

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 508  
3147665

BETWEEN

Yael Scott  
Applicant

AND

Department of  
Corrections  
Respondent

Member of Authority: Sarah Kennedy

Representatives: Digby Livingston and Digby George Livingston,  
counsel for the Applicant  
Peter Chemis and Jessica Taylor, counsel for the  
Respondent

Investigation meeting: 21 June 2022

Submissions received: 23 June 2022

Determination: 6 October 2022

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**DETERMINATION OF AUTHORITY**

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**Employment Relationship Problem**

[1] Yael Scott was employed as a Corrections Officer from 7 November 2016 to September 2020 when she was dismissed for serious misconduct. Ms Scott says that her dismissal was unjustified because her employer did not properly consider her responses to the concerns it had raised with her about videos she made and posted to the social media platform TikTok. Ms Scott also said there was disparity in treatment in relation to how she was treated and there was an issue about whether the decision maker received information that was obtained in breach of privacy and confidentiality.

[2] Ms Scott seeks compensation and costs.

[3] Corrections say Ms Scott's dismissal at the end of an employment investigation was justified, for reasons that included the seriousness of the conduct, the safety and reputational risks created by the nature and content of the posts on TikTok and the work that Corrections is engaged in. Corrections was also of the view that it followed a fair and reasonable process in investigating the concerns.

### **The Authority's investigation**

[4] For the Authority's investigation written witness statements were lodged from Yale Scott and Leonie Aben, Deputy Prison Director. All witnesses answered questions under oath or affirmation from me and the parties' representatives. The representatives also gave oral and written closing submissions.

[5] Having regard to s 174E of the Employment Relations Act 2000 (the Act), it has not been necessary to refer to all the information placed before the Authority in this matter. All material provided has, however, been considered.

[6] As permitted by 174C(4) of the Act, the Chief of the Authority has decided that exceptional circumstances exist to allow this written determination to be issued outside the three month timeframe required by s 174C(3) of the Act.

[7] The issues requiring investigation and determination were:

- (a) Whether the decision of Corrections to dismiss Ms Scott, and how it reached the decision, was what a fair and reasonable employer could have done in all the circumstances, at the time, including consideration of:
  - What was the misconduct and was it capable of amounting to serious misconduct?
  - If so, was dismissal warranted in all the circumstances of the case?
  - Whether Corrections' actions met the procedural standards set out in s 103A(3) of the Act;
- (b) If Corrections is found to have acted unjustifiably (in dismissing Ms Scott), what remedies should be awarded to her, including whether

compensation should be awarded under s123(1)(c)(i) of the Employment Relations Act 2000.

- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Scott that contributed to the situation giving rise to her grievance?
- (d) Should either party contribute to the costs of representation of the other party?

### **Background**

[8] On 27 and 28 May 2020, the Integrity Assurance Team (IAT) at Corrections received two calls from employees and on 2 June an email from a member of the public whose partner was in prison, raising concerns about a video depicting Ms Scott in her uniform holding up handcuffs and mouthing words “ima take your man if I want to” with the hashtags #thoselooksthoug, #relaxgirlsitsmyjob, #happyinarelationship and #fyp. Text was inserted above the video with the words “When partners come to see the men..”

[9] After reviewing the material available on Ms Scott’s TikTok account, IAT completed an initial report which concluded that Ms Scott had breached Corrections’ social media policy by “posting videos of behaviour and/or conduct that would not be acceptable in the Corrections workplace ...”. The matter was referred to human resources for follow up.

[10] Ms Aben was the Acting Prison Director of the site where Ms Scott’s employment was located. She was first made aware of the issue on 27 May 2020 when she received a phone call from a prison director from another region who was concerned about material on Ms Scott’s TikTok account. Ms Aben said that later the same day, the partner of a prisoner visited the prison and raised Ms Scott’s TikToks at the front gate. It was reported to Ms Aben that the partner was angry and concerned for her partner and later made the formal complaint that was emailed to IAT.

[11] Around the same time Ms Aben received various phone calls from other staff members and two written complaints.

[12] Ms Aben's evidence was that the ramifications of the TikTok posts were immediate. The day the video was brought to Ms Aben's attention, Ms Scott was rostered to work the following morning and scheduled to be managing prison visits. Ms Aben was immediately concerned for Ms Scott's safety, because of the post that referenced "partners coming to visit their men.." and made arrangements to ensure Ms Scott would not be working in the visiting area the next day.

[13] On 28 May 2020, Ms Aben first met with Ms Scott and a Corrections Association of New Zealand (CANZ) representative to discuss the situation. Ms Scott was placed on special leave because of Corrections' view that there was an immediate safety risk to Ms Scott and other employees following the complaint from the member of the public. She agreed to take the TikTok posts down and was later suspended from work while the employment investigation was carried out. Ms Scott did not oppose the suspension.

[14] That same day Ms Aben provided Ms Scott with a letter of concern referencing TikTok videos showing Ms Scott in uniform, the above video, together with another video in which Ms Scott can be seen mouthing the words "I'm a savage, choke im, shoot im, stab im ...what? That's how it goes" with matching hand gestures. Ms Scott is not in uniform in that video but she is identifiable as a Corrections Officer because other videos posted to her TikTok account show her in uniform.

#### *Employment investigation*

[15] Corrections worked through an employment investigation which ultimately resulted in Ms Scott's dismissal for serious misconduct. After the initial meeting with Ms Scott and having undertaken some further enquiries, Ms Aben invited Ms Scott to a further meeting on 19 June to discuss those enquiries, view and discuss the individual TikTok videos and to talk to Ms Scott in more detail about her submissions.

[16] Ms Scott's lawyer advised that Ms Scott did not wish to attend a second meeting because she had declared her remorse at the first meeting and acknowledged the gravity of the situation, but they did in fact meet on 19 June. Throughout the process Ms Scott accepted responsibility for making and posting the videos and agreed that the content was inappropriate. She gave evidence that she never meant to cause any harm and

removed the videos as soon as she knew they could be viewed publicly. It was her understanding that they could only be viewed by her friends and family.

[17] There is no dispute, and it was accepted by Corrections that Ms Scott was under high levels of pressure and stress due to circumstances personal to her over the general time period in which the TikTok videos were made and prior to that. This was raised with Ms Aben at the meetings and in written submissions from her lawyer to Corrections.

[18] Ms Scott also said these circumstances were exacerbated because of the Covid-19 lockdown in 2020, when in hindsight she realised that working through the lockdown, and not being able to have contact with key family members (because she was working created a risk of infection for her family members), meant she had very little support at home during what was a very difficult time for her and her family.

[19] Ms Scott says the result was that these factors impacted on her judgement, but also she was unaware her TikTok posts could be accessed by the wider public. She said other employees had posted similar content and raised this as being unfair because she was the only one being held accountable for it.

[20] A detailed letter conveying the dismissal to Ms Scott was dated 23 September 2020 and set out a summary and consideration of Ms Scott's submissions, the finding that the videos breached the social media policy and the code of conduct with reasons and the final decision that dismissal was the appropriate outcome.

[21] Ultimately the fact that Ms Scott made and posted TikTok videos showing her in her Corrections uniform including the two specific videos outlined above, were found to amount to serious misconduct and the final decision was dismissal on notice.

[22] The reasons included that the posting with the text "when partners come in to see their men ..." displayed careless and unsafe behaviour that placed Ms Scott and others at risk, that Ms Scott failed to understand the seriousness or the potential and actual ramifications of the posts and that the videos may have brought Corrections into disrepute.

## **The legal framework**

[23] The Authority is asked to determine whether Corrections was justified in the decision it made and the actions it took to dismiss Ms Scott. It is required to apply the justification test which is set out in s 103A of the Act. In applying the test, the Authority does not determine justification by considering what it may have done in the circumstances. It is required under the test to consider on an objective basis whether the actions of Corrections, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[24] This includes whether the allegations against Ms Scott were sufficiently investigated, the concerns raised with her, whether she had a reasonable opportunity to respond to the concerns and whether such explanations were genuinely considered by Corrections before dismissal.

[25] Ms Scott said there were several reasons why the decision to dismiss was unreasonable. Firstly, there were mitigating factors personal to her aggravated by the Covid-19 lockdown and these were not given sufficient weight. Secondly, that TikTok is not intended to be serious, and she did not intend it to be serious or disrespectful, rather it was a way to cope with the extremely stressful position she had found herself in and thirdly, other employees were posting similar content on social media, and they had not been dismissed. Ms Scott provided statistics from Corrections obtained by way of a request under the Official Information Act 1982 showing only one dismissal for social media posts and she assumed that was her.

[26] Lastly Ms Scott also said Ms Aben had a “conflict” because she had seen a text message conversation that suggested Ms Scott’s remorse was not genuine. There were legal submissions about whether in law that information could form part of the investigation.

[27] The Authority may take into account other factors as appropriate and must not determine the dismissal to be unjustified solely because of defects in the process if they were minor and did not result in Ms Scott being treated unfairly.<sup>1</sup>

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<sup>1</sup> Employment Relations Act 2000, s 103A(5).

[28] To the extent that Ms Scott's concerns above raise issues with the process followed by Corrections, they will be discussed below but I was satisfied the remainder of the process followed by Corrections was fair and reasonable.

[29] Corrections could also be expected as a fair and reasonable employer to comply with the good faith obligations set out in s 4 of the Act.

**What was the misconduct and was it capable of amounting to serious misconduct?**

[30] The conduct was making and posting TikTok videos showing Ms Scott in a Corrections uniform or identifiable as a Corrections employee over a five-month period and more specifically the nature and content of two videos described above that were of greater concern.

[31] In reviewing the evidence and submissions on this matter, I note the difference between the parties as to how the social media posts have been interpreted and therefore the level of seriousness each party ascribed to them. On the one hand, submissions on Ms Scott's behalf were that these were light-hearted skits posted with a trending song on TikTok, created as a means to relieve stress and engage with her children. Having said that, Ms Scott accepted they were inappropriate.

[32] Corrections approached the content of the posts from more literal perspective taking into account the inferences that arose from the words, actions and text depicted in the posts. Even though the posts were no longer available, and the "when partners visit their men .." video was only publicly available for a day, Corrections said it was Ms Scott's actions in deciding to film and post the videos, including selecting the song with the particular lyrics, creating the skit and adding the text, that it focussed on.

[33] Posting in uniform was not permitted by the social media policy and the sexualised content and lyrics describing violent themes such as shooting and stabbing provided an inescapable inference about what was conveyed. Whether that was light-hearted or not, what the posts on TikTok depict tends to show both a lack of understanding and respect for the custodial environment. While this may not have been intended by Ms Scott, the videos were able to be interpreted that way, and interpreted subjectively by viewers and that had the effect of elevating the level of seriousness,

especially when considered together with Ms Scott's employment as a Corrections Officer.

[34] When people are detained, specifically because they are deprived of their liberty, they are accorded specific rights to ensure they are treated with humanity and respect.<sup>2</sup> A consequence of this is that higher levels of care are expected from those engaged to work within custodial environments<sup>3</sup> which I understood Corrections to mean when it reached its conclusion that it had lost trust and confidence in Ms Scott to the extent it could not be repaired.

[35] Because of the complexities of the custodial environment I consider that it was reasonable for Corrections to consider Ms Scott's conduct to have reached an elevated level of seriousness. I note at this stage that this may not have been the case had Ms Scott been employed elsewhere.

[36] I also considered whether the posts either brought Corrections into disrepute or could potentially risk bringing Corrections into disrepute. In *Wikaria v Chief Executive of the Department of Corrections*, Chief Judge Colgan formulated an approach as follows:<sup>4</sup>

I conclude that a fair and reasonable employer, considering whether an employee's conduct brought, or risked bringing, the employer into disrepute, must consider objectively several factors. They are whether a neutral, objective, fair minded and independent observer, apprised appropriately of the relevant circumstances, could have considered the relevant actions to have brought, or to be a reasonable risk of bringing, the employer into disrepute.

[37] Having regard to the above formulation, I find that a significant risk existed of harm to the reputation of Corrections (and Ms Scott) from her postings viewed by either the wider public or a narrower group of friends (as she had intended). Given her position and role with male prisoners in a custodial environment, it is not an unreasonable expectation that videos with sexually suggestive content and conveying words associated with violence, even if intended to be light-hearted, are not created by employees and made available to others.

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<sup>2</sup> New Zealand Bill of Rights Act 1990, s 23(5).

<sup>3</sup> Crimes Act 1961, ss 2 and 195.

<sup>4</sup> *Wikaria v Chief Executive of the Department of Corrections* [2016] NZEmpC 37.

[38] While there may have been another interpretation open to Corrections, it is my conclusion that it was reasonable for it to interpret the videos in the way that it did, and taking into account the consequences, including reputational damage, find that Ms Scott's conduct was capable of amounting to serious misconduct.

**Whether Corrections could have reasonably come to its conclusion that dismissal was warranted in all the circumstances of the case?**

[39] In reaching the conclusion that dismissal was an appropriate outcome Corrections would be expected to have acted as a fair and reasonable employer and complied with the requirements set out in s 103A of the Act. Of particular relevance in this matter is whether the employer genuinely considered Ms Scott's explanation in relation to the allegations before dismissing her, whether there was a "conflict" due to the text message conversation being included in Ms Aben's considerations and whether or not there was disparity of treatment when compared with other employees who engaged in the similar conduct.

[40] Normally dismissals are preceded by a warning unless the misconduct is so serious that dismissal can be justified by one incident. It has been found that failure to follow appropriate professional standards during employment may result in dismissal<sup>5</sup> but there are no formal professional standards that apply in this case.

[41] There is also currently very little guidance on dismissals resulting from inappropriate social media posts. Although comments or posts online may seem relatively harmless compared with the facts of other cases concerning misconduct outside the workplace, judicial notice has been taken of the potentially exponential reach of Facebook posts and it has been acknowledged that depending on the circumstances, posted comments may result in dismissal. In *Hook v Stream Group (NZ) Pty Ltd* the Employment Court observed that:<sup>6</sup>

The cases generally recognise that Facebook is not a strictly private forum, and that asserted expectations of privacy will likely be tested. Depending on the circumstances, posted comments may substantiate a dismissal/disciplinary action or, by logical extension, vitiate a claim of constructive dismissal.

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<sup>5</sup> *Faapito v CEO of the Dept of Corrections* (2012) NZEmpC 2006.

<sup>6</sup> *Hook v Stream Group (NZ) Pty Ltd* (2013) NZEmpC 188.

## **Employers concerns**

### *Social media posts*

[42] Ms Aben considered Ms Scott's evidence that Ms Scott believed her posts to be private and could not be seen by the public, but did not find that credible. I do not need to resolve that because the posts were accepted as inappropriate by Ms Scott, and whether they went to a smaller group of 214 friends or were visible to the public, the content remains inappropriate. I make that comment based on the fact that even if the posts were not available publicly, that would not mitigate the employer's concerns in circumstances where it is accepted that the creation and content of the posts was unacceptable and inappropriate and reached the threshold for serious misconduct.

[43] I also note the observations in *Hook v Stream Group (NZ) Pty Ltd*, that once a publication is available electronically the options for dissemination are obvious and remain over time. As long as the material is or was posted or re posted, assertions that publications on social media are private because they were limited to a smaller group are questionable. The ease of dissemination and loss of control in an electronic environment, even when publication is limited to a group of friends means privacy cannot be guaranteed even if a post is not available to the public in the first instance.

[44] The fact that Ms Scott raised her concerns that other employees had saved one of her posts and she was unhappy about that, illustrates the point about dissemination once material is available electronically.

### *Concerns about safety*

[45] Corrections' concerns were set out in its final letter to Ms Scott. In finding there were breaches of the social media policy and the code of conduct, in relation to videos posted over a five-month period, there were two in particular that it considered to be more concerning. In one Ms Scott displayed careless and unsafe behaviour by virtue of the sexualised content and placed Ms Scott, her family and her colleagues at risk. The other depicted Ms Scott mouthing words that suggest and/or infer violence is acceptable.

[46] Corrections also took the view that the posts created a risk to Ms Scott's safety in both the immediate and in the longer-term. Immediately because at least one partner of a prisoner had complained and was very upset about the sexual inferences. Ms Aben

was of the view that Ms Scott would be unable to supervise prison visits for the foreseeable future and this was part of her role as a Corrections Officer. I accept that these circumstances presented genuine risks, to Ms Scott, other employees and prisoners that were the responsibility of this employer to manage.

#### *Nature of the posts*

[47] My observation is that the issue with the two posts Corrections considered to be more serious and social media posts in general, is that how they are interpreted is subjective. I have discussed above the differing views of the parties as to how the posts could be interpreted and what was intended and concluded that regardless of whether light-hearted or not, the posts lack respect for those in a custodial environment and their whanau. This is significant in this case because Ms Scott was employed to work solely with individuals and their whanau in a custodial environment.

[48] Because of the nature of the content, the connection to Ms Scott's work, the various safety issues articulated by Ms Aben, and the potential to bring the employer into disrepute, I have reached the conclusion that in the context of Ms Scott's employment, it was reasonable for Corrections to reach the conclusion that dismissal would be an option in this case.

#### **Ms Scott's concerns**

##### *Personal mitigating factors*

[49] Submissions were made on Ms Scott's behalf that because of her personal circumstances a fair and reasonable employer would have accepted Ms Scott's explanations and given the passage of time, permitted her to return to work under a strict warning.

[50] Ms Aben acknowledged Ms Scott's personal circumstances and it is accepted that Corrections and Ms Aben were aware of the stress Ms Scott had been under. This included the compounding impact of the Covid-19 lockdown in 2020.

[51] Ms Scott had raised her personal situation as a mitigating factor directly with Ms Aben at the meetings and Ms Aben confirmed that she had taken these matters into account. Ms Aben spoke with a degree of empathy for Ms Scott's difficult circumstances and experiences however, in the end, she reached the view that the level

of seriousness meant that those circumstances could not mitigate Ms Scott's actions. She noted that the videos compromised not only Ms Scott's safety but also the safety of Ms Scott's and others including her colleagues.

[52] Having said that, Ms Aben also said she gave serious consideration to whether a final written warning or redeployment to another role could be appropriate. She characterised the rationale for the decision to discount these options as being a lack of trust and confidence in Ms Scott.

[53] The final letter to Ms Scott from Corrections set it out as follows:

To be clear, your role as a Corrections Officer requires Corrections to have significant trust and confidence in you to role model high standards of integrity and behaviour. It is through your actions, that you have irretrievably impacted the necessary trust and confidence that Corrections must have in you, in particular your ability to make sound and safe decisions, exercise good judgement and ensure that your safety and/or that of your colleagues is not compromised by your actions within and /or outside of the workplace.

...I have carefully considered a range of options including giving serious consideration to whether a final written warning might be appropriate, and/or whether redeployment to another role might be an option. However, trust and confidence issues are not easily the subject of a final written warning, nor are they necessarily resolved by a redeployment. After considering the range of sanctions, it is my final view that the appropriate disciplinary sanction in all of the circumstances is dismissal on notice.,

[54] Having reached the conclusion Ms Scott's TikTok posts were serious misconduct, Ms Aben's view was that the inappropriateness of the posts had an impact on Ms Scott's ability to carry out her role safely and also on redeployment options across Corrections. Ms Aben noted it was not only about Ms Scott's safety in the prison environment but also that the nature of the posts had the potential to generally undermine work with prisoners and in addition to make Ms Scott vulnerable to manipulation. Ms Aben said she needed to have confidence that Ms Scott would do the right thing even when no one was looking and given the nature and content of the posts, she did not feel she had that confidence.

[55] I did not find Ms Aben's evidence to be that she discounted Ms Scott's personal circumstances, rather that the nature of the posts reached a level of seriousness, in part caused by immediate and longer-term safety risks to both Ms Scott, and others that

meant there were no other options available other than dismissal. With the safety risks in mind, Ms Aben's view was that working with prisoners was no longer a viable option for Ms Scott. Given the nature of the work Corrections is responsible for, those same reasons meant that redeployment was not appropriate.

### *Disparity*

[56] With regard to the disparity issue, Ms Scott says other employees' TikTok posts were raised with Ms Aben on several occasions. She did not name names initially but did point out the content of one was particularly sexually explicit.

[57] Ms Aben's evidence was that when matters were raised with her, they were referred for investigation in the usual way. Ms Aben also said uniform was not the key factor in determining seriousness. For that reason, she explained some posts by other employees that were raised with her were not as serious, or if they were or if they were and she had previously been unaware of, those matters had been referred for investigation in accordance with Corrections' policy.

[58] I understood Ms Aben to be indicating that there was a degree of tolerance for material that was posted depicting an employee in uniform when the content was not otherwise of concern. For example, a video showing a group of Corrections employees doing push ups to raise money for a cause. Ms Aben drew a distinction between those types of posts and the two posts of Ms Scott's that Corrections were clearly more concerned about for the reasons set out above.

[59] However, in submissions, Corrections accepted that one video posted on social media by another employee and described by Ms Scott, was arguably similar. There was a dispute as to whether Ms Aben was made aware of this prior to finalising Ms Scott's matter. Ms Scott says she had brought that particular video to Ms Aben's attention a year ago and no action has been taken against that staff member.

[60] If that video had been brought to Ms Aben's attention, the issue of disparity would likely arise, however, no evidence was provided about when that video was posted or how and when the video was brought to Ms Aben's attention. It was submitted it was not posted until after Ms Scott's matter was under investigation, but this was contested at the investigation meeting. As such I have been unable to consider that submission any further.

[61] In any event, Ms Aben gave evidence that any social media posts by employees that were of concern because they depicted sexualised or violent content with a connection to Corrections or were otherwise inappropriate, would be investigated in the same way Ms Scott's posts were. Corrections is clearly aware of the particular video now, but Ms Aben's evidence was that she was unaware at the time she dismissed Ms Scott.

[62] There can be no issue of disparity given that I accept Ms Aben's evidence to be that the particular video and others also containing sexualised material when Corrections is clearly identifiable as the employer, were brought to her attention by Ms Scott, and they are now under consideration by Corrections.

*Text message conversation*

[63] During the investigation another Corrections employee disclosed her concern about a text conversation she had with Ms Scott. Ms Aben halted the process and wrote again to Ms Scott attaching the text messages and sought comment from Ms Scott.

[64] The text messages appear to call into question the genuineness of Ms Scott's remorse. Ms Scott asked the other person involved in the text message conversation to keep the conversation private between them and their inclusion in the employment investigation was challenged by Ms Scott's representatives.

[65] Ms Aben said she did not take that conversation into account when she made her final decision because the nature and content of the videos and ramifications from being available electronically were sufficient from her perspective to justify her decision that dismissal was the appropriate outcome.

[66] In the overall circumstances and because of the conclusions I have reached above, I accept that is an appropriate approach to take but in the event I am wrong the only possible legal challenge to the texts being available to Corrections would be because of an obligation of confidentiality. There was no privacy breach as submitted by Ms Scott's representatives because the information was handed to Corrections by

the other employee who was also a participant in that conversation. For various reasons this would not be a breach of privacy either by the individual or by Corrections.<sup>7</sup>

[67] If the confidentiality of the text message conversation was considered under s 69 of the Evidence Act 2006, it is my view it is unlikely a Judge would exercise the statutory discretion and direct that the communication not be disclosed. This is because the extent of the harm caused by disclosure was limited and Ms Scott's remorse was considered but not central to the decision to dismiss. The text message conversation, although Ms Aben found it to be disappointing, only raised questions about Ms Scott's level of remorse. In the end, Ms Aben said she put the text message conversation aside because Ms Scott's remorse although considered, was insufficient to overcome practical ramifications of the posts and the reputational risk that Corrections had already been exposed to.

[68] Relying on a confidential and private text message conversation obtained through a privacy breach in a disciplinary matter was said to be a breach of Corrections good faith obligations. Given my conclusion above I am satisfied there was no breach of the good faith obligations towards Ms Scott in s 4 of the Act by Corrections.

## **Conclusion**

[69] I find that despite Ms Scott's intention, and her experience and commitment to the job of a Corrections Officer, Ms Scott neglected to recognise the inappropriateness of posts she was creating and uploading to TikTok and the likely loss of control of material in an electronic environment. With the consequent actual and potential for reputational damage and the safety risks created by the content and nature of the posts, Corrections has acted as a fair and reasonable employer in all the circumstances.

[70] Ms Scott's claim that her dismissal was unjustified is unsuccessful.

## **Costs**

[71] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Corrections may lodge, and then should serve, a memorandum on costs

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<sup>7</sup> <https://www.privacy.org.nz/privacy-act-2020/privacy-principles/>

within 14 days of the date of issue of this determination. From the date of service of that memorandum Ms Scott 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.

[72] If the Authority were asked 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.<sup>8</sup>

Sarah Kennedy  
Member of the Employment Relations Authority

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<sup>8</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).