

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 162/09  
5151352

BETWEEN

JACQUI WASTNEY  
Applicant

AND

THE CHIEF EXECUTIVE OF  
THE DEPARTMENT OF  
CORRECTIONS  
Respondent

Member of Authority: James Crichton

Representatives: David Beck, Counsel for Applicant  
Steve Wragg, Counsel for Respondent

Investigation Meeting: 7 & 8 July 2009 at Greymouth  
24 July 2009 at Christchurch

Submissions received: 27 July 2009 from Applicant  
14 August 2009 from Respondent

Determination: 1 October 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Ms Wastney) alleges that she has been unjustifiably dismissed and/or the subject of unjustified actions causing her disadvantage and in addition claims the respondent employer (Corrections) breached terms of her employment agreement.

[2] Corrections says that Ms Wastney was found to have committed serious misconduct after a fair and thorough investigation, and that the conclusion that Corrections formed in respect of that serious misconduct, and to dismissal being an appropriate response, was a fair and reasonable decision in all the circumstances. Corrections denies any unjustified disadvantage and in any event says that that

grievance was not raised in time and it also denies any breaches of Ms Wastney's employment agreement.

[3] Ms Wastney was employed as a probation officer at Corrections' Greymouth office. Her employment lasted from 9 May 2007 until 14 October 2008, the effective date of the dismissal.

[4] The events which led to Ms Wastney's dismissal were the second set of events wherein Ms Wastney was investigated for serious misconduct. Between 21 September 2007 and 4 April 2008, Ms Wastney was suspended from employment while Corrections conducted an earlier investigation into allegations against her of serious misconduct. That investigation resulted in Ms Wastney receiving a final written warning on 12 May 2008, just three months before the events which led to her dismissal.

[5] Those events took place on 14 July 2008 and were the subject of a letter dated 17 July 2008 from Corrections to Ms Wastney in which the former set out three allegations against the latter. Corrections had been alerted to the events complained of by a report from a long serving probation officer colleague of Ms Wastney. That individual, Mr Kerry Aston, reported to Corrections' Greymouth manager that a member of the public had observed wood from a van and trailer belonging to Corrections being offloaded at Ms Wastney's home.

[6] Corrections arranged for offenders sentenced to community work to, inter alia, prepare firewood for persons in need in the community. That firewood is delivered by Corrections to those persons, typically by the senior community work supervisors.

[7] Corrections' letter of 17 July 2008 alleges that Ms Wastney:

- (a) Worked on her day off without permission (the first allegation);
- (b) Used Corrections' van and trailer for personal purposes (the second allegation); and
- (c) Arranged to have firewood offloaded at her home which firewood belonged to Corrections, thus potentially committing theft (the third allegation).

[8] The applicant was suspended from duty on full pay and the investigation was headed up by a senior Corrections manager from outside the district, Mr Garth Newman.

[9] Mr Newman conducted an extensive investigation and made findings of fact. He concluded that the applicant had been guilty of the second and third allegations, that is the allegation of using a Corrections van and trailer for personal use and the allegation of arranging for Corrections' firewood to be delivered personally to Ms Wastney's home. That intelligence was conveyed to Ms Wastney by letter dated 22 September 2008 which, amongst other things, conveyed Mr Newman's preliminary view that Ms Wastney should be dismissed. Further submissions were sought on penalty and a meeting took place on 14 October 2008 to hear those submissions from Ms Wastney and her PSA representative who had been engaged in the process throughout. In the result, the provisional determination to dismiss was confirmed.

[10] A personal grievance was raised by letter dated 12 December 2008 and the parties subsequently attended an unsuccessful mediation on 20 February 2009. On that basis then the matter comes to the Authority for determination.

### **Issues**

[11] The fundamental question is whether it was available to Corrections to reach the conclusions that it did in relation to Ms Wastney's alleged wrongdoing. Subsidiary questions revolve around the contention that Ms Wastney was subject to two unjustified actions causing disadvantage, whether a grievance in relation to that separate matter was ever properly raised and whether there were indeed breaches of the implied and express terms of the employment agreement.

[12] The Authority will need to consider the following elements in order to reach a determination:

- (a) What happened on 14 July 2008?
- (b) Was Corrections' investigation into those allegations fair and just?
- (c) Were there unjustified actions causing disadvantage?
- (d) Were there breaches of implied terms of the employment agreement?

**What happened on 14 July 2008?**

[13] Ms Wastney's evidence (and for completeness, what she told the investigator from the Department), was that on Friday, 11 July 2008 she had received a telephone call from a person called *Jan* who lived at Blackball (a small town some distance from Greymouth) and who appeared desperate and in urgent need of firewood. Allegedly, brief directions to Jan's residence in Atarua Road were given and a cellphone number was communicated. Apart from some general directions about how to get to the address, Ms Wastney acknowledged that she had not obtained a surname for the caller or any other identifying information.

[14] Ms Wastney says that she asked the senior community work supervisor to arrange for a trailer to be filled with wood so that she herself could deliver it to Jan the following week. Then, Ms Wastney says that she received a call on her cellphone on Monday, 14 July 2008 from Jan saying she was desperate for the wood and could she have it that day. Ms Wastney says that she told Jan that that day (Monday) was her day off but she agreed to try to accommodate the request.

[15] It is accepted that Ms Wastney took no steps to satisfy herself that Jan qualified for assistance in the receipt of free firewood. There is a criteria to be met for such a service and it is accepted that Ms Wastney did not inquire further into Jan's bona fides save to make clear that she thought Jan sounded old and desperate.

[16] In any event, Ms Wastney attended at the office on Monday, 14 July 2008 and spoke to her manager, Ms Kelly Hill, who agreed that she could deliver the firewood on her day off on the basis that she also did some other appropriate work at the same time in the Blackball area.

[17] Before she left Greymouth for Blackball, Ms Wastney received a telephone call from her son reminding her that there were some hired DVDs that needed returning. Ms Wastney then proceeded away from the Corrections office, driving a Corrections van which in turn was towing what she described as *a small trailer of wood, not overflowing*. She says she got as far as the Cobden Bridge where she received another telephone call from Jan, again on her cellphone, questioning the nature and quality of the wood. When told that the wood in question was from the local mill, Jan apparently said she did not want mill wood, only split wood and thus did not want any wood delivered.

[18] Ms Wastney then headed home having received this call from Jan about a minute away from her own residence. At home, her evidence is that she rang Bill, a Community Work Sponsor, to arrange to get Bill to take the wood. While at home, she picked up the DVDs and she says that when she went to leave again after being inside for a very short time, her 11 year old son had a tantrum about not being allowed to go with her and her two dogs had followed her outside, necessitating her throwing a couple of lumps of wood at them from the trailer. Ms Wastney then proceeded to return her son and the dogs inside her residence and took the trailer load of wood around to Bill's house.

[19] In the letter from Paul Tomlinson, Corrections' regional manager, which initiated the investigation into Ms Wastney's behaviour on this day, there were three allegations. The first of these was that Ms Wastney had worked without authorisation on her day off. I agree with Corrections' investigating officer's conclusion that that allegation is not made out. I interviewed Kelly Hill, Ms Wastney's direct manager, and I am satisfied from her evidence that she tacitly consented to Ms Wastney performing work duties on her day off, namely 14 July 2008.

[20] As to the other allegations, Corrections' investigator reached conclusions that those allegations were made out. For reasons which I will set out shortly, I agree with those findings. The second allegation, which complained that Ms Wastney used a work vehicle for private purposes, is clearly made out. Ms Wastney went home, on her own admission, for amongst other reasons to collect DVDs and return them to the rental company. That has nothing to do with the affairs of Corrections and the fact that she tended to minimise that does her no particular credit. Her evidence that she had to go home to use the telephone to ring Bill is frankly unsustainable; she had the Department's cellphone with her in the van and she could easily have pulled off the road and rung Bill with the Department's cellphone. If she did not have the number, she could have rung the office or indeed Directory Service. Even if it is accepted that one of the reasons she went home was to ring Bill, there was an ancillary purpose, namely the collection of the DVDs to return to the rental company, and that taints the official business. It is, in my view, of no moment that Ms Wastney did not in fact use the Corrections' vehicle to actually return the DVDs; clearly she used the vehicle to collect them and that is enough.

[21] Most significantly, I come to the allegation that Ms Wastney caused part of the firewood load to be discharged at her home so that only part of it was provided to Bill later on. This is the most serious of the allegations, but also the one which generated the most controversy in both Corrections' investigation of the matter and in my investigation meeting.

[22] Having heard Corrections' investigating officer give evidence and having reviewed his written findings, I am satisfied that the decision that he reached on behalf of Corrections was the decision available to a fair and reasonable employer. There are a number of factors which influence me to reach that conclusion.

[23] First, the evidence that I heard was that the trailer which left Corrections' Greymouth premises was full. Ms Wastney wanted me to accept that the trailer was not full but a number of people from Corrections saw the trailer leave Corrections' office premises and they described it as being full. Although I did not hear from Bill, the community work sponsor, I am satisfied that Corrections' investigator accepted Bill's evidence that Bill did not get a full load.

[24] More importantly though, I am persuaded that Ms Wastney is mistaken when she indicates that she left her home promptly after making a call to Bill and collecting the DVDs for return; in fact, the evidence strongly suggests that the van and trailer were parked outside her home for at least 20 minutes and parked in a most curious way if she was simply calling in to do some quick errands. The vehicle was parked on the grass verge immediately adjacent to the high fence that surrounds Ms Wastney's property. That in itself is curious because, as Corrections' investigator rightly pointed out, Ms Wastney lived in a cul de sac in a small outlying community attached to Greymouth, itself hardly a large community with any significant traffic flow. Ms Wastney's explanation of parking off the street to avoid *boy racers* has little to recommend it, given this was the middle of a week day.

[25] I am satisfied that Ms Wastney was parked on the grass verge outside her home and had the vehicle and trailer parked there for at least 20 minutes because she was seen by Rhondda Aston, a member of the public who is married to Mr Kerry Aston, a senior probation officer based in the Greymouth office of Corrections. Mrs Aston gave evidence at my investigation meeting. She told me that she recognised the Corrections' van and trailer as she passed close by Ms Wastney's property to visit a friend. On this initial occasion, Mrs Aston's evidence is that she

saw a young adolescent on the trailer throwing wood over the fence into Ms Wastney's property. When Mrs Aston drove through the intersection from which she could see Ms Wastney's property (having finished her visit to her friend), Mrs Aston was able to see that the van and trailer were still in place. She says that that was some 20 minutes later and I accept that evidence. Mrs Aston even took photographs of the trailer using her cellphone and those photographs show the wood is not visible; indeed, to all intents and purposes, it looks like the trailer is empty.

[26] For all the foregoing reasons, it seems to me more rather than less likely that Ms Wastney arranged to help herself to a half trailer load of firewood or thereabouts before delivering the balance to Bill.

[27] That leaves the issue of the identity of the mysterious *Jan*. Ms Wastney clearly believed that she had been set up by her colleagues who, for various reasons, allegedly did not like her. I will consider this aspect further in a later section of this determination. However, for the purposes of the events of 14 July 2008, the issue of the identity of Jan needs to be confronted. Ms Wastney thought that Jan was in fact Mrs Aston, the woman who had reported seeing the van and trailer and the wife of Mr Kerry Aston, a work colleague of Ms Wastney's and a man of significant experience in Corrections. Mr Aston formed negative views about Ms Wastney during her short career at Corrections and made little secret of his views. Whatever the relationship between Mr Aston and Ms Wastney in the workplace, the allegation that **Mrs** Aston was Jan is simply fanciful. There is not a shred of evidence to support that contention. First, Mrs Aston denied at my investigation meeting that she was Jan and I believe her. Second, and equally importantly, the notion that Jan was a creation of Mrs Aston designed to, as it were, *set up* Ms Wastney, is simply too implausible to be real. If Jan were an invention of somebody such as Mrs Aston, seeking to get Ms Wastney into trouble, it is difficult to see how the creation of this apparently fictional individual could ensure that Ms Wastney would end up committing the indiscretions that she did. If the purpose of creating the Jan figure, requesting the firewood and then withdrawing that request, was to ensure that Ms Wastney would appropriate the firewood to her own use, that was drawing a very long bow. Ms Wastney might equally have behaved perfectly properly, taken the firewood back to the office or delivered all of it to Bill, the local community work sponsor.

[28] It seems to me more likely that Jan was in fact a fictional creation of Ms Wastney herself, designed to justify the business of loading up the trailer with wood in the hope that she could retain some of it for her own use. This was the view of matters formed by Corrections' investigator who also concluded that the Jan figure was a creation, not a real person. There would be no basis normally on which a probation officer would deliver wood to a community person in need. Typically that was the job of the senior community work supervisor. However, by inventing Jan, Ms Wastney would have been able to have a trailer load of wood prepared and then, by continuing the fiction that Jan had rung back and changed her mind, to proceed to take some of the firewood for herself and deliver the balance to Bill, presumably in the hope that Bill would not complain that he had not been given a whole load.

[29] For the purposes of my findings, it is certainly not necessary to affirmatively conclude that Jan was a creation of Ms Wastney. What is certain is that the inquiries conducted by Corrections suggest that no such person exists and the address and other information which Jan provided do not provide any further assistance. The cellphone number is not allocated to anyone, or at least was not allocated to anyone when the investigation by Corrections was carried out, and the address provided did not disclose anybody fitting the description of Jan.

[30] It follows that, having reached the conclusion that the Department reached proper and sustainable conclusions in respect of the investigation, a finding of serious misconduct by Corrections is, in my judgment, a fair and reasonable conclusion for an employer to make in the circumstances that Corrections was in at the time in which it conducted its investigation.

### **Was Corrections' investigation into those allegations fair and just?**

[31] I have already discussed the substance of the investigation and I consider, in this section of the determination, the process used by Corrections to reach those substantive conclusions.

[32] First I note that the initial allegations were contained in a letter addressed to Ms Wastney dated 17 July 2008 and signed on Corrections' behalf by Paul Tomlinson, the regional manager for Greymouth. However, to ensure that a fair and robust process was undertaken, Mr Tomlinson invited an area manager colleague, Mr Garth Newman, to conduct the actual investigation.

[33] Mr Newman gave evidence at my investigation meeting about the nature of the investigation that he conducted. In that investigation, Mr Newman was advised by Corrections' human resources regional HR advisers, Keely Maule and Alex Goodall. Ms Maule and Ms Goodall job share and are both based in Christchurch. At all relevant and appropriate times, one or other of them assisted Mr Newman, either in person or by telephone.

[34] Mr Newman is an experienced investigator for Corrections. He was previously a sworn Police officer and no doubt developed some of his forensic skills in that environment. The process adopted by Mr Newman on behalf of Corrections seemed robust. Witnesses were interviewed, either in person or when availability problems dictated, by telephone, and notes of those interviews were kept by either Ms Goodall or Ms Maule. At the end of the interview, a copy of the notes of the interview was provided to the deponent. In identifying who should be spoken to in respect of Mr Newman's investigation, Mr Newman's evidence was that he spoke to everybody who he thought could reasonably assist him in understanding precisely what might have happened.

[35] Of particular significance is the fact that Mr Newman interviewed Ms Wastney twice, some two weeks apart. The second interview gave Mr Newman an opportunity to put to Ms Wastney matters which had come up in the course of the inquiries that he had made in the preceding period and in a number of areas, Mr Newman was able to seek further and better particulars from Ms Wastney. In particular, Mr Newman is very clear that his contact with Ms Wastney (and particularly his willingness to see her more than once), enabled him to pursue lines of inquiry which she herself suggested and to investigate or re-investigate matters which she suggested would benefit from further inquiry.

[36] The investigation process really began in earnest on 25 July 2008 and concluded with the letter dismissing Ms Wastney dated 14 October 2008. I consider that the process adopted by Corrections in respect of the investigation was thorough and fair and that it complied with Corrections' own procedures as detailed in the Department's Code of Conduct as the relevant portions of that document are set out in the correspondence before the Authority.

[37] However, Ms Wastney complains that Mr Newman was biased. She told me in her oral evidence: *I believe he had already made the decision before the*

*investigation started so I thought he was biased.* But it is difficult to see how Mr Newman could have decided the matter before he even started the investigation. First, there is not one piece of evidence to enable the Authority to come to such a far-reaching conclusion. As I have already noted, Mr Newman had had no previous engagement either with the Greymouth office or Ms Wastney and had never met any of the principal protagonists before. There is nothing before the Authority that would suggest that Mr Newman had formed some conspiracy with Paul Tomlinson, the regional manager, or indeed with any other person or persons within Corrections about the outcome of this investigation. Accordingly, I reject that contention of Ms Wastney absolutely.

[38] However, Ms Wastney also raises a number of other particular matters which she says, had the investigation taken proper account of, might well have resulted in a different outcome.

[39] The particular concern of Ms Wastney was her allegation that Mr Newman had failed to take into account her allegations of *bullying* within the Greymouth office, specifically bullying of her by others. As the evidence came out in my investigation meeting, it seemed to me that it might be more accurate to describe Ms Wastney's contention as an example of her being *ganged up on* and then *set up* by co-workers in Corrections' Greymouth office. Ms Wastney says in her written brief of evidence that she *raised the wider issues at all the investigation meetings we had ...* but that is not the evidence of Mr Newman who, although he agrees that Ms Wastney raised the issue of having been *set up* at the first interview, did not raise a bullying allegation until the pair's second interview on 19 August 2008.

[40] Mr Newman says in his evidence that he was obligated to inquire into and make findings about three specific allegations and wider concerns about bullying or conspiracy were outside the ambit of his investigation. I agree with Mr Newman in that regard. Clearly, he had a particular task which he had derived from the original letter generated by Mr Tomlinson, the regional manager responsible for the Greymouth office. That task required investigation into three particular allegations.

[41] Of course, Ms Wastney says that part of her defence to those allegations is the contention that she was bullied by co-workers and/or that she was the victim of a conspiracy by those same people which resulted in her being *set up*.

[42] As to the bullying allegation, there is no evidence of a causal link between the alleged bullying and the specific allegations which Ms Wastney was facing. However, the position is, I think, otherwise in relation to her contention that she was the victim of a conspiracy and was *set up* by co-workers. If that allegation could be made out, then it might well be relevant to Mr Newman's inquiry. The difficulty for Ms Wastney is that there is no evidence at all that there was a conspiracy to *set her up*. There is evidence that the Greymouth office was dysfunctional, that there were factions in the Greymouth office and, in particular, that a number of the more senior staff in the Greymouth office simply did not approve of Ms Wastney for a variety of reasons that are not germane to this determination.

[43] Even although I accept that a number of Ms Wastney's co-workers neither liked nor approved of her and in particular that a number of her co-workers were resentful that her earlier serious misconduct disciplinary matter resulted in her being restored to the workplace, there is still, in my judgement, no evidence to link that evident dislike to the alleged *set up*.

[44] It is true that Ms Wastney maintained, for example, that the mysterious *Jan* was in fact Rhondda Aston who had created the *Jan* persona to create difficulty and mischief for Ms Wastney. The problem with that contention, as I have already mentioned, is that there is no evidence for that view other than Ms Wastney's bald assertion; Ms Aston denied categorically to me in her oral evidence that she had in fact been *Jan* and as I have already noted, I believe her.

[45] Another example is Ms Wastney's claim that her Department cellphone was wiped of evidence of the *Jan* calls after it was repossessed when she was suspended at the beginning of Mr Newman's investigation. Again, there is no evidence for this assertion. Ms Wastney says that she did not wipe the cellphone and the Corrections' recipient of it, Ms Hill, the Greymouth manager, told me that she took possession of the cellphone and she checked it for normal type *useful* information and found none.

[46] Further, Ms Wastney claims that if Ms Hill (her immediate manager) had accepted Ms Wastney's request to visit Ms Wastney's home and search for the allegedly misappropriated firewood immediately the allegation was made, Ms Hill would have found nothing untoward. Ms Wastney claims that she made that suggestion the day after she is alleged to have misappropriated the wood. However, Ms Hill told me that Ms Wastney did not give her the option of visiting her home to

check for the wood. Ms Hill's recollection of this issue is expressed in the following words:

*Jacqui [Ms Wastney] did not offer me the option of going to her house to look for the wood. She was quite defensive and wouldn't sit down (during this interview on 15 July 2008). She never invited me to her house. Had she done so, I would have gone. She simply did not make the offer. I would have gone if she had offered.*

[47] I was impressed with Ms Hill as a witness and I must say that on this point I preferred her evidence to Ms Wastney's. I conclude, therefore, that Ms Wastney did not make the offer that she claims to have made.

[48] A further example of Ms Wastney's evidence is the contention that the photographs taken by Ms Aston of the van and trailer outside Ms Wastney's house was not an accurate representation of what Ms Aston would have seen and that the photograph had been *doctored*. Both Mr and Mrs Aston gave evidence at my investigation meeting and I asked them whether they wished to comment on that suggestion. They denied altering the photograph with Mr Aston in particular being quite vociferous in his denial, making it clear that neither he nor his wife would know how to edit a photograph as Ms Wastney contended.

[49] My conclusion then is that not only was the investigation conducted by Mr Newman a fair and balanced one in an abstract sense, but also that the contentions made by Ms Wastney about the alleged deficiencies in that investigation are completely misplaced. There is, in my view, no evidence of bias by the decision-maker, no evidence of a *set up*, and the particular claim that Ms Wastney makes about, for example, *Jan* being Ms Aston, Ms Aston's photograph being *doctored* and Ms Hill failing to take the opportunity to inspect Ms Wastney's house property when that suggestion was proffered, all fail for want of evidence.

### **Were there unjustified actions causing disadvantage?**

[50] Ms Wastney's claim in this regard is that the issues around bullying and alleged harassment of her by co-workers were raised by her with Corrections within the statutory 90 days period and that they constitute evidence of disadvantage to her caused by the unjustified actions of Corrections in that Corrections took no proper steps to investigate the matters complained of or to ameliorate their consequences.

[51] Corrections first of all denies that the personal grievance was raised within time, claiming that the first and only occasion on which the issue was properly put before it was in Ms Wastney's personal grievance letter of 12 December 2008. Corrections says that the events complained of in that letter happened well outside the statutory 90 day period. However, Ms Wastney counters with the contention that her personal grievance letter was not the first intimation she made of bullying and that happened in her interview with Mr Newman. Even on Mr Newman's evidence, he concedes that Ms Wastney raised bullying allegations on 19 August 2008 and raised the allegation that she had been *set up* by a conspiracy of co-workers at the first interview on 28 July 2008.

[52] As Ms Wastney's counsel observes in the submissions filed on her behalf, it is clear law that the question of whether a personal grievance has been properly raised or not *depends solely on whether it falls within the definition of s.103 (of the Employment Relations Act 2000): Clark v. Nelson Marlborough Institute of Technology* CRC51/07 per Couch J. I am satisfied in the present case that both of the complaints made to Mr Newman were in truth personal grievances within the meaning of s.103 as elucidated by Judge Couch, and that it follows that Corrections was on notice from 28 July 2008 that Ms Wastney was complaining about matters to do with her various collegial relationships in the Greymouth office.

[53] That view of matters is supported by the fact that, subsequent to Ms Wastney's dismissal, there was an investigation into relationships in the Greymouth office by Corrections' human resources team which did disclose evidence of dysfunctional relationships having existed there previously.

[54] Even if that is not accepted as support for my conclusion, I am satisfied that there is reason to conclude as an alternative pathway to reaching a similar conclusion that Corrections has an obligation to provide a safe workplace under the Health and Safety in Employment Act and when faced with complaints from an employee, albeit in the context of a serious disciplinary investigation, it is obligated to conduct a proper investigation and reach reasonable and sustainable conclusions.

[55] I do not think it can be said that that happened in this particular case, or at least that it happened in a timely fashion. Certainly, it is true that the human resources team conducted inquiries, but by the time those inquiries were brought to a conclusion, Ms Wastney had long since been dismissed for misconduct.

[56] I am satisfied that Ms Wastney is entitled to succeed in respect of this second head of claim and I make orders accordingly.

### **Determination**

[57] For reasons which I have already elaborated upon, I am not satisfied that Ms Wastney has been unjustifiably dismissed. I conclude on the basis of the evidence before the Authority that Ms Wastney was subject to a fair and reasonable investigation of her alleged wrongdoing and that the decision to dismiss her for serious misconduct was a decision which a fair and reasonable employer would make in the particular circumstances of the case: s.103A of the Employment Relations Act 2000 applied. I think that Corrections gave appropriate weight to the previous final warning in reaching its decision.

[58] Mr Beck, for Ms Wastney, urges on me the proposition that the Corrections investigator erred in not opening his mind to the possibility that Ms Wastney *had been set up or at least partially set up*. It seems to me whether Ms Wastney was set up or not, the Corrections investigator found as facts that she had committed conduct which amounted to serious misconduct and, that being the position, it was available to him to conclude, as he did, that she ought to be dismissed from her employment. The issue must be whether the investigating employer is satisfied on reasonable grounds that the offences under investigation have been committed by the employee and in the end that was the conclusion which Mr Newman reached. My determination concludes that Mr Newman's conclusion on behalf of Corrections was a conclusion that a fair and reasonable employer would reach.

[59] That being the position, Ms Wastney's claim for having been unjustifiably dismissed fails, as does her claim for the remedies particularly associated with the allegation of unjustified dismissal, especially her claim to be reinstated to her former position.

[60] Conversely, I reach a different conclusion in relation to Ms Wastney's claim that she was disadvantaged by a series of unjustified actions of Corrections. I think this allegation is made out because I am satisfied that Corrections was properly advised of Ms Wastney's concern within time, and because it focused on what, for it, was the most important issue, namely the disciplinary inquiry, no proper steps were

taken to investigate Ms Wastney's concerns of bullying and unsatisfactory human relationships until it was too late for her.

[61] I award Ms Wastney the sum of \$3,000 as compensation for hurt, humiliation and injury to her feelings in respect of her successful personal grievance.

**Costs**

[62] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority