

Attention is drawn to the order prohibiting publication of certain information in this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 74A/08
5099026

BETWEEN

GLENARR HUNTLEY
Applicant

AND

MAATAA WAKA KI TE TAU
IHU TRUST
Respondent

Member of Authority: Helen Doyle

Representatives: Kay Stringleman, Advocate for Applicant
Brian Fletcher, Counsel for Respondent

Investigation Meeting: 13 and 14 March 2008 at Blenheim

Determination: 30 June 2008

DETERMINATION OF THE AUTHORITY

Identity of respondent

[1] The respondent named in the statement of problem lodged with the Authority is Maataa Waka Ki Wairau Incorporated. During a telephone conference on 10 March 2008 with the Authority and Ms Stringleman, Mr Fletcher advised that the incorporated society no longer exists and that its successor, Maataa Waka Ki Te Tau Ihu Trust, a charitable trust, should be the respondent. Mr Fletcher confirmed the Trust assumes the responsibility of Ms Huntley's employer.

[2] By consent, the name of the respondent is Maataa Waka Ki Te Tau Ihu Trust. I shall refer to the respondent from hereon as Maataa Waka.

Prohibition from publication

[3] On 28 May 2008 I made an interim order prohibiting from publication all of the internet material and any information from the internet material that was downloaded about X, who was an employee who worked at Maataa Waka during the material time and any material that may identify X. I make that interim order permanent and prohibit from publication the identity of X and all of the internet material and any information from the internet material that was downloaded about X.

The employment relationship problem

[4] The applicant, Glenarr Huntley commenced employment with Maataa Waka in June 2000 as a general receptionist and then her role moved into animal control work.

[5] Ms Huntley says that the problem she wishes the Authority to resolve is that she was unjustifiably dismissed from her employment with Maataa Waka on 24 July 2007.

[6] Maataa Waka is a Maori health organisation based in Blenheim. It manages a number of contracts, including animal control and registration under contract to the Marlborough District Council. Ms Huntley was employed at the material time to carry out administrative functions in terms of that animal control and registration contract.

[7] Ms Huntley seeks a finding that she was unjustifiably dismissed from her employment with Maataa Waka, an order reinstating her into her previous position, an award in terms of lost wages and lost benefits with respect to parental leave payments, an award of compensation for humiliation and loss of dignity, and costs.

[8] The General Manager at the material time was Faye Ripeka Houkamau. Ms Houkamau was appointed as General Manager on 29 October 2005. The previous manager at Maataa Waka died in June 2005 and the department had been managed until Ms Houkamau's appointment by interim managers. Ms Houkamau has since resigned from her position at Maataa Waka.

[9] Maataa Waka say that Ms Huntley was justifiably dismissed for actions that amount to serious misconduct and the trust and confidence that Ms Houkamau and the

Board needed to have in Ms Huntley was completely destroyed at the time of dismissal. Maataa Waka also say there was incompatibility between Ms Huntley and other employees and performance concerns.

The test for justification

[10] Section 103A of the Employment Relations Act 2000 sets out the new test for justification. The Authority under section 103A must consider justification objectively. Objective may be likened to “dispassionate” or “disinterested” as opposed to how the affected employee or employer may have considered justification. It is the employer’s conduct that is the focus of the objective inquiry. It is necessary to consider the actions of the employer in terms of the substantive dismissal, and how the employer acted in the process leading to that outcome – *X v Auckland District Health Board* [2007] 1 ERNZ 66.

[11] The Authority must be satisfied that what the employer did and how the employer acted were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurs.

The employment agreement

[12] The Authority was provided with an individual employment agreement between Maataa Waka and Ms Huntley which was signed on 24 October 2000 and the collective employment agreement between Maataa Waka Ki Te Tau Ihu Trust and the Central Amalgamated Workers Union of New Zealand (“the Union”) for the period 1 April 2007 to 31 March 2009. Ms Huntley was a member of the Union and her work was covered by the coverage provision of the collective agreement. Whilst the collective agreement had not been signed by both parties, it was agreed that the provisions of that document had been applied from on or about 1 April 2007.

[13] There was no specific procedure in the event of any disciplinary action set out in either the individual or the collective agreement.

The disciplinary process

[14] Ms Huntley was given a letter dated 18 July 2007 which contained a number of allegations. She was told to take paid leave to consider the allegations and what her responses were to them. The letter provided that there was to be a meeting on

Friday, 20 July 2007. Ms Huntley was advised that an outcome of the meeting may be termination of her employment and that she should bring a support person.

[15] I have attached a copy of that letter to this determination as appendix 1, replacing the employee's name with an "X".

[16] Steve McManus, a Union organiser, became aware that the three Union members at Maataa Waka had all received letters containing allegations that they were required to answer. The other two members of the Union were Colin Thompson and Jonathon Joseph. The Authority has also investigated their personal grievances that they have been unjustifiably dismissed from Maataa Waka. I investigated all three employment relationship problems separately, but have issued all three determinations at the same time.

[17] Mr McManus was unable to attend the meeting on 20 July 2007 and he felt that more time was needed to answer the allegations. Mr McManus suggested other meeting dates and eventually a date was fixed for 23 July 2007.

[18] Before the meeting and arrangement of the new date, Ms Houkamau sent Mr McManus a letter along the lines that Maataa Waka has proceeded to determine the matter on the information the organisation had at present and that if there were any other matters the employees wanted to put forward then they were required to be provided by 2pm on 23 July 2007.

[19] There could have been unfairness if Ms Houkamau had not changed the date to accommodate Mr McManus. Ms Houkamau did however agree that a meeting would proceed on 23 July 2007 and any unfairness in that respect was therefore averted.

[20] Between 18 July and 23 July 2007 Mr Thompson and Mr Joseph who were also on paid leave to answer allegations in letters given to them, distributed some material that had been obtained by them from the internet and downloaded about another employee X, to Ms Houkamau, members of the Board of Maataa Waka and the Marlborough District Council. Attached to the copies of the internet material about X was a distribution list which had the names of all the Board members, Ms Houkamau, the local Member of Parliament, the District Health Board, the Mayor and Garth Congdon from the Marlborough District Council.

[21] The meeting on 23 July 2007 was attended by John Drummond, Advocate for Maataa Waka, Ms Houkamau, Ms Huntley, Mr Joseph, Mr Thompson, Mr McManus and Kore Tombs who was there as a supporter. Mike Porter attended to take the minutes of the meeting. The notes of the meeting are quite brief because only the procedure is set out and not specifically what was said by Ms Huntley about the allegations.

[22] Mr Drummond gave Ms Huntley, Mr Joseph and Mr Thompson the option of discussing the matters individually or collectively. Maataa Waka had certainly intended that there be three separate meetings initially. Mr McManus advised that all three of his members were happy with a collective response.

[23] There was an understanding reached that each employee would make their individual response to the allegations in the letter that they had received.

[24] Ms Huntley read from prepared notes which she provided as part of her evidence at the Authority meeting. There was criticism by Ms Huntley in terms of the process adopted. This was because Ms Houkamau and Mr Drummond essentially listened to Ms Huntley's explanation without comment.

[25] In short, Ms Huntley denied all the allegations. She said that she did not consider she was responsible for the performance concerns in terms of the contract with the Council and the allegation that Kerry, X and Ms Houkamau resigned or were resigning because of her and/or her actions was absurd and unfair.

[26] Ms Huntley was questioned about the downloaded internet material that was distributed about X. The notes taken by the minute taker at the meeting on 23 July 2007 do not reflect what Ms Huntley said about the internet material. Ms Huntley said in her evidence that she told Mr Drummond that she knew the material was to be given to Ms Houkamau and the members of the Board and that she supported that. Ms Houkamau and Mr Drummond said in their evidence at the Authority investigation meeting that they believed Ms Huntley by her explanation at the disciplinary meeting knew about circulation or intended circulation in terms of the other agencies and supported that. Ms Houkamau concluded that Ms Huntley had not read all the internet material.

[27] Shortly before the disciplinary meeting closed it was agreed that some questions Ms Huntley had were to be put in writing and given to Mr Drummond and

Ms Houkamau before the meeting they were having with the Maataa Waka Board that afternoon.

[28] Mr McManus asked that all three employees be allowed to address the Board directly. It was explained that Ms Houkamau had the authority to make a decision.

[29] A letter was sent on 23 July 2007 to Mr McManus' office which he found when he returned from the disciplinary meeting. The letter was from the Board Chairperson, Lewis Boyles. The letter confirmed that the request to meet with the Board had been declined. The letter further provided that the Board had been kept well informed of the issues relating to the matter and fully supported the process of action by the manager to date.

[30] Ms Huntley provided some written questions to Ms Houkamau to take to the Board. She said she was operating under time pressures to get them to Ms Houkamau before the Board meeting on the afternoon of 23 July 2007.

[31] Ms Houkamau said that she consulted with the Board at the meeting later in the day on 23 July 2007 and at that time considered the questions from Ms Huntley.

[32] Ms Houkamau said in her evidence that the matters concerning the distribution of material about X were so serious that it outweighed the need to give a response. Ms Houkamau said that she thought Ms Huntley should have advised Mr Thompson and Mr Joseph to limit the distribution of the internet material to her and the Board, or have made it quite clear that she did not want to be a part of the distribution.

[33] X was at that time on stress leave for reasons that she said were related to her treatment by Ms Huntley and others. Ms Houkamau said that at that time the working relationship between X and Ms Huntley had hit rock bottom and the organisation was facing the possibility of personal grievance claims from X.

[34] Ms Houkamau said that on 20 December 2006 Ms Huntley had specifically been told about the need not to have inappropriate correspondence with outside agencies, and in this case the internet material downloaded about X was provided to the agency Maataa Waka relied on for funding. Ms Houkamau concluded that the material was distributed to undermine X and that the distribution or threatened distribution constituted a breach of trust and confidence.

[35] Ms Houkamau said in her evidence that had there not been the distribution of the internet material, then she would consider a *formal disciplinary process with warnings*.

[36] Ms Houkamau said that she decided on 23 July 2007 that Ms Huntley's employment should be terminated.

24 July 2007

[37] Ms Huntley was telephoned by Ms Houkamau who asked to meet with her and the other two staff members. Ms Huntley said that she just assumed she would be getting the answer to her questions. Mr Thompson and Mr Joseph were not able to attend the meeting, but Ms Huntley attended with her husband. She was not advised to obtain a representative and the Chairman of the Board attended at the meeting, which was unexpected. There was a brief discussion and then Ms Huntley was handed a notice terminating her employment.

[38] Ms Huntley said that she started to cry as she left the office. She was due to commence parental leave on 24 August 2007 and was so upset that she was concerned about the welfare of her unborn child.

[39] Ms Huntley was paid beyond the start of her parental leave, but she was not eligible for payments during her parental leave because she did not have a job to return to.

[40] The letter handed to Ms Huntley by Ms Houkamau provided amongst other matters the basis for the decision to terminate her employment. There were six numbered paragraphs set out as below:

1. *Actions that may Seriously Damage the employers Reputation*

Given your current employee status and your part in the collection and distribution of sensitive information about a fellow employee at Maataa Waka, Management and Board must now have and does have serious concerns about your work ethic, professionalism and motives. This conduct will most certainly cause serious harm to the reputation of your employer and lays open the organisation to personal grievance claims.

2. *Inappropriate Correspondence*

Concerns or information about a fellow employee or your employer should not be disclosed to outside agencies.

Concerns must always be channelled through the manager in the first instance and the board if required.

Your actions with regard to the distribution (or threatened distribution) of sensitive information about a fellow employee to the Marlborough District Council, the Nelson Marlborough District Health Board, and a local Member of Parliament is inappropriate and gratuitous and in conflict with your responsibilities as an employee.

Your part in attempting to discredit and cause embarrassment for X by distributing sensitive information has been viewed as harassment and intimidating behaviour that lays open the organisation to personal grievance claims.

3. Breach of Trust and Confidence

The trust and confidence that the employer must have in you together with the working relationship which must exist within the office particularly with X has been destroyed. The details are set out above.

4. Working Relationship Incompatibility.

Complaints received by management from staff about your general conduct in the workplace has caused management to have serious concerns about your ability to work as part of a team.

5. Serious Performance Related Issues.

For example, your duties to process and carry out the infringement notice procedures. Because of the substantial financial loss to Council this failing has put the contract in jeopardy.

6. Lack of Administrative Performance .

Failure to perform a number of administrative functions in accordance with the Marlborough District Council contract. These are clearly outlined in a letter received by Maataa Waka on 12 July 2007, a copy of which you have received.

As recent as Friday 20 July 2007 Council reported further concerns about a substantial amount of unaccounted for tags. Your failure to carry out regular tag audits as requested by the Manager may have prevented this from happening.

These failings have put the contract in jeopardy.

The issues

- Was Maataa Waka justified in concluding that Ms Huntley's actions in terms of the internet material about X amount to serious misconduct?
- Was Maataa Waka justified in concluding that there was incompatibility attributable to Ms Huntley?

- Was Maataa Waka justified in concluding that Ms Huntley had performance issues?
- Was the process used to investigate the allegations fair and reasonable?
- Would a fair and reasonable employer have made the decision to dismiss Ms Huntley in all the circumstances that existed at the time of dismissal?
- If the dismissal is found to be unjustified, what remedies is Ms Huntley entitled to, and are there issues of contribution?

Was Maataa Waka justified in concluding that Ms Huntley's actions in terms of the internet material about X amount to serious misconduct?

[41] The reasons for Ms Huntley's dismissal were those set out in the letter of 24 July 2007.

[42] The first three reasons for Ms Huntley's dismissal concern the internet material.

[43] Ms Huntley knew that Mr Joseph and Mr Thompson were going to distribute the information to Ms Houkamau and the Board members. Maataa Waka considered the misconduct was the distribution or threatened distribution to outside agencies. Ms Huntley said in evidence that she knew that Mr Joseph and Mr Thompson wanted to distribute the information to outside agencies, but that she did not know who they were.

[44] There is a dispute as to whether Ms Huntley's explanation in terms of the distribution at the disciplinary meeting was to the effect that she supported the wider distribution of the material. Ms Huntley denies that she made a statement to that effect.

[45] Ms Huntley did not take part in the collection or distribution of sensitive material about X and there can be no misconduct on that basis. Mr Joseph and Mr Thompson downloaded and distributed that information.

[46] There is nothing to support a conclusion that Ms Huntley encouraged or assisted Mr Thompson or Mr Joseph to distribute the material to the Marlborough District Council rather than limiting distribution to Ms Houkamau and the Board members. There is nothing to support a conclusion that Ms Huntley had any part in the preparation of a list of those outside the employer or Board to whom the material

was distributed to or threatened to be distributed to. I do not find it would be safe for a fair and reasonable employer to conclude from anything said that Ms Huntley said at the disciplinary meeting that Ms Huntley supported the distribution of internet material to outside agencies.

[47] What Ms Huntley did was to not distance herself from the actions of the other employees, advise her employer of the distribution or threatened distribution, or tell Mr Thompson and Mr Joseph not to distribute the material outside of the employer organisation.

[48] The actions that are said to have discredited, undermined and caused embarrassment for X and Maataa Waka were the distributing and/or threatening to distribute sensitive information outside the organisation. These were not Ms Huntley's actions. A fair and reasonable employer would not conclude that Ms Huntley aided and abetted Mr Thompson and Mr Joseph.

[49] An act that amounts to serious misconduct is one that deeply impairs or destroys the employment relationship rendering it untenable.

[50] I am not satisfied that a fair and reasonable employer would conclude after the disciplinary meeting on 23 July 2007 with respect to the distribution or threatened distribution of the sensitive information to outside agencies that the trust and confidence Maataa Waka must have in Ms Huntley was destroyed and/or that the working relationship with X was destroyed.

[51] It was agreed by Ms Huntley and the other two employees that the meeting on 23 July 2007 be a joint disciplinary meeting. Maataa Waka intended that there be separate meetings. Given that agreement, there can be no criticism of Maataa Waka proceeding in that way. Looking at the matter objectively, a joint disciplinary meeting disadvantaged Ms Huntley. That is because her actions were not seen differently to those of Mr Thompson and Mr Joseph. A fair and reasonable employer would have seen her involvement as different, but I think the way the disciplinary meeting was held made that difficult. That difficulty could have been overcome by a further meeting, but one was not held.

[52] In terms of the first three reasons relied on as reasons for the dismissal in the letter of 24 July 2007 which all concerned the internet material, I do not find

evaluated against an objective standard there was serious misconduct on Ms Huntley's part.

Was Maataa Waka justified in concluding there was incompatibility attributable to Ms Huntley?

[53] In *Mabry v West Auckland Living Skills Home Trust Board* (unreported, AC86/01, 19 December 2001) Judge Travis held that the essential issues in an incompatibility case could be encapsulated as :

- whether the employer was entitled to come to the conclusion that the employment relationship was irreparable;
- if so, whether that state of affairs was attributable wholly or substantially to the employee;
- whether the manner in which the employer carried out the dismissal was fair in the circumstances.

[54] There was a meeting on 1 December 2006 to discuss what Ms Houkamau describes as considerable difficulty with Ms Huntley and her apparent refusal to attend training for the Council's new computer system. Ms Huntley had issues with respect to her employment agreement and job description. The email communication became terse on the part of Ms Huntley. Following the meeting on 1 December 2006 there was a further meeting to discuss some other issues, but these did not include performance issues.

[55] Ms Houkamau recorded her findings in terms of that meeting in a letter to Ms Huntley dated 21 December 2006. Ms Huntley's responses to that letter at the disciplinary meeting on 23 July 2007 are to the effect that Ms Huntley considered the letter inaccurate.

[56] There were some comments about incompatibility in the letter of 21 December 2006. The letter records that the manner and tone of Ms Huntley's letters and emails to Ms Houkamau was raised at the meeting. Ms Houkamau records her view that the relationship between her and Ms Huntley had deteriorated to a point where working together was becoming difficult, if not impossible, to a point that there was clear

incompatibility. Ms Houkamau also recorded in the letter that she would endeavour to discuss matters face to face with Ms Huntley and deal promptly with issues.

[57] Ms Houkamau preferred to attempt to resolve issues with Ms Huntley in an informal way and there was no formal disciplinary process in terms of Ms Huntley's performance or in terms of concerns about working relationships within the office prior to the formal process that commenced with the letter dated 18 July 2007. There was a difference in view between Ms Huntley and Ms Houkamau as to whether their relationship improved. Ms Huntley said it did but Ms Houkamau did not accept that.

[58] In or about May 2007 Maataa Waka came under increasing pressure from the Marlborough District Council to comply with contractual obligations in the animal control area. There was a risk that the Council's contract with Maataa Waka could be cancelled. Amongst other concerns, the Council was worried about a backlog of administrative procedures within animal control and by early July 2007 the Council had concluded that there were numerous breaches of the contract particularly with regard to the standard of administration.

[59] As well as the concerns about the contract, Ms Houkamau was faced with some serious working relationship difficulties within the office. Ms Houkamau was receiving a number of complaints about interactions within the office. In late June 2007 the team leader of animal control X resigned saying that she was subject, amongst other behaviours, to bullying. A fair and reasonable employer would consider from May 2007 that incompatibility issues within the office were not only impacting on those who worked there, but on the ability of the organisation to understand and meet its contractual obligation to the Council. The evidence supports that the atmosphere was tense and unpleasant.

[60] On 27 June 2007 a mediation was arranged to see if the issues within the office could be resolved and X could continue on at Maataa Waka. The mediation was not successful.

[61] On 29 June 2007 X handed a medical certificate to Ms Houkamau and told her that she had become unwell as a result of the situation in the office and what she described as bullying and intimidation.

[62] After 29 June 2007 X did not come into the office when others were present. She did do some work from home and came into the office on the weekend to try and assist Maataa Waka meet the contractual requirements.

[63] Given these circumstances it was quite appropriate that workplace relationship issues be raised and put to Ms Huntley in a formal way as they were in the letter of 18 July 2007.

[64] It was recognised in *Marby* that in respect to incompatibility there is unlikely to be any single or multiple incidents of related misconduct but rather evidence of a snowballing effect in respect to incompatibility issues over a reasonable period of time.

[65] In the letter of 18 July 2007 there is reference to concerns with respect to interaction between an employee, Kerry, who was employed as an administrative assistant in the animal control department for a brief period of three weeks. She resigned on 12 March 2007. Ms Houkamau talked to Kerry during her brief period of employment and at the time of her resignation. As a result of those discussions she formed a view that Ms Huntley's behaviour toward Kerry had been of concern and a significant factor in her resignation. One of the issues for Kerry in her resignation letter was that information was not being shared and *I have got the strong feeling it was never likely to be*.

[66] It is clear from Kerry's letter of resignation that even after a few weeks in the animal control department she felt that there was tension between management and animal control, and an *in group, from which she felt excluded*. Ms Houkamau had also identified after she took up her appointment that there was a group comprising of Ms Huntley, Mr Thompson and Mr Joseph who she felt were dominant within the animal control department.

[67] Ms Huntley denied the allegation at the disciplinary meeting about her interactions with Kerry, said that she had only worked with Kerry a few days and questioned why she had not been talked to about the matter earlier.

[68] After Kerry resigned Ms Houkamau met with all the animal control staff on 13 March 2007. Ms Houkamau advised them that Kerry had resigned and expressed concerns about Kerry's advice to her about tension between animal control and management and the overall work environment. Ms Houkamau invited any staff

members with problems about management or concerns about Kerry's resignation to talk to her. Ms Houkamau explained at the Authority investigation meeting that Kerry had not wanted her to take any action prior to her resignation and simply wanted to leave.

[69] Ms Houkamau did not raise with Ms Huntley after Kerry resigned that a significant reason for her resignation was because of Ms Huntley's behaviour toward her. Had she done so then Ms Huntley would have had an opportunity to know that her behaviour caused upset to another employee and to change that behaviour. Ms Houkamau could fairly conclude from job descriptions that giving assistance/training to other employees in animal control was part of Ms Huntley's role. Ms Huntley herself is recorded as saying she was training new employees during a May 2007 meeting with Council.

[70] The other allegation in the letter of 18 July 2007 is that similar and almost identical complaints about Ms Huntley were raised by X who was appointed to her role on 23 April 2007 initially as administrator, then as project manager on or about 15 May 2007, and by 1 June 2007 X became team leader of animal control. The allegations were that X found she was given a lack of or confusing and misleading information, that Ms Huntley was non-communicative and unhelpful and generally made life extremely difficult and upsetting. It was also set out that because of the way that X had been treated she had taken sick leave. The allegations were broadly of bullying and general incompatibility.

[71] Ms Huntley disputed the allegation of bullying and asked in her response at the disciplinary meeting what procedures Ms Houkamau had followed to contain and resolve these problems indicating that she was the only one aware of them. Ms Huntley said in her responses at the disciplinary meeting to the allegations with respect to X, that X was responsible for the working relationship difficulties.

[72] There were two specific incidents that X complained of to Ms Houkamau that were put in the letter of 18 July 2007 as allegations to be answered.

[73] In late May 2007 X complained to Ms Houkamau that she had been called out to deal with a customer about securing money for a barking dog collar. X complained to Ms Houkamau that it was done deliberately to cause her inconvenience and to effect her ability to undertake her work effectively. Ms Huntley said in response to

that allegation at the disciplinary meeting that she was not the one who went and called for X to come for advice. Ms Houkamau spoke to Ms Huntley at the time when X complained about this matter but did not take the matter any further.

[74] The second incident occurred after X had resigned but during her notice period. On the weekend of 30 June 2007 X went into the office and spent several hours doing work that was considered urgent by Maataa Waka. X sent an email to all animal control staff, including Ms Huntley, which said:

If you need to move my stuff and I appreciate that you may need to please could you put it back or let me know where it is as I am having to spend a lot of time looking for files and folders.

[75] On Monday, 2 July 2007 Ms Huntley sent an email to Ms Houkamau with the subject being the email that was sent to her by X as above.

[76] Ms Huntley said in her email, amongst other matters, that she had set up her desk on Friday ready to go for the first day of the financial year. Ms Huntley said that her stationary supplies had been used, all the tags were missing and that some of her personal stationary was missing. Ms Huntley also complained in the email that templates for documentation are missing and that her locked drawer with the tags inside was broken into and left hanging on its hinges.

[77] There is a clear implication in the email from Ms Huntley that X, having been in the office over the weekend, was responsible for the state of Ms Huntley's desk.

[78] Ms Houkamau sent the email to X. X responded by email and letter. She denied breaking into any drawer and said that it was a serious unfounded allegation and it was the duty of Maataa Waka to afford her protection. Ms Houkamau simply concluded that X's version of events was the correct one. She did not investigate the matter further, look at the drawer or talk to Ms Huntley.

[79] In a letter dated 3 July 2007, X raises the following concerns:

My concerns are that a malicious allegation of opening locked drawers to access tags has been made and this leaves me exposed to an allegation of misappropriation. I have asked that you lock in your office all the paperwork on Candice's desk and that management undertake an audit and confirm to me in writing that the tags are all accounted for and if for any reason they are not all accounted for that the Police are called immediately.

The contents of Glenarr's email and the inaccuracy of the facts in my view provide a further example of the relentless bullying culture within the office.

[80] If this matter had been properly investigated and Ms Houkamau had concluded that the allegation was fabricated, then a fair and reasonable employer would conclude that this was serious misconduct. The investigation however was not undertaken in a fair and proper way to enable Ms Houkamau to reach the conclusion that Ms Huntley had fabricated in a malicious way that her drawer had been broken into and items taken from her desk. Any investigation would have to show that was the situation on the balance of probabilities applied when there is a particularly serious allegation.

[81] Both Kerry and X had complained to Ms Houkamau about Ms Huntley and said that they had difficulty carrying out their roles effectively in the environment and had experienced a reduction in job satisfaction. A common concern was a failure by Ms Huntley to provide adequate information.

[82] A fair and reasonable employer would conclude that the behaviour of Ms Huntley within the work environment and the effect it was having on others needed to be brought to her attention in a fair, clear and formal way with warnings as necessary if there was no insight into the conduct that caused these employees and Ms Houkamau concern.

[83] The environment clearly had become very unpleasant and matters needed urgently to be addressed. I do not find though that a conclusion could be reached that objectively assessed the workplace employment relationships were irreparable and that the reason for that could be attributed wholly or substantially to Ms Huntley. This is because the situation could also be attributed to the failure to formally manage the behaviours that caused the situation before they got to that stage.

Performance issues

Infringement notices

[84] On 17 May 2007 a letter was sent to Ms Houkamau from the Marlborough District Council advising of a number of administrative issues and concerns. These included a concern that infringement notices had not been lodged with the Court or reminders sent out within the statutory timeframe. At that time there was approximately \$50,000 worth of infringement notices that required writing off, and

there were a number of other backlog issues. The figure for written off infringement notices increased shortly after that letter to \$88,868 over the previous 19 months.

[85] Ms Huntley said in her evidence at the Authority investigation meeting that she *thinks she was somewhat responsible for infringements not being processed.*

[86] That was not the answer she gave at the disciplinary meeting. Ms Huntley gave a two part response which related to the allegation of write offs of infringements not processed through the Court in time.

[87] Ms Huntley responded under part 1 of her answer amongst other matters that *I would also like to point out, that you as manager have admitted (9th line – point 10) that “no action was taken to rectify the matter ...you as manager are responsible.”*

[88] Ms Huntley also sought some further information about the meeting with Council representatives some 19 months ago.

[89] Ms Houkamau said that Ms Huntley was never specific about the type of assistance that she required or what help was needed. Ms Houkamau said she was unaware that there was a serious problem with infringement notices until X made inquiries with the Council and then letters were received. X took over the responsibility from May 2007 for the infringement notices, but could only ensure at that time they were processed properly from that point on. The write-off prior to that was significant.

[90] A fair and reasonable employer would conclude that Ms Huntley did not advise that she was falling behind with lodging the infringement notices with the Court, or ask for specific assistance in that area. Ms Huntley had processed some of the notices and Ms Houkamau could fairly conclude that she would have been aware that she was outside of the timeframe for others. Objectively assessed it was reasonable for Ms Houkamau to conclude given that X had identified the issue about infringement notices and was able to deal with it then that there were no good reasons for the work not to have been done by Ms Huntley. This was a serious performance failure, exacerbated by the failure to bring it to Ms Houkamau’s attention earlier and ask for help.

[91] I am not satisfied though, that in the absence of any monitoring of or warnings about performance that, objectively assessed, the failure could be said to have amounted to a dereliction of duty and therefore serious misconduct.

Other performance issues

[92] A fair and reasonable employer would conclude that the administration at Maataa Waka fell well short of what was required under the contract with the Council.

[93] The performance issues in appendix 1 had not been the subject of a formal performance process with warnings, an opportunity to improve with Ms Huntley's performance assessed objectively. There were serious concerns about time management. A fair and reasonable employer would conclude that Ms Huntley did not prepare a CRM manual or ask for help in doing so. I do not find though that the point had been reached without a performance plan where there could be a conclusion by a fair and reasonable employer that Ms Huntley lacked the requisite capacity to do the role.

Conclusion

[94] I do not find that a fair and reasonable employer would conclude that there was serious misconduct on the part of Ms Huntley or an irreconcilable breakdown of workplace relationships attributable wholly or substantially to Ms Huntley. I have reached that view because the concerns about Ms Huntley's attitude and behaviour were not brought to her attention at the time that concerns arose so that she could be in no doubt that her employment would be in jeopardy if the issues of considerable concern to Maataa Waka were not addressed. There had not been a formal process in terms of performance issues and the point had therefore not been reached that dismissal was the only option.

[95] For completeness, I accept Ms Stringleman's submission that the process was not what a fair and reasonable employer would have undertaken in all the circumstances. Ms Huntley was expecting a response to her questions. She did not expect her employment to be terminated on 24 July 2007 and there was no warning to her that that would occur. There should have been a further meeting held after the meeting on 23 July 2007. In *X v Auckland District Health Board* it was held that fair dealing required significant conclusions, including tentative ones to be articulated to

the employee. Ms Houkamau should have provided responses and conclusions to Ms Huntley as part of a fair process.

Would a fair and reasonable employer have made the decision to dismiss Ms Huntley in all the circumstances that existed at the time of dismissal?

[96] I have not found there to have been serious misconduct, performance or incompatibility that would have justified dismissal. On that basis therefore a fair and reasonable employer would not have summarily dismissed Ms Huntley in all the circumstances that existed at the time of her dismissal.

[97] A fair and reasonable employer would have treated the matter as the start of a formal process whereby Ms Huntley was aware of the serious concerns that there were issues with her performance and workplace relations. Warnings would have been issued about performance and behaviour expected in the future.

Determination

[98] Ms Huntley has a personal grievance that she was unjustifiably dismissed. She is entitled to remedies.

Contribution

[99] The Authority must, in deciding the nature and extent of the remedy to be provided, consider the extent to which the actions of Ms Huntley contributed towards the situation that gave rise to the personal grievance and if the actions require reduction of remedies.

[100] I find that there was contribution by Ms Huntley. I conclude from the evidence that Ms Huntley was not communicative and responsive about her work and backlog issues. As a result Ms Houkamau was not able to identify the very real problems facing Maataa Waka in the performance of its contract and do something about them. Identifying the backlog issues in administration was left to X. The start of the email FRH12 from X to Ms Huntly supports a reluctance on Ms Huntley's part to talk about these issues. The backlog then became the subject of formal letters and allegations of breaches from Council which could have resulted in the contract being cancelled. That placed Maataa Waka under considerable pressure and X then resigned because of workplace relations.

[101] I have considered the evidence around the incompatibility and workplace relationship issues. There is support for a conclusion, on the balance of probabilities, that Ms Huntley provided inadequate information and was generally unhelpful to employees Kerry and X. Kerry gave evidence that supported the reason for her resignation. She said that she was not helped in her work by Ms Huntley and concluded she never would be. She said she spent long periods of time staring into space, had concerns about Ms Huntley's attitude toward her and found herself losing confidence. She resigned from Maataa Waka with no arranged role to go to. X was not able to work as effectively to identify the backlog and deal with it as a result of the reluctance by Ms Huntley to provide information.

[102] I have considered whether I could reach a conclusion on the balance of probabilities that Ms Huntley deliberately fabricated the situation with the break-in to her desk. I do not find, given the failure to investigate it at the time that I am able to reach a conclusion on the balance of probabilities that Ms Huntley maliciously fabricated the event.

[103] I find that Ms Huntley contributed in a substantial way to the situation that gave rise to the personal grievance and in all the circumstances I assess Ms Huntley's contribution at 50%.

Remedies

Reinstatement

[104] Section 125 of the Employment Relations Act 2000 provides that reinstatement is to be the primary remedy and section 125(2) provides that the Authority must, whether or not it provides any of the other remedies provided for in section 123 provide wherever practicable for reinstatement.

[105] Ms Huntley wants to go back to work at Maataa Waka. Ms Houkamau said that she is *stunned that Glenarr believes that reinstatement is even possible*. Ms Houkamau said that the trust and confidence in Ms Huntley has been totally destroyed. I heard from two other employees in animal control, Whiona and Candice, who said that they would resign immediately if Ms Huntley was reinstated. I found both Whiona and Candice to be genuine in their views but the focus must be on wider matters than that in my consideration as to whether or not reinstatement is practicable.

[106] Chief Judge Colgan in *Sefo v Sealord Shellfish Ltd* (unreported, 17 April 2008, CC 4A/08) referred to the test of practicability in *New Zealand Education Institute v Board of Trustees of Auckland Normal Intermediate School*. The Court in that case described the test of practicability in practice as follows:

Practicability is capability of being carried out in action, feasibility or the potential for the reimposition of the employment relationship to be done or carried out successfully. Practicability cannot be narrowly construed in the sense of being simply possible irrespective of consequence.

[107] In *Sefo* it was held that the Court is entitled to consider a broad range of relevant past events, the focus of the reinstatement inquiry is on the future predicated on past and current events and circumstances.

[108] In terms of practicability I have considered whether the employment relationship could be successful particularly in terms of working relationship within the environment and appropriate performance of work.

[109] The evidence did not support that there was a good team environment in the animal control department when Ms Huntley was employed there and there was at least a perception that Ms Huntley was part of the reason for that.

[110] A concern for Maataa Waka is that this situation would continue and that management of it would be difficult if not impossible.

[111] An employer has a duty to provide a healthy and safe working environment for employees. Employees do not need to like each other but they must be able to work together in a professional way that enables the work to be done. This requires appropriate communication.

[112] Ms Huntley's defensive responses at the disciplinary meeting about the working relationships within the office raised doubt that she would be amenable to constructive solutions or change in terms of working with existing employees or even new employees who may challenge her way of doing things. This would be required for a successful employment relationship into the future if reinstatement was to be practicable.

[113] There was no acceptance at the time of the disciplinary meeting of any responsibility for performance issues but at the Authority meeting for the first time

Ms Huntley did concede that she was in some way or partly responsible for the infringement notice right off. There were numerous breaches of the contract and in particular with regard to the standard of administration. It is clear from Ms Huntley's responses to these matters that she regarded them as primarily management shortcomings.

[114] The Authority is often investigating and hearing evidence about the negative aspects of an employment relationship. I am quite sure over the years Ms Huntley must have contributed in some positive way to the administrative side of animal control, and also that she must have had some successful working relationships over that time.

[115] Unfortunately, I must accept Mr Fletcher's submissions that there was very little in this matter that I heard by way of evidence to support Ms Huntley contributing in a positive way to benefit Maataa Waka from the time Ms Houkamau was appointed as manager to Maataa Waka. This was not a situation, for example, where Ms Huntley's work performance was shown to be adequate or where there was a good team environment working together in animal control.

[116] Assessing the matter objectively I am not satisfied considering past events and circumstances that reinstatement is practicable.

[117] For the reasons that I have set out above, I find that reinstatement is not practicable and I decline to order that Ms Huntley be reinstated to Maataa Waka.

Lost Wages

[118] Ms Huntley claims lost wages from the beginning of March 2008 when she was to return to work after her parental leave, in the sum of \$800 per week. Ms Huntley seeks payment of that sum until she is reinstated. I have declined to order reinstatement.

[119] In final submissions Ms Stringleman claims on Ms Huntley's behalf the loss of the benefit of paid parental leave which Ms Huntley did not receive because she did not have a position to return to. Mr Fletcher said in his submissions in reply that he was ambushed by this. I accept that it was raised clearly for the first time only in final submissions and I reserve leave for Mr Fletcher to make submissions on this claim and for Ms Stringleman to have an opportunity to respond.

[120] Ms Huntley was to have been on maternity leave from August 2007 until the end of February 2008. After that time Ms Huntley gave evidence that she expected to return to work and it is appropriate in my view for reimbursement to apply from that time onwards.

[121] The Authority heard this matter in March 2008 but decided to release three determinations at the same time. When the Authority investigated the matter there was no evidence as to mitigation. Ms Huntley was intent on reinstatement. I have taken that matter into account and this is not situation where I am persuaded to exercise my discretion and make an award by way of compensation for remuneration lost by Ms Huntley in excess of three months.

[122] Ms Huntley may have earned some money between 1 March 2008 and the date of this determination in which case it is to be disclosed and deducted from any award for reimbursement for lost wages.

[123] Subject to the findings I have made about contribution, and any reduction for any money earned by Ms Huntley in the three months from 3 March 2008, that would be an award in the sum of \$10,400 under s.123(1)(c)(ii).

Humiliation

[124] I accept that Ms Huntley was humiliated and distressed to be dismissed in such an unexpected way. Ms Huntley gave evidence that she thought the meeting on 24 July 2007 was going to be *positive*. Instead she was given a letter advising that her employment was terminated. Ms Huntley's husband, Brad Huntley, gave evidence that she struggled to breathe in the car on the way home and was crying. He said that there was concern for the wellbeing of their unborn child.

[125] I do not consider that the evidence about Ms Huntley's humiliation and loss of dignity is such that it would justify an award proposed by Ms Stringleman of \$20,000.

[126] Subject to my findings that I have made about contribution, I consider a fair and reasonable award to compensation Ms Huntley for humiliation and loss of dignity would be \$10,000 under s.123(1)(c)(i) of the Employment Relations Act 2000.

[127] Applying the contribution to the award for reimbursement and compensation for humiliation and loss of dignity, I make the following orders:

- I order Maataa Waka Ki Te Tau Ihu Trust to pay to Glenarr Huntley the sum of \$5,200.00 being reimbursement of lost wages under s.123(1)(b) of the Employment Relations Act 2000.
- I order Maataa Waka Ki Te Tau Ihu Trust to pay to Glenarr Huntley the sum of \$5,000 being compensation for humiliation and loss of dignity under s.123(1)(c)(i) of the Employment Relations Act 2000.
- I reserve the right for Mr Fletcher to make further submissions to the Authority about the claim in final submissions from the applicant for a lost benefit of paid parental leave. Ms Stringleman will then have the right of reply. The representatives should discuss and reach an agreement on a suitable timetable for exchange on that matter.

Costs

[128] I reserve the issue of costs.

Summary of findings and orders made

- I have found that Glenarr Huntley was unjustifiably dismissed from her employment;
- I have found that reinstatement is not practicable and have declined to order reinstatement;
- I have assessed that Glenarr Huntley contributed to the situation that gave rise to the personal grievance and have assessed that contribution at 50%;
- Taking contribution into account I have ordered Maataa Waka to pay to Glenarr Huntley the sum of \$5,200.00 being reimbursement of lost wages;
- Taking contribution into account I have ordered Maataa Waka to pay to Glenarr Huntley the sum of \$5,000 being compensation for humiliation and loss of dignity;

- I have reserved the right for Mr Fletcher to make further submissions to the Authority about the claim in final submissions by the applicant for the lost benefit of paid parental leave. Ms Stringleman will have a right of reply and I have asked that the representatives discuss a suitable timetable for exchange;
- I have reserved the issue of costs.

Helen Doyle
Member of the Employment Relations Authority



Maataa Waka Ki Wairau Inc.

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 Phone: 03 577 9256
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 Email: mataa@xtra.co.nz

18 July 2007

Mrs G Huntley
 Maataa Waka Ki Te Tau Ihu Trust
 P.O. Box 1016
BLLENHEIM

Kia Ora Glenarr,

EMPLOYMENT

I wish to meet with you to discuss issues of performance and conduct. The purpose of the meeting is to receive your comments in regard to matters of concern and then to decide whether or not any disciplinary action should be taken if, as your employer, it is considered that these concerns are upheld.

I wish to meet with you at Poumanawa Oranga, on Friday 20 July 2007 at 10am. I will have with me at the meeting Industrial Consultant, John Drummond. A minute taker will also be present at this meeting.

As your employer this matter is being treated very seriously. An outcome of the meeting may be termination of your employment or other disciplinary action e.g. written warnings.

You should therefore bring a representative and/or support persons with you. As I understand you are a member of the Amalgamated Workers Union I will notify the Union as to this meeting to provide them with an opportunity to attend. You should also contact them directly if you wish.

Working relationship – incompatibility

1. Following a meeting on 20 December 2006 I wrote to you setting out the outcome expressing concern. While no disciplinary action was taken at that time it was made clear that should the working relationship between you and me as manager not be able to proceed on a good working basis then steps may need to be taken to resolve this.
2. I am concerned that matters have not improved significantly and it is your attitude as reported to me and observed by me, towards other staff members that leads me to this view. There does appear to be a general incompatibility with you in the office with other persons who need to work with you. By way of example Kerrie Vale was employed for approximately 3 weeks up to March 2007. In particular Kerrie alleges that the work environment was intolerable with your conduct and behaviour towards her being the main issue. Kerrie complains that she experienced a general lack of willingness to assist and train her and she formed the view that you did not intend sharing any of your knowledge about the job, with her.

3. Kerrie, having resigned after only three weeks, alleges that she suffered distress and viewed behaviour by you as bullying towards her which has badly affected her confidence. No personal grievance has been notified to Maataa Waka but if her view on these matters is accepted by me as your employer then it is of extreme concern that lays open the organisation to personal grievance claims.
4. I held a meeting with staff on 13 March 2007 after Kerrie's resignation. I outlined the tensions in the office and how important it was for the team to work together and move forward, particularly with my advertising for a new administrator.
5. Similar and almost identical complaints have been raised by X who joined Animal Control on 23 April and was appointed as team leader last month. She generally states that she was given a lack of information, confusing and misleading information, that you were non communicative and unhelpful and generally made working life extremely difficult and upsetting.
6. As a result of her treatment by you and others at work, X has now taken sick leave with the approval of the employer. While no personal grievance has at this stage been lodged the organisation is susceptible to such a claim if the allegations are correct.
7. These allegations, if accepted, give cause for grave concern as to your ability to operate in the office, to fulfil your tasks and to assist with the running of the office and training of persons as required. The allegation is one of bullying by you and general incompatibility with Kerrie and X.
8. These allegations, if upheld, would lead to a finding of serious misconduct.
9. The allegations contain allegations of bullying behaviour by you directed towards Kerrie Vale who has now left and X who is now on sick leave and has also resigned. If the allegations are found to be correct then termination of employment may occur.

Performance related issues

10. In addition to the allegation of misconduct the issue of training of the staff specifically Kerrie Vale and X your duties as animal control office administrator is to implement the administrative requirements of the Marlborough District Council animal control contract. Your duties include processing and carrying out of the infringement notice procedures as required by the Council. You met with the Council's representative some 19 months ago to discuss the fact that you were not processing infringements through the courts and that as a direct result of this omission, infringements with a total value of \$30,000 were now out of time and could not be enforced in this manner. It would appear that thereafter no action was taken to rectify the matter and that a significant number of infringements were still not being processed through court in the required timeframe. The situation was again discussed with you at a meeting on 19th March. Council advise me that in the last 19 months they have written off infringements with a total value of \$88,868 because they were not processed through the court in time. I consider that the enforcement of all infringements is fundamental to the credibility of Animal Control. You are aware of the correspondence from Council which includes formal warning letters to me about this fundamental failing in the performance of the contract and it is exceedingly serious that the continued contractual relationship has been jeopardised in this way. This correspondence is attached. I remind you of your duties to retain this information as confidential. It is commercially sensitive and must not be

disclosed outside the office. I will require your explanation as to why you have not carried out the enforcement process or indeed taken any steps to adopt and follow a system for managing, progressing and monitoring the progress and status of all issued infringements. You should be aware I consider the issues set out above in relation to infringements to be very serious and if you found to be guilty of all or any of these omissions it would be necessary to consider the termination of your contract as the most appropriate course of action.

11. I would advise that Council has now outlined a significant number of other non performance or poor performance issues relating to administration that they require to be rectified forthwith. You are the senior administrator and as such I consider that prima facie you are accountable for the failing highlighted by Marlborough District Council. However, it is of course only fair and just that you should have a full opportunity to respond to the matters in question. Council have confirmed that they consider that the following administration matters amount to breaches of the contract for Animal Control service:
- A) There are 142 dogs registered to the pound and 11 registered to Alfred Street this should not be occurring.
 - B) Banking is not done on a daily basis.
 - C) Proclaim was not updated for some dogs that had been classified.
 - D) No system was adopted and pursued to account for all tags. A number tags remained unaccounted and Maataa Waka were required to reimburse the Council. You did not take any appropriate action to rectify the matter and report to Council.
 - E) On 8th March there were 256 dogs in the system showing as not having renewed registration for the year 2006/07. It transpired that 130 were administrative errors of one kind or another and should have been taken out of the system.
 - F) A standard letter was sent out on or about the 16th April to owners whose dog was showing as not being registered for 2006/07 and responses indicated that a significant number of people had already advised Animal Control of their dogs' change of status.
 - G) Dogs that required a microchip (newly registered and classified) were not being proactively followed up.
 - H) There was a backlog of un-entered data (death/lost notices, microchip certificates, transfer of dogs, impound records change of addresses etc.) that meant that the data in the system could not be relied upon and gave rise to a serious risk of staff and Council acting upon incorrect and misleading information. This particular complaint is outlined in more detail in paragraph 18 below.
12. I must again stress that a breach of contract with regard to administration is a very serious matter and unless there is a good reasons for your failings in this respect disciplinary action is likely to be taken and this action could include your dismissal.
13. A backlog or administration work built up some of which is detailed in an email of 14 May 2007 from X to me, of which I have discussed matters with you. The matters set out in that email do not constitute an exhaustive list of

your backlog of work at that date. It subsequently transpired that other tasks had not been undertaken for example there was a back log of over 200 animal check matters to be entered on Proclaim. You did not bring to my attention that a significant backlog of work had built up and seek assistance. Your output and productivity is in question and you are asked to respond specifically the allegation that you engaged in your own personal activities non work related matters such as speaking on your personal phone, downloading music and general internet use, use of office time to buy food on a regular basis and generally carrying out personal activities rather than work activities. I also require your explanation as to why the backlog arose and why it was not brought to my attention by you.

14. I am informed that on 25 May 2007 an incident arose in regard to the procedure for securing money from a client for a barking collar. X advises that she was called to the counter to deal with the client after you advised you did not know how to deal with the issue. When I spoke to you the next morning in a meeting with X you denied that you stated you did not know how to deal with the money and said that you had just wondered if X had a better procedure. I am concerned that you may have not told me the truth in regard to this matter and that your motivation for calling X out of the back safe and into the front office, may have been to cause X inconvenience and effect her ability to undertake her work efficiently: I must decide if this was the case.
15. On 2nd July 2007 you sent me an email which contained serious allegations regarding your desk drawer having been broken into and tags having gone missing. Having made my enquires I am concerned that your email is not accurate and cannot be substantiated. Should you have misrepresented the facts this would be considered a matter of serious misconduct.
16. On Friday 13 July animal control administration staff reported to me that you had left the office on two separate occasions to deal with personal business regarding a house purchase. I was also informed that you spent a proportion of work time on the phone dealing with this matter as well. Staff reported that little assistance was received from you at the front counter on that day. Your comments are sought in this respect.
17. You worked closely with Council staff to produce a complaints program for use by Animal Control known as CRM, "Customer Complaints Module". You were the only member of staff from Animal Control to be involved in the entire process. You had sole responsibility for training all other staff with regard to the operation of the CRM program for Animal Control and were required to write the operating manual for Animal Control. It has transpired that you have not started the very important project of preparing the users manual; you have not even collated working notes for the task. You did not bring this matter to Council's or management's attention. The lack of an operator's manual has had an impact on the ability of staff to work efficiently and has resulted in huge amounts of time being wasted and the fragmented manner in which file records have been saved electronically.
18. You have not given staff adequate training in the use of CRM which is an integral part of daily routine work in Animal Control. You did not give X any training on the program. Although Whiona received some basic CRM training from you, you did not provide her with adequate/continued follow up support and monitoring. You failed to train Whiona to undertake basic CRM tasks despite her appointment in April as the CRM operator for Animal Control. The lack of ongoing support and training coupled with your failure to produce a manual, has resulted in considerable difficulties for all staff trying with limited knowledge, to use a computer program that you helped write and implement In considering the seriousness of these allegations, I will be taking into

account the fact that you are the only person who has full knowledge of the CRM program and its operation within Animal Control, the fact that CRM is such an integral part of the business and its day to day routine functioning and the fundamental importance of imparting that knowledge to all staff within the organisation. These allegations, if accepted, will therefore be viewed as matters of serious misconduct and unacceptable performance giving cause for grave concern about your ability to function in a manner that will ensure the objects of this organisation are met.

Summary

In isolation and in combination, if all or any of the above concerns are factually correct and accepted by me as your employer, then they would be considered to be serious misconduct and/or serious lack of performance and I must advise that termination of your employment may occur.

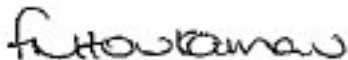
Many of these allegations relate to staff relationships and in this respect the dealings I had with you at the end of 2006 are of particular relevance. I would remind you of the meeting you attended at that time and the letter sent to you in this regard. The need for you to have compatible working relationships was stressed to you. I am therefore very disappointed that many of the same issues have arisen again. The organisation has lost staff through these alleged behaviours: Kerrie, X and I have resigned and your behaviour towards us has been a contributory factor in this respect.

You should be aware that the outcome of this disciplinary process might be that you are considered to be unable to effectively carry out your duties. These allegations if accepted would go to the heart of the trust and confidence that Maataa Waka needs to have in you to carry out those duties properly.

Even if I, as your employer, did not dismiss you for serious misconduct and/or serious performance related issues, I would need to consider whether lesser disciplinary action should be taken. If this were to be the case and your employment were to continue, then I would need to consider what standards and requirements you would need to meet and to review those requirements to ensure that you were able to effectively carry out your duties.

Failure to do so may then lead to a further disciplinary hearing and possibly dismissal from employment at that time.

Yours faithfully,



Ripeka Houkamau
General Manager