

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Simone Joy Corbett (Applicant)

**AND** Chief Executive of the Department of Corrections (Respondent)

**REPRESENTATIVES** Joan Forret, Counsel for Applicant  
Christina Inglis, Counsel for Respondent

**MEMBER OF AUTHORITY** Ken Anderson

**INVESTIGATION MEETING** 24 June 2005

**SUBMISSIONS RECEIVED** 18 July 2005  
8 August 2005

**DATE OF DETERMINATION** 3 November 2005

**DETERMINATION OF THE AUTHORITY**

**The Employment Relationship Problem**

[1] Ms Corbett was a Corrections Officer at Waikeria Prison (“the Prison”). On 18 January 2005, she was dismissed from her employment on one months’ notice. Ms Corbett says that the dismissal was unjustified and seeks that the Authority find that she has a personal grievance and award her various remedies, including reinstatement.

**Background Facts and Evidence**

[2] Ms Corbett commenced her employment at Waikeria Prison in June 2001. In addition to the matter that led to her dismissal, Ms Corbett has been the subject of two other investigations pertaining to what the Department of Corrections (“the Department”) found to be inappropriate behaviour on her part.

**The first investigation**

[4] In early 2003, an investigation was conducted into the actions of Ms Corbett and another Corrections Officer, Mr William Corbett.<sup>1</sup> The investigation concerned the use of the Waikeria Prison internal email system by the two officers over the period 23 October 2002 to 24 November 2002, for the purpose of promoting an invitation to Ms Corbett’s father, Mr Sonny Anderson, a Kaumatua with Kaiwhakamana status with the Public Prisons Service, to spiritually cleanse and re-bless the Te Ao Marama Unit at the Prison.

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<sup>1</sup> Ms Corbett was not married at that time: Her surname was Anderson.

- [5] The outcome of the investigation was that via a letter dated 3 November 2003, from the Site Manager, Ms Liz Nielsen, Ms Corbett received two specific instructions as follows:

**“You are to cease all activity in the workplace surrounding the re-blessing of the Te Ao Marama Unit”** and;

**“You are to cease all activity in the workplace surrounding the role of Sonny Anderson at Waikeria Prison, and generally within the Department of Corrections.”**<sup>2</sup>

- [6] The letter also conveyed to Ms Corbett that:

“The investigation found that many of the behaviours that were investigated had their origins in advocacy and support for Mr Anderson and it is seen as a necessary safeguard for you and the Department of Corrections that this activity at work and advocacy cease.

It is appreciated that strong family links exist for you and Mr Anderson and this instruction therefore applies to matters that pertain to the personal advocacy of Mr Anderson in the workplace.”

- [7] Ms Corbett was also informed that:

“It is important to note that failure to follow these written instructions may, if proven, constitute a serious misconduct which could result in an employment related warning or dismissal. If you are in doubt that any activity you wish to undertake might compromise the instructions please discuss it with me before undertaking the activity or action.”

### **The second investigation**

- [8] The evidence of Ms Nielsen is that in June 2004, she became aware of concerns relating to alleged telephone contact between Ms Corbett and an inmate between 2 April 2004 and 30 May 2004. A subsequent investigation revealed that Ms Corbett had given the phone numbers of herself and her father to an inmate and that inappropriate direct telephone contact had occurred between the inmate and Ms Corbett on 2 April, 26 April and 30 May 2004.

- [9] The outcome of the investigation and the disciplinary process was that in a letter dated 30 September 2004, it was conveyed to Ms Corbett by Ms Nielsen that:

“You were invited to provide submissions on the proposed disciplinary action by 24 September 2004. In the absence of any submission from you this letter serves as formal confirmation of the written warning.

It is important to understand that any further misconduct of this or any nature could, if proven, result in disciplinary action including dismissal.

As a Corrections Officer you should recognise the vulnerability of people under the Department’s care and control and be clear it is your professional responsibility to maintain appropriate boundaries at all times. You must inform your manager immediately if you are placed in a situation where you cannot comply with this requirement.”

### **The third and final investigation**

- [10] The Manager of the Nikau Unit at the Prison is Ms Jan Taepa. On 5 September 2003, Ms Taepa received a phone call from a Corrections Officer, Ms Christine Griffin. Ms Griffin conveyed a concern about the content of a discussion that had occurred with an inmate and

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<sup>2</sup> Mr William Corbett also received these instructions.

the experience of this person pertaining to her contact with Ms Corbett. [In order to protect the privacy of this inmate, she shall be referred to in this determination as Inmate F.]

- [11] Ms Taepa duly interviewed Inmate F and the discussion confirmed what Ms Griffin had reported. That is, that Inmate F wished to withdraw a request that she had previously made to see the Prison Inspector but she was fearful that there may be some retribution from Ms Corbett. Inmate F told Ms Taepa that she had been instructed by Ms Corbett to complete an interview form in order to see the Prison Inspector. Inmate F also informed Ms Taepa that Ms Corbett had instructed her, that during the interview with the Prison Inspector, she was to question why her spiritual needs were not being met and that Inmate F should be seeing her father, Mr Sonny Anderson, and that he would be able to assist her spiritually. Inmate F also informed Ms Taepa that on a previous occasion, about a month ago, Ms Corbett had requested that Inmate F ask to see her father and that she was trying to get him into the Prison units “but at the moment he was going through a process.”
- [12] The above information and Ms Taepa’s findings, pertaining to the investigation she conducted, are recorded in her report dated 8 September 2004.
- [13] Also on 8 September 2004, during a routine visit to the Nikau Unit, Prison Inspector Ms Ruth Reese interviewed Inmate F and as the result of a complaint made by Inmate F, Ms Reese recorded the following conclusions in a memorandum dated 11 September 2004, to the Prison Manager:
- “9 Inmate [F’s] allegations in respect to the extent of CO Corbett’s influence concerning spiritual matters causes me to have concern about the general well being of all Nikau Unit inmates
- 10 I advised the Unit Manager about the content of inmate [F’s] interview. I received an email on 10 September 2004, advising me that the inmate was to be transferred to MEWP for a time and I consider that it is appropriate for the inmate to be removed from the unit meantime.
- 11 I am of the view that the inmate’s allegations require investigation as they indicate that CO S Corbett might have acted outside of her CO role and responsibilities.
- 12 The inmate’s allegations are:
- CO S Corbett attempted to coerce inmate F into taking spiritual instruction against her wishes
  - CO S Corbett has disclosed personal information about inmate B to her father Mr Anderson.”
- [14] The Regional Manager for the Waikato/Central Region of the Public Prisons Service is Mr Harry Hawthorn. As a result of the information provided by Ms Taepa and Ms Reese, Mr Hawthorn concluded that the matters raised were potentially serious and he instructed an external investigator, Ms Justine O’Connell, to conduct a full investigation into the matters that had come to his attention in regard to Ms Corbett. There was also an additional matter - an allegation that Ms Corbett had been named as executor/beneficiary in the draft will of Inmate M.
- [15] At a meeting on 20 September 2004, Ms Corbett was advised of the allegations and the investigation that was to occur. Following a further meeting on 23 September 2004, Ms Corbett was suspended on full pay pending the outcome of the investigation.

[16] Following a variety of communications from time to time, via a letter from Mr Hawthorn, dated 15 November 2004, Ms Corbett was informed that the investigation had been completed. Mr Hawthorn also conveyed that:

“I have now considered the original allegations, the evidence contained in the report and the conclusions of the investigation officer, Justine O’Connell together with the submissions provided on your behalf by your representative dated 28 October 2004. I have also conducted my own personal enquiries following receipt of your submissions.”

[17] The details and findings pertaining to the allegations against Ms Corbett are set out in Mr Hawthorn’s letter. The matters raised are:<sup>3</sup>

**“Attempted to coerce inmate [F] into taking spiritual instruction against her wishes**

Evidence in the report outlines that a serious misconduct has occurred and that the alleged activities concerned the inmate to such a degree that she became physically ill. ....”

“I do not accept your contention that inmate [F] assertively sought Sonny Anderson’s assistance and evidence indicates that the inmate felt considerable pressure from you in respect to being referred to Mr Anderson.

**Acted inappropriately in a Prison Officer role regarding the interview form 10041573**

While you deny you instructed inmate [F] to see the inspector the evidence of Prison Inspector Ruth Reece, Unit Manager Jan Taepa and the case officer again corroborates the inmate’s account of the situation. The consistent issues raised by the inmate during the investigation had also been raised with the Unit Manager and the Prison Inspector and were:

- You directed the inmate to go straight to the Inspector
- You told an inmate what to say to the inspector – i.e. that her spiritual needs were not being met
- The inmate felt under pressure from you
- She was worried about the consequences of not doing as you asked
- The inmate felt she did not need the support of Mr Anderson as she was getting it from her bible studies.”

**“Failure to comply with the requirements of PPM<sup>4</sup> B 10**

The procedure standard outlined in PPM B 10 requires internal inmate interviews to be dealt with at the lowest level possible and referred through all internal levels possible where necessary for resolution. I am satisfied through the evidence provided in the report and my own enquiries that you fail [sic] to comply in this instance with the policy or with unit process that requires issues to be referred back to the case officer and then to the Principal Correction Officer.

**Failure to comply with a written direction dated 3 November 2003**

I do not accept your view that the Site Manager Instruction dated 3 November 2003 was unlawful and I concur with the findings of the investigation that you failed to comply with that written instruction. Specifically you promoted your father Mr Sonny Anderson as a spiritual advisor to inmate [F] against that written direction of the Site Manager and a serious misconduct has occurred.

It is my view that your actions as outlined in the investigation breached the second principle of the Department of Corrections Code of Conduct which requires you to perform your official duties

<sup>3</sup> For the purpose of this determination, the overall content has been condensed.

<sup>4</sup> Policy and Procedure Manual

honestly, faithfully and efficiently, respecting the rights of the public, colleagues and offenders. Specifically you:

- Failed to comply with all lawful and reasonable instructions and work as directed by the Site Manager and Unit Manager.
- Failed to adhere to your delegations, not exploiting or abusing any power or authority accorded you because of your role.
- Failed to apply the policies and processes outline [sic] in PPM B 10 and the Unit Instruction with inmate issues.”

[18] In regard to the issue of Ms Corbett being named in the draft will of Inmate M, Mr Hawthorn conveyed that no breaches had been found and that the matter required no further investigation and was closed. Ms Corbett received a copy of the report of the investigation and associated documents and she was invited to attend a disciplinary interview on 24 November 2004 and to provide written submissions by 2:00pm on 23 November 2004.

[19] Ms Corbett responded via a letter dated 20 November 2004. She conveyed that:

“As I stated in previous correspondence to both yourself and Justine O’Connell, I view this recent investigation as being undertaken solely with the purpose of my dismissal.”

“Your letter of 15 November has confirmed more than ever, my view that nothing I submit will make any difference to the expected outcome of the so-called ‘independent’ employment investigation.”

[20] Ms Corbett also made a number of “observations” in her letter and concluded by indicating that she would attend a meeting on 24 November 2004. That duly occurred. Subsequently, Mr Hawthorn investigated further a number of matters that Ms Corbett raised and responded in writing on 20 December 2004. Mr Hawthorn also conveyed that having considered all the information available to him his “preliminary decision” was that “the appropriate disciplinary action is dismissal.” Ms Corbett was invited to provide any submissions that she may wish to make regarding the proposed penalty by 11 January 2005. Ms Corbett duly responded in writing on that date.

[21] On 18 January 2005, Mr Hawthorn wrote to Ms Corbett and conveyed that it remained his conclusion that her actions:

[“constitute a breach of the Department of Corrections Code of Conduct identified specifically as:

- Failed to adhere to your delegations, not exploiting or abusing any power or authority accorded you because of your role
- Failed to apply the policies and processes outlined in PPM B. 10 and the Unit Instruction for dealing with inmate issues
- Failed to comply with a lawful and reasonable instruction and work as directed by the Site Manager”

And, that this amounted to serious misconduct. Ms Corbett was notified that her employment was terminated on one months’ notice.

## **Analysis and Conclusions**

[22] Ms Corbett says that her dismissal was unjustified, largely on the alleged grounds that her employer consciously set out to remove her from her employment. In particular, Ms Corbett appears to believe that her Unit Manager, Ms Taepa, embarked on something of a “witch hunt” in order to obtain a dismissal. Effectively, Ms Corbett seeks to have the Authority re-open the investigation that her employer conducted, but that is not the role of the Authority. Neither is it the role of the Authority to place itself in the shoes of the employer in regard to

its analysis of the information received, as a result of a properly conducted investigation into the alleged conduct of Ms Corbett. As the Employment Court has stated:

“A personal grievance is not an appeal to the Employment Relations Authority from the employer’s findings of fact but is an inquiry into the question whether the employer actually believed, and did so on reasonable grounds following a fair inquiry, that the employee had been guilty of misconduct so serious that it warranted dismissal. In reaching conclusions, an employer is entitled to draw reasonable inferences from surrounding or circumstantial facts and it is not a valid objection that such inferences may not have been the subject of direct proof. The employer is also entitled, where there are conflicting accounts, to choose between them, either preferring one to another or rejecting one and accepting the other.” *Chief Executive of the Ministry of Maori Development v Travers-Jones* [2003] 1 ERNZ 174 at 184.

- [23] Furthermore, it is not for the Authority to substitute its decision to dismiss, or not, for that of the Department. Rather, the role of the Authority is to determine whether the Department’s decision was a fair and reasonable one in the circumstances.<sup>5</sup>
- [24] I conclude that the Department conducted a careful and proper investigation into the alleged misconduct of Ms Corbett and that at all times the various findings of that investigation were put to Ms Corbett for her response. Then, having acknowledged her response, further investigation into the matters she raised took place and the findings of the Department were communicated to Ms Corbett and her representative. Indeed, the investigation took place over a substantial period of time – more than 3 months, and was both thorough and fair.
- [25] In determining whether the decision of the Department to dismiss Ms Corbett was a fair and reasonable one in the circumstances, I have taken into account the submissions advanced for her. Firstly, Ms Corbett says that PPM B. 10 requires that complaints are dealt with at the lowest level in the first instance and escalated according to the results of initial investigations, and that the last two investigations into her conduct were not conducted according to the Code of Conduct.
- [26] Unfortunately, Ms Corbett appears to have failed to understand that PPM B. 10 relates entirely to “*Inmate Interviews and Complaints*.” The procedure has nothing to do with investigations into possible employee misconduct. That misunderstanding on the part of Ms Corbett perhaps goes to the nub of why Ms Corbett found herself facing the circumstances that arose. While the procedure is clear about inmate interview requests, Ms Corbett choose to ignore and/or circumvent the recognised procedures and encouraged Inmate F to make a direct request for an interview with the Prisons Inspector, apparently for the specific purpose of obtaining spiritual assistance from Ms Corbett’s father. This was despite the fact that she had received a specific written instruction on 3 November 2003 that she was to: [“cease all activity in the workplace surrounding the role of Sonny Anderson at Waikeria Prison and generally within the Department of Corrections.”
- [27] In regard to Ms Corbett’s submission that the investigations were not conducted according to the Code of Conduct, in addition to the fact that there is no evidence that Ms Corbett took any issue with the outcome of the first two investigations concerning her previous conduct, I can find no fault in the manner in which the Department conducted the third investigation into Ms Corbett’s conduct. On the contrary, I find that the Department adhered to the requirements of the Code of Conduct in an exacting manner and also accorded to Ms Corbett a high standard of fairness and reasonableness.

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<sup>5</sup> *BP Oil NZ Ltd v Northern Distribution Union* [1992] 3 ERNZ 483 (CA). Also see section 103A Employment Relations Amendment Act (No 2) 2004.

[28] Ms Corbett also says that dismissal was a disproportionate punishment and this was not an action open to a fair and reasonable employer.

Given the overall evidence, I am unable to find any merit in that submission, particularly given that Ms Corbett was on notice as of 3 November 2003, that a failure to follow the instructions then given, could result in her dismissal. Regrettably, Ms Corbett has a history of inappropriate behaviour in regard to her responsibilities as a Corrections Officer and despite being given previous warnings as to the consequences of repeating such behaviour; Ms Corbett failed to heed the warnings and left her employer with no option but to terminate her employment.

## **Determination**

[29] On the basis of the considerable evidence presented, I find that the dismissal of Ms Corbett was what a fair and reasonable employer would have done in all the circumstances at the time and that the dismissal was justified. Ms Corbett does not have a personal grievance and hence the remedies that she seeks are not available to her.

## **Costs**

[30] Costs are reserved. The parties are invited to reach a resolution of this matter. In the event that a resolution is not achieved, submissions may be made to the Authority for an order, within 28 days of the date of this determination.

**Ken Anderson**  
**Member**  
**Employment Relations Authority**