

**Attention is drawn to the 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 692  
3136564

BETWEEN	PAULA KNIGHT Applicant
AND	CARINGTON RESORT JADE LP Respondent

Member of Authority:	Andrew Gane
Representatives:	Richard Mark, counsel for the Applicant William Tan for the Respondent
Investigation Meeting:	29 June 2022 at Kerikeri
Submissions and other material received:	18 July 2022
Determination:	22 December 2022

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**DETERMINATION OF THE AUTHORITY**

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**Non-publication order**

[1] At the investigation meeting Ms Paula Knight sought a non-publication order over any information regarding her health. I am satisfied it is appropriate to make an order under clause 10(1) of the second schedule of the Employment Relations Act 2000 (the Act) that any information referencing Ms Knight's health is prohibited from publication.

## **Employment relationship problem**

[2] Ms Knight raises two personal grievances and claims she was unjustifiably disadvantaged by being unlawfully suspended, and that she was unjustifiably dismissed from her employment with Carrington Resort Jade LP (Carrington Resort). She seeks wage arrears, compensation, as well as reimbursement of legal costs.

[3] Carrington Resort does not agree that it unjustifiably dismissed Ms Knight, or that Ms Knight suffered an unjustified disadvantage. Carrington Resort maintains it lawfully suspended Ms Knight during an employment investigation and summarily dismissed her for serious misconduct.

## **The Authority's Investigation**

[4] There were several case management conferences dealing with evidential issues prior to the matter being set down for hearing. Initially Carrington Resort failed to engage or comply with the Authority's directions and did not file a statement in reply. An urgent case management conference was set down on 10 May 2022 as Carrington Resort's representative was incapacitated and could not appear at the investigation meeting. The investigation meeting dates were vacated, and a new investigation meeting was set down. Leave was granted for Carrington Resort to appear at the investigation meeting and lodge evidence with the Authority.

[5] I investigated Ms Knight's claims by receiving written statements of evidence from Ms Knight and Leanne Dixon and other documents on Ms Knight's behalf. For Carrington Resort I received evidence and supporting documents from the General Manager, Mr William Tan, Head of the Winery of the Carrington Group, Allan Collinson, Receptionist, Haley Manukau Ewan and Restaurant Manager, Jurgens De La Ray. During an investigation meeting on 29 June 2022, I heard evidence from the witnesses who answered questions put by myself and the parties' representatives.

[6] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received. In determining this matter, the Authority has carefully considered all the material before it, including all the evidence by the parties and their submissions. This determination has been issued

outside the timeframe set out in 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.

## **Issues**

[7] The issues for resolution were:

- (i) was Ms Knight unjustifiably dismissed by Carrington Resort;
- (ii) was Ms Knight unjustifiably disadvantaged by Carrington Resort's decision to suspend her;
- (iv) if Carrington Resort's actions were found to have unjustifiably disadvantaged and/or dismissed Ms Knight, what remedies should be awarded considering:
  - (a) lost wages (subject to evidence of reasonable endeavours to mitigate this loss); and
  - (b) interest awarded on any lost wages; and
  - (c) compensation under s 123(1)(c)(i) of the Act;
- (v) if any remedies are awarded, should they be reduced under s 124 of the Act for any blameworthy conduct by Ms Knight that contributed to the situation giving rise to her grievance; and
- (vi) should either party contribute the cost of representation of the other party?

## **Background**

[8] Gorges Jade Holdings Limited is the parent company of the Carrington Group and its partnership entities in New Zealand, which includes Carrington Resort.

[9] Carrington Resort is a resort hotel and conference centre that runs a restaurant and associated winery in Northland. Mr William Tan is the CEO of Gorges Jade Holdings Limited and is also the General Manager of Carrington Resort. Mr Tan knew Ms Knight's father, a wine maker who supplied wine to the Carrington estate. Carrington Resort employed Ms Knight as winery sales manager on an individual employment agreement (IEA) dated 24 October 2020. Ms Knight commenced employment on 11 November 2020. The IEA contained a probationary period which expired on 11 February 2021.

## **Events leading to dismissal**

*17 February 2021*

[10] The employment relationship was working well for the first few months into the new year. At a weekly staff meeting on Wednesday 17 February 2021 Ms Knight took issue with a remark made by Mr Tan about a professional colleague of Ms Knight. The discussion turned into an argument with both Mr Tan and Ms Knight shouting at each other. It was uncomfortable for those attending and a staff member left the room followed by Ms Knight. Ms Knight said she felt bullied and threatened by Mr Tan's behaviour. After the meeting Ms Knight sent an email to Mr Tan and other attending staff apologising for leaving the meeting, explaining that she was upset and felt she had to get away.

[11] On 23 February 2021 Ms Knight sent an email to Mr Tan suggesting some wine sales opportunities. Mr Tan responded the same day requesting Ms Knight attend a meeting in his office at 10 am on 24 February 2021. The email stated the purpose of the meeting was to "address your behaviour at last week's meeting". She was invited to bring a support person if she wished. Ms Knight responded saying the meeting was very short notice and she may have to reschedule the meeting to find a support person. Mr Tan responded later that night advising the meeting would not be rescheduled and she was required to attend the 10 am meeting so he could assess whether she was fit to participate in the weekly staff meeting the next day. Ms Knight could not find a support person and did not attend the 10 am meeting on 24 February 2021. After hearing nothing further from Mr Tan, Ms Knight emailed him on 27 February 2021 asking what the nature of the meeting was.

*28 February 2021*

[12] At 11.30am 28 February 2021 Ms Knight said she was working as the cellar door salesperson by the restaurant. As the cellar door salesperson, Ms Knight noticed there was no licensed manager on duty that day and therefore she questioned whether the restaurant and wine cellar could lawfully serve alcohol to customers. She said she took down the sign displaying the name of the licensed manager as he was not on the premises. She then had a discussion with the restaurant manager, Mr De La Ray and told him that they could not sell wine until they had a licensed manager on the premises.

[13] At 11.31am Mr Tan emailed Ms Knight advising her she had been suspended for her behaviour at the 17 February 2021 meeting. Ms Knight said she found the tone of the email highly offensive as it raised several issues not previously put her, including her failure to attend the 24 February meeting. Mr Tan also questioned her capacity to work. The email was copied both to her father and Alan Collison the winemaker. Mr Knight found the email deeply upsetting and humiliating and felt it had breached her privacy. On receipt of the email Ms Knight said she left Carrington Resort.

[14] Mr De La Ray's account of what happened in the restaurant was very different to Ms Knight's. Mr De La Ray said that Ms Knight abruptly walked to the front of the winery restaurant, she first took down the sign of the duty manager who was not present and then she started telling front of house restaurant staff that they could not sell alcohol, and that they could be prosecuted. He said Ms Knight went into the kitchen and told kitchen staff that they should not be selling alcohol. At the time there were about 50 customers having lunch with most having already been served.

[15] Mr De La Ray said that Ms Knight was behaving irrationally and that he took her away from the restaurant back to the cellar to discuss the matter. Mr De La Ray said it soon became a heated argument. He said Ms Knight was shouting at him, and that he repeatedly asked her to leave, but she would not comply. He said Ms Knight's behaviour was witnessed by some Carrington Resort staff members and customers.

[16] Mr De La Ray described having to reassure staff the matter was under control and told them to continue with what they were doing. He let everyone know that there were no issues with the liquor licence, and no one would be arrested or "prosecuted". Mr De La Ray then phoned Mr Tan. Ms Knight then left.

#### *Employment investigation*

[17] Ms Knight obtained legal representation and there was an exchange of correspondence between Ms Knight's representative and Mr Tan. Some of comments Mr Tan made in correspondence concerning Ms Knight were described by Ms Knight as degrading and intimidating. On 10 March 2021 Mr Tan wrote to Ms Knight's representative outlining several matters which had not been previously put to Ms Knight, including alleged concerns from work colleagues about her behaviour. The letter also sought to justify Carrington Resort's suspension of Ms Knight.

[18] A disciplinary meeting took place on 17 March 2021 with Ms Knight, her representative and Mr Tan. The parties disagreed with each other's version of events and the meeting lasted only 15 minutes. On 18 March 2021 Mr Tan dismissed Ms Knight in a termination letter headed up "Dismissal without notice". The letter set out that Ms Knight had been summarily dismissed based on a finding of serious misconduct. The letter also purported to rely on the "probationary period" clause in the IEA as grounds for dismissal.

### **The Authority's view of the employment relationship problem**

*Was Ms Knight's dismissal justified?*

[19] Justification is to be assessed in accordance with the justification test in s 103A of the Act. This requires the Authority to objectively assess whether "the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances". Justification is to be assessed at the time Ms Knight was dismissed, being 18 March 2021.

[20] A fair and reasonable employer is expected to comply with its contractual and statutory obligations. These include the good faith obligations in s 4(1A) of the Act and each of the four procedural fairness tests in s 103A(3) of the Act. Failure to do so may undermine an employer's ability to justify a dismissal.

*Did Carrington Resort comply with procedural fairness requirements?*

[21] Section 103A(3) of the Act sets out four minimum procedural fairness tests that an employer is required to comply with:

- (a) sufficiently investigating the allegations, before the employee is dismissed;
- (b) raising the disciplinary concerns with the employee, before they are dismissed;
- (c) giving the employee a reasonable opportunity to respond to the disciplinary concerns, before they were dismissed; and
- (d) genuinely considering the employee's explanation, before they were dismissed.

*Were allegations sufficiently investigated?*

[22] Mr Tan's investigation into its disciplinary concerns was inadequate and therefore insufficient, in breach of the requirements of s 103A(3)(a) of the Act.

[23] Relevant information was not identified or disclosed to Ms Knight. Specific allegations were not formulated. The allegation of staff concerns about her behaviour were not adequately put to her and Ms Knight said Mr Tan did not provide any written witness statements of staff he claimed to have interviewed.

[24] The Authority therefore finds that Carrington Resort failed to sufficiently investigate the disciplinary allegations against Ms Knight before it dismissed her.

*Concerns not raised with Ms Knight*

[25] Carrington Resort failed to raise specific disciplinary concerns adequately or appropriately with Ms Knight before she was dismissed, in breach of its obligation under s 103A(3)(b) of the Act.

[26] The failure to provide written allegations from witnesses of alleged serious misconduct prevented Ms Knight from properly understanding the nature and particulars of the allegations, or the evidence they were based on. It also deprived her of a chance to consider her response in advance of the disciplinary meeting, or to obtain information to counter the allegations.

[27] The Authority therefore finds that Carrington Resort failed to adequately raise its concerns with Ms Knight before she was dismissed.

*No reasonable opportunity to respond to concerns*

[28] The way in which Mr Tan conducted the disciplinary process, making unsubstantiated allegations about her health intimidated Ms Knight. It left her feeling humiliated.

[29] Although legally represented Ms Knight was not given a reasonable opportunity to respond to Mr Tan's concerns. She was required to respond to verbal allegations without being given the information she needed to be able to do so, amounting to a breach of natural justice requirements. She was not given an opportunity to be heard on the appropriate disciplinary sanction.

[30] While Ms Knight responded as best as she could during the disciplinary meeting, the respondent breached its s 103A(3)(c) obligations in the Act to give her a reasonable opportunity to respond to its concerns before she was dismissed.

*Failure to genuinely consider Ms Knight's responses*

[31] Carrington Resort failed to genuinely consider Ms Knight's explanation to the disciplinary concerns before she was dismissed, in breach of the requirement in s 103A(3)(d) of the Act.

[32] Ms Knight stated she was not given an opportunity to correct inaccuracies or to ensure Mr Tan had understood her responses. In respect of the 28 February 2021 incident, her explanation as to the legal risk to Carrington Resort for allegedly unlawfully selling alcohol was not given any credence. Given the short duration of the disciplinary meeting there was no evidence that her explanations were investigated, and Ms Knight stated there was a sense of predetermination on Mr Tan's part. Further there was no evidence from Mr Tan that alternatives to dismissal were considered before she was dismissed. The dismissal letter also purports to rely on the probationary period in the IEA which had expired in early February 2021 and was no longer in force.

*Outcome*

[33] I find that Carrington Resort breached its s 4(1A) good faith and each of the four s 103A(3) procedural fairness obligations in the Act.

[34] Ms Knight's dismissal for serious misconduct was procedurally unjustified because the disciplinary process was unfair to Ms Knight.

[35] Ms Knight's dismissal was not substantively justified, because Carrington Resort could not reasonably conclude that her conduct amounted to serious misconduct. In the circumstances summary dismissal was not within the range of reasonable responses that were available to a fair and reasonable employer.

[36] Carrington Resort did not have substantive reasons for summarily dismissing Ms Knight and it has treated her in an unfair manner, that breached minimum good faith and procedural fairness obligations.

*Was Ms Knight unjustifiably disadvantaged by Carrington Resort's decision to suspend her?*

[37] There was no interaction between the parties following the 17 February 2021 staff meeting until Ms Knight received an email from Mr Tan on 23 February 2021, requiring Ms Knight to attend a meeting with Mr Tan the following day. Ms Knight could not find a support person and did not attend the meeting on 24 February 2021.

[38] The email dated 23 February 2021 was not an invitation to a disciplinary meeting. It did not provide any indication of the potential outcomes from the meeting. It did not comply with the procedural requirements for a disciplinary meeting.

[39] On 28 February 2021 Mr Tan sent an email suspending Ms Knight. The suspension was implemented without any prior discussion or consultation with her and was based on events that allegedly took place 11 days earlier on 17 February 2021.

[40] The way in which Carrington Resort implemented Ms Knight's suspension was procedurally unfair and a breach of its good faith obligations.<sup>1</sup>

[41] Ms Knight was unilaterally suspended. She was not:

- (a) given information about what disciplinary concerns the respondent was investigating;
- (b) informed why the respondent believed suspension was necessary;
- (c) told how long her suspension would be;
- (d) consulted about whether her suspension would be paid or unpaid;
- (e) paid while on suspension when there was no contractual right to suspend her without pay;
- (f) referred to the suspension clause in her employment agreement;
- (g) given an opportunity to take advice on the suspension before it occurred.

[42] Although suspension of Ms Knight was available to Carrington Resort, the way it suspended her unjustifiably disadvantaged her in her employment. Accordingly, her unjustified disadvantage personal grievance claim succeeds.

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<sup>1</sup> Employment Relations Act 2000, s 4.

## **Remedies**

### *Reimbursement of wages*

[43] Where the Authority finds that the employee has a personal grievance; and that the employee has lost remuneration as a result of the personal grievance, the Authority must order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration being \$12,500. Here the latter is the lesser amount. Carrington Resort is ordered to pay Ms Knight \$12,500 in reimbursement of lost wages.

### *Compensation for humiliation, loss of dignity and injury to feelings*

[44] Ms Knight has succeeded in proving her two personal grievances claims that she was unjustifiably dismissed from her employment with Carrington Resort and was unjustifiably disadvantaged by being unlawfully suspended Ms Knight is entitled to an award of compensation under s 123(1)(c)(i) of the Act,

[45] In regard to the unjustified dismissal Ms Knight said she felt the way she has been treated by Carrington Resort has had a significant, negative impact on her and has caused her financial hardship. Ms Knight said her treatment by Carrington Resort and Mr Tan's comments were humiliating and derogatory. I am satisfied Ms Knight has experienced significant harm for humiliation, loss of dignity and injury to feelings. Further the failures by Carrington Resort to comply with basic fairness requirements that caused Ms Knight humiliation, loss of dignity and injury to feelings entitles her to compensation. I consider that an award of \$20,000 appropriate.

[46] In regard to Ms Knight's claim for unjustified disadvantage, she said she felt that the unfair way she was suspended was extremely upsetting and humiliating for her. Having regard to the circumstances of this case and other awards of compensation I consider that an award of \$5,000 appropriate.

### *Contribution*

[47] The Authority is required under s124 of the Act, where it determines an employee has a personal grievance, to consider the extent to which the employee's actions

contributed towards the situation that gave rise to the personal grievance and if the actions require, then reduce remedies that would otherwise have been awarded.

[48] Section 124 of the Act requires blameworthy conduct that has been established to the required standard of proof. In this case Ms Knight admitted having a heated exchange with Mr Tan at the 17 February 2021 staff meeting. She also admitted telling some staff they could not serve drinks in the restaurant without a licenced manager present on 28 February 2021. On this matter I rely on the evidence of Mr De La Ray in that Ms Knight's behaviour was unprofessional and was witnessed by staff and some restaurant customers. It is speculation to assume that Ms Knight behaved in a retaliatory manner towards her employer after receiving her notice of suspension, as it was not clear as to whether Ms Knight opened the email suspending her before the incident at the restaurant. Ms Knight denied having viewed the email prior to telling staff to refrain from selling alcohol until a licensed manager was present. She said she left the restaurant after she opened the email informing her she was suspended.

[49] However Ms Knight's unprofessional behaviour was blameworthy conduct that contributed to the situation that gave rise to her personal grievances. Her conduct therefore required a deduction to be made from the compensation she would otherwise have been awarded.

[50] I consider that a twenty five percent reduction to the award of compensation is appropriate in the circumstances. Accordingly, Ms Knights' compensation for unjustified dismissal is reduced from \$20,000 to \$15,000 under s124 of the Act, to reflect contribution. Ms Knights' compensation for her corresponding unjustified disadvantage is reduced from \$5,000 to \$3,750 reflecting contribution.

#### *Wage arrears*

[51] Ms Knight is entitled to lost remuneration because her dismissal was substantively unjustified;

- a. Ms Knight's salary for the period of her suspension to 18 March 2021 amounting to \$1,530.22; and
- b. 2 days in lieu for working statutory holidays amounting to \$218.60; and
- c. expenses and bonus amounting to \$1009.10; and
- d. 40 hours annual leave entitlements amounting to \$961.53.

### *Interest*

[52] Ms Knight can recover interest on the arrears and Carrington Resort is liable for payment of that interest calculated from 21 March 2021, the date of the letter raising a personal grievance, until the arrears are paid in full. Carrington Resort is ordered to pay interest, using the civil debt interest calculator.<sup>2</sup>

### **Result**

[53] Ms Knight has succeeded with both of her personal grievance claims.

[54] Her suspension unjustifiably disadvantaged her because it was carried out in a procedurally unfair manner. Her dismissal was unjustified, because it had been carried out in a fundamentally unfair way, that failed to meet minimum employment law requirements.

### **Summary of orders**

[55] Ms Knight was both unjustifiably disadvantaged and unjustifiably dismissed for which remedies have been awarded. Her claims for wage reimbursement have been upheld. The following orders are made:

- (a) Within 28 days of the date of determination Carrington Resort is ordered to pay Ms Knight the following sum:
  - (i) reimbursement of 3 months' salary being \$12,500; and
  - (ii) compensation for hurt humiliation and injury to feelings under s 123 being \$15,000 for unjustified dismissal; and
  - (iii) compensation for hurt humiliation and injury to feelings under s 123 being \$3750 for unjustified disadvantage; and
  - (iv) wage arrears of \$2,757.92 and holiday pay being \$961.53.
- (b) Within 28 days of the date of determination Carrington Resort is to calculate and pay Ms Knight interest on the arrears as awarded in paragraph [55] above.

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<sup>2</sup> <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

## **Costs**

[56] Costs are reserved. If a determination of the Authority is required on costs, Ms Knight may lodge a memorandum within 14 days of the date of this determination and Carrington resort would then have 14 days from the date of service to lodge a memorandum in reply. No submissions on costs will be considered outside this timetable unless prior leave has been sought.

**Andrew Gane**  
**Member of the Employment Relations Authority**