

**ATTENTION IS DRAWN TO THE
ORDER PROHIBITING PUBLICATION
OF CERTAIN INFORMATION REFERRED
TO IN THIS DETERMINATION**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 9
5379107

BETWEEN

WILLIE ALATIPI
Applicant

A N D

CHIEF EXECUTIVE OF
DEPARTMENT OF
CORRECTIONS
Respondent

Member of Authority: G J Wood

Representatives: Alison Maelzer for Applicant
Juliet Dobson for Respondent

Investigation Meeting: 31 October and 1 November 2012 at Wellington

Submissions Received: By 7 November 2012

Date of Determination: 28 January 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. The applicant, Mr Alatipi, claims that his summary dismissal by the Chief Executive of the Department of Corrections (Corrections/the Department), was unjustified, as he did not assault Prisoner X. There is an order of the Authority prohibiting publication of Prisoner X's name, or any details that may lead to his identification. Corrections denies his claims.

2. The issues for determination are:

- whether the Department adequately investigated the allegations against Mr Alatipi;
- whether the Department's process, including its decision not to re-interview Mr Alatipi when another witness was, meant that Mr Alatipi had a fair opportunity to respond to Corrections' concerns;
- whether the Department had already formed its views before Mr Alatipi was interviewed and whether it genuinely considered his explanations;
- whether the Department should have relied to previous alleged instances of inappropriate behaviour by Mr Alatipi; and
- whether the Department had sufficient grounds to conclude that Mr Alatipi had committed serious misconduct.

The facts

3. Most of the facts relevant to this matter are in essence agreed. The major dispute appears to be over whether or not Mr Alatipi did assault Prisoner X. However, it is not necessary for the Authority (in the first instance, at least) to determine this matter because, as noted below, it is the employer's justification of the dismissal and how it acted in reaching its decision that must be first assessed.
4. Mr Alatipi was an experienced Corrections Officer, who in 2011 was working in the Remand Wing at Rimutaka Prison. He worked with another Corrections Officer in that Block, under the supervision of a Senior Officer, who was in the Control Room at all times.
5. Between 8.00 and 8.30am on 2 July 2011 Prisoner X approached Mr Alatipi seeking to make a telephone call. However, Mr Alatipi had been earlier informed that prisoners such as Prisoner X could not be allowed calls that morning. Mr Alatipi declined the request and in the following discussion a verbal altercation took place. Mr Alatipi required Prisoner X to return to his cell. It was at this point, approximately just after 8.30am, that Prisoner X alleges he was assaulted by Mr Alatipi. Whatever occurred then, Mr Alatipi left Prisoner X's cell, closing the door on his way out. Some short time later Prisoner X used his

cell intercom to advise the Senior Officer in the Control Room that he had been assaulted. The Senior Officer sent Mr Alatipi to check on Prisoner X. On his return, Mr Alatipi advised the Senior Officer that there were no problems.

6. Around 9.10 that morning a prison nurse, accompanied by Corrections Officers, was carrying out her usual medical round. They asked Prisoner X, from the entrance to his cell, if he wanted his medication. He refused it. A Corrections Officer then approached him and asked him what was wrong, and Prisoner X told him that he had been assaulted by an officer. The medical round then continued.
7. Soon thereafter Mr Alatipi went to Prisoner X's cell and asked if he wanted to go into the yard, which he declined to do.
8. In the meantime, the Corrections Officer who had approached Prisoner X during the medical round raised, with the Principal Corrections Officer, his concerns that Prisoner X had been assaulted and that facial injuries were visible to that Corrections Officer.
9. Prisoner X was then taken to the medical unit, where his injuries were assessed, treated and photographed. The prisoner again raised the issue of having been assaulted.
10. The matter was referred to Ms Liz Hawthorn, Assistant Regional Manager, Southern Region, for Prisons. She requested Ms Mary Wilson, Investigations Projects Manager, to undertake an employment investigation into the assault allegations.
11. The same day Mr Alatipi was informed of the investigation by Ms Hawthorn, who placed him on special leave on pay immediately in order, given the gravity of the allegations, to allow him the opportunity to prepare submissions on whether suspension should or should not occur. He was given until 15 July to make such submissions.
12. Mr Alatipi's representative from his union, the Corrections Association (CANZ), denied that he had assaulted the prisoner and submitted that he should not be suspended, but that he was willing to accept any decision that was made in the interim.

13. On 19 July Ms Hawthorn decided to implement the suspension because of the gravity of the allegations. The above decisions have not been challenged as part of this investigation. I do not refer to them again.
14. Ms Wilson wanted to interview Mr Alatipi, but he declined to be interviewed given that the Police were involved, following Prisoner X's complaint to them of assault. Ms Wilson decided to continue with her investigation, notwithstanding this approach by Mr Alatipi. Mr Alatipi did attend an interview with Ms Wilson on 19 August, but he declined to answer any questions in relation to the allegations until the outcome of the Police investigation was known.
15. In the meantime Ms Wilson interviewed Prisoner X, two prison nurses and the Corrections Officers who were involved, except the other Corrections Officer who was on duty with Mr Alatipi at the time. She also visited the remand Wing of the prison, and reviewed video and audio tapes and medical notes.
16. Despite Mr Alatipi's insistence that he could not respond until the Police investigation had been completed, Corrections determined to continue with its investigation. Ms Wilson provided Ms Hawthorn with a final report accordingly on 30 August. Ms Hawthorn wrote to Mr Alatipi, providing him with a copy of the report, the same day. She also stated:

Prior to making the decisions with respect to what action, if any, I shall take in relation to this matter, I wish to consider any comments and submissions you might choose to make regarding it. You have the right to take advice (union, legal or otherwise) before making submissions.

Please ensure any comments and submissions you wish to make are received at my office no later than 4.30pm Monday, 5 September 2011.

17. I accept Ms Hawthorn's evidence that she did not peruse Ms Wilson's report closely at that time. This is because she was still awaiting submissions from Mr Alatipi and because of the short period of time within which Mr Alatipi had to respond. I also note that in her later letter of 5 September 2011 Ms Hawthorn stated that she would be reviewing the information, which implies that she had not done so to date.
18. The union responded on 5 September, noting that Mr Alatipi had not declined to answer, but merely exercised his right to silence. It was noted that the Police investigation had not been completed and that the union had been assured that *the*

report would be provided to both parties. As the investigator, Ms Wilson was advised that Mr Alatipi would be willing to speak with her, once he was in possession of that report and/or was informed if criminal proceedings were to be started.

19. Ms Hawthorn responded that day, stating:

As I previously advised, I will be reviewing the information contained within the employment investigation report (relating to the serious allegation of the assault of a Prisoner on 2 July 2011) when considering whether you have breached the Code of Conduct. I would like to emphasise again the importance of this opportunity for you to explain events from your perspective and to comment on any information or misinformation contained within the report.

20. Mr Alatipi was given a further day to respond.

21. The union responded the next day, raising concerns about Corrections' approach to the matter, particularly the difference between maintaining a right to silence and refusing to answer questions. It was noted that *the approach that you have taken overall suggests a fair amount of predetermination.*

22. On 8 September 2011 both parties were advised that no criminal charges would be laid against Mr Alatipi, due to insufficient evidence to proceed to prosecution.

23. On 9 September Ms Hawthorn wrote to Mr Alatipi stating:

As I have yet to come to a decision concerning the employment investigation (based on the information I have received so far) it is now possible for you to meet with Mary Wilson, Investigation Projects Manager, to explain events from your perspective as the impediments that concerned you have been removed. You will also be able to comment on any information or misinformation contained within the report.

24. I am satisfied from Ms Hawthorn's evidence and the surrounding circumstances that Ms Hawthorn had come to no predetermined conclusion about whether Mr Alatipi had committed the assault on Prisoner X prior to the serving and considering of Ms Wilson's second report. That is because I accept her evidence that this was how she operated and because it was consistent with the events that took place around that time. It is also clear that Ms Wilson did not discuss her initial report with Ms Hawthorn.

25. Ms Wilson determined not to interview the other Corrections Officer because her review of the audio and video evidence showed that he was not in the vicinity at the relevant time. However, he was a part of the medical round team.
26. In Mr Alatipi's interview with Ms Wilson, the union asked if any information had been received from the Police, and the response was that the Police had yet to provide a report to Mr Alatipi, but that he was prepared to continue with the interview.
27. Given that the Police had concluded that there was insufficient evidence to support a prosecution, the union believed that Mr Alatipi should not be disciplined by Corrections.
28. It was Mr Alatipi's account that Prisoner X took the decision to refuse him the use of a phone badly, and at one point racially abused him severely, at which point Mr Alatipi locked Prisoner X in his cell. Mr Alatipi then returned, after the allegations of assault, when he said that Prisoner X wanted to get out of the wing and was told that it was full and that there were no vacancies elsewhere. Mr Alatipi then says that he told Prisoner X that he was *over* the issues earlier in the morning and shook his hand to let him know there were no bad feelings. He indicated that he had never seen any injuries on Prisoner X.
29. Mr Alatipi concluded that the swearing by the prisoner was a non-incident from his point of view.
30. Towards the end of the meeting there was further discussion on the Police report. The union offered to supply a copy of that report when it arrived, stating *I'm offering them to you and it should be in the next couple of days if you want to wait to assist you – if you don't want to wait that's fine by us.*
31. The response was that it may be Ms Hawthorn who may want the report. The union repeated its view that the offer was there.
32. Prisoner X was subsequently re-interviewed and maintained his allegations.
33. In her subsequent summary of findings, Ms Wilson noted that Prisoner X's account had been consistently relayed, including when first made near to the time of the alleged assault. The allegations of assault had been conveyed to a number

of Corrections Officers, and a number of Corrections staff also noted that the prisoner had sustained injuries to his face. I note that this is consistent with photographs taken at the time, which I conclude, despite Mr Alatipi's submissions to the contrary, do show clear bruising to the right side of the prisoner's cheek, unlike photographs of the prisoner taken before the incident.

34. There appeared to be no reason to Ms Wilson for anyone else to have been involved. In fact both parties ultimately appeared to accept that either Mr Alatipi had assaulted the prisoner, or the prisoner had injured himself.
35. Ms Wilson noted that despite three interactions with Prisoner X over this time, Mr Alatipi did not observe any injuries. Ms Wilson also noted that Prisoner X denied injuring himself and that the other Corrections staff also considered that Prisoner X appeared very scared.
36. Ms Wilson took into account that at no point had Mr Alatipi raised any concerns with any other member of staff about the prisoner, or made any file notes to this effect. It was also suggested that Mr Alatipi should have requested assistance from another staff member when locking and unlocking the prisoner's cell. I note here that the evidence was clearly to the effect that while it may be good practice to use another officer when locking a prisoner in his cell, this was not at all consistently adhered to and hence Ms Wilson was wrong to take account of this matter.
37. On 19 October Ms Hawthorn was provided with submissions on Ms Wilson's report from the union. It was again denied that Mr Alatipi had committed any assault. It was also noted that one of the Officers' observations could lead to the conclusion that the injuries were not fresh.
38. In her initial response, Ms Hawthorn noted that the Department's investigation was quite separate from that of the Police. Ms Hawthorn concluded that there was no evidence that the bruising was not fresh, that the allegation of assault was proven and that her preliminary view was that dismissal was the suitable outcome. However, submissions were sought on that matter.
39. A meeting was held for this purpose on 9 November. At that meeting it was noted that the other Officer in the wing had not been spoken to. That Officer told the Police that he was part of the medical round team and did not notice anything

wrong with the prisoner, and that no concerns were brought to his attention by the medical staff at that time. He noted that he was not aware of anything else that may be relevant to the issue. The absence of a discussion with the other Officer was seen as part of Corrections' predetermination of the matter.

40. The point was made that the injuries were not seen by all those who went to Prisoner X's cell, which could only have been because they were not that obvious. This is consistent with the absence of any witnesses to any assault. It was noted that the prisoner's evidence was not consistent, as he made references to threats by gangs on some occasions and not others. It was noted by CANZ that the reference to old bruising came from Police statements from a Corrections Officer, whose account Corrections had accepted. This was said to be particularly important as where a serious charge is the basis for justification of dismissal then the evidence in support of it must be convincing as the charges are grave. It was also suggested the Corrections could not make findings on the balance of probabilities.
41. It was noted that Corrections should have put information from the Police to its staff. Ms Hawthorn responded that she did not have the Police information. It was then submitted that none of the other prisoners reacted to what was a serious assault. It was also noted that Prisoners often do not react to issues that occur as evident from video footage of other uncontested assaults. Given all that, the findings were said to be wrong and predetermined.
42. As a result of the meeting, Ms Hawthorn decided to have a further interview with the Corrections Officer who had first noticed the bruising. His account was that the prisoner's face was swollen and all red at the time. When questioned about why he had told the Police the injuries were yellow, he said he did not know why he had said that to the Police, but that it could have been because he saw the Prisoner later, around the time of the Police interview and at that point the injuries could have been yellow, given that it was four weeks later.
43. Ms Hawthorn concluded there was nothing in that interview, or the previous one with Mr Alatipi's representatives, to make her change her mind that dismissal was the appropriate option. She therefore dismissed Mr Alatipi summarily by letter dated 22 November. Amongst other things, she stated:

The outcome of the employment investigation is not predetermined because I, as the decision maker, review and consider all the information

presented to me (including your submissions) before I make my decision. ... I have not had access to any Police information. I would like to reiterate that all evidence and information available to me has been made available to you and your representatives.

44. Ms Hawthorn confirmed that there was no need, in her view, to interview the other Corrections Officers because they were unaware of the altercation, as Mr Alatipi himself submitted. Ms Hawthorn made it clear that she had considered proper legal standards before determining matters on the balance of probabilities. She also reviewed Mr Alatipi's service, which was said to give her *reasonable doubt as to your suitability as to continued employment especially as your ten years of service contains previous incidences of inappropriate behaviour.*
45. CANZ promptly raised a personal grievance with Corrections a month or so later, repeating many of the concerns raised above, and noting that Corrections had not considered the possibility of Prisoner X's injuries being self-inflicted. In addition, it raised concerns that Mr Alatipi was never asked to comment about previous examples of alleged inappropriate behaviour. Reinstatement was sought, and denied by Corrections. Despite mediation, the problem remains unresolved.

The Law

46. In *Angus & McKean v Ports of Auckland* [2011] NZEmpC 160 the Full Court dealt with the application of s.103A in practise. It held at para [57]ff:

[57] *The Authority or the Court must first determine, as matters of fact, what the employer did leading to the employer's dismissal or disadvantaging of the employee, and how the employer did it. This may include findings about what occurred which brought about the employer's acts or omissions that led to the dismissal or disadvantage, if the facts about material events are disputed.*

[58] *Next, relying upon evidence, relevant legal provisions, relevant documents or instruments and upon their specialist knowledge of employment relations, the Authority and the Court must determine what a fair and reasonable employer could have done, and how a fair and reasonable employer could have done it, in all the relevant circumstances at the time at which the dismissal or disadvantage occurred. These relevant circumstances will include those of the employer, of the employee, of the nature of the employer's enterprise or the work, and any other circumstances that may be relevant to the determination of what a fair and reasonable employer could have done and how a fair and reasonable employer could have done it. Subsections 3, 4 and 5 must be applied to this exercise.*

[59] *Finally, in determining justification under new s103A, the Authority or the Court must determine whether what the employer did and how the employer did it, were what that notional fair and reasonable*

employer in the circumstances could have done, bearing in mind that there may be more than one justifiable process and/or outcome. The Court or the Authority must do so objectively, that is ensuring that they do not substitute their own decisions for that of a fair and reasonable employer in all the circumstances.

47. Those subsections (3), (4) and (5) referred to above state as follows:

(3) *In applying the test in subsection (2) the Authority or the court must consider –*

- (a) *whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and*
- (b) *whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and*
- (c) *whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and*
- (d) *whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*

(4) *In addition to the facts as described in section (3), the Authority or the court may consider any other factors it thinks appropriate.*

(5) *The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were –*

- (a) *minor; and*
- (b) *did not result in the employee being treated unfairly.*

48. In *Faapito v. The Chief Executive of the Department of Corrections* [2012]

NZEmpC 206 the Court held in relation to procedure:

[103] *As the Court has said repeatedly and for a long time, it is overall substantial fairness and substantial reasonableness with which it should be concerned rather than minute pedantic scrutiny of individual elements of a comprehensive process by which justification must be judged under s.103A of the Act. There may well be some minor elements of a lengthy and detailed process which, in isolation, might be said to have had flaws or elements of unfairness. The same conclusion cannot be reached, however, when overall fairness and reasonableness is assessed. There may have been steps that, with the benefit of hindsight, the employer ought to have taken in its investigation process but did not.*

However, the checks and balances in this case of a dual investigative process, which involved the plaintiff and allowed her to have input into the employer's process, means that what may have been initial inadequacies ceased to be so by the time of final decision making. Initial procedural flaws can be rectified and negated by subsequent adherence to proper standards of fair and reasonable process.

Determination

49. Ms Wilson determined not to interview the other Corrections Officer because from her review of the audio and video evidence she believed that he was not in the vicinity at the relevant time, which she assessed was the time of the alleged assault. It would have been appropriate to interview the other Corrections Officer simply if only to ascertain conclusively that he did not know about the events because he was not in the vicinity. Furthermore, Ms Wilson failed to interview Mr Alatipi's co-worker when he had observed Prisoner X when doing the medical rounds, even though that Officer did not notice anything then either. That in itself was information of benefit to Mr Alatipi, as it was consistent with Mr Alatipi's failure to notice any injuries on the Prisoner. In addition, that Officer may have been able to give valuable information about Mr Alatipi's demeanour over the relevant period, which may have been of benefit to the parties. However, the Officer's statement to Police did not provide any information about Mr Alatipi's demeanour and this was not a major issue in any event.
50. As the non-interviewed Officer was not called to give evidence it would be unsafe to find that he did have relevant information to impart about Mr Alatipi's demeanour on the day. On this basis, and given that the other members of the medical team who did not approach Prisoner X similarly did not observe his injuries when he was in his cell, this was no more than a minor failure by Corrections that did not result in Mr Alatipi being treated substantially unfairly.
51. Furthermore, I conclude that Corrections had sufficient information to make the conclusions it did about Mr Alatipi, given that Mr Alatipi's failure to notice the injuries was not necessarily a significant factor in Ms Hawthorn's assessment of whether or not he had committed the assault, and there was no doubt that the injuries could only have been caused by the prisoner himself or Mr Alatipi. This failure, therefore, constituted a defect in the process that was minor and did not result in Mr Alatipi being treated unfairly.

52. I also accept that, ideally, Corrections should have made more effort to obtain the Police investigation documentation. I conclude that this resulted from a miscommunication between Corrections and the union about whether and how the Police information would be accessed by Corrections. Corrections made it clear that it did not believe it had direct access to the Police documentation. Mr Alatipi did have that access and could have provided the documentation to Corrections who would then, I consider, have taken account of it. On the balance of probabilities, I conclude, as a result of all the parties' conversations, that the responsibility for providing that information lay primarily with Mr Alatipi, and not with Corrections. It therefore follows that this was not a failure to take account of relevant material by Corrections.
53. I also accept Corrections' view that it was inappropriate, and unnecessary, to interview other prisoners, as there was no evidence that they had seen anything, and as their accounts were unlikely to be reliable in and of themselves.
54. I do not accept that Mr Alatipi was not allowed a real and timely opportunity to respond before Corrections' adverse views of his behaviour were formed. Corrections' actions over Mr Alatipi's exercising of his right to silence were wrong, in particular because the period of delay during which the Police were investigating was minimal and Mr Alatipi's representatives had made it clear that they expected an answer very soon.
55. However, those actions, which resulted in Ms Wilson's first report, were remedied by Corrections, with Mr Alatipi being interviewed after the Police had decided to take no further action against him. Subsequently, a new report was prepared, which was considered by Ms Hawthorn, who also met with Mr Alatipi and his union representatives, and who conducted further investigations on her own account. This is thus a case of a wrongful action being remedied later, which is justifiable, as found in *Faapito*, the latest in a long list of precedents to so conclude.
56. Similarly, I reject the claim there was no genuine consideration of Mr Alatipi's explanation or other possibilities. I have accepted Ms Hawthorn's oral evidence that she did consider Mr Alatipi's explanation, and considered the possibility that the injuries to the prisoner were self-inflicted. In addition, I do not accept that Ms Hawthorn relied on Mr Alatipi's alleged dishonesty as part of the reason for

dismissal. Rather I conclude that her evidence on the issue of dishonesty was that she believed Mr Alatipi was being dishonest in denying that he had assaulted Prisoner X. This is an entirely different matter to relying on his alleged lying as a reason for dismissal.

57. It is true that Mr Alatipi was not given an opportunity to respond to the last interview held with another Officer about the colour of the bruising to the prisoner. However, no new information was given by that Officer, and therefore it was not necessary for Corrections to revert to Mr Alatipi about that. If there was such a requirement in law then it could result in an unending series of interviews and re-interviews with relevant people. This is not a requirement of a reasonable investigative process.
58. Finally, I do not consider that it was unfair or unreasonable for Corrections to take into account, as part of its explanation for Mr Alatipi's dismissal, *previous instances of inappropriate behaviour*. First, it is clear that Mr Alatipi would have been dismissed anyway, given the seriousness of the assault Corrections found he had committed, even if he had had an unblemished record. Assaults on prisoners by Corrections Officers simply must be treated with the utmost seriousness. Second, it would have been wrong of Corrections not to have taken into account Mr Alatipi's performance in the job as a factor. Third, no evidence was provided that Corrections' assessment of Mr Alatipi's record was in any way inaccurate. I thus accept that while it would have been better for Corrections to have raised this directly with Mr Alatipi, its failure to do so was not fatal, given that dismissal was going to occur anyway once the assault was found to be proven.
59. I conclude that there are no other factors necessary to consider and that how Corrections acted during this disciplinary process was how a fair and reasonable employer could have acted in all the circumstances at that time.
60. It is not for the Authority to determine whether or not Mr Alatipi assaulted Prisoner X, but whether Corrections had sufficient grounds to so conclude on the balance of probabilities, i.e. what is more likely than not, taking the seriousness of the charge into account. Similarly, CANZ's assumption that the Department can not make findings on the balance of probabilities is incorrect. It may make findings, unlike in the criminal courts, on the balance of probabilities, but it must also take into account of the seriousness of the charge. The Department should

also always be sceptical of prisoners' accounts over that of a Corrections Officer, but here I conclude that Ms Hawthorn met those standards.

61. Once the issue of the timing of the injuries was clarified (and the yellow bruising comment was adequately explained), it was clear that the prisoner had either injured himself or he had been assaulted by Mr Alatipi, as he was the only one with the opportunity to do so within the relevant timeframe.
62. In evidence in the Authority, CANZ representatives gave coherent and telling accounts of prisoners that had, and continue, to injure themselves, particularly while in their cells. This evidence extended to how a prisoner might injure himself and make it appear to have been caused by an assault by somebody else. I do not rule out that possibility. However, in the course of Corrections' investigation, there was only a very limited reference to that possibility in Mr Alatipi's defence. I accept that Corrections staff considered self-injury in that light, and discounted it as an unlikely possibility. I accept that this was a conclusion open to a fair and reasonable employer. Once that option was discounted as a realistic possibility, then the only option left for Corrections to adopt was the one that it did.
63. I also accept Ms Hawthorn's evidence that the preponderance of evidence was weighted towards this conclusion. In particular, there was the prompt complaint by the prisoner, the observation of his upset (and, on closer examination by a number of Corrections staff, of his injuries), together with Mr Alatipi's failure, by contrast, to raise any concerns about the prisoner.
64. While Prisoner X's account was not completely consistent from one interview to the next, that was not surprising in circumstances such as these. No genuine witness is likely to be able to recall and recite an incident in exactly the same form over the course of several interviews. I also note that Mr Alatipi was subjected to racial abuse by the prisoner. While he says he took it in his stride, Corrections was entitled to view this as motive for the alleged assault. It was also a relevant factor that Mr Alatipi took no steps to notify any staff, either orally or in writing, of any problems with the Prisoner, albeit that Corrections' expectations of Mr Alatipi were too high, in that it expected him to fill out a time-out form or make a file note.

65. In all these circumstances, I accept that it was open to Corrections as a fair and reasonable employer to conclude that Mr Alatipi did assault Prisoner X, despite the graveness of such an accusation. In so concluding, I do not, however, accept that the investigation by Corrections was ideal, but it did not need to be so, but merely to act in a way that was fairly and reasonably open to it. It therefore follows that Mr Alatipi's claims are dismissed.

Costs

66. Costs are reserved.

G J Wood
Member of the Employment Relations Authority