

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 122  
3050134

BETWEEN	JANETTE FLORENCE WALKER Applicant
AND	CROSSROADS (MARLBOROUGH) TRUST Respondent

Member of Authority: Michele Ryan

Representatives: Graham Hill, advocate for the Applicant  
Brian Fletcher, counsel for the Respondent

Investigation Meeting: 24 and 25 October 2019 at Blenheim

Submissions [and further Information] Received: 1 November 2019, and 10 & 11 November from the Applicant  
7 November 2019 from the Respondent

Date of Determination: 29 March 2021

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Crossroads (Marlborough) Trust, (“Crossroads”) is a registered charity that provides, amongst other things, food and companionship at its drop-in centre ‘John’s Kitchen’ (“the Kitchen”) in Blenheim.<sup>1</sup> Crossroads is governed by a Board of Trustees comprised of 7 Board members/trustees.

[2] Ms Janette Walker was employed by Crossroads as the Administrative Coordinator at the Kitchen for approximately three years before her employment was terminated on 25 June

---

<sup>1</sup> Crossroads was incorporated in February 2008 and registered under the Charitable Trusts Act 1957.

2018. Ms Walker says her dismissal was both procedurally and substantively unjustified. She says the matters for which Crossroads says she was dismissed were pretext for ulterior reasons. Ms Walker seeks remedies associated with the dismissal, and for a range of other actions alleged to be unjustified and/or in breach of good faith or other obligations owed to her.<sup>2</sup> Ms Walker applied also for damages from Ms Yvonne Dasler, a Board member of Crossroads, but Ms Dasler was not personally cited as a respondent in the matter, and that claim can be taken no further.<sup>3</sup>

[3] Crossroads acknowledges the work Ms Walker undertook, but says the relationship between them had deteriorated. At a meeting to discuss that matter, it says Ms Walker accused both Ms Dasler, and Vice Chairman of the Board Mr Peter Stubbs, of lying, and that Ms Dasler may have been involved in theft.

[4] Crossroads says those assertions, against a background of ongoing allegations made by Ms Walker against Ms Dasler, including a recent event where Ms Walker is said to have pushed Ms Dasler, and its findings following an investigation led it to conclude trust and confidence was broken and could not be restored. It says the actions above also amounted to serious misconduct.

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

[5] Ms Walker and her union representative Mr Steve McManus, as well as Crossroads' Chairman of the Board Mr Stephen Vallance, and Mr Stubbs and Ms Dasler, each provided oral and written evidence.

[6] The factual matrix leading to Crossroads' decision to dismiss Ms Walker, and Ms Walker's separate claims, encompass a multitude of interactions and events. It has not been practicable to record all the material before the Authority or document every disagreement between the parties.<sup>4</sup> Despite that limitation I have given careful consideration to all evidence and submissions provided. This determination makes findings of fact and law to resolve the matters of dispute between the parties so as to dispose of the employment relationship problem.

---

<sup>2</sup> Supplementary Statement of Problem dated 12 December 2018

<sup>3</sup> Above 3.9

<sup>4</sup> As is permitted under s 174E of the Employment Relations Act 2000

[7] This determination has been issued outside the timeframe set out at s 174C(3)(b) Employment Relations Act 2000 (the Act), in circumstances where the Chief of the Authority has decided exceptional circumstances exist.<sup>5</sup>

### **Summary of relevant information**

[8] The following information has been pieced together from the evidence and submissions furnished to the Authority.

[9] Ms Walker was appointed to her role in mid-2015 having previously volunteered at John's Kitchen, and a trustee. When she interviewed for the position she advised she was an atheist, and says she was assured this was not a problem.

[10] In July 2017 Ms Walker's hours of work were reduced to 16 per week to allow her to work on a project run by another charity. Around the same time Crossroads employed a person to perform the role of Kitchen Supervisor. I have referred to this person as the chef. The chef did not attend the Authority's investigation and I have not identified him personally where he had no opportunity to respond to matters said to have involved him.

### ***Ms Walker's position***

[11] A significant portion of Ms Walker's evidence focused on matters separate to the dismissal but for which she seeks remedies. Broadly, these concern Crossroads' alleged mismanagement of; Ms Dasler's "*intermeddling*"; the chef, and; Mr Stubbs. I have set these matters out below.

### ***Ms Dasler***

[12] There was an evidential dispute about the scope of Ms Walker's position but I am satisfied her role was managerial in nature, noting she reported to the Board.

[13] Ms Walker says the line between Board members' governance role and Crossroads' day to day operations was an ongoing source of frustration for her, and further compounded when trustees volunteered at the Kitchen. Ms Walker says Board members, and in particular, Ms Dasler would cross the line and "*intermeddle*" with her "*prerogative to manage*".

---

<sup>5</sup> Pursuant to s 174C(4) Employment Relations Act 2000

[14] By way of background, Ms Dasler was the Board's convenor until mid-2017. However the relationship between Ms Walker and Ms Dasler deteriorated soon after Ms Walker's appointment. By September 2015 Ms Walker's point of contact with the Board was through Mr Vallance. Mr Vallance and Ms Walker usually met once a week.

[15] Between 2015 and 2017 (inclusive) Ms Walker complained on separate occasions to Mr Vallance about Ms Dasler's conduct including that she had;

- altered passwords associated with Crossroads' online IRD records and IRD had sent Ms Dasler a letter in this regard, and;
- sent multiple email and text messages to her that were "nutty" and amounted to harassment.

[16] Ms Dasler rejected the allegations when Mr Vallance put these to her, and he did not take those issues any further.

[17] In December 2017 Ms Dasler emailed Ms Walker advising she was able to obtain ice-cream from a local producer. She sought permission to bring it to the Kitchen for Christmas. The request led to an email exchange between the pair and Mr Vallance, about how the ice-cream was sourced. This matter has assumed importance to each party for different reasons, to which I shall return. However, at the conclusion of the email exchange Mr Vallance reminded Ms Dasler to leave "*management to the manager*" and ensure her volunteering activities at the Kitchen do not compromise the governance role.

[18] The boundary between governance, management and volunteer work was raised by Ms Walker again in January 2018 following Ms Dasler's purchase of margarine for the Kitchen when Ms Walker was absent. In the same correspondence Ms Walker informed Mr Vallance that she had blocked Ms Dasler from sending messages to her personal facebook page and phone because Ms Dasler had been "*stalking*" her friends via her [Ms Walker's] facebook page and was sending unwanted text messages.

### *The chef*

[19] The chef reported to Ms Walker. Tension developed between them in late 2017. By mid-March 2018 both had raised a personal grievance about the others conduct. It is not the role of the Authority in this case to determine the complaints each made about the other.

However the chef's (alleged) conduct forms part of the narrative to Ms Walker's claims, and this has been recorded where necessary.

[20] On 20 December 2017 the chef and Ms Walker argued and the chef left the Kitchen part-way through his shift. He was subsequently suspended and Mr Stubbs and Mr Vallance investigated the event.

[21] Ms Walker met with the Board on 24 January 2018 to discuss next steps for the chef. I understand it was Ms Walker's preference to have the chef dismissed, but that she agreed to work with him if he returned to the Kitchen.

[22] In February 2018 Ms Walker held two separate meetings with the chef. Mr Stubbs attended the second meeting. Neither meeting went well. Mr Stubbs and Ms Walker spoke privately after the second meeting. Handwritten notes taken contemporaneously by Ms Walker, report that Mr Stubbs said: "*you are a grown up woman how did you get to this stage in your life*" and "*Crossroads was doing fine until you turned up and caused trouble*". Ms Walker's evidence suggests Mr Stubbs went on to further criticise various aspects of her personal life although nothing further of that nature is recorded in her notes.

[23] On 1 March 2018 Ms Walker reported to the Board. She tabled documents detailing the chef's recent behaviour and requested he receive a second warning. She reported also on the incident with Mr Stubbs and sought a formal apology. Mr Stubbs denied Ms Walker's account of their exchange and the pair argued.

[24] During the same meeting Ms Walker learnt the chef had raised a personal grievance citing her personally, and had applied for mediation.

[25] In or around 8 March 2018 Ms Walker obtained a copy of the written warning given to the chef in January. Within it there was a comment that Mr Vallance and Mr Stubbs were happy to meet with him regularly or he could approach any of the trustees "*to discuss any issues that may arise or to talk in general about the work of Crossroads*". Ms Walker perceived her role as the chef's manager was undermined by this statement and on 12 March 2018 she informed Mr Vallance that she had "*filed a personal grievance complaint with MBIE*" on the matter. Mr Vallance responded on the same date. He commended the work she performed. The email went on to advise:

However the Board has some very valid reasons for proceeding cautiously with this employment issue with the chef. Your track record for interpersonal relationships with the Board (verbal abuse of three Board members at different times – one continuing), difficulties created in the past with our landlord and neighbouring charity, resolved by Board intervention, and other incidents are a major factor in this.

...

[26] Ms Walker and Crossroads attended mediation on 17 May 2018. As regards Ms Walker's complaints about the chef, a way forward was agreed and documented in a memorandum of understanding ("MoU"). Ms Walker was to formally raise her complaints regarding the chef with the Board, and the Board would appoint an agreed expert to investigate those matters.

[27] Also during mediation, Ms Walker said the chef had very recently (one or two days earlier) intimidated her whilst chopping food with a knife (the "second incident"). She said she had recorded the matter and would be taking it to the Police. I will return to this matter and to the MoU.

### ***The Board's position***

[28] In the period between Ms Walker's notice of a personal grievance of 12 March 2018 and the parties' attendance at mediation, Ms Walker was given a letter dated 29 March 2018 on behalf of the Board. The letter advised the Board held concerns with the way Ms Walker communicated with it, its volunteers, and others.

[29] The letter set out thirteen examples said to illustrate the issue. The first two examples referred to Ms Walker's conduct towards a particular Board member in 2016 and to the argument with Mr Stubbs at the Board meeting on 1 March 2018. Examples 3-9 concerned Ms Walker's conduct towards Ms Dasler. The letter alleged Ms Walker had, over a long period, hectoring and had been abusive and rude to Ms Dasler at Board meetings and other functions. The letter itemised the allegations Ms Walker had made against Ms Dasler over time and more recently (see para. [15], [17] - [18] above).

Reference was also made to a recent incident where it was alleged Ms Walker had obstructed Ms Dasler, using physical force, from speaking grace ("the pushing incident") at a recent John's Kitchen dinner.

[30] The letter recommended Ms Walker bring any evidence she had in support of the allegations she had made about Ms Dasler and said the material would be put to Ms Dasler for comment.

[31] Ms Walker's communication with the landlord, and with a neighbouring charity were matters identified as of concern also, as was the manner in which Ms Walker spoke to, or about, volunteers and users of Crossroads. The letter conveyed the hope that the relationship between them could be restored however, importantly, it noted:

...the board views these allegations as possible serious misconduct. It is also of the preliminary view that the trust and confidence it needs to have in you has been seriously eroded. If the Board does find that there is serious misconduct on your part or if it is of the view that the relationship of trust and confidence has broken down and is unlikely to be repaired then termination of employment is a possible outcome.

[32] The parties met on 20 April 2018 (the April meeting). Mr Vallance and Mr Stubbs attended the meeting as did Ms Walker and Mr McManus. The meeting was recorded by Ms Walker although this was not known to Crossroads at the time. A transcript was provided to the Authority as well as the recording itself. The meeting was difficult.

[33] Evidence given on behalf of Crossroads and in its submissions suggests the examples set out in the letter of 29 March 2019 were not viewed by it as allegations for which Ms Walker was required to respond. It is said they were placed in the letter to illustrate the kind of behaviour the Board held concerns about. Mr Vallance's evidence is that he hoped the meeting would focus on improving the relationship going forward. That expectation presupposes there would be some acceptance by Ms Walker that her communication mode was problematic. There was not.

[34] Ms Walker challenged each of the instances listed, and raised four additional matters involving Ms Dasler which she considered should be of concern to Crossroads. It is at this meeting that Crossroads says Ms Walker accused both Mr Stubbs and Ms Dasler of lying, and that Ms Dasler may have been involved in theft.

[35] On 12 June 2018 Crossroads sent Ms Walker a letter setting the information it had subsequently obtained from individuals (or entities such as IRD) which had some involvement in the matters discussed. Ms Walker was asked to provide written feedback on by 20 June

2018 or to indicate if she wished to do so face to face. Ms Walker did not reply to this correspondence.

[36] There was no further engagement between the parties on any of the matters raised in the letter of 29 March 2018 and/or discussed in the April meeting until Ms Walker was dismissed on 25 June 2018. The rationale for the dismissal was documented in a letter of the same date.

[37] The dismissal letter set out the Board's findings on all matters itemised in the letter of 29 March 2018 as well as the issues raised in the meeting by Ms Walker. Amongst other things the letter reported IRD had no records of any communication with Ms Walker nor had it sent a letter to Ms Dasler; there was no evidence of an alternative facebook page; the Board accepted Ms Walker found emails and text messages sent to her by Ms Dasler unacceptable but there was nothing to establish they were inappropriate.

[38] As to the remaining examples, the Board advised it either preferred the information it had gathered and/or did not accept Ms Walker's explanation on a matter. The letter went on as follows:

6. From the Board's point of view there was a long list of inappropriate actions which you mainly deny or have a different view in regard to. The Board is of the view that you have shown no insight into the concerns raised and that it is unlikely that you will act differently in the future.
7. Of particular concern are the repeated allegations in regard to Yvonne Dasler of an extremely serious nature. The only allegation that the Board upholds is that you had asked for no text or emails from Yvonne and after this Yvonne had sent further text or emails. However the Board does not consider that these (either after this or before) were inappropriate, nutty or amounted to harassment.
8. You have directly accused Yvonne of theft and made various other very serious allegations such as her interfering with the IRD account. Your statement at the meeting of 20 April 2018 was that Yvonne Dasler should be removed from the Board. You said that Yvonne lies.
9. You have directly accused Peter Stubbs of lying.
10. The Board members are your employer. In particular Peter Stubbs and Yvonne Dasler are your employers.
11. The Board has found that you have acted in a way and made allegations which the Board holds are inconsistent with your role as manager of Crossroads Trust.

12. The Employment Relations Act requires parties to an employment relationship to deal with each other in good faith.
13. Your lack of promoting a constructive working relationship and being uncommunicative can be demonstrated in your request to attend mediation. The Board sought from you details of the issues that you wished to discuss at mediation. Instead of doing so you replied that you would raise the issues at the mediation and you also intended to produce at the mediation documentation. You are entitled to raise the dispute and entitled to request mediation.

However you are also required to actively work towards resolving issues and concerns that you have in the working relationship. This cannot be done if you do not raise the issues and supply the details to your employer. Additionally you raised a complaint with the police in regard to alleged threats by the chef. You refused to provide to the Board, details of your complaint to the police, stating it was a matter between you and the police. The Board is firmly of the view that any matter concerning its employees as it relates to the workplace is a matter for the Board and a matter which the Board must know about. You as the Board's manager must work constructively with the Board to resolve these issues. You also initially refused to supply a set of keys to the premises and passwords including those dealing with external agencies. The passwords have still not been received.

14. To falsely accuse any of your employers of theft and lying is a breach of the obligation of trust and confidence and general obligations of good faith. The Board also found that you pushed Yvonne Dasler which amounts to an assault by you on your employer. Those actions on their own, and in combination with the Board's findings, must result in a lack of trust by you in your employer and a lack of trust and confidence by your employer in you. Your actions also amount to serious misconduct.
15. As a result of these findings the Board considers that termination of your employment is an appropriate outcome. The Board has considered whether this should be on notice or immediate. The Board has taken into account the nature and seriousness of the allegations and misconduct and considers that to dismiss you on notice may put the organisation at risk. Therefore termination is immediate. We will make arrangements for a certain time for you to come to the office to collect your personal things and for you to provide us with your computer passwords. The Board will, if you wish, work with you as to a mutually agreed public statement as to your leaving the position.

[39] Relevant to Ms Walker's response to Crossroads' concerns, she says she did not regard Board members as her employer. However Ms Walker's written evidence indicated she has advanced knowledge of the dynamic in which charitable boards operate, and it was a term and condition of her employment to report to the Board's trustees (the Board members).

[40] It is reasonable to conclude Ms Walker was aware that Crossroads' Board members were, in effect the human face of her employer and may be regarded as her employer.

### Claims pleaded separately to the dismissal

[41] Some of Ms Walker's claims fell away as the Authority's investigation progressed. However some matters for which the Authority understood would not be pursued appeared to remain live in final submissions.

[42] I have not itemized every cause of action claimed by Ms Walker as a number of these arise from a particular event. I have therefore grouped claims according to the factual matrix in which they arose and determined these accordingly.

#### Intermeddling<sup>7</sup>

[43] Ms Walker's claims of unjustified disadvantage(s) due to "*intermeddling*" did not refer to any instances other than to say intermeddling was relevant to 10 of the matters put to Ms Walker in Crossroads' correspondence of 29 March 2018.<sup>8</sup>

[44] As with any personal grievance based on an alleged unjustified dismissal, an unjustified disadvantage grievance must be raised with the employer within the 90 day limitation period prescribed in s 114(1) of the Act.

[45] Section 103(1)(b) defines the context in which an unjustified disadvantage may arise. There must be an unjustifiable action by the employer which affects the employee's employment or one or more conditions of it to his or her disadvantage.<sup>9</sup> In *Bilkey v Imagepac Partners* the Court noted:<sup>10</sup>

"a personal grievance claim depends upon an act or omission having disadvantageous consequences to the employee and not merely the employee's subjective dissatisfaction at [his or her] circumstances"

[46] In response to the Authority's request for further details as to when the claim(s) alleging intermeddling were raised, it was not asserted that the complaints made to Mr Vallance regarding Ms Dasler's electronic messages and/or IRD were raised as personal grievances. Rather Ms Walker, via her advocate, provided three separate email threads. These concerned the appointment of a cleaner (2016), the issuing of a trespass order (2017); an offer by Ms

<sup>7</sup> Above n 2, at 1.2 (1) & (11)

<sup>8</sup> Ms Walker's amended pleading titled "Supplementary Statement of Problem" dated 12 June 2018

<sup>9</sup> Employment Relations Act 2000, s103(1)(b) paraphrased

<sup>10</sup> *Bilkey v Imagepac Partners* EMC Auckland AC65/02, 7 October 2002

Dasler to Ms Walker to pick up supplies for John's Kitchen (2017), and; the ice-cream issue in December 2017.

[47] With the exception of the offer to pick up supplies to which Ms Walker replied there was no need, each thread broadly reflects an exchange of views between Ms Walker, Ms Dasler and Mr Vallance (and on occasion another Board member) as to whether the topic under discussion was a matter of governance or was operational. At issue was whether a Board member (usually Ms Dasler) should be involved or whether the matter lay within Ms Walker's control.

[48] That there was some debate or disagreement between the participants on the issues contained in the various emails does not, in itself, establish there was a condition of Ms Walker's employment that was affected to her disadvantage, nor do I consider Ms Walker's responses or views in each of the proffered instances constitute the raising of a personal grievance.

[49] I accept Ms Walker was likely frustrated at times by Ms Dasler's inquiries and/or attempts to be included in a particular matter.<sup>11</sup> But Ms Walker's exasperation alone cannot be fairly characterised as a disadvantage such that monetary compensation is warranted even if it could be demonstrated that a personal grievance was raised and an unjustified action established. Ms Walker's claims of an unjustified disadvantage in which she says intermeddling occurred have not been established.

*Disparity of treatment*<sup>12</sup>

[50] Several of Ms Walker's claims alleged there was a disparity of treatment between Crossroads' treatment of her and the chef. The phrase "disparity of treatment" in an employment setting refers to circumstances where an employer appears to impose on an employee a different disciplinary sanction (usually dismissal) compared to that given to another employee despite the conduct of both employees being materially similar. Those circumstances are not apparent in the personal grievances where Ms Walker alleges disparity of treatment.<sup>13</sup> I have treated these matters as claims of an unjustified disadvantage.

---

<sup>11</sup> See for example: Ms Walker's email of 19 March 2016, and email exchange between Ms Walker, Ms Dasler and Mr Vallance 8-13 December 2017.

<sup>12</sup> Above n 2, at 1.2 (2) and 1.3 (3)

<sup>13</sup> The first appears to have been raised in or around early March 2018, and the second in the letter of 7 September 2018

[51] In the first, Ms Walker says the chef received pastoral care from Ms Dasler in or around the time in which the conflict between her and the chef arose. There is no suggestion that Ms Walker sought care of that nature from Ms Dasler or that she was therefore unfairly refused. The crux of this issue appears to lie with Ms Walker's perception that when the chef was receiving pastoral care, Ms Dasler may have talked to him about his personal grievance and Ms Walker's involvement in it. She regards their interaction as a breach of her [MsWalker's] employment agreement. There is no evidence that Ms Dasler's conversations with the chef were as is suggested or that their discussion resulted in an action that breached terms and conditions of Ms Walker's employment.

[52] Next, Ms Walker refers to the December 2017 incident which resulted in the chef's suspension during January 2018. I understand Ms Walker cancelled her scheduled annual leave due to begin around that time to ensure John's Kitchen continued to run. Ms Walker says Crossroads' approval of the chef's request to take a week's annual leave 6 months' later, (in the week prior to her scheduled response to Crossroads investigation) was unfair compared to her situation in January 2018.

[53] These circumstances also do not demonstrate an unjustified disadvantage. There is no evidence that Crossroads withdrew its approval for Ms Walker to take annual leave in January 2018. If it had, and done so unfairly, Ms Walker could have raised a grievance with Crossroads on the matter at that time. She did not. Further, Crossroads decision to approve the chef's leave was a power open to it as his employer and it was not obliged to consult with Ms Walker regarding those arrangements.

[54] I am unwilling to accept an inference that Ms Walker was prevented from responding to Crossroads' investigation due to her workload while the chef took annual leave. Ms Walker did not advise Crossroads that she could not furnish a response on that basis (or at all for any other reason) and no claim of an unjustified disadvantage was made on this issue.

*The chef's written warning*

[55] As already noted, on 12 March 2018 Ms Walker informed Mr Vallance by email that she had filed a personal grievance complaint with MBIE. Ms Walker told Mr Vallance that she had received a copy of the chef's written warning and considered her authority as the chef's manager had been undermined, noting the chef had told her "*she didn't have a leg to stand on*".

No further detail was provided on the matter. The Authority was not provided with a copy of the personal grievance complaint said to have been sent to MBIE.

[56] Ms Walker's pleadings to the Authority expanded on the 12 March 2018 email. It referred to Crossroads' failure to notify her of the written warning given to the chef on 24 January 2018 and provide her a copy of the letter. It was alleged she was unjustifiably disadvantaged in this way.<sup>14</sup>

[57] I accept Crossroads' submission that personal grievance(s) on these issues were raised out of time. Given the importance Ms Walker places on the chef's warning letter, it is appropriate to record that even if these claims had been sufficiently raised I am not satisfied Ms Walker was unjustifiably disadvantaged in the circumstances.

[58] Crossroads was under no obligation to provide a copy of its letter to the chef to Ms Walker. But in any event I am satisfied Ms Walker was aware the chef had received a written warning around the time it was issued, given five weeks' later she asked the Board to issue him with a further warning.

[59] Ms Walker says the warning letter stated the chef could, if he wished, "*report to the board*".<sup>15</sup> She says this instruction contradicted the chef's terms of employment which required him to report to her.

[60] I find Ms Walker's interpretation of the statement (at [25] above), stretches what could reasonably be understood the wording was meant to convey. The letter does not alter the chef's contractual reporting arrangements. Nor is there any evidence to support Ms Walker's view that the statement generated the chef's alleged subsequent insubordination. Ms Walker's claim that she was unjustifiably disadvantaged by the chef's warning letter would not have been successful on the facts provided, and Crossroads, as the chef's employer was entitled to communicate with the chef on any matter it chose.

### Retaliation<sup>16</sup>

[61] Ms Walker links the Board's letter of 29 March 2018 setting out its concerns to the personal grievance she forwarded to Mr Vallance on 12 March 2018. She alleged Crossroads

---

<sup>14</sup> Above n 2, at 1.2.(8) and email of 12 March 2018

<sup>15</sup> Brief of Janette Walker at para.133

<sup>16</sup> Above n 2, at 1.2 (6)

letter was retaliation for her complaint. I accept the events are relatively proximate but there is no evidence to support a view that they are connected.

[62] Ms Walker's evidence, written and oral, pointed to a range of instances in which she herself says she had had lost trust and confidence in various Board members. I shall return to these matters but each instance pre-dated her email to Mr Vallance in mid-March 2018. This concession, alongside Crossroads' evidence, leads me to conclude both parties were aware that the relationship had become fraught and Crossroads had genuine reasons for wanting to discuss the issue. The retaliation claim has not been established.

*The Memorandum of Understanding "the MoU"*<sup>17</sup>

[63] Following the mediation which resulted in the MoU, Mr Stubbs asked Ms Walker to provide a statement setting out her issues with the chef as agreed.<sup>18</sup> The conflict between them arose when he proposed Ms Walker's concerns be summarized and "*accepted*", and "*agreed*" in readiness to go to an independent investigator.<sup>19</sup>

[64] Ms Walker construed Mr Stubbs' request as an attempt to "*determine, edit and approve*"<sup>20</sup> her complaint, and was unwilling to furnish her complaints to Crossroads for presentation to an investigator in the manner Mr Stubbs suggested. Undoubtedly Mr Stubbs' wording as to how Ms Walker's complaints should be compiled for the investigator was clumsy. However it is apparent from his correspondence with Ms Walker that his hope for a concise summary of the complaints was motivated, at least in part, by a desire to contain Crossroads expenses.<sup>21</sup>

[65] I am not persuaded Mr Stubbs' request demonstrates an unjustified action or a breach of good faith on behalf of Crossroads. It is clear Ms Walker and Mr Stubbs held opposing views as to how the information should be compiled. The differences were acknowledged in the Board meeting of 12 June 2018. Minutes from that meeting indicate the parties agreed to return to mediation on the issue.<sup>22</sup> These circumstances do not give rise to an actionable claim of an unjustified disadvantage or breach of good faith.

---

<sup>17</sup> Above n 2, at 1.2 (7), (14)-(15), 1.3 (1).

<sup>18</sup> Emails sent between 27 and 31 May 2018, and at Board meetings on 30 May 2018 and 12 June 2018.

<sup>19</sup> Email of 27 May 2018

<sup>20</sup> These words were used in Ms Walker's evidence and submissions but there was no evidence that Mr Stubbs request was phrased in these terms.

<sup>21</sup> Above n 18.

<sup>22</sup> Board meeting notes dated 12 June 2018

Health and Safety<sup>23</sup>

[66] This claim alleges Crossroads failed to ensure a safe working environment and failed to address Ms Walker's concerns as to personal safety (regarding the chef).

[67] During the Board meeting On 1 March 2018 Ms Walker reported she did not feel safe in the chef's presence and advised she now ensured she was not alone when interacting with him.<sup>24</sup> I am satisfied Crossroads was entitled to consider Ms Walker's immediate safety concerns were addressed. I accept also that Mr Vallance made inquiries amongst volunteers who regularly attended Crossroads as to the chef's behaviour (and performance). I accept his evidence that he received no adverse reports.

[68] As to the second incident said to have occurred shortly before mediation in May 2018, and the Board's request on 30 May 2018 for details of the event, Ms Walker advised she would provide the police complaint reference number when she received it, (presumably so that a copy of her statement to Police could be obtained).<sup>25</sup> The Board minutes to a later meeting held on 12 June 2018 record Ms Walker said there was no police reference number on the matter as these were assigned only to burglary or robbery cases. She said there were witnesses to the second incident but would not identify those individuals to the Board.<sup>26</sup> For reasons that remain unclear Ms Walker was unwilling to supply details of alleged second incident to Crossroads. I do not accept Crossroads "*did nothing*" to support Ms Walker when it had insufficient information on which to act.

[69] Ms Walker says she was told by Police that it would not be pursuing her complaint against the chef. She says she was advised Mr Stubbs had approached Police and asked that the matter not be pursued. Ms Walker alleges her right to access justice under the Bill of Rights Act 1990 was contravened by Crossroads in this way.<sup>27</sup> Mr Stubbs resolutely denies he had any involvement with the Police on this issue.

[70] Ms Walker did not summons the Officer who advised no further action by Police would be taken on the matter, nor was any other evidence to support her account on this matter. I am

---

<sup>23</sup> Above n 2, at 1.2 (3) and at 1.2 (9)

<sup>24</sup> Ms Walker's written report to the Board on 1 March 2018

<sup>25</sup> During a Board meeting on 30 May 2018

<sup>26</sup> In contrast Ms Walker's Brief of evidence at para. 220 stated "*The altercation was by myself on the phone*" ...

<sup>27</sup> Above n 2, at 1.2(9)

unwilling to rely on a hearsay statement to establish this particular claim and it is dismissed as a consequence.

*Discrimination<sup>28</sup> and Intolerance*

[71] Ms Walker refers to several statements made by various Board members in March or April 1 2018. She claims she was discriminated against on the basis of her atheism.<sup>29</sup>

[72] It is alleged the first statement, made in April or May 2018, was by a Board member (not previously identified in this determination) who likened Ms Walker to a “*serpent in the garden of Eden*”.

[73] The second instance alleges that during the Board meeting of 1 March 2018 Mr Stubbs said that he wanted Crossroads “*back to being a Christian organisation*”.

[74] The third was made towards the end of the April meeting. In the context of discussing Ms Dasler’s attempts to engage with Ms Walker, Mr Vallance stated “*it’s because she wants to save your soul*”. Mr Vallance says this was a facetious throwaway comment made towards the end of a difficult meeting with Ms Walker. I accept Mr Vallance’s evidence that, with the exception of a spoken grace before the Wednesday dinner, Crossroads does not promote, preach or proselytize Christianity.

[75] A personal grievance was not raised within 90 days in respect of any of these statements. Crossroads did not consent to those matters, nor has an application for leave to raise these matters out of time been received. The Authority therefore has no jurisdiction to decide the claims of discrimination and they are dismissed.

[76] Ms Walker’s written evidence and submissions allege Ms Dasler and Mr Vallance held a view that a Christian higher calling “*trumped [its] employment obligations*” towards her.<sup>30</sup>

[77] I agree with Crossroads that Mr Vallance did not, during cross examination, concede that the proposition reflected Crossroads position, and, in fact, it was a statement he emphatically rejected. There is no evidence at all to suggest Crossroads’ ignored its employment obligations on the basis of Christian beliefs.

---

<sup>28</sup> At n 2 at 1.4.

<sup>29</sup> A fourth statement is alleged but this did not occur during Ms Walker’s employment nor did it involve Ms Walker.

<sup>30</sup> Brief of Janette Walker at para. 60; Applicant’s Legal Submissions at 1.1, 1.18, 1.48, 3.1

Communications to Ms Walker's other employer<sup>31</sup>

[78] Two claims allege Ms Dasler and Mr Vallance respectively sent correspondence to Ms Walker's other employer to embarrass her, or to inform it of otherwise personal information.

[79] The only evidence received by the Authority on this issue are two emails exchanged between Ms Dasler, Mr Vallance and Ms Walker, on the ice-cream issue, one in which records Mr Vallance's caution to Ms Dasler.<sup>32</sup> I am unable to identify anything in the content of either document which gives rise to a claim for breach of good faith or any other actionable claim for which the Authority may determine.

[80] It is perhaps arguable that the inclusion of Ms Walker's other employer as a recipient to the correspondence could be regarded as a privacy breach. But in any event the Authority has no power to impose or enforce obligations under the Privacy Act. These claims are also dismissed.

Final Payslip<sup>34</sup>

[81] Ms Walker claim for a penalty for Crossroads' failure to provide a final payslip is misconceived. There is no statutory requirement that requires an employer to provide a final payslip when employment finishes. Section 130 of the Act requires an employer to keep compliant wage and time records and to provide an employee with his or her records if requested, but there no evidence that Ms Walker made such a request. This claim is dismissed.

**Was Ms Walker unjustifiably dismissed?**

[82] Section 103A of the Act requires the Authority to assess and determine whether a dismissal is justifiable by applying the test in subsection (2), which states:

The test is whether the employer's actions, and how the employer acted were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[83] Section 103A(3) sets out a range of procedural fairness matters the Authority must consider. Relevant to this case, if an employer is contemplating disciplinary action it must raise its concerns with the employee and ensure the employee has an opportunity to respond if an employer. The Authority may also consider any other factors it thinks relevant,<sup>35</sup> but must

---

<sup>31</sup> Above n 2, at 1.3 (4)-(5)

<sup>32</sup> Email dated 13 December 2017

<sup>34</sup> Above n 2, at 1.5

<sup>35</sup> Above at s 103A(4)

not determine a dismissal is unjustified solely because of defects in the process if they were minor and did not result in the employment being treated unfairly.<sup>36</sup>

[84] As noted, the letter of dismissal indicates Crossroads terminated Ms Walker's employment in circumstances where it viewed Ms Walker's actions demonstrated a loss of trust and confidence between them. Although not expressed overtly, Crossroads considered the relationship unsalvageable.

[85] It is less clear from the wording in the dismissal letter [at its para. 14] whether Crossroads viewed all, or just some, of the events listed in the letter of 29 March 2018 as serious misconduct, or alternatively, whether Ms Walker's actions during the April meeting were regarded alone as serious misconduct. That ambiguity is apparent in the contrasting approach each party took to the Authority's investigation. Crossroads leaned towards those matters concerning trust and confidence as grounds to justifiably terminate Ms Walker's employment whereas Ms Walker's challenge centred on Crossroads' findings of serious misconduct.

[86] Whether a dismissal is based on serious misconduct or an irreconcilable breakdown in trust and confidence, justification for the dismissal is assessed against s 103A. In practical terms there are two aspects to an inquiry regarding justification. The Authority needs to examine whether the procedure used by Crossroads was such that it could fairly reach its decision to dismiss on the matters it considered warranted dismissal, and whether the reasons for which Crossroad's relies on were substantially justified.

[87] I have assessed first whether Crossroads was able to reasonably conclude Ms Walker had engaged in serious misconduct. I have then assessed whether the process Crossroads used to decide trust and confidence was irretrievably broken was undertaken in such a way it could fairly dismiss Ms Walker.

### ***Serious misconduct***

[88] In *Emmanuel v Waikato District Health Board* the Court set out the approach it (or the Authority) should apply when assessing whether serious misconduct:<sup>37</sup>

[58] When considering whether an employee's conduct amounts to serious misconduct, justifying summary dismissal, the Court must stand back and consider the factual findings and evaluate whether a fair and reasonable

---

<sup>36</sup> Above at s 103A(5)

<sup>37</sup> *Emmanuel v Waikato District Health Board* [2019] NZEmpC 81

employer could characterise that conduct as deeply impairing, or destructive of, the basic confidence of trust essential to the employment relationship, justifying dismissal. What must be evaluated is the nature of the obligations imposed on the employee by the employment contract, the nature of the breach that has occurred, and the circumstances of the breach.

[89] It has been necessary to set out all the events referenced both directly and indirectly at para. 14 the letter of dismissal, so as to assess whether a fair and reasonable employer could have concluded some or all of Ms Walker's actions were capable of amounting to serious misconduct.

*The allegation of theft*

[90] The background to the allegation that Ms Walker accused Ms Dasler of theft arises out of Crossroads concern, recorded in the letter of 29 March 2018, that Ms Walker "*failed to take advantage of vouchers for food items from a [local producer], presumably because they have been arranged by Yvonne*". Ms Walker responded to this matter stating when she began her role Ms Dasler was secretive about how she obtained some food items. She then made inquiries with a manager of the local producer who reported he was unaware Crossroads received its produce. Ms Walker said she then suspected they were "*coming out the back door*".

[91] In answer to the Crossroads' question "*Are you saying Yvonne is stealing the items?*" Ms Walker said "*Well how else if the manager doesn't know*", and it is this comment that Crossroads views as an accusation that Ms Dasler was involved in theft. Ms Walker then went on say she is now aware of a voucher system (referred to by Ms Dasler in the email exchange in mid-December 2017), albeit Ms Walker said the manager she spoke to did not know of the practice.

[92] Assessing the entirety of Ms Walker's response regarding the voucher system, I find Ms Walker's reply to the question as to whether Ms Dasler was stealing, reflected her original position. Her subsequent comments acknowledged the possibility that items might have been legitimately received via a voucher system, albeit she expressed reservations about whether those arrangements remained operative.

[93] Ms Walker's response to Crossroads inquiry falls short of a direct accusation of theft as is stated in the letter of dismissal.<sup>38</sup> I am not persuaded her actions on this issue can be regarded as serious misconduct.

*Allegations of lying*

[94] The accusations of lying concerns separate statements. The first relates to the argument between Ms Walker and Ms Stubbs after the meeting in February with the chef, and their subsequent exchange during a Board meeting on 1 March 2018. I find it likely Ms Walker called Mr Stubbs as liar during that exchange.

[95] Returning to the April meeting, Ms Walker told Mr Stubbs if he maintained his view on what was said during their private discussion after the February meeting "*you are a liar*".

[96] The second set of allegations were also said in the April meeting. The first occurred following an acknowledgment by Mr Vallance of the difficulties between Ms Walker and Ms Dasler, Ms Walker said "*And she lies, she absolutely lies*". Ms Walker later referred again to Ms Dasler stating "*... I had to put up with her lies, and I'll be quite blunt, her bullshit*".

[97] Ms Walker's responses may have benefitted from some caution given the purpose of the meeting, but I am unwilling to conclude the statements can be fairly characterised as serious misconduct given these were said in the context of a meeting to discuss the conflict between parties. Ms Walker was robust in the defence of her position but I am unwilling conclude her responses could be fairly met with summary dismissal because of it.

*Allegations concerning IRD records*

[98] Ms Walker stood by her allegations that Ms Dasler had interfered with Crossroads' access to its online IRD records including altering passwords and that IRD had told Ms Walker that it had blocked Ms Dasler from the account. Ms Walker's representative said Ms Dasler's behaviour "*was fraud isn't it*."

[99] It would be open to an employer in similar circumstances to regard an allegation of this nature as serious misconduct if there was no evidence to support it when it was first raised. The problem for Crossroads is that it took no action on the matter for at least a year after it was

---

<sup>38</sup> Letter of 25 June 2018, at para. 8

brought to Mr Vallance's attention. He says he had no reason to doubt Ms Walker at the time she reported it to him.

[100] It cannot be the action of a fair and reasonable employer to accept an employee's conduct, but at some much later juncture, and without a material change to the information it held on the matter, seek to investigate the conduct and then assert it was so significant the employment relationship is in jeopardy. Crossroads' omission to act at the time Ms Walker made the allegation disentitled it to later treat it as serious misconduct.

Allegations regarding face book

[101] Ms Walker made two separate allegations regarding Ms Dasler's use of facebook.

[102] In the April meeting Ms Walker was unwilling to provide evidence of Ms Dasler "stalking" her and/or her friends on her personal facebook page, or the text messages she says she was receiving. She said Crossroads had introduced the matter in its letter of 29 March 2018 and it was up to Crossroads to provide evidence on the issue. I am satisfied however that Ms Walker had, in late January 2018, alleged Ms Dasler was stalking her via facebook.<sup>39</sup>

[103] The second allegation was made during the meeting on 20 April 2018. Ms Walker said Ms Dasler had created a second facebook page for the Kitchen in or around the time of her appointment and had replied to messages as if she was Ms Walker.

[104] At the Authority's meeting, Ms Walker produced a screen shot of a facebook page said to be the second facebook page. However there was nothing in the screen shot to indicate when the page was created or by who. Crossroads' was of the view that the page might have existed prior to Ms Walker's employment. It remains unclear why Ms Walker did not provide a copy of the facebook page to Crossroads before it made its finding on this issue.

[105] Ms Walker says Crossroads failed to investigate the matter and in particular it did not interview an "IT savvy" friend of hers who she had remove the page. I don't accept this submission. It is apparent from the transcript that Crossroads asked Ms Walker to provide any material she had to support those matters, including who it could talk to, to ascertain if a second page had been created and if so by who. Again, Ms Walker advised it was up to Crossroads to provide evidence on those matters. I am unwilling to find these allegations amount to serious misconduct but I accept Crossroads had a right to be concerned with the ease at which Ms

---

<sup>39</sup> Email dated 30/01/2018 from Ms Walker to Mr Vallance

Walker was willing to make allegations but resist its requests for information to support the complaint.

*The allegation regarding the purchase of margarine*

[106] I am unwilling to conclude Ms Walker's complaint about Ms Dasler's purchase of margarine in January 2018 amounts to serious misconduct.

*The pushing incident:*

[107] Ms Walker does not deny she prevented Ms Dasler's access to the microphone to say grace before dinner on 28 February 2018. She explained her actions at the April meeting by advising that she briefly acknowledged the food before dinner; that there did not have to be a grace before dinner, and; that Ms Dasler had reverted "*back to that really intensely religious thing*" which was "*turning people off*".

[108] At the Authority's meeting Crossroads produced Board Minutes from March 2016. These record an agreement among Board members, with Ms Walker in attendance, that grace would be spoken, as opposed to sung. This material was provided to refute Ms Walker's assertion that grace was discretionary.

[109] Ms Walker sought to rely on Mr McManus' written evidence that "*Ms Dasler wrestled with Janette*". However Mr McManus conceded when questioned that he "*didn't see that part of it*". Ms Walker's written evidence further stated "*I was first pushed*" – the inference being that Ms Dasler initiated force to which Ms Walker responded. I am certain Ms Walker would have reported any physical interaction started by Ms Dasler had it occurred. The transcript records Ms Walker's description of the incident. She said she "*didn't go near [Ms Dasler]*" and no mention is made of any physical contact between them. Ms Walker's resistance to have grace said before dinner, as well as her negative view about the style in which Ms Dasler gave a spoken grace, suggests motivation to breach Crossroads expectations on the matter and to prevent Ms Dasler from access to the microphone. I find it was reasonable for Crossroads to prefer Ms Dasler's version of events in the circumstances and, subject to a fair process, it was open to it to view Ms Walker's behaviour in this instance as serious misconduct.

*Examples of conflict prior to 2018*

[110] Ms Walker accepts there were several incidents in which conflict arose between herself and stakeholder's important to Crossroads, including; a Board member in 2016; Crossroad's landlord in 2017, and with a neighboring charity.

[111] In the meeting of 20 April 2018 Ms Walker's response to each of the instances, was to the effect that she considered her conduct entirely appropriate to the particular circumstances. She advised, respectively; the Board member was demanding and inconsiderate of her workload; the landlord had verbally attacked her, and; the other charity had created a health and safety risk for which it was appropriate to challenge it on. Ms Walker advised that any tension between herself and the protagonists in those events had since been resolved.

[112] I find it was reasonable in each instance for Crossroads to have concerns about Ms Walker's behaviour, particularly towards the landlord, which put Crossroads' lease arrangements at risk. But there is no real dispute that Crossroads did not take action on any of these matters in a timely manner.

[113] There is a suggestion, at least in relation to the landlord incident, that Ms Walker's actions reflected her personal interests rather than those of Crossroads. If this was a material concern, Crossroads was obliged to raise the matter with Ms Walker and provide clear expectations as to how it wanted her to conduct herself on its behalf. As with my findings concerning the IRD allegation, a fair and reasonable employer could not fairly re-characterise conduct as disciplinary where the behaviour had been previously been tolerated.

*Conduct towards volunteers and service users*

[114] The letter of dismissal referred to Ms Walker's "*loud and inappropriate reprimands and directions*" [to volunteers and patrons] and a corresponding finding that Ms Walker's management style and the way she acted was on many occasions inappropriate.

[115] At the April meeting Crossroads advised of two separate incidents to demonstrate Ms Walker's alleged propensity to discuss a client's private information in a public arena, and that she loudly reprimanded volunteers. Crossroads was unable to clearly identify in either instance who was involved or when the action(s) occurred, and Ms Walker was right to say she could not properly respond.

[116] I am not satisfied Crossroads had sufficient evidence to conclude Ms Walker's conduct towards volunteers and patrons was serious misconduct on the information it presented. Setting these matters aside Ms Walker described the nature of work at John's Kitchen as necessarily requiring loud and aggressive interventions at times. If Crossroads wanted Ms Walker to alter her communication style those matters should have been addressed as performance concerns.

*An irreconcilable breakdown in trust and confidence*

[117] It is accepted in law that an employer may be able to justify the dismissal of an employee where trust and confidence in the relationship has been irreconcilably broken.<sup>40</sup> To establish a dismissal on this basis the employer must demonstrate;

- there has been an irreconcilable breakdown of trust and confidence in the relationship;
- the irreconcilable breakdown has been substantially caused by the employee and is supported by convincing facts;
- the process used by the employer to reach those conclusions must be fair.

[118] The Courts have emphasised that cases of this nature are considered relatively rare and unusual compared to dismissals for serious misconduct.

[119] I need to record at the juncture that the process used by Crossroads used to terminate Ms Walker’s employment was sufficiently flawed that I must find her dismissal unjustified on procedural grounds. The reasoning for this is set out under the heading “*Process*” below.

[120] It is useful however to assess whether the grounds for the dismissal were substantively justified as these issues may impact on remedies. I need to note there is some tension between making a finding that there were substantive grounds for dismissal where the process taken by an employer was insufficient for it to justifiably reach that conclusion.

[121] Turning to the allegations and areas of conflict that occurred before January 2018, I am not persuaded Crossroads could rely on those matters as factors to conclude trust and confidence was broken between the parties. Subject also to my findings regarding process, my reasoning is substantially the same as that given to those matters Crossroads belatedly viewed as serious misconduct. Where the behaviour was well known to Crossroads but had not been addressed, it was not open for Crossroads to rely on it as cause for dismissal. This finding does not, however, absolve Ms Walker from her actions in the lead up to, during, and after, the April meeting.

[122] Between January 2018 and the meeting in April Ms Walker complained about Ms Dasler: regarding the margarine purchase, her contact via face book and text messaging, and

---

<sup>40</sup> See: *Reid v New Zealand Fire Service Commission* [1999] 1 ERNZ 104 (CA); and more recently: *Snowdon v Radio New Zealand Limited* [2014] NZEmpC 45 at [80]

her interactions with the chef. The pushing incident occurred in late February 2018. In March 2018 Ms Walker formally complained about Mr Stubbs, and raised a personal grievance concerning Crossroads failure to take action against the chef. Ms Walker's testimony before the Authority is that she had lost trust and confidence in Ms Dasler, Mr Stubbs and Mr Vallance prior to the April meeting, each for different reasons and at different times.

[123] Against this background and given the purpose of the meeting there can be no doubt the meeting of April was a critical event. There is no dispute Ms Walker said Ms Dasler and Ms Stubb were both liars. Whilst I have found Ms Walker did not directly accuse Ms Dasler of theft, she conveyed a stance that it was possible.

[124] Mr Vallance's evidence that Ms Walker interrupted and spoke over others is confirmed by the April meeting audio recording. Ms Walker made a range of additional allegations against Ms Dasler. She did not accept her conduct contributed in any way to Crossroads' concerns about the relationship. The following observation made by Mr Vallance during the meeting provides some insight to Ms Walker's approach to the discussion, and generally, as follows:

.... - the way you are talking to me at the moment is precisely one of problems that puts peoples backs up. As soon as anybody challenges you, you hit them in the face with hard words and abuse and that makes people very timorous of trying to discuss with ... you because you become so hard at them they can't respond. That is a major problem when we have got people [at Crossroads] that are in a fragile position and it's not the work that you do that really worries us, it's the fact that there are times when if you're challenged about anything you come back at them and really put them on edge in exactly the same way as the issue you had in a Board meeting with Peter.<sup>41</sup>

[125] Ms Walker did not respond to this statement, or to Mr Vallance's several requests to discuss the broader topic regarding her communication style, other than to advise she considered herself to be assertive.<sup>42</sup>

[126] Concerning her treatment of Ms Dasler, Ms Walker said she had made her role difficult by "*intermeddling*", and had been harassed by Ms Dasler's ongoing electronic communications. As already noted, there was no documentation to demonstrate Ms Dasler's

---

<sup>41</sup> See transcript, at paragraph 140

<sup>42</sup> Transcript at 54

messaging was as unrelenting as is inferred. Ms Walker says her phone was stolen in 2017 and text messages and emails were therefore lost.

[127] Mr Vallance was aware Ms Walker found Ms Dasler annoying and that there were personality differences between them. He had also been involved in discussions concerning governance and operations. However Ms Walker's refusal in the meeting to provide copies of messages received in 2018 or any other information to warrant the level of hostility she displayed towards Ms Dasler, leads me away from finding Crossroads was unwilling to address the matter before Ms Walker's later dismissal.

[128] I have no doubt the volume of complaints and allegations levelled at Board members (and others associated with Crossroads) by Ms Walker during the April meeting was corrosive to the trust and confidence Crossroads had in the relationship.

[129] Ms Walker's behaviour in the weeks following the meeting exacerbated the situation. She resisted supplying Crossroads information about her personal grievance in readiness for mediation, and avoided providing details to it of the second incident said to have occurred with the chef at the Kitchen. Ms Walker refused to identify, to the Board, the witnesses said to have been present at the time. Nor did she respond at all to Crossroads' correspondence regarding its investigation. She did not, as previously agreed, furnish work related passwords to the Board.

[130] I find it was open to Crossroads to conclude there was an irreconcilable breakdown in the relationship between it and Ms Walker as its manager, based on the above conduct. The difficulty for Crossroads is how it went about reaching this decision. I have detailed the process used by Crossroads leading to Ms Walker's dismissal because it is critical to my finding that on procedural grounds alone, the dismissal cannot be justified, as follows.

### ***Process***

[131] As already noted, the first communication between the parties regarding Crossroad's concerns about the relationship was the letter of 29 March 2018. Amongst other things it indicated the Board wished to meet and discuss those matters. The meeting occurred in April 2018. At its outset Ms Walker was advised the meeting was to gather information and was not disciplinary, albeit Crossroads informed Ms Walker that depending on the outcome, the Board would need to consider if future steps need to be taken.

[132] The next communication between them was Crossroads' letter of 12 June 2018. That letter outlined additional information Crossroads had obtained in respect of the matters discussed in the April meeting and invited Ms Walker to comment on those matters on or before 20 June 2018. No indication as to Crossroads' view of the conduct was given, and no findings were recorded. Rather, the letter advises that it will consider any responses Ms Walker wishes to make before it makes its findings.

[133] It was unwise for Ms Walker to ignore the letter particularly where, as is now clear, she did not accept any of the countervailing information recorded in the letter, but her omission to reply did not alter Crossroads' obligation to conduct a fair process.

[134] Having concluded the investigation, Mr Vallance and Mr Stubbs reported to the Board.

[135] It is clear the Board viewed some or all of the examples as serious misconduct, and that trust and confidence was broken. Having now decided Ms Walker's actions were so sufficiently serious that disciplinary consequences were more than an abstract possibility, it was incumbent on Crossroads to advise Ms Walker which matters were serious, the sanction it was considering, and provide her with an opportunity to comment on those matters before it took action. Unfortunately for Crossroads it omitted to take this important procedural step.

[136] I have considered whether the notification given to Ms Walker at the beginning of its investigation, that termination of employment might follow if serious misconduct or an unrepairable breach to trust and confidence was found, alters my findings above. I have no doubt Ms Walker was broadly aware her employment was at risk when she received the letter of 29 March 2018. But a generalized notification of this nature does not diminish an employer's obligation to specifically inform the employee of the particular concerns for which it is actively contemplating dismissal once those become apparent.

[137] Crossroads may view this finding as requiring procedure for procedure's sake where Ms Walker agreed at the Authority's meeting that there was nothing in the correspondence of 29 March 2018 and 12 June 2018 that she had not been able to comment on. However, both letters and Ms Walker's opportunity to respond to the contents of each, were furnished in an investigation setting. Notice by an employer to an employee that it views the matters as disciplinary, together with the obligation to detail the specific concerns, provides an unmistakable signal to the employee that it is now the time to provide all relevant information to the employer that s/he wishes it to consider, including anything that might mitigate against

disciplinary action. Crossroads' could not assume Ms Walker had nothing further to say after the meeting of April or that, in a disciplinary setting, her responses would remain unaltered. It was not the action of a fair and reasonable employer to deprive Ms Walker of that opportunity to comment on the Board's findings, including sanctions, before it dismissed her.

[138] I note also there were additional matters and events that were not put to Ms Walker for comment but for which I am satisfied influenced Crossroads' decision that Ms Walker's employment with it as its manager was no longer sustainable.<sup>47</sup> By way of example, Ms Walker's allegations regarding lying and theft were clearly critical to the decision to dismiss, as was her resistance to detail her complaints regarding the chef. Ms Walker was unaware of the depth of Crossroads concerns in respect of these matters. It follows she was not provided with an opportunity to respond to these.

[139] Crossroads omission to properly inform Ms Walker that its inquiry was now disciplinary in nature and allow her an opportunity to address those matters before a final decision was made was a fundamental procedural defect which cannot be regarded as minor. Ms Walker was treated unfairly as a consequence and I must find Ms Walker's dismissal was unjustified.

## **Remedies**

### ***Lost wages***

[140] Having established Ms Walker was unjustifiably dismissed, s 128(2) of the Act requires the Authority to award the lesser of either a sum equal to his actual loss or a sum equal to 3 months' ordinary pay. Ms Walker seeks \$4,992.00 in lost wages for the three months following her dismissal and \$499.20 (in total) as KiwiSaver contributions.

[141] The evidence is that following her dismissal Ms Walker's increased her time in her other role but this work went unpaid. Crossroads submits she failed to mitigate her loss in this way.

[142] The Court recently confirmed that an assessment as to mitigation must be viewed on a case by case basis and in context.<sup>48</sup>

---

<sup>47</sup> See paragraphs 11-13 in letter of 25 June 2018.

<sup>48</sup> *Maddigan v Director-General of Conservation* [2019] NZEmpC 190 at [65]

[143] By a slim margin, I find Ms Walker did attempt to mitigate her loss where she acted on a suggestion that paid hours of work with her alternative employment might be extended in the future. That eventuality did not transpire, but I find her actions were reasonable in the circumstances.

[144] Subject to my assessment as to contribution Ms Walker is owed wages (including KiwiSaver) as claimed.

### ***Compensation***

[145] Ms Walker seeks \$20,000 as compensation for humiliation, loss of dignity and injury to feelings corresponding to her personal grievance.

[146] Ms Walker referred to an article titled ‘*Charity and co-ordinator part ways over “personal difficulties”*’ which was published in a local newspaper almost 3 weeks’ after her dismissal. The article was initially produced to support a claim of an unjustified disadvantage action, but was later withdrawn. It is however a matter that I should consider as part of an assessment as to compensation.

[147] The article reports Mr Vallance saying:

- “the board ended the contract”,
- “Ms Walker is a hard, passionate worker”,
- “There was a breakdown in the relationship ...”,
- “Its not about [Ms Walker’s] competence. She is certainly strong-willed and that’s what makes her good at what she does”,
- He “understood Ms Walker planned to file a complaint against the board with the Employment Relations Authority”,
- He “would not say whether Walker’s “strong-willed” nature was a factor in the decision to end her employment”.

[148] The article reported Ms Walker as saying she “*will keep advocating for the vulnerable, just in an unpaid capacity*”.

[149] Ms Walker did not take issue with the content of the article or the effect of its publication on how she felt about her dismissal per se. Rather, her concern is that Crossroads spoke to the local press as she had firmly rejected a prior proposal by Crossroads that they release an agreed statement.

[150] That Ms Walker feels aggrieved that her position on this matter was disregarded is not a matter for which compensation under s 123 (1)(c)(i) may be awarded.

[151] Ms Walker provided little by way of direct evidence about the impact of her dismissal. Her written evidence referred to the void in the community after her dismissal. Gleaned from Ms Walker's testimony I accept she was distressed by the sudden loss of work she regarded as important and for which she felt passionate about.

[152] Subject to my assessment as to contributory behaviour, I assess an award of compensation of \$12,000 is appropriate.

### ***Contribution***

[153] The Authority must also consider the extent, if any, to which the employee's actions contributed towards the situation that gave rise to the grievance, and if so to reduce remedies accordingly.<sup>49</sup>

[154] My assessment as to contribution begins by recording Ms Walker was Crossroads manager, and her position was pivotal to the organisation. I further note that none of underlying behaviours which formed the basis for the dismissal are denied by Ms Walker. I am satisfied the following actions significantly contributed in a causative way to Crossroads' decision to dismiss, and are blameworthy:

- Ms Walker's response to Crossroads' good faith request to discuss and resolve communication issues was combative and aggressive.
- The allegations of theft and lying by Board members were provocative and aimed to shock and offend.

---

<sup>49</sup> Employment Relations Act 2000, s 124

- Ms Walker’s ongoing allegations against Ms Dasler coupled with a refusal to furnish material to corroborate those complaints.
- Ms Walker used physical force against a Board member to prevent the customary spoken grace being said before a meal at the Kitchen.
- She made a covert recording of the April meeting. Whilst not unlawful, it was a breach of good faith.
- Ms Walker’s allegations against the chef also coupled also with a refusal to furnish material to corroborate those matters, noting she had made a covert recording of her interaction with him, impacted on the Board ability to rely on her as its manager.

[155] The above contributory conduct, particularly in Ms Walker role, was exceptionally blameworthy.<sup>50</sup> A reduction of 50% in remedies is appropriate.

### **Summary of findings and orders**

[156] Ms Walker’s claims of an unjustified disadvantage, discrimination, and breaches of good faith and wage recording obligations have not been made out. However, the process leading to Ms Walker’s dismissal was unfair, and Ms Walker’s personal grievance claim that her dismissal was unjustified is successful.

[157] Noting that remedies have been reduced to reflect Ms Walker’s contribution to the situation that gave rise to the personal grievance, Crossroads (Malborough) Trust is ordered to pay Ms Janette Walker:

- (a) \$2,496.00<sup>51</sup> minus PAYE, as reimbursement of lost wages, pursuant to s 123(1)(b) and s 128(2) of the Act; and
- (b) \$249.60<sup>52</sup> as reimbursement of the total lost benefit of KiwiSaver contributions to be forwarded to IRD and deposited into Ms Walker’s KiwiSaver account.
- (c) \$6,000<sup>53</sup> as compensation pursuant to s 123(1)(c)(i) of the Act.

---

<sup>50</sup> *Maddigan v Director-General of Conservation*, above n 48, at [75].

<sup>51</sup> \$4,992.00 reduced by 50% = \$2,496.00

<sup>52</sup> \$499.20 reduced by 50% = \$249.60

<sup>53</sup> \$12,000 reduced by 50% = \$6,000.00

**Costs**

[158] Costs are reserved.

Michele Ryan  
Member of the Employment Relations Authority