

**NOTE: This determination
contains an order prohibiting
publication of certain
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 222
3203959

BETWEEN

DAHLEA REISIMA
Applicant

AND

THE CHIEF EXECUTIVE OF
ORANGA TAMARIKI -
MINISTRY FOR CHILDREN
Respondent

Member of Authority: Andrew Gane

Representatives: Allan Halse, advocate for the Applicant
Hamish Kynaston and Claudia van Zijl, counsel for the
Respondent

Investigation Meeting: 13-15 November 2023 in Palmerston North
20 December 2023 by AVL

Submissions received and other material: 20 December 2023 from the Applicant
19 January 2024 from the Respondent

Determination: 19 April 2024

DETERMINATION OF THE AUTHORITY

Non-publication order

[1] At the investigation meeting counsel for the Chief Executive of Oranga Tamariki - Ministry for Children (Oranga Tamariki), sought a non-publication order in respect of two matters. Firstly, the identity of a non-party complainant identified in the evidence of Mr Tom Malu, and secondly, the reference to an alleged historical incident in 2010 (which was referred to in the amended statement of problem). I am satisfied it

is appropriate to make an order under clause 10(1) of the second schedule of the Employment Relations Act 2000 (the Act) that any information referencing this information prohibited from publication.

Employment relationship problem

[2] Ms Dahlea Reisima is employed by Oranga Tamariki and has made several claims against it for unjustified disadvantage. Ms Reisima's claims included allegations against Oranga Tamariki of bullying, unjustified actions against her and failing to address her safety concerns.

[3] Throughout her employment, Ms Reisima also alleged Oranga Tamariki had breached its own internal policies (including its Code of Conduct, Disciplinary Policy, Health and Safety Policies and Practices, and Workplace Bullying Harassment Discrimination Guidelines). She also alleged that Oranga Tamariki breached its obligations under the Act, the Health and Safety at Work Act 2015 (the HSW Act) and the State Sector Act 1988.¹

[4] Ms Reisima also sought compensation for hurt and humiliation, as well as reimbursement of sick leave and of legal costs.

[5] Oranga Tamariki opposed several of Ms Reisima's claims on the basis that many of her claims were raised outside the statutory 90-day period.² Oranga Tamariki does not consent to the Ms Reisima raising these grievances out of time. Oranga Tamariki denied Ms Reisima's remaining claims.

The Authority's investigation

[6] I investigated Ms Reisima's claims by receiving written statements and supporting documents from Ms Reisima, Oranga Tamariki colleagues Debbie Waitoa, Sarah Pore, Danelle Walker, and Ray Finucane.

[7] For Oranga Tamariki I received written statements and supporting documents from various team leaders, Matthew Harvey, Tom Malu, Seiuli Fouva'a, William Ropati-Livigisitone, and Michael Moses. Written statements were also provided by

¹ Now repealed by the Public Service Act 2000.

² Employment Relations Act 2000, s 114.

Toni O'Rourke, residential services quality lead and Thomas Zimmerman, manager of residence operations.

[8] All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral closing submissions.

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

The issues

[10] The issues requiring investigation and determination were:

- (a) Whether Ms Reisima raised her personal grievances against Oranga Tamariki in accordance with s 114 of the Act?
- (b) If grievances were raised in time, was Ms Reisima disadvantaged by Oranga Tamariki's unjustifiable actions?
- (c) If Oranga Tamariki's actions were not justified what remedies should be awarded, considering compensation under s 123(1)(c)(i) of the Act?
- (d) If any remedies are awarded, should they be reduced (under s 124 of the Act) for blameworthy conduct by Ms Reisima that contributed to the situation giving rise to the grievance?
- (e) Should either party contribute to the costs of representation of the other party?

Background

[11] Ms Reisima was employed by Oranga Tamariki on 23 February 2007 at Te Au rere a te Tonga Youth Justice Residence in Palmerston North (the residence). She was initially employed on a casual basis but was employed as a permanent Residential Youth Worker on 22 November 2012.

[12] Ms Reisima is employed under the "Oranga Tamariki - Ministry for Children and PSA Collective Employment Agreement" dated 2 December 2018 – 30 June 2021 (CEA).

[13] Throughout her employment Ms Reisima has made several formal and informal complaints about staff failing to follow proper policies and procedure. She also made

complaints about how she had been discriminated and bullied by senior management. She described the workplace culture fostered by management as toxic and claimed she was constantly undermined, disrespected and humiliated during her employment.

[14] Since 2020 Ms Reisima had raised a number of significant claims against Oranga Tamariki:

- (a) On 9 September 2020 Ms Reisima raised a personal grievance against Oranga Tamariki (first personal grievance). Her personal grievance arose from how Oranga Tamariki addressed a complaint against her by the Napier District Court (Napier Court incident).
- (b) On 21 January 2021 Ms Reisima was involved in a non-work related motor vehicle accident (Ms Reisima's accident) and was diagnosed with whiplash and concussion. Ms Reisima has since raised concerns about how her return to work was managed by Oranga Tamariki.
- (c) On 28 April 2021 Ms Reisima raised a second personal grievance against Oranga Tamariki in relation to about an incident involving Mr Malu in 2010 (second personal grievance).
- (d) On 15 April 2022 Ms Reisima raised a third personal grievance against Oranga Tamariki, alleging she had been subjected to bullying behaviour by members of the management team (third personal grievance).

[15] On 9 December 2022 Ms Reisima lodged a statement of problem in the Authority setting out an employment relationship problem with Oranga Tamariki based on her personal grievances for unjustified action causing disadvantage. She later lodged an amended statement of problem on 6 July 2023 (amended statement of problem).

Whether Ms Reisima raised her personal grievances against Oranga Tamariki in accordance with s 114 of the Act?

Legal principles

[16] Section 114(1) of the Act requires an employee wishing to raise a personal grievance to do so within 90 days of the date the action alleged to amount to a personal grievance occurred or came to the notice of the employee.

[17] What is required in terms of the raising of a personal grievance is dealt with at s 114(2) of the Act, which provides as follows:

(2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

[18] There are several principles relevant to whether a personal grievance has been raised in accordance with the Act. I summarise them as follows:³

- (a) The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing, and there is no particular formulation of words that must be used.
- (b) Whether a grievance has been raised for the purposes of s 114(2) is to be objectively determined having regard to the facts of each case. The test is, “Whether to an objective observer the communication was sufficient to elicit a response from the employer”.
- (c) There is no requirement that the grievance be raised in writing, and it may be established by a “totality of communications”.
- (d) The level of detail required is not such as would be required in, for example, a statement of problem.
- (e) The substance of the grievance must be made clear, but an employee is not required to specify the type of relief sought.
- (f) Merely advising an employer that the employee has a personal grievance or specifying the statutory type of grievance without more detail, will be insufficient.

³ *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2009] NZEmpC 35, at [36] to [38]; *Idea Services Ltd (in statutory management) v Barker* (2013) 10 NZELR 262, at [39] and [41]; *Goodall v Marigny (NZ) Ltd* [2000] 2 ERNZ 30; *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] 1 ERNZ 139; *Creedy v Commissioner of Police* [2006] 1 ERNZ 517.

Grievances out of time

[19] Ms Reisima's claims before the Authority for investigation are set out through her three personal grievances, her amended statement of problem and her witness statement filed with the Authority on 13 July 2023. A number of her personal grievance claims are historical and fall outside the statutory time limit to be raised under the Act. I will deal with these claims briefly outlining the issue and why each claim is out of time.⁴

[20] Several of Ms Reisima's claims arose from her third personal grievance raised on 15 April 2022 where she claims:

- (a) She was constantly ignored and that management dismissed or trivialised her ideas and undermined her. Ms Reisima referred to an incident in April 2020 where a young person was admitted into secure care. There was no record of her raising concerns about this with Oranga Tamariki.
- (b) Oranga Tamariki management fabricated concerns against her. She said the matters occurred in 2016 and she was accused of intentionally missing a scheduled work-related flight, claimed time off in lieu (she was not entitled to) and drove a work vehicle without permission.
- (c) She was excluded from activities related to her role. Ms Reisima stated she was excluded from the Christmas family fun day in December 2018.
- (d) Orangi Tamariki made it difficult for her to apply for leave in 2016 when she applied for urgent family leave, domestic leave and in 2018, study leave.

[21] There was insufficient evidence to show Ms Reisima had raised these claims within the 90-day time period. Given these claims were raised on 15 April 2022 and 29 April 2022, each claim is well outside the required timeframe.⁵

[22] In her letter of 29 April 2021 Ms Reisima also raised a historical claim against Mr Malu. This is the second personal grievance. There is no evidence to show that Ms

⁴ Employment Relations Act, s 114.

⁵ Employment Relations Act 2000, s 114.

Reisima raised a personal grievance before the letter of 29 April 2021. The claim raised by the 29 April 2021 letter was 11 years old and is also out of time under the Act.

Conclusions on Ms Reisima's grievances being raised in time

[23] My decisions above mean there are some claims that I do have jurisdiction to consider. These are the first personal grievance and some of the third personal grievance.

[24] Ms Reisima, through her advocate, submitted that the Authority has a discretion to accept evidence of unjustified actions such as bullying being complained of outside the 90-day period as the alleged unjustified disadvantages are not finite but are ongoing and continuing.

[25] The suggestion is that the nature of bullying and the harm it causes, deserves that complaints about that form of conduct should be exempt from the requirement to raise grievances inside 90 days. However, that view is not supported by the wording of s 114 of the Act. The discretion the Authority does have is in relation to granting leave to raise a grievance out of time. No application for leave has been made by Ms Reisima. Accordingly, the Authority does not have jurisdiction to investigate Ms Reisima's claims made outside the 90-day period.

Unjustified disadvantage

[26] An unjustifiable disadvantage personal grievance is set out in s 103(1)(3) of the Act which states that an employee may have a personal grievance if the employee's employment or one or more conditions of their employment have been affected to the employee's disadvantage and by some unjustifiable action by the employer.

[27] The employee needs to establish that their employment conditions had been affected to their disadvantage. The employer then needs to demonstrate that their actions were that of a fair and reasonable employer could have done in the circumstances at the time the action occurred.

Was Ms Reisima unjustifiably disadvantaged by Oranga Tamariki's actions?

The nature of Ms Reisima's claims

[28] Ms Reisima's personal grievance that she was unjustifiably disadvantaged by Oranga Tamariki is made up of approximately 40 separate smaller claims regarding workplace incidents spanning over a decade.

[29] The culmination of these claims, she submits, is that Oranga Tamariki has repeatedly failed to address workplace hazards and failed to act on her health and safety related complaints/grievances and complaints/grievances over a lack of training and systems and procedures governing her personal safety. This has caused her severe distress and anxiety.

[30] To be concise I have merged and summarised a number of similar claims and shall now determine Ms Reisima's claims as set out below.

Napier Court incident (the first personal grievance)

[31] On 11 June 2020 Ms Reisima had escorted a young person in court and had spoken to the court on his behalf. A worker from the Napier Court had advised Oranga Tamariki that Ms Reisima had interfered with the court process. The complaint was that Ms Reisima had spoken to the Judge when she did not have authority to and had not been invited to speak.

[32] On returning to work the next day, Ms Reisima's reporting team leader Mr Fouva'a called her into a meeting. Other senior managers were also attending the meeting, acting residential manager Mr Malu and team leader Mr Ropati-Livigisitone. She was not given prior warning about the meeting. Ms Reisima asked whether she could bring a support person, but was told this would not be necessary.

[33] Ms Reisima was told there had been a complaint from the Napier Court. She had not been given any description of the nature of the complaint prior to the meeting. She alleged that Mr Malu accused her of single handedly ruining the relationship between the Napier Court and Oranga Tamariki and that she could very well lose her job through this situation. Mr Malu denied saying this.

[34] Ms Reisima felt she had no opportunity to respond to this complaint and was given no further description of the nature of the complaint.

[35] Mr Malu said he outlined the expectations of Ms Reisima when at the Court, and in particular the need to not speak unless spoken to by the Judge. Ms Reisima acknowledged she had done this and explained why she had spoken up.

[36] At the closure of the meeting Mr Malu told Ms Reisima that she would not do Court escorts until he was satisfied that Ms Reisima understood the issue and what was expected in terms of her role and proper court etiquette. In his view this was not a sanction, but intended to safeguard Ms Reisima.

[37] In response to my questioning at the Investigation Meeting, Mr Malu accepted that he had "predetermined" the decision to take Ms Reisima off escorts before meeting with her.

[38] Oranga Tamariki submitted the process and decision were not disciplinary and were solely about keeping Ms Reisima safe and away from the Court. In doing so, Mr Malu was protecting both Oranga Tamariki and Ms Reisima.

[39] Oranga Tamariki submitted that the low-level approach Mr Malu had taken was consistent with clause 8.1 of the CEA, including the commitment to resolve issues at the lowest possible level minimising any negative impact on those involved. It was also consistent with Oranga Tamariki's Disciplinary Policy.

[40] Following the meeting, Ms Reisima provided a written response, and accepted responsibility for what occurred and apologised for any offence she caused.

[41] Oranga Tamariki submitted that it acted justifiably, and that she was not disadvantaged materially.

[42] I disagree. This was not a low level or reasonable process. I find that from Ms Reisima's point of view she was subject to an unfair disciplinary process. She was given no forewarning of the meeting with three members of senior management, she did not have a support person and the outcome of the meeting was predetermined. Ms Reisima was sanctioned in that she was taken off the escort duties.

[43] I find that Ms Reisima was unjustifiably disadvantaged by Oranga Tamariki's investigation process into the complaint.

The 31 July 2020 email

[44] On 31 July 2020, Ms Reisima emailed Mr Fouva'a saying that she was being singled out and treated differently from her peers. In response Mr Fouva'a suggested they meet in person to talk about her concern, however, Ms Reisima did not raise this with Mr Fouva'a again.

[45] Mr Fouva'a attempted to resolve the concern but did not hear back from Ms Reisima. Ms Reisima suffered no disadvantage and Mr Fouva'a acted justifiably.

Ms Reisima's accident

[46] After Ms Reisima's accident in January 2021, a return to work plan for Ms Reisima was developed in consultation with and agreement from Ms Reisima and her occupational therapists. The first return to work plan meeting was held 4 May 2021 with Ms Reisima, Mr Zimmerman, and Ms Tasha Shemwell the occupational therapist. At the meetings they would discuss whether the work duties put in place were feasible and achievable for Ms Reisima.

[47] Ms Reisima claimed that the return to work plan implemented by Oranga Tamariki included unnecessary and additional tasks. She claims that her input was ignored and left out of the development of her return to work plans. She also said Oranga Tamariki unreasonably instructed Ms Reisima to not engage with young people.

[48] Oranga Tamariki provided email evidence of an example of Ms Reisima's feedback on the return to work plan provided by Ms Shemwell of 5 May 2021. This feedback was taken into account with the return to work plan being amended on 7 May 2021 to include tasks that Ms Reisima believed would be more suitable for her.

[49] During ongoing work meetings between Ms Reisima, Ms Shemwell and Oranga Tamariki management they continued to discuss the tasks Ms Reisima would complete during her return to work plan, and only if it was agreed to by all of them would it be put into the plan.

[50] Ms Reisima claimed the return to work plans were developed to humiliate or demean her. Oranga Tamariki disagreed and submitted that the plans were developed with Ms Reisima's safety at the forefront of Oranga Tamariki's thinking. Mr

Zimmerman and Mr Moses stated they were trying to help Ms Reisima return to her full duties as Oranga Tamariki wanted her to succeed.

[51] Ms Reisima also claimed that “due to management not adhering to the return to work plans, and assigning her duties she was not ready to undertake” the return to work plans took Ms Reisima 10 to 12 months to complete. Mr Moses said the delay was due to Ms Reisima being unable to complete the plans based on the medical advice she was providing Oranga Tamariki.

[52] There is no evidence that the return to work plans were developed to humiliate and demean Ms Reisima. I find that Ms Reisima was not unjustifiably disadvantaged by Oranga Tamariki’s actions in implementing a return to work plan after Ms Reisima’s accident.

Removal of paid sick leave

[53] Ms Reisima claims that she was unjustifiably disadvantaged when Oranga Tamariki unjustly removed her access to paid sick leave.

[54] Oranga Tamariki submitted that Ms Reisima's use of sick leave was correctly managed in accordance with clauses 5.7 and 5.10 of the CEA. Clause 5.9 provides that paid sick leave is managed and can be removed after due consideration and consultation.

[55] Ms Reisima was over her 10-day entitlement to paid sick leave from her anniversary date of 23 February 2021 until 30 November 2021 when she was on a graduated return to work plan. On 23 December 2021 Mr Moses met with Ms Reisima asking her to provide a medical consent form so he would have more medical information about her condition, when deciding whether she should continue to be able to receive further paid sick leave. Ms Reisima declined to give consent.

[56] On 5 January 2022 Mr Moses wrote to Ms Reisima inviting her to a meeting to discuss whether it was appropriate for her to continue to receive sick leave on a paid or unpaid basis. He also wanted to discuss information in relation to her health. Ms Reisima did not respond and further attempts to engage with Ms Reisima were unsuccessful.

[57] Mr Moses contacted Ms Reisima on Tuesday 25 January 2022, advising that as she was over her contractual entitlement, and she had not provided any further information regarding her medical condition, he was declining her further paid sick leave.

[58] I find that Oranga Tamariki administered Ms Reisima's sick leave in accordance with the provisions of the CEA. I also accept Oranga Tamariki made reasonable attempts to understand Ms Reisima's circumstances and whether it was possible to grant her further paid sick leave. Ms Reisima was not unjustifiably disadvantaged by Oranga Tamariki's actions.

Annual leave in January 2022

[59] Ms Reisima claimed in her letter of 15 April 2022 Oranga Tamariki unfairly managed her leave during her return to work plan. This concerned Ms Reisima being declined leave from 25 to 31 January 2022, as Oranga Tamariki's view was that it was in the best interests of Ms Reisima for her to complete her final four week return to work plan within the agreed timeframe.

[60] In the circumstances of needing to complete the agreed return to work plan I find Oranga Tamariki was justified in declining Ms Reisima's leave. Ms Reisima was not unjustifiably disadvantaged by Oranga Tamariki's actions.

Phone Incident in May 2023

[61] Ms Reisima claims that Oranga Tamariki unjustifiably disadvantaged her by commencing a disciplinary process when Ms Reisima gave a young person her phone.

[62] In 2023 Oranga Tamariki wanted to limit client access to cellular phones. On 28 April 2023 Parani Wiki, the General Manager Residential Services, sent a staff email prohibiting staff from taking such devices to operational areas of the facility.

[63] On 8 May 2023 Ms Reisima gave a young person use of her cellular phone. The matter was brought to the attention of Oranga Tamariki management. On 11 May 2023, Mr Zimmerman wrote to Ms Reisima requesting a meeting with Mr Kuiti on 17 May 2023 to provide Ms Reisima with an opportunity to discuss the incident and why it had happened.

[64] Mr Kuiti met with Ms Reisima, on 17 May 2023. When questioned on the matter Ms Reisima agreed that she should not have given the phone to the young person. Mr Kuiti advised Ms Reisima that as a result of the meeting she would be issued a letter of expectation which she accepted.

[65] On 18 May 2023, Ms Reisima received a letter of expectation. Ms Reisima believed the matter could have been dealt with through a less formal process,

[66] I find Oranga Tamariki acted justifiably and dealt with the matter in an appropriate way. Ms Reisima was not unjustifiably disadvantaged.

Privacy of a young person

[67] On 23 September 2020 there was an incident involving Ms Reisima assisting a distressed young person in a shower. On 28 September 2020 Mr Zimmerman invited Ms Reisima to a meeting to discuss what happened. Ms Reisima declined the meeting and provided a written response on 3 December 2020. After reviewing the matter Mr Zimmerman was satisfied that the young person's privacy had not been breached and no further action was taken. I do not find Ms Reisima was unjustifiably disadvantaged by the investigation process.

Human resources involvement

[68] In her letter of 15 April 2022 Ms Reisima alleged Oranga Tamariki attempted to undermine her employment relation by threatening to involve human resources (HR) when engaging with her. She did not refer to any specific examples. Oranga Tamariki denied threatening Ms Reisima but agreed that managers did sometimes consult with HR on employment issues.

[69] It is the role of HR to assist management in employment issues as they are specialists in employment practices. I do not find management taking advice from HR on an employment issue is an unjustifiable action.

Request of medical certificates

[70] Ms Reisima claimed in her letter of 15 April 2022 that Oranga Tamariki unreasonably required her to present medical certificates. She did not give evidence of when this occurred.

[71] The CEA has provision for Oranga Tamariki to request medical certificates and for the reimbursement of the cost of obtaining a medical certificate. I do not find management requesting medical certificates under the CEA is an unjustifiable action.

Breach of privacy

[72] Ms Reisima claimed in her letter of 15 April 2022 that Oranga Tamariki breached her privacy by sharing her medical certificate with management and administration staff.

[73] Oranga Tamariki submitted that the sharing of her medical certificate was limited to management and staff on a need to know basis for implementing the return to work plan.

[74] In the circumstances of implementing the return to work plan I do not find sharing of the medical information on a need to know basis is an unjustifiable action.

Medical Retirement

[75] Ms Reisima claimed in amended statement of problem that Oranga Tamariki was undertaking a medical retirement process to terminate her employment. There was no evidence of Oranga Tamariki initiating a medical retirement process under the CEA.

[76] Oranga Tamariki submitted it did request medical certificates but that these were for her return to work plan. Ms Reisima's claim that she was disadvantaged cannot be substantiated.

Union support

[77] Ms Reisima claimed in the amended statement of problem that Mr Kuiti resented her being represented by her union and would not communicate with her representative. Mr Kuiti denied the claim. Ms Reisima did not provide any evidence of examples of Mr Kuiti's failure to communicate.

[78] Ms Reisima also claimed in her letter of 15 April 2022 that Mr Zimmerman was offensive and used intimidating body language at a meeting with the PSA. Mr Zimmerman denies this.

[79] Ms Reisima never raised this issue at the time of the meeting with her representative and there is no further evidence to support the allegation.

[80] Ms Reisima's contention that she was disadvantaged in regard to the above claims cannot be substantiated.

Negative culture towards Ms Reisima

[81] Ms Reisima alleged managers had created a negative culture towards her. Ms Reisima's witnesses did state they had heard other employees talking about her in a negative way.

[82] There was no evidence of such behaviour being brought to the attention of management or whether management was aware of these allegations. Oranga Tamariki denied creating a negative culture towards Ms Reisima.

[83] The evidence did not substantiate this allegation that Oranga Tamariki management had created a negative culture towards Ms Reisima.

Health and Safety at Work Act 2015

[84] Ms Reisima alleges that Oranga Tamariki failed to provide her a safe working environment. Ms Reisima alleges that she has a personal grievance under section 110A of the Act which links into the HSW Act being a person who is discriminated for a reason described in section 89 of the HSW Act.⁶

[85] Ms Reisima has not identified any prohibited health and safety reason under the legislation, and after reviewing the provision I find it does not apply in this instance. Ms Reisima's claim that she was disadvantaged cannot be substantiated.

Non-compliance with various policies and legislation

[86] Ms Reisima alleges that Oranga Tamariki has breached various internal policies and legislation (see paragraph [4]). Unfortunately Ms Reisima failed to identify in her evidence and submissions which parts of the legislation and what internal policies have been breached. I am therefore unable to make a finding in regard to this claim.

⁶ Employment Relations Act, s110A(1)(j)

Allegations of bullying behaviour

[87] In the 15 April 2022 letter Ms Reisima raised allegations of bullying and punitive behaviour by management since 2010. In her evidence Ms Reisima has made generic allegations of bullying. She stated that some of her allegations of bullying behaviour had been witnessed by her colleagues.

[88] Oranga Tamariki replied to Ms Reisima's letter suggesting a facilitated restorative meeting where issues could be resolved without a formal investigation. Ms Reisima's representative responded saying he would contact Oranga Tamariki to discuss a way forward. At the time of the investigation meeting the proposed meeting had not progressed.

[89] The question of whether actions amount to bullying turns on the definition of bullying. The definition adopted by WorkSafe New Zealand is not controversial. At its simplest bullying is about behaviour that:

- (a) Is repeated and unreasonable.
- (b) Is directed at a worker (or group of workers).
- (c) Can lead to physical or psychological harm.

[90] There is no doubt that Ms Reisima signalled her concerns about workplace behaviour at the residence to Oranga Tamariki. This is exemplified by the many claims Ms Reisima has raised over the years in this matter. I understand Ms Reisima feels she is victim of bullying and is frustrated by the delays in completing her return to work plan.

[91] The evidence heard does not substantiate Ms Reisima's claim that she was subjected to bullying behaviour by Oranga Tamariki management. I do not find Ms Reisima unjustifiably disadvantaged by Oranga Tamariki's actions.

[92] Ms Reisima made a number of other general claims against Oranga Tamariki for unjustified disadvantage. No finding is made in respect of these claims on the basis that they could not be substantiated on evidential grounds. These claims against Oranga Tamariki include claims relating to:

- (a) Favouritism in allocating escort duties.

- (b) Nepotism in Oranga Tamariki's recruitment practices
- (c) Ms Reisima being excluded from staff communications.
- (d) Lack of communication from Mr Fouva'a to Ms Reisima.
- (e) Ms Reisima being excluded from training opportunities.
- (f) Ms Reisima being excluded from escort team meeting.
- (g) Unfair reimbursement by Oranga Tamariki of Ms Reisima's expenses.

Conclusion

[93] Oranga Tamariki acted in an unjustified manner toward Ms Reisima in regard to its investigation of the Napier Court incident and this caused disadvantage to her employment.

Remedies for a personal grievance

[94] Having determined Ms Reisima was unjustifiably disadvantaged she is entitled to an award for compensation pursuant for the humiliation, loss of dignity and injury to feelings that she suffered because of Oranga Tamariki's unjustified actions.⁷

[95] Assessing this compensation involves assessing the harm caused to Ms Reisima by the unjustified actions and the loss she suffered as a result, which I must then quantify.⁸

[96] Ms Reisima's evidence about the impact of the suspension was that that as a result of investigation process, the level of angst and discomfort she felt was "very difficult to describe".

[97] In terms of where Ms Reisima's harm and loss sits on the range of the quantification of loss this is in line with cases where \$12,000,00 has been awarded. I have assessed the level of harm and loss to Ms Reisima to be \$12,000.00.

[98] As I have awarded remedies to Ms Reisima, I must now consider whether she contributed to the situation that gave rise to her grievance.⁹ I do not accept that Ms Reisima contributed to the way in which Oranga Tamariki carried out the investigation and therefore, there is no contributory behaviour and no reduction in remedies.

⁷ Employment Relations Act 2000, s 123(1)(c).

⁸ *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

⁹ Employment Relations Act, s124.

Order

[99] Oranga Tamariki acted in an unjustified manner causing disadvantage to Ms Reisima. In satisfaction of this grievance, Oranga Tamariki must pay Ms Reisima \$12,000.00 without deduction for compensation pursuant to s 123(1)(c)(i) of the Act

Costs

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

[101] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Reisima may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Oranga Tamariki 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.

[102] 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.¹⁰

Andrew Gane
Member of the Employment Relations Authority

¹⁰ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1