadership training without explanation and he needed it.
- (d) Overall Veolia was not looking at what was triggering his behaviour and what it needed to do generally in terms of structure and management of the SWP team or specifically for him, including training.

[51] After the 6 September 2023 meeting Mr Rozitis and Mr Neru discussed the outcome of the disciplinary process and on 7 September 2023 issued a notice of dismissal to Mr Trail. This letter included:

You have previously been issued a written warning on 11th July 2023 for your communication not being consistent with the company value of respect.

In your role as Team Leader – SWP there is an expectation that you lead the way in promoting the company values and communicate with employees respectfully.

You were unable to provide a satisfactory response to the recent complaints and deflected your behaviour as being a management issue that has led to the way you treat others.

You have outlined a number of frustrations, including new management team, team members which you believe are inexperienced and your understanding of the business structure.

We acknowledge that this year there have been significant changes to support the growth of the business, however this does not condone your repeated aggressive and confrontational behaviour towards other employees.

Based on the above a decision has been made to terminate your employment with Veolia, effective immediately due to loss of trust and confidence in the employment relationship and your ability to act in a respectful manner towards other employees aligned with the company values.

[52] Mr Trail's employment with Veolia ended on 7 September 2023.

Were Veolia's actions in dismissing Mr Trail justifiable?

The written warning given to Mr Trail

[53] Before I turn to consider Veolia's compliance with the procedural steps for Mr Trail's dismissal, I will deal with the written warning given to Mr Trail on 11 July 2023. The warning is relevant to Mr Trail's dismissal. Whilst there is no separate personal grievance pursued in connection with it as part of this employment relationship problem, Mr Trail has challenged the warning as part of his dismissal.

[54] In short, there are some issues with the written warning:

- (a) Mr Rozitis was the complainant and decision maker in the process.
- (b) There was no investigation done into Mr Rozitis' complaint just an acceptance by him that it occurred as he remembered it.
- (c) Mr Rozitis had predetermined the outcome, particularly as that related to his assessment of Mr Trail's conduct. For example, in the letter of 10 July 2023 inviting Mr Trail to the disciplinary meeting Mr Rozitis states – your behaviour during this call was unprofessional.

[55] That said, I accept what Mr Rozitis says about the outcome of the meeting – that Mr Trail appeared to respond positively to the discussion about improving his behaviour and Mr Rozitis arranged for online leadership training to be made available to Mr Trail.

[56] Overall, though, the warning was not justified in terms of process and outcome and this is problematic as it informed some of the decision making when Veolia considered dismissing Mr Trail.

Did Veolia investigate what occurred in terms of the concerns it had about Mr Trail's conduct?

[57] Mr Rozitis accepted NSB's complaints as stated by her in the meetings he had with her and as subsequently set out in the two emails he received. Mr Rozitis took no steps to verify the complaints – he could have spoken to other members of the team about Mr Trail's interactions with NSB to check what occurred. This is important because ultimately there was never a clear admission by Mr Trail that all the complaints made by NSB occurred as described.

Did Veolia set out these concerns, provide relevant information and explain the possible implications of an adverse finding, for Mr Trail so that he could consider all of this and respond?

[58] Veolia did not properly set out its concerns for Mr Trail to consider.

[59] First, Veolia gave Mr Trail the two email complaints from NSB, on 25 August 2023. In doing this Veolia:

- (a) Did not provide any additional information about what Mr Rozitis discussed with NSB before each email was sent.
- (b) Asked for Mr Trail to provide a written statement of his version of events and stated it would then arrange a meeting to discuss – there was no indication that the statement from him might lead to disciplinary action.
- (c) Did not set out any concerns it had about NSB's complaints.

[60] Second, Mr Trail was invited to a disciplinary meeting on 6 September 2023. In doing this Veolia did not properly set out its concerns – so, for example, there was no reference to Mr Trail's behaviour toward NSB, if proven, being a breach of Veolia's values or that Veolia considered Mr Trail's behaviour extended to other employees who were belittled by him and felt psychologically unsafe.

[61] Third, in the disciplinary meeting on 6 September 2023, Mr Trail was told about allegations and concerns he had not previously been advised of. For example, that generally he belittled people, and they felt psychologically unsafe – noting that there were no examples provided of this belittling behaviour or complaints from anybody expressing concern that they felt psychologically unsafe.

[62] Fourth, in the notice of dismissal on 7 September 2023, Veolia refers to a loss of trust and confidence in the employment relationship – this had not been raised with Mr Trail during the process.

Did Veolia give Mr Trail a reasonable opportunity to respond to its concerns, before it made its decision on what had occurred and what sanction should be imposed?

[63] Given that Veolia did not properly set out its concerns in advance of the 6 September 2023 meeting and did not properly expand on its concerns in the meeting, Mr Trail was not given a proper opportunity to respond to Veolia's concerns.

[64] Arguably, Veolia's concerns were at least discussed and developed in the 6 September 2023 meeting, but Mr Trail was expected to respond in that meeting – had he been given further time after the meeting to provide comment and responses this might have been justifiable, but this did not occur.

Did Veolia consider the explanations given by Mr Trail before it made its decision on what sanction should be imposed?

[65] I am not satisfied that Veolia properly considered what Mr Trail was able to explain to them by way of feedback. So, for example:

- (a) Veolia did not appear to consider what Mr Trail was saying about the SWP Team. I believe part of the issue was that one of the decision makers, Mr Rozitis, had created the new team structure and did not appear open to considering if the structure might not be working or the people in place might not be right for the job.

- (b) Veolia did not look at work pressure on Mr Trail and what assistance he might need in his Team Leader role. For context, Mr Trail had operated effectively in this role under the supervision of Mr Climo for over three years.

[66] Overall Veolia took the view that Mr Trail's explanations and feedback was simply him failing to take responsibility for his own actions and seeking to deflect and blame others for what he had done. This was the same view Mr Rozitis had formed when he issued the written warning to Mr Trail.

Conclusion on the process adopted by Veolia

[67] The disciplinary process carried out by Veolia with Mr Trail was not justified:

- (a) Veolia failed to properly investigate NSB's complaints and just accepted that Mr Trail acted as alleged.
- (b) Veolia did not properly set out its concerns regarding Mr Trail's alleged behaviour.
- (c) Mr Trail did not have a proper opportunity to consider Veolia's concerns and respond to them.
- (d) Veolia did not properly consider what Mr Trail was able to tell them about the complaints and its concerns before making its decision.

[68] Veolia did not act as a fair and reasonable employer could when it carried out the disciplinary process.

Did Veolia act as a fair and reasonable employer could in all of the circumstances when it concluded that dismissal was the appropriate sanction?

[69] Despite the difficulties with the process there was, in my view, sufficient information – including some concessions by Mr Trail - available for Veolia to conclude that at least on some occasions Mr Trail had acted aggressively and belligerently to Veolia management (NSB in particular). However, the magnitude of this behaviour and that it extended to people

generally with widespread implications was not something a fair and reasonable employer could have concluded in the circumstances.

[70] I do accept that a fair and reasonable employer could have concluded that Mr Trail's behaviour did not meet Veolia's values. I also accept that a fair and reasonable employer could have concluded that despite acknowledging some of the behaviour, Mr Trail was not committed to changing his behaviour rather he expected Veolia to take steps to support him, including it seems changing the interim team structure.

[71] I do not accept that in all of the circumstances a fair and reasonable employer could have concluded that Mr Trail's behaviour in relation to NSB was serious misconduct. Nor could a fair and reasonable employer conclude that dismissal was the appropriate sanction for Mr Trail's behaviour.

[72] Whilst Mr Trail had acted inappropriately to NSB the circumstances of Mr Trail's behaviour should have been considered further. As a simple point, Mr Trail had been a successful and engaged Team Leader for the SWP Team for over three years without any complaint – a period of time in which he was managed and supported by Mr Climo – and since Mr Climo's departure his behaviour changed.

[73] What the events in April and May 2023 show was there were increasing factors affecting Mr Trail's work that were causing him frustration – lack of support with management training and the loss of management for himself with what he perceived as inadequate replacement management. It is also apparent at this time due to Mr Climo being absent from work, Mr Trail was experiencing increased workload pressures in terms of the amount of work he had to do and the management he had to undertake.

[74] A consideration of Mr Trail's behaviour and whether dismissal was appropriate should not have taken place without a proper analysis of these factors. It appears this analysis was disregarded as being necessary because of the view taken about Mr Trail's repeated behaviour, which was informed by other complaints and the written warning. That view being that Mr Trail was at fault and not willing to accept his own failings rather his explanations were simply an effort to excuse and deflect blame away from himself.

[75] Therefore, I am satisfied that Veolia's decision to dismiss Mr Trail was not a decision a fair and reasonable employer could have come to in all of the circumstances.

Conclusion on unjustifiable dismissal

[76] I conclude that Veolia unjustifiably dismissed Mr Trail.

Remedies

[77] As Mr Trail has been successful with establishing a personal grievance for unjustified dismissal, I must consider what remedies he may be entitled to.

Compensation

[78] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an employee suffers as a result of the unjustified acts (in this case suspension) and is made pursuant to s 123(1)(c)(i) of the Act.

[79] When assessing compensation, I must quantify the harm and loss caused by any humiliation, loss of dignity and injury to feelings arising out of the unjustified actions (suspension).¹ I must consider the effect of the dismissal on Mr Trail and establish what that shows in terms of the harm caused to him and the loss he suffered as a result. Then I must quantify that harm and loss. This is done by assessing that harm and loss against others who have been unjustifiably dismissed and establishing where that sits compared to the range of compensation awarded.²

[80] In his written evidence, Mr Trail provided a lot of context about his personal wellbeing and the effect of working at Veolia on him. This evidence focussed on the confidence and self-worth he gained from working at Veolia and then the stress and impact on his mental health at time of the restructure of SWP Team in 2023. All of this is compelling, but I am not awarding compensation for the effects on Mr Trail of Veolia's conduct during his employment generally or even specifically in terms of the restructure of the SWP Team. Rather, it is compensation for the impact of the dismissal.

¹ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

² *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

[81] What Mr Trail's evidence and the evidence of Sarah Trail shows is that the effect of dismissal on Mr Trail included:

- (a) It knocked his confidence and destroyed his self-worth.
- (b) He felt hopeless, devastated and lost.
- (c) He was stressed and unsettled, manifesting in sleepless nights.
- (d) He was emotionally scarred.

[82] This evidence shows a loss of dignity and injury to feelings, creating loss and harm. Comparing this loss and harm to other cases of unjustified dismissal and the amounts of compensation awarded I quantify Mr Trail's loss and harm at \$20,000.00.

Reimbursement

[83] Mr Trail also seeks reimbursement for lost earnings as a result of his unjustified dismissal.³

[84] Mr Trail is entitled to be reimbursed for lost remuneration because he lost income as a result of being unjustifiably dismissed by Veolia. What follows from this is that pursuant s 128 of the Act I must award the lesser of three months ordinary time remuneration or Mr Trail's actual loss. If Mr Trail's actual loss is greater than three months ordinary time remuneration I may exercise my discretion and award an amount up to the actual loss.

[85] Mr Trail was unable to find a new job until March 2024 – so six months after his dismissal. Mr Trail's actual loss, six month's remuneration, is greater than three month's ordinary time remuneration.

[86] The question is, should I exercise my discretion to award more than three months ordinary time remuneration. In answering this question, I must keep in mind that there is no automatic entitlement to full loss. And, I should recognise that moderation is appropriate, my assessment should be individualised to the circumstances of the case and I must allow for any

³ Section 123(1)(b) of the Act.

contingencies that might have resulted in termination of the employee's employment such that they would not have earned the total amount of the claimed loss.⁴

[87] With all of this in mind I am not satisfied that I should exercise my discretion to award Mr Trail more than three months' ordinary time remuneration.

Contribution

[88] As I have awarded a remedy to Mr Trail, I must now consider whether he contributed to the situation that gave rise to his grievance.⁵ This assessment requires me to determine if Mr Trail behaved in a manner that was culpable or blameworthy, and this behaviour contributed to his grievance.⁶

[89] I have already established that a fair and reasonable employer could have concluded that Mr Trail acted aggressively and belligerent toward management. In addition, Mr Trail made concessions about his behaviour in his evidence.

[90] I therefore conclude that Mr Trail did act in a manner that was culpable and blameworthy and this contributed to his personal grievance. And it follows that a reduction to the remedies I have awarded is appropriate.

[91] In assessing the level of contribution (and therefore reduction to the remedies) I have considered the Employment Court Guidance.⁷ I acknowledge that 50% is considered a high level of contribution and am satisfied that in this case that high level is appropriate in terms of Mr Trail's behaviour.

[92] The remedies I have awarded to Mr Trail are reduced by 50% to \$10,000 for compensation pursuant to s 123(1)(c) of the Act and one and a half months' ordinary time remuneration pursuant to s 123(1)(b) of the Act.

⁴ *Sam's Fukuyama Food Services Ltd v Zhang* [2011] NZCA 608.

⁵ Section 124 of the Act.

⁶ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136.

⁷ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136; and *Maddigan v Director-General of Conservation* [2019] NZEmpC 190.

Summary

[93] This employment relationship problem is resolved in favour of Mr Trail; he was unjustifiably dismissed by Veolia.

[94] In settlement of Mr Trail's personal grievance for unjustified dismissal Veolia must pay Mr Trail:

- (a) \$10,000.00 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.
- (b) Six and one-half weeks' ordinary time remuneration pursuant to s 123(1)(b) of the Employment Relations Act 2000.

Costs

[95] Costs are reserved.

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

[97] If they are not able to resolve costs and a determination on costs is needed, Mr Trail may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum Veolia 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.

[98] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.⁸

Peter van Keulen
Member of the Employment Relations Authority

⁸ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1