

**Attention is drawn to paragraph 12 containing
an Order Prohibiting Publication of certain
information in this determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 276
3122192

BETWEEN	BQW Applicant
AND	MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT Respondent

Member of Authority:	Trish MacKinnon
Representatives:	Mohammad Shabani, counsel for the Applicant Peter Chemis and Jessica Taylor, counsel for the Respondent
Investigation Meeting:	11 August 2021 at Auckland
Submissions and further Information Received:	11 and 25 August and 10 September 2021 from the Applicant 11 August and 2 September 2021 from the Respondent
Date of Determination:	28 June 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, identified in this determination as BQW, claims to have been unjustifiably disadvantaged and unjustifiably dismissed from his employment with the Ministry of Business, Innovation and Employment (MBIE or the Ministry). He seeks

reinstatement to his former position, or to one no less advantageous. He also seeks financial remedies including lost wages and compensation for hurt and humiliation.

[2] MBIE denies BQW's dismissal was unjustifiable and says it acted fairly, reasonably and in good faith throughout the investigation and disciplinary process it conducted. It says it was unaware of any personal grievance for unjustifiable disadvantage until it received BQW's statement of problem and those grievances were not filed within the statutory 90 day period. MBIE did not consent to them being raised out of time.

[3] In the course of a case management conference with the parties on 7 May 2021, BQW clarified that his main focus was his personal grievance for unjustifiable dismissal. It was agreed that matters concerning the disadvantage grievances would be investigated as part of the process leading up to the Applicant's dismissal.

The Authority's investigation

[4] I have not set out all the evidence and submissions heard in the course of my investigation although I have carefully considered all such matters. I have instead, in accordance with s 174E of the Act, set out the material facts and made findings on issues relevant to the determination of BQW's claims.

[5] The determination has been issued outside the timeframe at s 174C(3)(b) of the Act in circumstances the Chief of the Authority has decided, as he is permitted by s 174C(4) to do, are exceptional.

Non-publication

[6] The applicant sought and was granted an interim non-publication order at the Authority's hearing. A timetable was put in place for the parties to make submissions on BQW's application for permanent non-publication of his name and any details that may lead to his identification.

[7] MBIE neither strongly supported nor opposed the application.

[8] The Authority has discretion to grant non-publication orders under clause 10 of Schedule 2 to the Act. In considering the use of the Authority's discretion I have had regard

to the Supreme Court judgment in *Erceg v Erceg*, where the Court described the principle of open justice as being fundamental to our legal system.¹

[9] The Court recognised, however, that there were circumstances in which that principle could be departed from, but only to the extent necessary to serve the ends of justice² and "...the party seeking the order must show specific adverse consequences that are sufficient to justify an exception to the fundamental rule" and "...the standard is a high one".³

[10] The applicant based his request for non-publication on a number of factors, one of which I found compelling. That factor relates to a highly sensitive matter relating to a change of religion from Muslim to Christian that BQW disclosed to his employer during the disciplinary process that led to his dismissal.

[11] BQW's counsel submits that public disclosure of that matter could have dire consequences for the applicant. I accept that submission and find this is a case where it is appropriate to depart from the usual principle of open justice.

[12] I am satisfied that permanent name suppression of the applicant, and of any identifying details of him, is appropriate and I order the permanent suppression of the applicant's name and any details that could identify him.

Issues

[13] The main issues for the Authority to determine are:

- (a) Whether BQW was unjustifiably dismissed; and, if so,
- (b) Whether reinstatement is appropriate; and/or
- (c) What other remedies are appropriate.

Unjustifiable dismissal

Events leading to the dismissal

[14] BQW had been a long-term employee of MBIE when a complaint about his conduct was made on 2 June 2020. The complaint came from a senior employee of the New Zealand Red Cross (Red Cross), Ms Rachel Kidd, and involved matters that had been brought to her

¹ [2016] NZSC 135.

² At [3].

³ At [13].

attention by a Red Cross counsellor. The counsellor was concerned about information she had been given about ongoing phone contact by BQW with single female refugees known to him through his employment with MBIE. BQW was alleged to have approached the women for phone chats and, sometimes, for photographs.

[15] Ms Kidd informed MBIE the contact was not welcomed by the women who were fearful of being disrespected and shunned within their community. She asked the Ministry to ensure the behaviour by BQW ceased.

[16] The women, who were not identified, were accessing, or had accessed, services provided by the Ministry. They had made their disquiet known to the Red Cross counsellor in a confidential therapeutic environment.

[17] MBIE advised BQW of the complaint, which it described as serious, by letter dated 3 June 2020, informing him of its concerns that he:

- (a) may have developed inappropriate relationships with particularly vulnerable women whom he had met through his work with MBIE;
- (b) may have formed personal relationships with those women and failed or refused to declare the relationships as a conflict of interest;
- (c) may have been using information obtained in the course of his role as an MBIE employee to his advantage; and
- (d) may have misused his position.

[18] The letter advised BQW of the employer's intention to investigate the complaint fully and determine whether there was any substance to it. It informed him of its proposal to suspend him from his employment during the investigation, and of matters it considered pertinent to the investigation. These included potential breaches of MBIE's Code of Conduct, the State Services Standards of Integrity and Conduct, and MBIE's Declarations of Interest Policy and Procedure if he had acted as the complaint alleged. Copies of those documents were attached to the letter sent to BQW.

[19] The letter of 3 June 2020 also advised BQW that, if substantiated, the behaviour complained of could amount to serious misconduct. In that event, the Ministry may need to conduct a disciplinary process which could result in the termination of his employment. BQW was advised the name and job title of the person who would be the decision-maker if that occurred. He was encouraged to access MBIE's Employment Assistance Programme (EAP)

for counselling and support and to contact his manager if there was anything more the Ministry could reasonably do to support him.

[20] BQW met with his manager on 3 June 2020 and denied the allegations. In a letter to BQW dated 5 June 2020, MBIE noted, amongst other matters, the agreement it had reached with him in the meeting that he would take special paid leave while the investigation was conducted. The letter instructed BQW not to contact any refugees he had met through his work with the Ministry, noting that any breach would be considered a serious matter and may constitute serious misconduct resulting in disciplinary action up to and including termination of his employment.

[21] MBIE appointed its Principal Advisor, Integrity (the PAI or the investigator), to conduct the investigation, which continued throughout June 2020.⁴ This included meeting with BQW on 18 June 2020, and separately speaking with Ms Kidd. The PAI provided her draft report to BQW on 30 June 2020 seeking his feedback and comments by 4 p.m. on 2 July 2020. That timeframe was subsequently extended by four days following notification by BQW's lawyer at the time that two days was insufficient.

[22] In his letter of 1 July 2020, BQW's lawyer also noted that the mobile phone number the draft report attributed to BQW was not his number. He said the draft report contained "*not one shred of evidence... to support the allegation*" and that the onus of proof was on those making the allegation, not on BQW. His final point was that MBIE had not identified the complainants, which he described as a breach of natural justice that denied BQW the opportunity properly to respond to the allegation.

[23] Further correspondence was exchanged between MBIE and BQW before the PAI released her final report on 10 July 2020 which, amongst other changes, corrected BQW's mobile phone number, two digits of which had been transposed in the draft report.

[24] The investigation report observed that BQW had not, during his interview, offered any evidence to dispute the allegations contained in Ms Kidd's complaint. It recorded that he had said several times it was up to the Red Cross to show proof of the contact he had allegedly made with the women, and the relationships he had allegedly formed. The report observed that

⁴ As the PAI did not give evidence to the Authority's hearing, I have referred to her only by her role.

the lack of direct evidence from the Red Cross neither wholly undermined, nor corroborated, the validity of the complaint made by Ms Kidd.

[25] A further observation of the report was that BQW had confirmed he used the *Viber* messaging system, which was in line with the Red Cross's description of chat messaging it had witnessed. Ms Kidd clarified in the course of the Authority's hearing that the counsellor had witnessed that messaging, and had informed her of it: Ms Kidd had not personally witnessed it.

[26] The report noted BQW had offered in the course of his interview on 18 June 2020 to provide his phone records to the investigator to support his contention that he had not inappropriately contacted any female refugees. It also recorded that MBIE had followed up BQW's offer on 3 July 2020, when it had him asked for his mobile phone records for the last six months, "*including records from phone app Viber*".

[27] BQW responded both personally and through his lawyer to MBIE's request. His lawyer denied BQW had offered to provide the PAI with his phone records and described the request as "*clearly inappropriate*". BQW's personal response advised the PAI he was not prepared to give her his phone logs because it would be unfair to his family and him. He queried why MBIE wanted his phone records when the person who had complained about him had not provided hers. BQW asked the PAI to request phone logs from those who had complained about him.

[28] The findings of the PAI's final investigation report included that BQW had not sufficiently explained why the Red Cross, which had strong business and social relationships with MBIE, would make a serious complaint against him. The report stated the investigator's belief that it was more likely than not that the Red Cross had acted out of a duty of care to the women at the heart of the complaint who were reported to have experienced some psychological harm after forming an inappropriate relationship with BQW.

[29] The investigator referred to the significant experience the Red Cross had in working with vulnerable people; and to the reasonable expectation that the agency would be able to assess the credibility of a complaint before stepping in as the complainant. The PAI could see no reason for the Red Cross, or the women on whose behalf the complaint was made, to mislead MBIE.

[30] The investigation report also referred to reports it had received from Ms Kidd that BQW had been in contact with female refugees after MBIE's investigation into the allegation against him had commenced. It recorded no formal complaint had been received from the Red Cross about this at the time the report was completed.

[31] I note here Ms Kidd told the Authority that, at a certain point after making her concerns known to MBIE, the Red Cross had determined not to engage further with the Ministry. This followed the reports Ms Kidd had received about BQW's continued contact with refugees after she had made her complaint on 2 June 2020.

[32] The investigation report upheld on the balance of probabilities the allegations against BQW as set out in [17] (a) to (d) above. It also found the threshold was met for an investigation "*as per the 'corruption' and 'dishonesty' definition of the (Ministry's) Addressing Fraud, Corruption and Dishonesty policy*".

[33] The report further noted there appeared to be related breaches by BQW of the Ministry's Code of Conduct; Declaration of Interest Policy and Procedure; and the State Services Commission Standards of Integrity and Conduct. It did not elaborate on these related breaches.

[34] The report concluded that, due to the seriousness of the allegation and the investigator's concern that BQW had not been truthful in his responses during his interview on 18 June 2020, the next step would be to provide all documentation to BQW's line management for their consideration in relation to conducting a disciplinary investigation.

[35] BQW remained on paid special leave during this time.

[36] On 15 July 2020 Ms Fiona Whiteridge, the MBIE senior manager who had been nominated as the decision maker in the matter, issued her preliminary decision, "*based on the information that I received from this (investigation) report*" that BQW's conduct amounted to serious misconduct.

[37] In her letter to BQW conveying her preliminary view, Ms Whiteridge advised him that, if her finding stood, a "*possible and likely outcome*" was that his employment would be terminated with immediate effect. She told him that it was open to her to draw adverse

inferences from his refusal to provide his mobile phone records as he had agreed to do in his interview with the investigator on 18 June 2020 and noted:

“Specifically, I consider it is open to me to draw an inference that you had contact with refugees, and also that the contact you had (with) refugees was inappropriate. I have reached this view as you have refused to provide these records on the basis that they would incriminate you, i.e. show that you had been having contact with these refugees.”

[38] Ms Whiteridge also advised BQW that on 19 June 2020 the Red Cross had reported to MBIE that community support workers were aware members of a particular refugee community knew that BQW had been “*stood down from work due to a complaint*”. She told him the report had suggested he had been in contact via *Viber* messaging with refugee women, despite the instruction he had been given at the outset of the investigation process not to make contact.

[39] Ms Whiteridge notified BQW she considered this information from the Red Cross, together with his refusal to provide his phone records, was sufficient for her to conclude that he had breached that specific instruction and had made contact with the refugees during the process. She said the information from the Red Cross was “*inherently credible*” and she preferred “*that evidence over your denials*”.

[40] In communicating her preliminary decision, Ms Whiteridge referred to the PAI’s findings that it was more likely than not the BQW had:

- developed inappropriate relationships with particularly vulnerable women (namely, refugees) whom you have met through your work for the Ministry...;
- formed personal relationships with refugees whom you ...met at work ... and failed and/or refused to declare those relationships as a real or perceived conflict of interest;
- been using information you obtained in your role as a Ministry employee to your advantage; and
- misused your position.

[41] Ms Whiteridge stated that, overall, she found those findings to be reasonable in all the circumstances and that she accepted them. Her preliminary view was that it was more likely than not that BQW had behaved inappropriately and that the concerns raised by the PAI in her report were “*an accurate representation of what has happened.*” Ms Whiteridge considered

that the behaviour amounted to serious misconduct that undermined her trust and confidence in him to fulfil his role in MBIE. She expressed her concern that, during the process, BQW had continued to breach his obligations by making contact with some of the women and that he had not been honest with his employer when asked about this.

[42] The letter of 15 July 2020 asked BQW to respond to Ms Whiteridge's preliminary findings and preliminary decision that his employment should be terminated for serious misconduct. BQW could elect whether to respond in writing or in a meeting. He elected to meet and he, accompanied by his lawyer, met Ms Whiteridge and a senior MBIE Human Resources (HR) employee on 17 July 2020 by Zoom.

[43] BQW said that during the meeting he asked Ms Whiteridge to supply mobile phone numbers for the women and she refused, asking him to hand over his phone to MBIE. BQW said he refused her request but told her he would not mind if MBIE agreed to check only specific mobile numbers.

[44] Ms Whiteridge told the Authority she had no recollection of BQW making that offer in the 17 July 2020 meeting and she did not believe it had occurred. I note there is no reference to it in the contemporaneous notes taken by the HR person who accompanied Ms Whiteridge. Those notes confirm the phone was discussed, the context being BQW's refusal to release it or the phone logs/records, and the reasons he gave for his refusal.

[45] BQW wrote to Ms Whiteridge on 19 July 2020 providing further comments. He reiterated his denials of wrongdoing, emphasised his clear employment record with MBIE and asked her to take into account the effect dismissal would have on him and his family.

[46] Ms Whiteridge conveyed her final decision by letter on 23 July 2020. She found it was more likely than not that BQW had acted inappropriately towards the women and that his behaviour amounted to serious misconduct.

[47] She conveyed her belief that BQW had continued to breach his obligations during the Ministry's investigation process and had not been honest when questioned about this. Ms Whiteridge's letter advised BQW his employment was terminated without notice and with immediate effect.

Legal test

[48] The test to be applied is whether the employer's actions, and how the employer acted, in dismissing BQW were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.⁵

[49] The test is to be applied on an objective basis and, in doing so, the Authority is required to consider a number of specified factors which may broadly be described as coming under the umbrella of natural justice. Additionally, other factors the Authority considers appropriate may be taken into account. However, a dismissal or action is not to be found unjustifiable solely because of defects in the employer's process if those defects were minor and did not result in the employee being treated unfairly.⁶

Suspension and photograph

[50] One of BQW's claims about the process MBIE followed was that he had been suspended from his employment on 3 June 2020. MBIE's letter to him of that date informed BQW it was proposing to suspend him and was seeking his comments and feedback on that proposal at the meeting scheduled to take place that day.

[51] It is clear from MBIE's follow-up letter of 5 June 2020 that the matter was discussed at the 3 June meeting as the letter referred to their discussion, and to the agreement reached with BQW in the course of the meeting that he would be on special paid leave while the complaint against him was investigated.

[52] In the Authority's investigation meeting, BQW initially denied the matter of suspension had been discussed on 3 June 2020, but agreed under cross examination that he understood he was on paid special leave throughout the investigation process. I am satisfied that special paid leave was agreed between BQW and MBIE and that he was not at any stage suspended from his employment.

[53] BQW's second claim about the process MBIE followed that disadvantaged him relates to a photograph of him that was placed at the worksite on 3 June 2020, after the meeting with his manager that afternoon to discuss the complaint. BQW said he was phoned by a security guard that day who told him about the photograph. He contacted his manager to ask why this

⁵ The test of justification at s 103A of the Act refers.

⁶ S 103A(5).

had happened and his manager said he did not know about it. BQW believed the photograph was later taken down.

[54] Ms Whiteridge gave evidence of her enquiries into the matter, which included speaking to BQW's manager, who was available to give evidence to the Authority if required. After hearing the evidence of BQW and Ms Whiteridge, I deemed that to be unnecessary.

[55] I am satisfied the display of BQW's photograph at the worksite on 3 June 2020 was likely to have happened as the result of a misunderstanding by the third party that manages security at the site. It was not at MBIE's instigation and when BQW alerted his manager to the photograph, the manager instructed security to take the photograph down and apologised to BQW about the matter. The instruction to remove the photograph was quickly actioned.

[56] In the circumstances I find that the incident did not result from an unjustifiable action by the employer. I note that if I had held MBIE responsible for the third party's action, I would have found the brief time the photograph was displayed mitigated any disadvantage to BQW.

Was the investigation sufficient?

[57] One of the specified factors in s 103A of the Act is whether, having regard to the resources available to MBIE, it sufficiently investigated the allegations against BQW before dismissing him. MBIE is a large, multi-faceted government department and I am satisfied there is no issue as to whether it had the resources required to conduct a comprehensive and fair investigation into the allegations made against BQW.

[58] I am not satisfied, however, that MBIE's investigation was comprehensive and fair due mainly to the constraints on the PAI's access to information on which to base her findings. She did not have access to the women who had made the allegations, or to the counsellor to whom the allegations were made. She was provided with no direct evidence of BQW's contact with the women and the findings of her investigation report were largely based on what she had been told by Ms Kidd, who also had no direct knowledge of the events.

[59] The PAI was not able to make her own assessment of the genuineness of the allegations against BQW or of any possible motives there might have been for making them. She relied on Ms Kidd's account of events but Ms Kidd had not been present in the counselling session/s in which the allegations were made.

[60] The first finding in the final investigation report was that:

On balance, (the investigator's) view is that (BQW) had not sufficiently explained why a senior member of the Red Cross who have strong business and social relationships with MBIE and with the mandate to protect the interests of refugees, would make a serious complaint against him.

[61] The investigator placed an unreasonable burden on BQW to explain why a senior member of the Red Cross would make a serious complaint against him. While the investigator was not the decision maker in the matter, her investigation report provided the basis for the preliminary view reached by Ms Whiteridge that serious misconduct had occurred and that BQW's employment should be terminated.

[62] Ms Whiteridge said in her letter of 15 July 2020 to BQW, in which she conveyed that preliminary decision, that she did not understand, and BQW had not explained, what he meant when he said the request for his phone records was unfair to his family and himself. She said she could not conceive of any realistic concerns that would have or should have prevented him from providing the records to the investigator. Ms Whiteridge made it plain in that letter that she considered it was open to her to draw adverse inferences from his failure to provide his phone logs.

[63] Counsel for MBIE submits the Ministry acknowledged from the outset the lack of specific and direct evidence of wrongdoing by BQW and says it was open in both its reliance on his failure to provide his phone records, and the adverse inferences it drew from that. In counsel's submission, BQW had many opportunities to address those concerns before his employer made a decision in the matter. However, he failed to do so, instead providing different and inconsistent responses regarding the phone; whether he would, or would not, provide it; and his reasons for not providing it.

[64] I am not persuaded by that submission.

[65] Where an employee brings a claim of unjustifiable dismissal to the Authority, the employee must first establish there has been a dismissal. As there was no dispute that BQW had been dismissed, that onus was easily discharged. The onus then falls on the employer to justify the dismissal. I am not satisfied MBIE has done so.

[66] The Ministry was obliged to investigate the complaint made against BQW because of the vulnerable situation of the refugee women concerned and the Ministry's responsibilities

with regard to refugees. However, it had a duty to BQW to investigate in a way that was fair to him.

[67] I find it was neither fair nor reasonable for the Ministry to place responsibility on BQW to explain why the Red Cross would make a serious complaint about his conduct. Its stance appeared to be that an organisation as respected as the Red Cross would not make such allegations unless they were true and it was BQW's responsibility to prove they were untrue.

[68] The Red Cross complainant, Ms Kidd, did not know exactly who had made the allegations against BQW, or precisely what those allegations were. Her complaint referred to "*some women*", without stating how many, or who they were, and identified the staff member who had approached them for "*phone chat*" by his first name only.

[69] It was understandable that the Red Cross would want to protect the women but I find it was not reasonable for the Ministry to rely on such scant evidence and on the adverse inference drawn by the decision maker over BQW's failure to hand over his mobile phone or phone records to terminate his employment.

[70] I accept BQW's submission that he was prejudiced in his ability properly to respond to the allegations made against him by the lack of specific information regarding the contacts he was alleged to have initiated with the vulnerable women and what the complainant said about him. Without that knowledge, in his submission, he was unable to form a proper reply or defence.

[71] I am not satisfied sufficient consideration was given to the concerns BQW raised about the privacy of his personal mobile phone. MBIE submits it was reasonable in all the circumstances to draw adverse inferences from BQW's responses to its requests that he provide the phone. In the Ministry's view he could easily have allayed his employer's concerns by handing over the phone for inspection and it submits that his failure to do so leads to the reasonable conclusion that he was attempting to prevent inappropriate behaviour being discovered.

[72] I disagree. Earlier in this determination I made an order for permanent suppression of BQW's name and any details that could identify him. That was on the basis of BQW's safety concerns if information regarding his change of religion were to be made public. BQW raised that reason in his 17 July 2020 meeting with Ms Whiteridge as an explanation for his reluctance

to give up his phone or phone records which, by his evidence to the Authority, could have implicated at least one other another family member. BQW's explanation seems to have been dismissed by the decision maker because it was not made earlier. I am not satisfied it was genuinely considered.

[73] In relation to the specified factors in s 103A of the Act, I have found MBIE's investigation to be deficient. While it put its concerns to BQW, it did not provide him with sufficient information to allow him to address those concerns properly and it did not genuinely consider his explanation for not providing his phone which, in MBIE's view, could have allayed its concerns over the allegations made against him.

[74] I do not consider the deficiencies in MBIE's process could be described as minor: they were significant and resulted in BQW being treated unfairly. I find BQW was unjustifiably dismissed.

Remedies and contribution

[75] BQW seeks reinstatement which is a primary remedy under the Act. Having been successful in his claim to have been unjustifiably dismissed, he must be reinstated if it is practicable and reasonable to do so.

[76] BQW cites the enjoyment he had from his job and his wish to return to it. He referred in his evidence to the difficulty he would have in finding another position because of his age and the time he had spent in the MBIE position. I note, however, that at the time of the Authority's investigation meeting BQW said he had not applied for any other positions because he thought his application would be turned down.

[77] MBIE submits it is neither practicable nor reasonable to reinstate BQW to his former position and cites factors specific to the workplace at which he was employed and the vulnerability of the refugees with whom BQW would come into contact. Ms Whiteridge stressed that people in the position BQW held had to be utterly trustworthy and have integrity that was beyond reproach. She also noted that there were no vacancies or any similar roles available.

[78] In assessing the practicability and reasonableness of reinstatement, I have taken into account statements made by BQW during the Authority's investigation regarding his lack of

confidence in MBIE management. While he retained confidence in the manager in his immediate workplace, he had none in managers outside that discrete group. The specific workplace is part of the wider MBIE organisation, which makes BQW's stance problematic. Practicability requires a balancing of the interests of the parties and the justice of their cases with regard not only to the past but also in particular to the future.⁷

[79] I have concluded after taking all the evidence and submissions into account, that reinstatement is not a practicable or reasonable option.

[80] BQW said he was humiliated by his dismissal and belittled before his immediate and wider family and community. He said he has had several counselling sessions to look after his mental well-being and to cope with the pressure of losing the position he loved. He also claimed to have difficulty sleeping without the aid of sleeping pills and said he required medication to control the anger he often felt.

[81] I accept that BQW was hurt and humiliated by his dismissal and, although no medical evidence was provided, I also accept his evidence of having had sleep and anger issues after being dismissed. I find an award of compensation of \$20,000 to be appropriate and orders will be made accordingly.

[82] An award of wages is also appropriate. BQW by his own account made no effort to seek alternative employment. I find an award of three months' wages to be appropriate and will be ordered.

[83] I find no reason to reduce any awards on the basis of contributing behaviour by BQW. He was not responsible for the insufficient investigation by his employer. While BQW could have been more forthcoming in the PAI's investigation about his reasons for not providing his phone or phone records to his employer, he did volunteer that information to the decision maker in his interview with her.

[84] I find there was no contribution by BQW to the situation that gave rise to his dismissal.

⁷ Campbell v Commissioner of Salford School [2015] NZEmpC 122.

Orders

[85] The Ministry of Business, Innovation & Employment is ordered to pay to BQW:

- (i) \$20,000 without deduction as compensation for humiliation, loss of dignity and injury to feelings under s 123 (1)(c)(i) of the Act; and
- (ii) Three months' wages (13 weeks) (less tax) in accordance with s 128 of the Act.

Costs

[86] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[87] If they are not able to do so and an Authority determination is needed, BQW may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum MBIE would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[88] If the Authority were to determine costs, the parties could expect the Authority to apply its usual daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁸

Trish MacKinnon
Member of the Employment Relations Authority

⁸ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].