

Employment Relationship Problem

[1] Angela Rampton alleges she was constructively and unjustifiably dismissed and/or disadvantaged by bullying and harassment following her return to work after a serious head injury. The Wellington City Council disagrees.

Relevant Factual findings

[2] Ms Rampton was employed in October 2012 initially as a community centre co-ordinator. Following a restructuring she was appointed as the neighbourhood development co-ordinator. Her role was within the community services area of the Council.

[3] Ms Rampton's team leader and direct report was Donna Wilson. Ms Wilson reported to Jenni Rains, the manager of community services.

[4] All parties agree prior to September 2017 Ms Wilson, Ms Rains and Ms Rampton had a good working relationship.

Bullying policies

[5] The Council has various policies that form part of the terms and conditions of employment between the parties. This includes a bullying and harassment policy that includes a definition of workplace bullying taken from the Work Safe New Zealand guidelines below:

Workplace bullying defined

Bullying is defined as unreasonable and repeated behaviour towards a person or group that creates a health and safety risk. Repeated behaviour is persistent and can include a range of actions. Unreasonable behaviour covers actions which a reasonable person wouldn't do in similar circumstances, including victimising, humiliating, intimidating or threatening a person. A single incident isn't considered bullying but can escalate if ignored.

[6] The events giving rise to this claim occurred from 21 September 2017 onwards. There is a significant factual dispute between the parties about whether these events occurred and if they did whether they constitute workplace bullying.

[7] For efficiency purposes I have considered each event in terms of the above definition and set out my conclusions below. I have also been assisted by an investigation report dated

18 May 2018 prepared by the Council's external investigator that references the same incidences of alleged bullying, although I have not always concurred with the conclusions for the reasons set out below.

Events 21 - 26 September 2017 Head Injury

[8] Ms Rampton suffered a head injury during a private tramping expedition on 23 September 2017. This resulted in a concussion that was not properly diagnosed until 26 September.

[9] After the injury but before her diagnosis, Ms Rampton returned to work on 25 September. Both Ms Rampton and Ms Wilson recall speaking about the late cancellation of a stakeholder meeting at Linden. Its accepted Ms Rampton was very angry about the late cancellation. She swore at Ms Wilson saying for example "you make me look like a fucking nana". Ms Wilson says she offered to call the stakeholders to explain but Ms Rampton did this herself.

[10] Ms Rampton saw a medical practitioner on 26 September and was diagnosed with a mild traumatic brain injury. She recalls calling Ms Wilson to advise of her injury and alleges she was laughed at.

[11] She alleges the late cancellation was unprofessional, appeared to target her and was the start of a pattern of bullying by Ms Wilson. She believed this "only happened to certain people at certain times". She says because Ms Wilson knew she was a meticulous and organised person, any late cancellation would upset her.

[12] Ms Wilson accepted there was a late cancellation of the meeting but this was at Jenni Rains request because she believed further work was needed before they met with stakeholders. The Council denied any bullying.

[13] Both Ms Rains and Ms Wilson explained the lack of defined priorities and as a result the Council's changing work priorities in their area and how this resulted in the late cancellation of stakeholder meetings. This indicated the issue was a governance problem.

[14] It cannot be bullying behaviour by Ms Wilson if Ms Rains cancelled the meeting. There was no evidence of collusion between these two managers to bully Ms Rampton by the late cancellation. This is not bullying or unreasonable behaviour.

[15] I am also not persuaded Ms Wilson laughed as alleged. Ms Rampton had suffered a serious head injury. This would have impacted upon her recollection of events at that time.

[16] There was also an inexplicable delay in raising these concerns. Ms Rampton struck me as a forthright personality at the time who was unafraid of raising her concerns when she believed a wrong had been committed. This delay indicates there was nothing significant about the event at the time. Ms Wilson denies she laughed at Ms Rampton. I am not persuaded this did occur.

Events 26 September to 17 October 2017

[17] Ms Rampton was off work for nearly a month. During this time, it is alleged Ms Wilson misrepresented her illness to colleagues and made snide comments. Ms Wilson denies this. She accepts she did tell Ms Rampton's work colleagues that she had suffered a delayed concussion and had been behaving bizarrely but made no further comment.

[18] Ms Rampton was behaving erratically on 25 September including swearing. The comment about her acting bizarrely was a fair description of her behaviour at the time. It is not unreasonable behaviour.

[19] Several work colleagues were interviewed about this allegation by the Council's external investigator. Only one, Sarah Adams, alleged Ms Wilson was making snide comments at this time. Ms Adams gave evidence at hearing by telephone. She stated Ms Wilson's behaviour comprised the use of a disparaging tone about Ms Rampton's head injury to other staff and rolling her eyes. She could not recall specific events and accepted she did not raise any of these comments with her manager Ms Rains at the time or subsequently.

[20] Ms Adams gave one example of a meeting where Ms Wilson asked staff "if anyone will do the work". She then rolled her eyes and said "pity Angela's not here". On its face this example appeared complimentary of Ms Rampton's work ethic as opposed to derogatory. It may have less complimentary of the rest of the staff however.

[21] The example gave the impression Ms Wilson has a forthright management style. This was not necessarily bullying. It was clear not everyone was happy with her manner of speaking to staff. However her management style in these circumstances did not constitute workplace bullying of Ms Rampton.

18 October 2017 Return to Work Meeting

[22] Ms Rampton was to meet with her physiotherapist and Ms Wilson on 18 October to discuss her return to work plan. She had originally arranged to meet offsite in a nearby café but Ms Wilson requested they meet in the workplace. It was believed Ms Wilson was tasked with arranging a meeting room but when they arrived none had been organised. Ms Rampton decided to try to find a meeting room and went to her computer for the purposes of doing so. Ms Wilson intervened and I accept this was due to concerns about Ms Rampton's injury and the need to limit her computer use. This was consistent with the return to work plan the parties were discussing. This is not bullying behaviour.

[23] Ms Wilson found a meeting space in a semi-private room known as the "local host room". Ms Rampton and her physiotherapist agreed to use the meeting space offered. No one else was present in the room during the meeting other than the three participants. I understand they could be seen through a glassed wall area but not heard. People were also able to enter at will but no one entered the room during the meeting.

[24] Despite the above, Ms Rampton alleges this was unfair and unreasonable and breached her privacy and the code of conduct. There was no evidence Ms Rampton or her physiotherapist expressed these concerns at the time. Originally the parties were to meet in a nearby public café where there would have been significantly less privacy. It was not unreasonable for her employer to offer this meeting space in the circumstances. While Ms Rampton may feel aggrieved now, if concerns had been raised at the time the Council could have been adjourned the meeting or found a more private space.

[25] There cannot be any breach of privacy by her work colleagues knowing of her injury details or the meeting. Ms Rampton admitted publicising these details when she contacted at least three work colleagues to tell them about her injury and its consequences. Her work colleagues and policies created an expectation she would attend a return to work meeting with her manager following time off work due to injury. There is no evidence of any public release of information that was not already known by Ms Wilson.

[26] I am not persuaded this was a breach of the code of conduct or breach of Ms Rampton's privacy in these circumstances.

[27] During the meeting Ms Wilson was alleged to be oppositional and confrontational. Ms Wilson denies this occurred. An example given was when the physiotherapist asked what Ms Rampton's usual activities were during the day, Ms Wilson replied "yes Angela what do you do all day?" Even if she made the remark, Ms Wilson denies she intended her comments to be offensive. The comment on its face appears an attempt at sarcastic humour. I suspect this is again indicative of Ms Wilson's forthright management style. This type of commentary may not always be taken in the manner intended. However in these circumstances I do not accept it was intended to be bullying.

[28] I also place weight on the significant delay in raising any concern about this meeting. This infers whatever occurred was insignificant at the time and may have been expected workplace banter. A return to work plan was agreed despite the alleged oppositional and confrontational behaviour. This suggests Ms Wilson behaviour was not as disagreeable as suggested.

[29] At hearing Ms Rampton accepted Ms Wilson did express concerns about her health but appeared annoyed throughout. Even if Ms Wilson was annoyed, this does not meet the definition of workplace bullying.

[30] Following the end of the meeting another staff member did enter the room and approached Ms Rampton seeking information about a file. Ms Wilson made a motion to prevent the work colleague from approaching. Ms Rampton states this was a throat slashing gesture and Ms Wilson states it was more moderate. Even if there was a throat slashing gesture, I accept Ms Wilson's intention was to stop the colleague drawing Ms Rampton back into work earlier than agreed in the return to work plan. The behaviour appears based upon her concern for Ms Rampton's health and wellbeing as opposed to workplace bullying.

24 October 2017 Performance Task Template

[31] On her return to work Ms Wilson sent Ms Rampton a Performance Task Template (PTT) and asked her to fill this in. This set out her work plan for the immediate future. Ms Rampton was disconcerted because she had never had her performance monitored previously. She asked if this could be transferred to a MAP (My Accountability Plan) but this did not occur. Ms Rampton believed the use of the PTT was bullying.

[32] There was evidence the future use of MAP to assess performance was under review. This was because it focused on assessing individual performance that led to concerns about “siloeing”. The council wished to work more “agilely” with increased collaboration with staff working as teams. The MAP process was seen as unable to accurately assess collaborate workplaces. Further no MAP had been undertaken with Ms Rampton since 2014. At the time she had not had any MAP for approximately 3 years.

[33] Ms Rampton accepted the information requested by Ms Wilson was reasonable. The information was required because Ms Wilson wanted to put together a work plan consistent with her return to work plan and reduced work capacity. The PTT appears to have been a format for Ms Rampton to provide necessary and reasonable information. Ms Wilson had recently given Ms Rampton’s performance the highest score. There was no basis to assume there was anything negative by the provision of the information sought in the PTT. The request to complete the PTT as opposed to a MAP was not unreasonable behaviour.

20 November 2017 Book a Car Incident

[34] At a meeting on 20 November 2017 Ms Rampton raised the issue of wanting to travel to Strathmore. Ms Wilson told her to “make sure you book a car”. Ms Rampton felt forced to respond in front of her colleagues that she was unable to drive. She alleges this breached her right to privacy and was part of a pattern of bullying.

[35] Ms Wilson accepts she may have made the comment at the meeting but this was to remind her to book a car because of the limited availability only.

[36] A person causes a privacy breach by the unauthorised access to, or collection, use or disclosure of, personal information.¹ This alleged breach occurred because Ms Rampton chose to publicly release her private information, not Ms Wilson. She could have waited and reminded Ms Wilson in private about her injury or alternatively not said anything at all and ignored the comment. There was no need to act as Ms Rampton did to publicly reveal details of her injury. This was not a breach of privacy.

[37] Further I do not accept Ms Wilson’s behaviour was unreasonable in the circumstances. Her explanation was that there was limited availability of cars was accepted

¹ Information Paper to accompany Privacy Breach Guidance Material Office of the Privacy Commissioner <https://www.privacy.org.nz/news-and-publications/guidance-resources/privacy-breach-guidelines-2/>

as correct at that time. Any reminder staff to book a vehicle would not uncommon or unexpected.

[38] I am not persuaded Ms Wilson's behaviour was unreasonable or bullying.

Mental Health Day Correspondence 24 November 2017

[39] The Council had arranged a day on 13 December 2017 for external stakeholders to provide information on issues related to mental wellbeing. Ms Rampton wished to attend this event with another colleague and booked it in her calendar.

[40] On 24 November Ms Wilson noted this attendance in her calendar. She sent an email inquiring about this. Ms Rampton replied referring to the great contacts to be made. Ms Wilson advised the event was not one of their work priorities and she was not sure why Ms Rampton needed to be there. Ms Rampton advised it had been agreed for another colleague to attend. Ms Wilson again advised it was not a priority and was not in their work plans and asked her to advise the organisers that both she and the other work colleague would not be attending.

[41] Ms Rampton accepted this was a legitimate managerial action "if it was a one off". However she felt targeted because of alleged frequent cancellation of meetings. At this stage she had only identified one other cancelled meeting on 25 September. This does not evidence any pattern of cancellation. Further the cancellation of the attendance by her work colleague as well suggested this was not targeted at Ms Rampton.

[42] I am not persuaded Ms Wilson's behaviour was unreasonable or bullying.

Brainstorming 30 Minute Presentation 27 November 2017

[43] On 27 November 2017 Ms Wilson emailed Ms Rampton advising Ms Rains wanted to have a brainstorming session. She asked Ms Rampton to facilitate the 30-minute session for the street-by-street project team meeting held the next day. Ms Rampton believed this placed her under unreasonable pressure to prepare something she would normally be given more time to do. She put considerable time into preparing a PowerPoint presentation. It was agreed her presentation went well. Both Ms Rains and Ms Wilson made positive comments about her work.

[44] Ms Rampton believed this was bullying by setting unreasonable timeframes to complete work. Ms Wilson and Ms Rains both stated that she did not expect her to go to the length of preparing a powerpoint presentation, but rather a more low-level oral briefing.

[45] Ms Rampton accepted there could have been miscommunication about the amount of work required. In my view that is the more likely view of this behaviour as opposed to bullying.

New Employee Tour 29 November 2017

[46] A new employee started with the community services team. Part of her area of work included Strathmore where Ms Rampton was working at the time. She offered to take the new employee on a tour of Strathmore but Ms Wilson declined the offer than later took the new employee on the tour herself. Ms Rampton found this humiliating.

[47] Emails from the time indicate Ms Wilson merely thought the Strathmore tour premature. The new employee was not based in Strathmore, but had a wider role that Ms Wilson wished her to be more familiar with. The fact she later took the employee on a tour of Strathmore does not appear to connected with her refusal of Ms Rampton's offer. Rather it appeared part of a wider training plan.

[48] I am not persuaded Ms Wilson's behaviour was unreasonable or bullying.

Meeting with a Councillor 30 November 2017

[49] Ms Wilson tasked Ms Rampton with organising a meeting with internal/external stakeholders including a councillor. Ms Rains then asked Ms Rampton to cancel the meeting. Ms Rampton alleged the cancellation was humiliating and that she may have been seen as being disorganised or misguided. I understand she alleges this is an example of bullying behaviour by Ms Wilson and/or Ms Rains either separately or together.

[50] I do not agree. There is little to suggest the cancellation of this meeting was Ms Wilson's decision. She asked for the meeting to occur. Ms Rains made the decision to cancel because she wanted a wider meeting instead. She emailed Ms Rampton at the time explaining her reasons for the cancellation were because she believed more than one Councillor ought to be involved. Ms Rains also took responsibility for explaining the

changes to the Councillor involved. Further Ms Rampton still met with the Councillor together with Ms Wilson. There was no basis for her to feel humiliated by the cancellation.

[51] I do not consider this unreasonable behaviour by Ms Wilson or Ms Rains.

1 December 2017 light incident

[52] On 1 December 2017 at approximately 9.45 am Ms Rampton, Ms Wilson, Ms Rains and her work colleagues were meeting in an open area. The meeting had concluded and a quiz was being held. Everyone was scattered through the area. This appeared to be a relaxed informal time. Ms Rampton was standing with another colleague Phil Railton-Jacks. They were directly across from Ms Wilson. Ms Wilson and another employee were seated on a couch below a window. Ms Rains was standing a short distance to the side and between Ms Rampton and Ms Wilson.

[53] Ms Wilson was playing with her phone reflecting sunlight around the room. Ms Rampton stated she moved her head and the light shone in her right eye. She experienced pain and discomfort. Two work colleagues, Jonathon Moore and Phillip Railton-Jacks noticed the light move towards Ms Rampton and shine into her eye and noted her discomfort. The meeting ended and everyone returned to work.

[54] Ms Rampton continued working through the day including meeting with her physiotherapist to approve the closing of her head injury case. Later in the day she felt unwell and attended the Emergency Department at Wellington Hospital. She believed her unwellness was connected to the light incident earlier. At 3.47 pm she emailed Ms Wilson stating:

I am sure you did not mean any harm but this morning when you were joking about during the quiz reflecting light off the screen of Donna's phone you accidentally reflected sunlight directly into my eyes. It is a really bright sunny day and it really hurt my eyes and I can still feel some discomfort behind one of my eyes.

I have made a really good recovery from the concussion but retain some degree of photosensitivity (you may have noticed I always have sunglasses on my head these days).

I did not want to "make a scene" at the time but I wanted to discretely let you both know what had happened.

Ngā Mihi
Angela

[55] Her hospital record states she was seen at 4:08 p.m by the Emergency Department doctors. Neurological and eye checks were undertaken. No damage was found.

[56] By 4 December 2017 her view about the seriousness of the incident had changed. She reported the incident. The incident investigation report recorded her views below:

During the quiz held after the regular team meeting on Friday, Angela felt a sharp pain in her right eye and saw a blinding light. She flinched in pain, said ow and turned away from the light. She realised this had been caused by focussed sunlight coming from Donna Wilson's cell phone screen. She and [SP] had been playing with the phone using the screen to catch and focus and directed the bright sunlight.

[57] The report noted Ms Rampton had reported the incident to the Police. It's accepted no further action has been taken by the Police.

[58] By 5 December 2017 Ms Rampton advised Ms Wilson that she had spoken to her physiotherapist again on the following Monday about the incident on 1 December. She advised this had aggravated her concussion symptoms. As a result, her physiotherapist advised that she amend her return to work plan to manage her symptoms. She returned to taking regular twenty minute "brain breaks" and Panadol and Panadeine for discomfort.

[59] Ms Wilson emailed the same day, thanked her for the update and asked if she needed some time away. She noted she had spoken to the physiotherapist on Friday and been told Ms Rampton had advised she was not feeling any discomfort.

[60] Ms Rampton then went to her GP on 6 December complaining of photosensitivity, headaches and disorientation. He examined her and concluded:

In my opinion the return of her concussion symptoms is directly related to the bright light that was shone in her eye. I feel that she is still fit to work with regular brain breaks. Angela is working with the return to work physiotherapist to manage her return to work.

[61] Ms Rampton replied to Ms Wilson's email on 7 December. She confirmed she had told the physiotherapist on 1 December that she was feeling better and was happy to close her case and described her deteriorating condition later that afternoon:

I did not mention the discomfort behind my right eye (caused by being exposed to the sunlight directed off Donna's phone screen) to [the physiotherapist] as at the time I did not think it had any relevance to the ACC recovery plan. I was also very hopeful that the eye discomfort would ease

shortly. I was not experiencing any aggravation of concussion symptoms at this time about 2-2.5 hours after the health and safety incident at 9:45 a.m.

Just as with my original concussion symptoms the aggravation of the concussion symptoms did not start immediately following the exposure to the concentrated sunlight at 9:45 a.m. Instead it slowly developed over the afternoon (my original concussion developed slowly over three days). At about 2:00 p.m. when I started to prepare the #Welly Next Door display in the Project I had to get down off a chair I was using to hang things due to feeling dizzy, nauseous, and a growing headache and I requested that Donna and Phil do the high part of the display while I did the lower part. By the time my partner picked me up at 3:30 p.m. I was feeling quite unwell and I needed to request pain relief for the concussion symptoms in the emergency department later that afternoon. The aggravation of the symptoms continued over the weekend to the point that I am now regularly taking Panadol and Panadeine for relief.

[62] She attached the medical certificate from her GP dated 6 December 2017.

[63] An HR staff member [FW] organised a meeting with Ms Rampton and her union official, Maddie Drew. FW advised that the incident was going to be investigated and sought a meeting on 8 December 2017.

[64] The parties met on Friday 8 December 2017. Ms Rains was the investigator and decision maker. It later transpired that she also gave evidence in support of Ms Wilson regarding the incident.

[65] The investigation report was completed on 13 December 2017. Four people were interviewed excluding Ms Rains. No notes of the interviews were made. Only one interviewee gave a written statement. The report concluded:

On the basis of the confirmed accounts of the staff interviewed, we have concluded that the incident where light was reflected into Angela Rampton's eye was entirely accidental.

There is no evidence of any deliberate or malicious intention by Donna to cause Angela harm, and in particular, from the 3 eye-witness accounts, there was no deliberately-planned playing of light on to Angela, as one of the number of staff who were present, in particular.

[66] The report did not recommend any further action. I understand Ms Rains spoke to Ms Wilson in January 2018 and asked her to be more mindful but no other outcome has resulted. I deal further with this incident below.

International Volunteers Day 1 December 2017

[67] Ms Rampton wished to attend this event but Ms Wilson directed the volunteer co-ordinator attend instead. She believes this was deliberate action to exclude her. I do not accept this.

[68] Ms Wilson was acting appropriately when she directed the dedicated volunteer co-ordinator to attend a meeting that was relevant to his job. It was not relevant to Ms Rampton's work plan. This was not unreasonable behaviour but appropriate staff management.

Community Awards Debrief Meeting 4 December 2017 "Gas lighting" example

[69] Ms Rampton was involved in the organisation of the community awards ceremony with another employee Mark Farrar. Following its completion, a debrief meeting was to be held on 4 December that she wished to attend. Ms Wilson emailed on 4 December:

Hey Angela, just in the DR meeting and Mark has brought up the community awards meeting he is going to this morning. He feels you won't need to be there so that frees up some of your time! Yay 😊

Donna 😊

[70] Ms Rampton believes she had influenced Mr Farrar to exclude her from this meeting. She alleges this is an example of "gas lighting".² The definition of gas lighting in the Oxford Dictionary is "to manipulate (a person) by psychological means into questioning his or her own sanity." I am uncertain how the behavior alleged here fits within the definition of "gaslighting" behavior.

[71] Irrespective I directed Mr Farrar give evidence. He confirmed he had suggested to Ms Wilson in the DR meeting that Ms Rampton was not required at the debrief meeting because he usually attended this meeting on his own. Further he confirmed he was not influenced at all by Ms Wilson in his decision. I accept his evidence. This was not an example of "gaslighting" or unreasonable behaviour by Ms Wilson.

² The term derived from the title of a 1930's thriller "Gas Light" by the British playwright and novelist Patrick Hamilton.

New Zealand Translation Service 12 December 2017

[72] On 12 December Ms Wilson emailed noting her attendance at a New Zealand Translation Service workshop on 5 December that was not in her weekly work plan. Ms Rampton stated it had come recommended by another colleague. Ms Wilson asked her to discuss attendance at any future workshops prior to booking. Ms Rampton believed this was another example of Ms Wilson seeking to micro-manage and therefore bully her.

[73] This interaction occurred when the investigation into the light shining incident above was occurring. Their normal workplace dealings may have become more tense than usual.

[74] Ms Rampton had been emailing weekly work plans to Ms Wilson. The purpose was to ensure compliance with the return to work plan and prevent re-injury.

[75] This workshop was not part of Ms Rampton's work plan. It is reasonable to assume she should not have been attending this as a consequence. However she attended the workshop in her own lunch hour, albeit extended to one and half hours. Ms Wilson conceded she would not have objected to the attendance if she had known it was occurring during lunch time. She then later pointed out to the investigator Ms Rampton attended the workshop and took her usual lunch break as well.

[76] This issue appears to have taken more significance than it would or should attract. Ms Rampton was unhappy because she had previously been able to act autonomously in terms of the meetings she attended. Ms Wilson viewed her actions as part of a reasonable instruction for Ms Rampton to adhere to her work plan. She noted there were several meetings Ms Rampton was attending that were not in the plan. Her point about the extended lunch hour seems reactionary as opposed to raising any real source of concern.

[77] This is an example of the usual type of conflict that occurs in a workplace. The parties needed to review Ms Rampton's work plan if she wished to continue attending meetings that were not within it. This is not an example of bullying.

Connecting City Communities 13 December 2017

[78] This was a project led by Ms Rampton aimed at encouraging community amongst urban apartment dwellers. Ms Wilson sent an email asking she send a brief and work plan for this project because she was confused about the work done and still required. A councillor

had made negative comments about the necessity for the project. She also copied in Ms Rains.

[79] On 19 December 2017 Ms Rampton sent a comprehensive email setting out the work performed and links to relevant information. Ms Rampton alleged this inquiry was challenging in the sense of asking whether she knew what she was doing.

[80] An employer is entitled to ask an employee for details of their work. This is especially when concerns are raised by external stakeholders. The manner and tone of Ms Wilson's correspondence was appropriate. This was not unreasonable behaviour. Again these normal interactions may have been tainted by the ongoing investigation.

Street-by-Street Project Strathmore 19 December 2017

[81] Ms Rains emailed Ms Rampton on 19 December advising she wanted to place this project on hold. She believed this would be better directed at the Newtown community. She asked Ms Rampton to concentrate on another project "Vertical Communities". Ms Rampton states she was forced to cancel the project team meeting to be held in two days. This was embarrassing and the involvement of Ms Rains was part of a pattern of unreasonable meeting cancellations and changes in direction.

[82] Ms Rain's explained the cancellation was because firstly another employee was still completing work on the community engagement to define the Council's future action in this area. Secondly she was considering moving the project to a different community where there had been extensive community engagement already. Thirdly she asked Ms Rampton to concentrate on another project called vertical communities as it had assumed priority due to the requests from Councillors. Community services appear to have been subject to frequent changes in work priorities to meet the external needs of Councillors. This is a governance problem due to the lack of defined priorities for this area. There is no evidence this decision was targeting Ms Rampton. The behaviour was fair and reasonable in these circumstances.

Personal Grievance

[83] On 22 December 2017 Maddie Drew the PSA representative complained about the health and safety investigation. She asked that this be considered as part of "the wider context of bullying behaviour" and that she would send the complaint details in a separate

email. The same day she sent an email dated 22 December 2017 raising a personal grievance by repeated bullying behaviours by management.

[84] Ms Rampton went on leave from 25 December until 8 January 2018.

[85] On 16 January 2018 Ms Rampton met with FW. It was agreed that an external investigator would be appointed to look at Ms Rampton's personal grievances.

[86] During the meeting it is alleged FW made comments that Ms Rampton might be subject to a disciplinary process as a possible outcome of the investigation. Ms Rampton found this upsetting. Mr Halse asked for FW's removal from any further involvement in her bullying complaint on 1 March 2018. Nicola Brown from Human Resources then took over corresponding with Mr Halse. This seems to have been resolved the matter as it does not form part of any personal grievance raised before me.

[87] On 24 January 2018 Ms Drew sent an email asking that the light incident be included within the terms of reference for the investigator.

[88] Ms Rampton was interviewed by the investigator on 22, 23 and 26 March 2018. She took annual and sick leave from 16 January to 9 April.

[89] Ms Rampton resigned on 9 April 2018.

[90] Ms Rampton's final interview with the investigator occurred on 16 April 2018. A draft investigation report was also provided to her on 4 May 2018. The final investigation report was completed on 18 May 2018.

Was Ms Rampton constructively and unjustifiably dismissed?

[91] Ms Rampton alleges she was constructively and unjustifiably dismissed due to bullying behaviour by management.

[92] The law pertaining to constructive dismissal is well settled. The Court in *Auckland Shop Employees IUOW v Woolworths (NZ) Ltd*³ described three non-exhaustive situations where constructive dismissal might occur:

(a) when the employee is given a choice of resigning or being dismissed;

³ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA) at 374.

(b) where the employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; and

(c) where a breach of duty by the employer leads an employee to resign.

[93] The test for constructive dismissal requires causation and foreseeability.

[94] Ms Rampton did not address which of the categories her case fell within. From the evidence her case cannot fall within category one.

[95] Because I was not persuaded more than one of the alleged events were unreasonable behaviour, the evidence does not meet the definition of workplace bullying. Workplace bullying requires more than a single event. There has been no repeated unreasonable behaviour here.

[96] As a result there cannot be any pattern of behaviour by the Council with the dominant purpose of coercing resignation. Therefore this matter cannot fall within category two.

[97] By failing to meet the tests for workplace bullying, no breach of duty can arise. Therefore this matter cannot fall within category three.

[98] There is also a lack of evidence to show foreseeability. Ms Rampton admitted at hearing she had been considering leaving the Council in January 2018. She was applying for jobs from January until she resigned in April. Mr Chemis asked why, if she was fearful about her continued employment, she didn't she say that to anyone? Her reply was "why would I say to my employer I was worried about my employment?" She confirmed to Mr Chemis that she said nothing about her fears for continued employment from mid October onwards.

[99] Ms Rampton accepted there were no further incidents from 25 December 2017 until she resigned on 9 April 2018. She was also out of the workplace from 25 December 2017 to 9 January 2018, then on leave from 16 January until she resigned on 9 April. Her explanation for the delay in resigning was the necessity to find other work before she left. The delay in resigning appears to be a choice she made as opposed to having been caused by any event.

[100] At the time Ms Rampton was represented by experienced persons in employment law. The Council had engaged an external lawyer to investigate the personal grievances, had appointed another manager to supervise her work and another HR personnel to manage the

investigation process. A reasonable employer would not have foreseen her resignation on 9 April prior to the investigation report being released.

[101] The evidence does not meet the tests for constructive dismissal. Ms Rampton was not constructively and unjustifiably dismissed. This personal grievance is dismissed.

Was Ms Rampton unjustifiably disadvantaged?

[102] Ms Rampton had raised a specific personal grievance about the conduct leading to the incident, the impartiality of the decision maker, investigation process and conclusions.

[103] In respect of the light incident the Council alleged the light incident was within the scope of the investigator's terms of reference, there is no specific reference to this incident therein. It was unsurprising when the investigation report declined to investigate the light incident noting:

Because this matter has been separately investigated – and a conclusion made after an investigation process – I do not believe that it is open to me either to reach a different view about the matters previously investigated – or to reopen a process which has been concluded. I can do no more, therefore, than note the Council's investigation process concluded this was an accidental event.

[104] This statement arises from a misapprehension that the health and safety report investigation was also an employment investigation. The terms of reference do not clarify this was to form part of the investigation report. As a result Ms Rampton's personal grievance about the light incident and the investigation report was not and has not been investigated at all.

[105] The Council accepted the outcome of the investigation report as determinative of its employment obligations. It has taken no further action about this personal grievance. This inaction cannot be justified in terms of the requirements of s103A of the Employment Relations Act 2000. This requires an employer to investigate an employee's concerns, provide an opportunity for the employee to be heard and consider those responses before taking action or not. This did not occur here.

[106] There was merit to her concerns about the incident and the subsequent investigation. There were issues about the decision maker's impartiality, adequacy of investigation and conclusions. Under examination Ms Rains admitted she did not see the incident. This was not stated in the report. Instead the report stated Ms Rains "had not observed there to be any

deliberate targeting of Angela in the light reflection incident.” This inferred she saw the incident when she did not. She also accepted the additional evidence of Phillip Railton-Jacks about the incident would have caused her to investigate further.

[107] The finding there was “no deliberately-planned playing of the light onto Angela” based upon 3 eye witness accounts including her own was questionable. Ms Wilson was deliberately shining the light around the room. She was aware Ms Rampton was photo sensitive due to her concussion, yet shone the light in the direction of her face. The dangers of blinding someone by shining light on their faces should be well known given the recent publicity. Two witnesses saw the light move towards Ms Rampton’s face.

[108] I do not find Ms Wilson consciously intended harm. This was however reckless. It was unreasonable behaviour. This does not however meet the definition of workplace bullying. This is because the unreasonable behaviour has not been repeated. This was a one off incident that caused unintended harm.

[109] However the Council’s inaction regarding Ms Rampton’s personal grievance caused disadvantage in her employment. This cannot be justified in terms of the requirements of s103A.

[110] Angela Rampton was unjustifiably disadvantaged by the Wellington City Council’s actions and inaction regarding the light incident on 1 December 2017.

Remedies

[111] Ms Rampton has a proven personal grievance of unjustified disadvantage. She is therefore entitled to seek remedies of lost remuneration and compensation for hurt and humiliation.

[112] There were no lost wages. This is because following the disadvantage occurring Ms Rampton continued to receive her wages for three months after 1 December 2017. There are no circumstances that suggest the wages recovery should be extended beyond the statutory cap of three months. I decline to award any lost remuneration.

[113] In terms of compensation I am satisfied Ms Rampton has suffered physical and emotional harm as a result of the incident. Her medical certificates confirmed physical harm. She lost trust and confidence in her employer. She has now fully recovered from her original

head injury and no longer suffers any effects from the December incident. The harm did not prevent Ms Rampton organising or travelling for her wedding in January 2018. The harmful effects were not permanent.

[114] The final report revealed no investigation of her employment grievance. The ongoing failure to investigate the employment grievance is relevant conduct to the award of remedies.

[115] Recent awards by the Court for disadvantages have been \$4,000⁴. Those cases can be distinguished by the aggravating factors here. The incident was preventable. There was physical and emotional harm caused. There is an ongoing failure to investigate the personal grievance. Deterrence of this behaviour is required. In my view \$20,000 is an appropriate award. There is no reduction for contributory behaviour.

[116] I order Wellington City Council to pay Angela Rampton \$20,000 compensation within 28 days of this determination.

Costs

[117] Costs are reserved. Costs shall be awarded based upon the daily notional tariff in the absence of any *Calderbank* offers. There was nothing to indicate costs in excess of the daily notional tariff should be awarded. These may also be reduced up to 50% of the hearing time given Ms Rampton was only partially successful. I would encourage the parties to reach an agreement on costs in the circumstances.

TG Tetitaha
Member of the Employment Relations Authority

⁴ *Emmerson v Northland District Health Board* [2019] NZEmpC 34; *Kids Republic Playland Limited v Kylie Lowe* [2018] NZEmpC 22.