



YHT runs, among other places, Hamilton House (“*the Home*”), which is a residential home for these young people and one of the highest risk services it delivered. Those in the Home had often had a number of previous broken down placements, and could exhibit volatile behaviour that required careful management.

[2] The Applicant, Mr Elton Sharplin, had previously worked as a specialist support worker in a high security complex, so he had experience working in challenging environments, that had high safety risks associated with his work.

[3] Mr Sharplin, worked for YHT as a TFM Practitioner (Youth Worker) from 15 June 2020 until he resigned on 17 November 2020.

#### *The 8 October incident*

[4] On 8 October 2020, Mr Sharplin intervened in an attack in the Home by one youth on another and, in the course of doing so, was struck by the attacking youth. Although Mr Sharplin had removed himself to a safe area, along with the youth who was being attacked and another staff member, the youth who initiated the attack attempted to break into the safe room that Mr Sharplin was in.

[5] The Police were called to the Home to deal with the incident. Mr Sharplin was sent home early due to the incident. He had started writing an incident report, but had been unable to complete it before he left work that day. The Home’s social worker subsequently made changes to the incident report, but Mr Sharplin was not given an opportunity to review it before it was finalised.

[6] Although Mr Sharplin attempted to return to work the day after the incident for his next rostered shift (which was a day shift on Friday 9 October 2020), he had an adverse reaction when the youth who had been the attacker unexpectedly returned to the Home. Mr Sharplin was again sent home by his manager, so he did not complete his shift that day.

[7] Mr Sharplin’s next rostered shift was Monday 12 October 2020. He met with his manager before his shift started and they agreed to put a return to work plan in place. The Manager also approved leave for Mr Sharplin for the remainder of that week.<sup>1</sup>

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<sup>1</sup> It was later confirmed in an email dated 16 October 2020 that would be annual leave in advance.

*Return to work arrangements*

[8] Mr Sharplin and his manager met on Tuesday 13 October 2020) during which a return to work plan (which Mr Sharplin said was a 'Safety Plan') was verbally agreed. Mr Sharplin said that the agreed Plan provided:<sup>2</sup>

- (a) He would not be rostered alone at any time during a shift;
- (b) He would be allowed to leave the Home if he became overwhelmed, which he could do if there was other staff rostered on with him because the young persons could not be left alone in the Home without an adult present;
- (c) He could call his manager as soon as he is experiencing adverse symptoms;
- (d) He would utilise EAP and see a counsellor, and obtain a medical certificate for his absence for the rest of that week.

[9] Mr Sharplin provided YHT with a medical certificate dated 16 October 2020 that said he would be fit to return to work on 19 October 2020.

[10] On 21 October 2020 Ms Sharlene Southey, who was YHT's Operations Manager for the Waikato area that included the Home, emailed Mr Sharplin to recap her view of what had been agreed regarding his return to work plan. It was slightly different from what Mr Sharplin believed they had agreed. YHT's version of the Plan included:

- (a) The days and hours he would work, and when he was to be rostered off;
- (b) That if overwhelmed he would use the strategies his counsellor had taught him;
- (c) If he needed a break he would let his colleague know and would take some time out;
- (d) He could phone on-call if things became too overwhelming for him;
- (e) He would email his managers to let them know how his shift on Monday night 26 October 2020 (the Labour Day public holiday) went;
- (f) A manager would check in with him on morning of Tuesday 27 October 2020, at the treatment planning meeting;

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<sup>2</sup> This has been paraphrased by the Authority.

- (g) He would continue with his EAP counselling sessions.

*Mr Sharplin's claims*

[11] Mr Sharplin claimed that his resignation was an unjustified constructive dismissal. He also claimed he had been unjustifiably disadvantaged in his employment because YHT had failed to:

- (a) Comply with the rostering arrangements in his employment agreement;
- (b) Ensure that he was not left to work alone on Labour Day, which breached his return to work 'Safety Plan' that had been agreed between the parties; and
- (c) Take adequate care of his health and safety after the 8 October 2020 incident.

[12] Mr Sharplin made a fourth unjustified disadvantage personal grievance claim that YHT had breached his employment agreement and privacy by repeatedly requesting medical information, including his full medical history, from him.

[13] However, the Authority dealt with that fourth disadvantage grievance as part of his dismissal grievance, because Mr Sharplin's resignation was mainly based on YHT's refusal to allow him to return to work unless he consented to its request for disclosure of his medical information.

*Medical information issues*

[14] On 28 October 2020 Mr Sharplin's GP certified that he was fit for return to work on 11 November 2020. The ACC medical certificate Mr Sharplin gave his employer referred to PTSD and that was of concern to YHT.

[15] YHT wrote to Mr Sharplin on 2 November 2020 asking for his consent to access his medical history to establish whether or not he was "*fit to carry out the duties of a TFM practitioner*". The request related to disclosure of all of his medical conditions to provide YHT with "*historical medical information relating to your wellbeing and your ability to perform your role*".

[16] Mr Sharplin initially indicated that he would be prepared to sign it, but said he wanted to discuss the request with his GP and EAP counsellor before he did so. His GP and EAP counsellor both advised him not to sign the consent form, as they expressed concern that YHT's

request was far too wide, so would unreasonably breach his privacy. They both recommended he take legal advice, which he did.

[17] Mr Sharplin's advocate also expressed concern at the wide extent of medical information that was being sought and she also advised him that YHT's request was an overreach. She further noted that the reference to PTSD that had caused the request was not a formal diagnosis, because PTSD had to be diagnosed by a psychiatrist or psychologist.

[18] Mr Sharplin's advocate suggested that YHT should use the medical examination clause in his employment agreement to have him assessed, by a medical specialist of its choosing, if it was not prepared to accept his GP's medical certificate that said he was fit to return to work on 11 November 2020.

[19] Mr Sharplin offered on four occasions to undergo an independent medical assessment, but YHT did not arrange for that to occur. YHT also cancelled an in person meeting that had been scheduled with him to discuss the situation, without explanation and without indicating how the dispute between the parties about the request for medical information could be resolved - apart from Mr Sharplin providing the requested consent.

[20] Mr Sharplin said the situation had got to the point where he believed he had no option other than to resign. He had been on unpaid leave, or had to used his advance leave, on the days that he was unable to work as a result of the incident. YHT's agreement to pay him special leave for his rostered hours of work between 14 and 20 November 2020 had ended, so Mr Sharplin was facing an unknown period without pay, unless he gave YHT the consent it had requested.

[21] Mr Sharplin said he had a stark choice between either consenting to release medical information that his advocate, GP and EAP counsellor had all advised would unnecessarily and inappropriately breach his privacy or continuing to be held out of the workplace by YHT, without pay.

[22] Mr Sharplin believed the parties had reached an impasse. He said he needed certainty of income in order to be able to manage his family's financial obligations. Although he did not have a new job to go to Mr Sharplin said he felt he had to resign, in order to resolve his employment situation because he could not afford to continue to be out of work indefinitely without pay.

[23] Mr Sharplin therefore resigned on 17 November 2020, citing YHT's repeated insistence that he consent to disclosing medical information that would have improperly and unnecessarily breached his privacy along with the other issues that he has pursued as disadvantage grievances.

#### *YHT's position*

[24] YHT denied unjustifiably disadvantaging Mr Sharplin in his employment. It also denied that he had been dismissed.

[25] YHT said its request for Mr Sharplin's medical information was reasonable, necessary and did not breach his privacy. He had therefore resigned of his own free will. YHT pointed out that it had given Mr Sharplin an opportunity to reconsider his resignation, but he did not wish to do so.

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

[26] The Authority conducted an in-person investigation meeting in Hamilton.

[27] Mr Sharplin, his wife and his EAP counsellor gave evidence. The Respondent's 'in person' witnesses included Ms Southey and Mr Neil Brand, who was the Regional Director of Operations for the area that included the Home.

[28] Both parties filed additional information and submissions after the investigation meeting.

#### **Issues**

[29] The following issues are to be determined:

- (a) Did YHT unjustifiably disadvantage Mr Sharplin by:
  - (i) Issuing rosters and making roster changes on short notice;
  - (ii) Leaving him to work alone on Labour Day, in breach of the Safety Plan;
  - (iii) Failing to take care of his health and safety after the 8 October 2020 incident.
- (b) Was Mr Sharplin's resignation a constructive dismissal?
- (c) If so, was his dismissal justified?

- (d) If any of Mr Sharplin's personal grievance claims succeeded, what if any remedies should he be awarded?
- (e) Should any remedies that Mr Sharplin may be awarded be reduced under s 124 of the Act, on the grounds of contribution?
- (f) What costs and disbursements should the successful party be awarded?

### **Did YHT unjustifiably disadvantage Mr Sharplin?**

[30] Although Mr Sharplin's Statement of Problem set out four unjustified disadvantage grievances, his fourth disadvantage grievance gave rise to his resignation and therefore dismissal grievance. To avoid unnecessary duplication, that meant only three unjustified disadvantage personal grievance claims have been dealt with as stand-alone disadvantage grievances.

#### *Issuing rosters and making roster changes on short notice*

[31] The hours of work clause in Mr Sharplin's employment agreement stated that he was employed to work 32 hours a week, between 6am and 10pm Monday to Sunday "*as per the roster*". He was also required to work overtime as was "*reasonably required*" to fulfil his duties.

[32] His hours of work clause also stated:

The commencing and finishing times may change as per business needs. In the event that such changes are required you will be consulted initially about such changes and receive one month's notice of the effective date of such change.

[33] Mr Sharplin claimed that meant he had to be given one month's notice of the roster, but the Authority did not accept that. The rostering arrangement had some flexibility, but it was an implied term of the employment agreement that Mr Sharplin would be given reasonable notice of his shifts via the timely communication of the rosters to him.

[34] Mr Sharplin said he felt he was treated like an 'on-call' employee because of the short notice he received about his rostered shifts and regarding last minute roster changes. The Authority accepted his evidence about that.

[35] There was considerable evidence that staff rosters were repeatedly issued at very short notice and that roster changes were implemented with minimal or, at times, no advance notice.

YHT's communication to staff of rosters and roster changes was often inadequate both in terms of advance notice and the method of communication.

[36] That rostering situation was unreasonable and unjustified. It disadvantaged Mr Sharplin, because it interfered with his ability to plan his non-work time and activities. The evidence established that the way in which YHT communicated the rosters to Mr Sharplin clearly impinged on his family, social, medical and personal commitments, which was to his and his wife's significant detriment.

[37] Some non-exhaustive examples of problematic rostering that disadvantaged Mr Sharplin are summarised below.

[38] At 8.41pm on Thursday 15 October 2020 Mr Sharplin was emailed to his work email the roster that started on Monday 19 October 2020. However, he did not work on 16, 17 or 18 October 2020, meaning he could only view this emailed roster when he reported to work on Monday 19 October 2020 for his afternoon shift that day, being the day the new roster started.

[39] Mr Sharplin said when he got to work on Monday 19 October 2020 there was no roster written on the whiteboard that confirmed his work hours for the day. YHT pointed out that it emailed Mr Sharplin a roster on 15 October 2020 that recorded that he was working the afternoon shift that day. However, he did not know that until after he had already arrived at work.

[40] According to the roster that was emailed to staff on 15 October 2020, after working the Monday afternoon shift on 19 October 2020, Mr Sharplin was next rostered to work a sleepover on the evening of 23 October 2020, followed by the full day and sleepover on Saturday 24 October and the morning shift from 6 am until 9 am on Sunday 25 October 2020. However that was not what occurred.

[41] An email Ms Southey sent Mr Sharplin on 21 October 2020 said he would work 2-10pm that day followed by a sleepover (he did not work that day) and from 6am to 9am on Tuesday and attend a three hour planning meet that same day. Mr Sharplin only worked four hours that day. The email did not record that Mr Sharplin was to work all day on Monday 26 October 2020 or that he had to do the sleepover shift as well on that public holiday, which at that time was five days away.

[42] Ms Southey's 21 October 2020 email did not align with what had actually occurred in terms of the days and hours of work Mr Sharplin had worked.

[43] At 11.27pm on Saturday 24 October 2020 YHT emailed Mr Sharplin the roster that commenced on Monday 26 October 2020, which was the Labour Day public holiday. Mr Sharplin was already at work in the Home at that time. He had been rostered to work a sleepover on Friday 23 October 2020, the full day and the sleepover shifts on Saturday 24 October 2020 and the 6am to 9am morning shift on Sunday 25 October 2020.

[44] YHT's claim that Mr Sharplin did not work the afternoon or sleepover shifts on Sunday 25 October 2020 was not accepted by the Authority. Mr Sharplin's evidence about that was preferred, because YHT failed to produce a timesheet that had been signed by Mr Sharplin that supported its claim that he had only worked the early shift on Sunday.

[45] The Authority noted that YHT's evidence during the investigation meeting about who was rostered to work, and who did actually work each shift on any given day was unsatisfactory. YHT was unable to provide copies of the source data, such as evidence of communication of the rosters that were actually provided to Mr Sharplin or of the timesheets he had signed.<sup>3</sup>

[46] The Authority accepted Mr Sharplin's evidence that had worked the Sunday afternoon and sleepover shifts for his colleague ("S"), because there was no evidence from YHT that "S", or for that matter any other staff member, had worked these Sunday shifts instead of Mr Sharplin.

[47] On Sunday 25 October 2020 Mr Sharplin was required to fill in (without notice) for a colleague's rostered afternoon and sleepover shifts that day. He was already at work, and had been at work since his shift that had started at 2pm on Friday 23 October 2020.

[48] That meant Mr Sharplin did not finish work at 9am on Sunday (as per his return to work plan) but instead had worked continuously (including doing four back to back sleepover shifts) until 9am on Tuesday 27 October 2020.

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<sup>3</sup> Some limited documentation was provided by YHT after the IM, but that did not include timesheets signed by Mr Sharplin

[49] YHT's witnesses agreed during the investigation meeting that requiring an employee to work that many hours in such a short period was undesirable. It was even more unreasonable to require an employee who had just returned to work after health issues to work this shift pattern.

[50] Mr Sharplin said he had expected to work the day shift on Monday 26 October 2020 but not the sleepover shift that night. His wife had just had surgery and needed around the clock post-surgery care during the night, so he needed to be home with her. He had told YHT that.

[51] However, Mr Sharplin said he ended up being required to work all day Monday, the sleepover shift on Monday night and the Tuesday morning shift from 6am until 9am on 27 October 2020. He did not return home until after his morning shift on Tuesday 27 October 2020 had ended.

[52] Mr Sharplin was already at work when he found out he was going to have to work the sleepover shift on Monday 26 October 2020. He initially tried to arrange a replacement but was not successful, so he made arrangements for someone else to stay with his wife while he was at work. That situation was very stressful for him, his wife and family members who had to step into the breach at the last minute.

[53] Mr Sharplin had told YHT he was not available to work on 31 October 2020. After he finished work on Tuesday 27 October 2020 (around 10am) he saw he had been rostered to work the day and sleepover shifts on 31 October 2020. He had not seen the email which attached the roster which was sent to staff at 11.27pm on Saturday 24 October 2020, because he had already been at work when that was sent and had not finished work until Tuesday morning.

[54] He had told his manager a month earlier that he could not work on 31 October 2020 and he had reminded the Practice Lead about that the previous week. He had a prepaid appointment that day, so had not expected to be rostered to work.

[55] When Mr Sharplin reminded his manager that he had booked that time off, she told him his plans were not important because YHT was short-staffed, so he had to work that day. He was only give a few days' notice of that, which was highly inconvenient and stressful for him, and interfered with his pre-existing commitments.

[56] There were other rostering issues where Mr Sharplin missed a family event because he was declined leave for a shift he had found cover for, on the basis the other staff member would have been required to work too many hours if the shifts were changed. He was also twice required to find his own shift cover when away on sick leave.

[57] Mr Sharplin said the rostering difficulties meant he would not know with certainty when he would be working in any given week. He said that the job was made harder because staff were often not given copies of the roster, but had to navigate a roster that was written on the whiteboard in an office which would often change without notification.

[58] That evidence was accepted, because YHT could only produce three rosters that had been emailed to Mr Sharplin and it was clear those had been sent out on short notice.

[59] Mr Sharplin said the roster changes caused him ongoing anxiety because he never knew when he was going to be rostered on or with who, the lack of clarity about when he would be working or which shifts he would be required to work on a particular day made it difficult for him to plan activities for the boys in the Home.

[60] Mr Sharplin also said he did not have any way of knowing if activities were on or off, and without knowing who he had been rostered to work with, then he could not know if an outing was planned. Mr Sharplin said this had practical implications for him, such that he didn't know if he had to bring a packed lunch, walking shoes or sun protection to work on any particular given day to facilitate outings for the boys.

[61] Mr Sharplin said the roster problems also meant he never had certainty to be able to plan things like medical appointments, family events, or social engagements in the comfort that he would not suddenly be required to work at short notice. That directly affected Mr Sharplin's ability to organise his time outside of his work obligations, including his ability to support his wife after her surgery.

[62] YHT said the rostering issues were due to being short staffed. That may be the case but it did not justify YHT disadvantaging Mr Sharplin by the way it dealt with rostering.

[63] In terms of the short notice given to staff about rosters, that appeared to result from poor organisation or inadequate advance planning. YHT had focused on its needs only without

paying regard to the adverse effects its short notice rostering, and last minute roster changes, was having on its staff.

[64] By the end of October 2020 YHT had acknowledged it needed to give more notice of rosters to staff and it was working on that. There was no evidence about to why that could or should not have occurred before then, as it was an issue Mr Sharplin had repeatedly raised as a concern.

[65] In terms of the last minute roster changes (like Mr Sharplin being required to work without notice for “S” on Sunday 25 October 2020 or the sleepover shift on Monday 26 October 2020), YHT had a number of other options short of requiring staff to work at such short notice.

[66] That included using casual, temporary, or on call employees or even if need be one of its social workers. There was no evidence produced by YHT these other options had been explored regarding the short notice shifts that Mr Sharplin was required to work and that had disadvantaged him. He was simply required to work at short notice.

[67] Mr Sharplin’s unjustified disadvantage grievance relating to rostering issues succeeded.

*Leaving him to work alone on Labour Day, in breach of the Safety Plan*

[68] Mr Sharplin and YHT had differing views on whether or not they had agreed that Mr Sharplin would not be rostered to work by himself.

[69] YHT did not agreed that Mr Sharplin would always be rostered on to work with a colleague as part of his return to work plan. YHT said in its submissions that the Plan stated: “*Avoid high risk situations and isolation – see support from colleagues*”. That was not evident from the documents produced to the Authority and the recap of the plan that was emailed to Mr Sharplin on 21 October 2020 did not say that.

[70] This conflict was resolved in Mr Sharplin’s favour. The email from Mr Sharplin’s manager to him on 21 October 2020 stated (among other things) that: “*If you need a break you will let your colleague know and will take some time out*”. That implied he would be working with a colleague who he could inform. It also indicated that he was able to take some time out if he was feeling overwhelmed.

[71] The time out was a strategy the counsellor had recommended, so it was clearly anticipated that Mr Sharplin may need to leave the Home for a short time, such as to walk

around the block. However, Mr Sharplin could not do that when he was the only person working in the Home as the boys could not be left unattended without an adult present.

[72] There was no dispute that Mr Sharplin was left as the only adult in the Home for the day on the 26 October 2020 Monday Labour Day public holiday, when the other staff member working that day took one of the boys out for the entire day. Mr Sharplin was not informed about this, so only discovered that after the other staff member had left the Home for the day.

[73] YHT had given approval for that to occur, but had not put cover or any other arrangements in place to ensure Mr Sharplin could take a time out break if need be. That omission was aggravated because Mr Sharplin had been at work since 2pm on Friday 23 October 2020, so YHT should have known a time out break could have been necessary.

[74] Another aggravating feature of YHT's failure to ensure Mr Sharplin had a colleague working with him on 26 October 2020 was that the on-call arrangements and planned check in set out in YHT's 21 October 2020 email had not occurred. So not only was he left alone in the Home but his manager was not available at all and the on call person did not answer his calls in a timely way. He waited seven hours for a reply.

[75] Mr Sharplin tried calling his manager a number of times and he sent her text messages. She did not reply because she was at a Tangi. She forwarded them to the social worker who contacted Mr Sharplin at 13.49 and then again at 7.30pm that day. She tried to find cover for him but no-one was readily available to replace him. Mr Sharplin also confirmed to her that he felt able to complete his shift.

[76] His manager's check in on the morning of Tuesday 27 October 2020 did not occur because he did not appear to be in a good mood, so she decided to defer speaking to him about how his shifts after his recent return to work had gone until he was better disposed.

[77] YHT's actions unjustifiably disadvantaged Mr Sharplin because it did not adhere to the arrangements it had recorded in its email of 21 October 2020, that had been designed to support his return to work.

[78] YHT was not justified in failing to give Mr Sharplin advice notice he would be in the Home by himself. The details of the other staff member's outing that day were never communicated to Mr Sharplin, when they should have been.

[79] YHT should have known that it needed to pay specific attention to shift arrangements associated with Mr Sharplin's return to work over the long weekend period. Normally on a Monday the boys would be away from the Home attending study or other activities. None of which occurred on public holidays, meaning the boys were in the Home all day. There was therefore likely to be more pressure on Mr Sharplin on 26 October 2020 than would be on him during a normal Monday.

[80] Accordingly, this unjustified disadvantage claim succeeded.

*Failure to take care of his health and safety after the 8 October 2020 incident*

[81] YHT's failure to resolve Mr Sharplin's legitimate rostering concerns, its requirement that Mr Sharplin work shifts he had not been expecting to work or that he cover shifts for other staff at very short (or no) notice, the need for him to take leave in advance or unpaid leave due to absences related to the 8 October incident, its failure to adhere to the agreed return to work Plan regarding his shifts on 26 October 2020 together amounted to failures to appropriately address Mr Sharplin's health and safety after the 8 October 2020 incident.

[82] The rostering problems put him under unnecessary and inappropriate additional pressure at a time when he was already vulnerable and stressed. He should not have had to work the back to back shifts and multiple sleepovers in a row that he had to do over the period 23 to 27 October 2020. YHT had declined to allow another employee to work that number of hours, so it should have protected Mr Sharplin from that in the same way it had previously done for one of his colleagues.<sup>4</sup>

[83] YHT failed to take appropriate care and attention regarding the 26 October 2020 work arrangements, and it failed to do what it had agreed it would do to support Mr Sharplin's return to work over the long weekend.

[84] YHT also subjected Mr Sharplin to considerable financial pressure and worry because he had to use leave he did not yet have or take unpaid leave when he was unable to attend work for reasons related to the 8 October 2020 incident. He was also not given an opportunity to review the incident report before it was finalised. YHT's failures were unjustified.

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<sup>4</sup> Mr Sharplin's previous attempt to change shifts with that employee was declined by YHT on the grounds that employee would have worked too many hours.

[85] Accordingly, Mr Sharplin's disadvantage grievance claim that YHT had failed to adequately support him after the 8 October 2020 incident succeeded.

**Was Mr Sharplin's resignation a constructive dismissal?**

[86] A dismissal is a 'sending away' that occurs at the employer's initiative. A free and voluntary resignation is not a dismissal.

[87] However, a resignation that arises from the employer's conduct towards the employee, particularly if there has been a breach of duty that made resignation reasonably foreseeable, may amount to a constructive dismissal.<sup>5</sup> Whether a resignation is a constructive dismissal involves an intensely factual inquiry into all of the circumstances that resulted in the resignation.

[88] In this case the Authority had to determine whether or not there had been a fundamental breach of duty by YHT that made it reasonably foreseeable that Mr Sharplin would not continue working in the face of such a breach.

[89] Mr Sharplin said he resigned because of YHT's unreasonable actions and behaviours towards him that included:

- (a) Shifts repeatedly being allocated to him, or changed, at short notice;
- (b) Being rostered at short notice to work shifts on dates he had already advised YHT he was not available;
- (c) YHT's failure to adhere to the agreed return to work Safety Plan;
- (d) Failing to let him return to work after his GP cleared him to do so;
- (e) Failing to arrange an independent medical assessment of him to assess his fitness to return to work, in a timely manner;
- (f) Requiring him to remain away from work without pay, with no end date to that situation and without any process being put in place to resolve the outstanding medical consent issues;

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<sup>5</sup> Conduct other than just a breach of contract may also result in a constructive dismissal.

- (g) Overreaching in its repeated requests for disclosure of his medical information, to the extent that what had been requested would have unreasonably and unnecessarily have breached his privacy, had he consented to it.

[90] On 27 October 2022 Mr Sharplin told his manager that he felt let down over shifts that had been changed without discussion or at short notice, and that he believed that the safety plan that had been in place over the Labour Day weekend had been unworkable.

[91] Mr Sharplin had a meeting with his manager on 28 October 2020, during which he raised issues that were causing him stress. These included rostering, leave and communications. Mr Sharplin also said he felt unsupported and again noted that he believed the safety plan had been unworkable. Mr Sharplin told his manager that he had been given medical leave until 11 November 2020.

*Summary of the medical requests and information*

[92] On 14 October 2020 Mr Sharplin's manager had asked him to provide a medical certificate because he did not attend work as rostered on 9, 12 and 13 October 2020. He submitted a medical certificate from his GP on 16 October 2020, which stated that he would be fit to return to work on 19 October 2020.

[93] However, the work related issues that occurred from 23-27 October 2020 caused Mr Sharplin stress, so he returned to see his GP on 28 October 2020.

[94] On 30 October 2020 Mr Sharplin provided his employer with a copy of a medical certificate relating to a consultation that had occurred on 28 October 2020. This recorded that Mr Sharplin had been medically unfit to work from 8 October 2020 and should be fit to resume work on 11 November 2020.

[95] He also gave YHT an ACC medical certificate from Mr Sharplin's GP, dated 28 October 2020, that recorded (among other things):

**Diagnosis 2**

[X] Post-traumatic stress dis

**Comments**

Was punched in the chest by a client triggering a PTSD

*Medical information requested*

[96] YHT response was to send an email from Ms Southey to Mr Sharplin on 2 November 2020 that stated:

[...] we are very concerned about your wellbeing. We would like to request your permission to obtain medical information from your GP to ensure you are fit to carry out the duties of a TFM Practitioner. Attached is a letter requesting this information and a request form for your GP.

[97] YHT further noted that it was “*very concerned about the diagnosis and what has preceded it*”, so it wanted Mr Sharplin’s approval to “*obtain the relevant medical records that relate to your diagnosis. In particular, any record that impacts your ability to perform your frontline role of TFM Practitioner.*”

[98] An ‘Authority for Release of Medical Information’ form (“*the consent form*”) was attached to the letter and Mr Sharplin was advised that once he returned it YHT would:

contact his medical practitioners and any other relevant medical professional who you believe could provide us with some context as to your wellbeing. We would request they provide us with historical medical information relating to your wellbeing and your ability to perform your role.

[99] The consent form required Mr Sharplin’s consent for his employer to:

obtain any relevant medical information and advice from my medical or other health practitioners. Such information should only concern my fitness to safely undertake the duties of my position and other health related matters that have been identified by my employer that need to be considered in respect of my employment.

[100] The consent form also went on to state that any information disclosed could be passed by YHT to a nominated medical assessor and/or to an independent review panel, if he sought a review of any medical assessment that YHT had done. Mr Sharplin was asked to list the details of his current and previous treating medical and health practitioners. The consent form further stated:

My consent is provided to Youth Horizons/Kia Puāwai to obtain any relevant information and advice from them concerning my fitness to safely undertake the duties of my position and other health related matters that have been

identified by my employer that need to be considered in respect to my employment.

[101] Mr Sharplin’s EAP counsellor, GP and advocate all thought that the disclosure of “*historical medical information relating to your wellbeing and your ability to perform your role*” was too wide and therefore an unnecessary breach of his privacy.

*Communications with Mr Sharplin’s advocate*

[102] Mr Sharplin’s advocate wrote to YHT on 6 November 2020 recording her view that the extent of the medical information and the timeframe it covered was too wide. She advised that the only event that had caused Mr Sharplin’s post-traumatic stress had occurred in the workplace on 8 October 2020, it was known to the employer, so there was no dispute it had actually occurred.

[103] Mr Sharplin’s advocate emphasised that he wanted to act in good faith and would allow YHT to have him undergo an independent medical assessment of his current status regarding his fitness to return to work. She therefore proposed that instead of disclosing all of his medical records that he be medically assessed, as per clause 20 of his individual employment agreement, to assess his fitness to return to work and undertake the normal duties of his role.

[104] Clause 20 of the employment agreement stated:

**Medical examination**

- 20.1 The Trust may, at its expense, require you to undergo a medical examination by a registered medical practitioner or practitioners nominated by the Trust (after the Trust has considered your wishes in respect of the appointment of the registered medical practitioner). A copy of any relevant report provided by that medical practitioner will be available to both parties.
- 20.2 The Trust may exercise its right to:
- (a) determine whether granting you ongoing sick leave is appropriate;
  - (b) determine whether your employment should be terminated for incapacity;
  - (c) assess your fitness for work and/or return to work after a period of sick leave;
  - (d) obtain a second opinion if you have provided the Trust with a medical certificate report; and/or
  - (e) assess your health for insurance purposes.

[105] Mr Sharplin's situation clearly fell within clause 20.2(c) and (d).

*The PTSD/PTS issues*

[106] YHT was not prepared to accept the medical clearance it had received from Mr Sharplin's GP that he was fit to return to work on 14 November 2020 because it remained concerned about the initial Post Traumatic Stress Disorder (PTSD) diagnosis in the 28 October 2020 ACC medical certificate.

[107] The PTSD issue arose because Mr Sharplin's GP had ticked a box on an ACC form that had limited options available. The PTSD box had been ticked in an attempt to obtain ACC coverage for Mr Sharplin, but within the restrictions of the form that had to be completed for ACC purposes. Mr Sharplin did not get ACC coverage.

[108] Mr Sharplin had shared the PTSD diagnosis with his EAP counsellor, who expressed her view (based on her experience) that he did not appear to be suffering from PTSD. She also pointed out that PTSD had to be diagnosed by a psychologist or psychiatrist. The PTSD diagnosis was revisited by his GP and amended to Post Traumatic Stress (PTS).

[109] On 4 November 2020 Mr Sharplin had informed YHT that he had suffered PTS (ie post-traumatic stress arising from the one-off incident that had occurred on 8 October) but was not suffering PTSD.

[110] Mr Sharplin's GP confirmed that to YHT in a medical certificate that was dated 4 November 2020. This stated (among other things) that "*PTSD should be changed to PTS since it is a short-term condition – suggested by the EAP counsellor with which I agree*".

[111] Mr Sharplin had emailed his employer on 4 November 2020 attaching the updated ACC form and stating:

The PTSD on this form cannot be changed as ACC provide no other options. However medical records that I can send shortly show that the change in that diagnosis to PTS (post traumatic stress), however, only a registered psychiatrist could formally diagnose.

[112] On 10 November 2020, YHT's Operations Manager responded by stating:

Our expectation is that a recruit has no contra-indications or pre-existing conditions that will affect their ability to perform the role safely and well. This

is tested in the pre-employment screen where a potential employee is asked if they have any pre-existing medical condition that may affect their ability to undertake the role.

Elton has indicated that there were no pre-existing conditions affecting his role.

[113] During the Authority's investigation meeting Mr Sharplin and his wife confirmed he had not had any previous PTSD events. His EAP counsellor confirmed that he had told her that as well when they had been discussing the PTSD issue.

#### *Suggested meeting*

[114] The 10 November 2020 letter from YHT asked Mr Sharplin to meet with it.

[115] Mr Sharplin's advocate replied on 12 November 2020 to point out that Mr Sharplin had been cleared by his GP to return to work and that he wanted to be back at work. She explained that Mr Sharplin was losing money every day that he was kept away from work and that he did not see that as responsible behaviour from his employer.

[116] The adverse financial consequences to Mr Sharplin of him not being permitted to return to work had also been referred to in his advocate's previous communications with YHT.

[117] YHT was questioned about why it had not replied to Mr Sharplin's offer to be independently medically assessed regarding his current health status, as per clause 20 of his employment agreement.

[118] Mr Sharplin agreed that he would attend the meeting with YHT and was available the following day. He noted that it was costly for him to have representation and that because he was not earning (being away from work on an unpaid basis), he was particularly concerned about costs mounting up.

[119] The letter that Mr Sharplin's advocate sent summarised his position, namely that:

- (a) He had offered to have an independent medical assessment as per his employment agreement;
- (b) He had become affected by post-traumatic stress after the 8 October incident and needed some time off to recover. He had now recovered, had been cleared to return to work from 14 November 2020, and wanted to return to work;

- (c) The GP who had first assessed Mr Sharplin after the workplace incident had stated that the PTSD initial diagnosis was wrong and that Mr Sharplin did not have PTSD and had been affected by post-traumatic stress only;
- (d) Mr Sharplin was willing to see a psychiatrist or psychologist of YHT's choosing so his current health status to be assessed, including any concerns that YHT had regarding his PTSD/PTS diagnosis.

[120] Mr Sharplin's advocate pointed out that in such circumstances there was no need for YHT to obtain Mr Sharplin's full medical records. It had no contractual right to review his medical records and doing so in this case would be an unacceptable breach of his privacy. An independent medical assessment would enable YHT to find out the information that it needed without unreasonably breaching his privacy.

[121] Mr Sharplin's advocate asked if YHT would pay for the cost of her attending the meeting it wanted to have with Mr Sharplin and she said she could meet the following day (13 November) or on the afternoon of Monday 16 November 2020. YHT responded on 13 November 2020 saying it would be unwilling to pay for Mr Sharplin's costs of being represented at the proposed meeting.

[122] Mr Sharplin's advocate responded on 13 November 2020, again reiterating that she had not received an answer from YHT regarding the offer Mr Sharplin had made to undergo an independent medical assessment. She pointed out that had been proposed as a legitimate contractual pathway for YHT to investigate its concerns and as a pathway to enable Mr Sharplin to return to work. She noted that the offer had been made on 6 November 2020 (a week ago) and expressed concern that things were "*dragging on*".

[123] Mr Sharplin's advocate reiterated that he was:

ready, willing and able to work and he has been cleared for work. We do not understand why Youth Horizons will not take up his offer to have a medical assessment with professionals of your choosing and get on with things. Elton is running desperately short of money as he has not been working since early October 2020.

[...]

Elton has not received any ACC payments for his time away, he did not take sick leave, he has not been offered stress leave and Youth Horizons' lack of response to his offer to have a medical assessment is now causing unnecessary

delays. He is rostered to work tomorrow 14 November 2020, however we understand he has not been allowed to come back to work.

Added to this, Elton is incurring legal expenses as a result of having to get representation to address these issues through no fault of his own, and Youth Horizons are refusing to assist him financially with bills the employer is creating. It is starting to appear that Youth Horizons do not want Elton to return to his job. We are still available to meet with you on Monday afternoon 16 November 2020 to discuss. Please be aware that Elton will incur an invoice of \$2,750 plus GST for such a meeting.

*Further consent requested*

[124] On 13 November 2020 YHT asked if Mr Sharplin would consent to release his medical records to the nominated medical practitioner and allow the doctor to brief it on the information they obtained. YHT said that if it got confirmation of this, then it would request an independent medical practitioner to schedule an appointment with him.

[125] It pointed out that Mr Sharplin had been employed for less than six months and had used four days' sick leave in advance of his entitlement. YHT agreed to pay Mr Sharplin special leave for his rostered hours of work between 14 and 20 November 2020 that he was unable to work while undergoing a medical assessment process, because it did not want him at work during that period.

[126] Mr Sharplin's advocate replied on 13 November 2020 confirming that Mr Sharplin would present for a medical assessment with a medical practitioner of YHT's choice as soon as it could be organised. She again emphasised that he was keen to and need to get back to work as soon as possible.

[127] Mr Sharplin's advocate pointed out that the agreement to pay special leave from 14 – 20 November was helpful, but it did not assist with the adverse financial impact Mr Sharplin had suffered as a result of his absence from work while recovering from the workplace incident that had occurred on 8 October 2020.

[128] Mr Sharplin's advocate advised that Mr Sharplin would answer any questions that the independent medical practitioner asked him honestly and in good faith, which should provide answers to the questions his employer had.

[129] On 16 November 2020 YHT replied to Mr Sharplin's advocate saying it still wanted confirmation that he would release his medical records to the nominated medical practitioner

and allow that person to brief it on the medical information they had obtained from him. It stated:

As part of the independent medical assessment process, the assessing medical professional will request Youth Horizons to provide them with the authorisation to allow them to request relevant historical medical information from his GP. We again request this form be signed and returned to us so we can send it to the assessing doctor.

We have no requirement to meet face to face at this stage.

*Issues remain unresolved*

[130] Mr Sharplin's advocate replied on 16 November 2020 and said that she would be meeting with Mr Sharplin to discuss the situation. She expressed her concern that the parties were "going around in a circle". She reiterated that Mr Sharplin was willing to have a medical assessment with an independent practitioner of his employer's choice and that he would answer any questions that were asked of him, including those relating to the PTSD area of concern.

[131] Mr Sharplin's advocate pointed out:

It is still not clear on what grounds Youth Horizons is seeking Elton's past medical records and this is a breach of his privacy. Again please point out to me in his IEA where the employer has a contractual right to do this.

[132] YHT replied to Mr Sharplin's advocate on 16 November 2020 and stated:

The concern for the organisation is pre-existing conditions that may put him at risk. [...]

He states in his pre-employment screening that he has no medical conditions that affect his ability to undertake the work he is employed for. However, we are concerned that this statement may not be accurate and, in order to allay that concern, we requested access to his previous medical history.

You have suggested that he could be deemed fit to work by a medical practitioner of our choice. This is not helpful in determining if he is safe at work.

His response to the incident and the diagnosis of PTSD makes the organisation very wary that there are underlying issues that are concerns for Elton's safety and wellbeing. The subsequent change of diagnosis does not change the essential issues and risks.

[133] Mr Sharplin's advocate replied on 16 November 2020, noting that she would talk to him about these issues when they met. She further said:

Psychiatrists are able to diagnose PTSD without seeing a past medical history. I have already said this in my emails and I believe you will know this.

She also gave the name of a particular person who was able to do that and noted that there had been no response to the question about the contractual right to seek past medical records.

[134] At that point Mr Sharplin finally lost trust and confidence in his employer and he resigned in writing on 17 November 2020.

#### *The resignation*

[135] His resignation letter stated that he believed that the stress he suffered in response to the 8 October incident was because he was in a relatively new work environment and he had an unwell wife at home, which was a situation he had asked his employer to assist with by planning his shifts well in advance, but that did not happen and his shifts had not been notified to him in a timely manner. He said that *“Things compounded around uncertainty of rostered shifts, communication breakdowns and attempted breaches of my privacy since the incident occurred.”*

[136] He then went over the PTSD/PTS issues which had already been notified and explained to YHT. He said that he had the added stress of not knowing how he would be able to manage financially as YHT had been unwilling to support him financially after the workplace incident, that had resulted in his absences while he recovered from it.

[137] Mr Sharplin pointed out that after returning to work for the Labour Day weekend he was not made aware that he would be working the Monday overnight shift and he had been rostered on to work for a day that he had requested that he did not work a month previous, and which he had reminded his manager that he was not available to work the week before.

[138] When he told his employer that he had paid a deposit for an appointment that day, his manager said that the appointment was not important enough to change the roster. Mr Sharplin said he felt that overstepped professional boundaries and personal territory, particularly where he had been given such short notice to work. He said that added to that, he had the stress of finding a carer for his wife who had needed around the clock post-surgery care during the night.

[139] Mr Sharplin pointed out that on Labour Day he was left alone in the Home because his colleague had taken one of the boys out for the day. He therefore had no ability to utilise the

cooldown plan that he had, to take a walk around the block, if he needed time out due to feeling overwhelmed.

[140] Mr Sharplin also pointed out that when he called the on-call reliever, there was no reply and his manager was unavailable. He said he did not know if he would have someone available to relieve him and therefore his stress levels rose. He said he did not manage to speak to the on-call relief person until seven hours later and by that time he had managed to get through his rostered shift.

[141] Mr Sharplin pointed out that he felt that YHT had failed to recognise the impact that the traumatic 8 October incident had had on him, because the return to work plan that they had agreed on was rendered unworkable when he had been left to work on his own on Labour Day public holiday. He pointed out how he had to take extended time off work and that no financial assistance was given to him regarding that.

[142] He was then asked to release his medical history for YHT to determine if he was fit for his role. He said that his employer reacted to him as if he was at fault and had past medical issues that had caused the PTSD, which he pointed out he did not even have. He said he had provided confirmation from his GP that his stress was a reaction to the single incident that had occurred at work.

[143] Mr Sharplin expressed his view that YHT was seeking to breach his privacy by seeking an overly wide range of historical medical information and he was not comfortable releasing that level of personal information to an organisation that he believed had failed to care for him in the first place.

[144] Mr Sharplin pointed out that his EAP counsellor, his GP and his advocate had all said that the request was a breach of his privacy and unnecessarily wide. He said that without financial aid in terms of wages, ACC or other financial support, he found himself in a situation where he had to seek and pay for legal representation and manage the stress of the incident himself.

[145] He told the Authority that he felt YHT was looking to discredit and dismiss him, despite his efforts to work in accordance with the employment agreement and his offer to be independently medically assessed.

[146] He felt that YHT's continued request for his medical records were a breach of his privacy and that YHT had ignored his advocate's questions. Mr Sharplin noted that the meeting YHT had wanted to have with Mr Sharplin did not proceed because it had been cancelled without explanation by YHT. YHT could not explain to the Authority why it had cancelled the meeting.

[147] Mr Sharplin said that he got to the point by 17 November 2020 where he faced no income and no end potentially in sight to the stalemate situation. He therefore believed that he had to resign, because his only options were resigning, being forced into agreeing to release an overly wide range of his private historical medical information that was unrelated to the events at hand, or to indefinitely stay away from work without pay.

[148] Mr Sharplin said that he did not have a job to go to when he handed in his resignation, but that the motivator for resigning was an attempt to resolve the uncertainty and the financial stress that he and his family were under. That meant he needed to obtain clarity (and certainty) around his income by obtaining future employment elsewhere as soon as possible.

#### *YHT's position*

[149] YHT said it did not want Mr Sharplin to resign. However, an employer that wanted the employment to continue may also still have constructively dismissed an employee because of its conduct towards the employee.

[150] YHT said that Mr Sharplin had other options available to him such as raising an employment relationship problem using the dispute resolution mechanism in his employment agreement. YHT said that there was no fundamental breach of his employment agreement, it had not undermined the trust and confidence inherent in the employment relationship, and that it was not reasonably foreseeable that Mr Sharplin would resign.

#### *Authority's findings*

[151] YHT effectively adopted a stance that meant Mr Sharplin could not return to work unless he had consented to disclose an unduly wide range of historical medical information. That was unreasonable and unjustified in all the circumstances. It was also an unwarranted overreach that would have breached the privacy of his confidential medical information. It was

understandable that Mr Sharplin would not want his entire medical history disclosed to his employer.

[152] YHT changed its reason for requesting the medical information. It started out by saying it was concerned about his fitness to return to work but then later morphed that into requesting information to establish whether to not he had given untrue information at the pre-employment stage.

[153] YHT's position regarding its requests that Mr Sharplin consent to disclosure of his medical information is an example of the inherent power imbalance in employment relationships that was referred to in s 3 of the Act. The late, and limited, offer of a few days of paid special leave had not addressed Mr Sharplin's particular vulnerability.<sup>6</sup>

[154] YHT was repeatedly put on notice of the financial hardship Mr Sharplin was suffering. He was a new employee who had to take leave without pay, he had exhausted his advance leave entitlements, he had to pay for an advocate (and had already incurred thousands of dollars in legal costs addressing YHT's requests) and for his medical appointments while having no income and no indication of when that situation would change.

[155] It was reasonably foreseeable that the situation could not continue and that in all the circumstances Mr Sharplin would need the certainty that a resignation gave him. There was no pathway forward and no indication as to when he would be paid again by YHT.

[156] YHT's cancellation of the meeting to discuss the situation without explanation and with no alternative way of resolving the impasse the parties had reached meant Mr Sharplin's view that he had run out of options was a valid one. He needed to be able to get on with his life and earning an income was a critical part of that. There was no certainty as to when that would occur if he did not give YHT the consent form it wanted.

[157] YHT's actions were a breach of its good faith obligations to be active and constructive towards him. It used its power to deprive him of income and was not responsive to his legitimate concerns. YHT could have achieved what it had wanted without repeatedly pressuring him to consent to provide the information it had requested.

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<sup>6</sup> 14 to 20 November 2020.

[158] It could have written to his GP for confirmation that there were no previous PTSD incidents/events in Mr Sharplin's past. It could have asked its independent medical expert to make such an inquiry with Mr Sharplin's GP, if the independent medical expert believed it was necessary. It could have instructed its independent expert to verify the GP's letter on 4 November 2020 that advised the reference in the 28 October 2020 ACC certificate to PTSD was incorrect, and which had explained the circumstances of that.

[159] A fair and reasonable employer would have addressed Mr Sharplin's legitimate privacy concerns but YHT simply rejected them out of hand. A fair and reasonable employer would only have sought the limited information it required, it would not have asked for disclosure of a full or historical medical record.

[160] It must be borne in mind that this was not a situation in which the employer had no medical information or incomplete medical information. Mr Sharplin had been cleared to return to work. He and his GP had both provided a legitimate explanation to the PTSD reference that had given rise to YHT's concerns. This was a situation in which YHT was not prepared to accept that information.

[161] Mr Sharplin had proposed a reasonable and legitimate path forward that would have enabled YHT to have addressed its concerns (via an independent expert of its choosing) but in a way that did not improperly impose on his right to privacy or on the confidentiality of his medical information. His proposal was also consistent with YHT's contractual rights and enabled it to address his concerns in a way that respected the privacy of his medical records.

[162] Mr Sharplin was suffering financial hardship and his special leave had expired. He faced a further unknown period without pay and YHT had not addressed that.

[163] Mr Sharplin had offered on four occasions to undergo an independent medical assessment (6 November 2020, 12 November 2020, 13 November 2020 and 16 November 2020). His advocate had expressed the concern that "*We seem to be going around in a circle*" and previous concern had been repeatedly expressed about the financial implications that no work and no pay had been having on Mr Sharplin.

[164] The special leave from 14 to 20 November 2020 had expired and no alternative had been agreed, so he was back to not being paid. It was also unclear as to how long it would take

for him to have a medical assessment and then for that to be reviewed by YHT and a decision made about his return to work, and therefore income.

[165] It was therefore reasonably foreseeable in such circumstances that Mr Sharplin would not be able to continue working in the face of such circumstances.

[166] The Authority was satisfied that YHT's repeated insistence that Mr Sharplin consent to disclosing a wide range of historical medical information breached its obligation not to unreasonably impinge on his privacy or to require him to provide more personal or sensitive information than it reasonably required. Those breaches together with the successful disadvantage grievances created a situation in which resignation was reasonably foreseeable.

[167] Mr Sharplin's resignation was not a free, genuine or voluntary resignation. He felt he had no other realistic option, because of YHT's breaches of its obligations to him. His resignation was therefore a constructive dismissal.

#### **Was Mr Sharplin's dismissal justified?**

[168] YHT did not attempt to justify Mr Sharplin's dismissal, because it claimed he had not been dismissed. Because his resignation was in fact a constructive dismissal, YHT was unable to meet the requirements of s 103A(2) justification test in the Act.

[169] Mr Sharplin's constructive dismissal was therefore unjustified.

#### **What remedies should Mr Sharplin be awarded?**

##### *Mitigation of loss*

[170] Mr Sharplin appropriately mitigated his loss because he obtained a new job that started on 20 December 2020.

##### *Lost remuneration*

[171] Mr Sharplin said he was out of work for four weeks. He said he had lost \$2,944 ordinary time pay (being \$23 an hour x 32 contracted hours of work a week), calculated at the ordinary time rate of \$736 gross per week.

[172] Mr Sharplin was also entitled to be paid for sleepovers that he would have done had he not been unjustifiably dismissed. He said he would normally be rostered for two sleepovers a

week, for which he earned \$151.20 gross per sleepover. He claimed for eight missed sleepovers which resulted in \$1,209.60 gross for lost sleepover pay.

[173] Accordingly, YHT is ordered to pay Mr Sharplin total lost remuneration of \$4,153.60 gross, under s 128(2) of the Act, to compensate him for the remuneration he actually lost as a result of his unjustified dismissal.

*Distress compensation*

[174] Mr Sharplin gave comprehensive evidence of the distress that he had suffered as a result of his unjustified disadvantage and unjustified dismissal personal grievances. This evidence was supported by his wife and EAP counsellor.

[175] Mr Sharplin has clearly been deeply impacted by these events. He had no work for several weeks, which was extremely stressful for him and his family.

[176] Mr Sharplin felt that his unjustified dismissal had put a negative cloud over his future career plans. He lost confidence as a result of that. His personal life was also adversely affected. Mr Sharplin believed he had been punished for standing up for his values. He did not believe his employer was entitled to the wide ranging information it had requested.

[177] Mr Sharplin was deeply affected that he had been treated with mistrust and suspicion by YHT, who appeared to have taken the stance that it did based on a belief that he had a pre-existing condition that he did not declare at the pre-employment stage. That was not factually correct, because he had no pre-existing condition and had not previously suffered from PTSD.

[178] Mr Sharplin was upset and distressed to have to leave his job without having an opportunity to say goodbye to the boys who he had cared for. The whole situation was overwhelming, humiliating and highly stressful for him.

[179] The financial pressure that he was put under was significant. For privacy reasons the Authority has not explained all of the details that it received during the investigation meeting about this. Suffice to say, money that had been earmarked for other high priority family spending had to be repurposed to cover living costs while he was without an income. That was distressing to him and his wife, and delayed important family plans they had.

[180] The Authority has made one combined award of distress compensation for all three of his disadvantages grievances and a separate distress compensation award for his dismissal grievance.

[181] Within 28 days of the date of this determination, YHT is ordered to pay a global distress compensation amount of \$4,000 for his disadvantage grievances. The circumstances of the three disadvantage grievances were so closely connected that a global award was considered more appropriate than individual awards of distress compensation. He was also awarded \$20,000 distress compensation for his unjustified dismissal grievance.

[182] Accordingly, YHT is ordered to pay Mr Sharplin total distress compensation of \$24,000 under s 123(1)(c)(i) of the Act to compensate him for the hurt, injury to feelings and humiliation he suffered as a result of his successful personal grievance claims.

### **Summary of findings**

[183] YHT unjustifiably disadvantaged Mr Sharplin in his employment by:

- (a) Issuing rosters and making roster changes on late notice;
- (b) Leaving him to work in the Home by himself all day on Labour Day, in breach of the agreed return to work Plan;
- (c) Failing to take care of his health and safety after the 8 October 2020 incident.

[184] Mr Sharplin's resignation was a constructive dismissal.

[185] Within 28 days of the date of this determination, YHT is ordered to pay Mr Sharplin \$27,053.60 gross consisting of:

- (a) \$4,153.60 lost remuneration; and
- (b) \$24,000 distress compensation.

### **Costs**

[186] Mr Sharplin as the successful party is entitled to a contribution towards his actual legal costs. The parties are encouraged to resolve costs by agreement.

[187] If that is not possible, then Mr Sharplin has 14 days within which to file costs submissions. YHT then has a further 14 days within which to file its costs submissions. No

submissions will be accepted outside of this timetable, except with the prior leave of the Authority.

[188] The Authority will adopt its usual notional daily tariff based approach to costs. This matter involved a two day investigation meeting, so the notional starting point for assessing costs is \$8,000. The parties are invited to identify any factors they say should result in the notional starting tariff being adjusted.

**Rachel Larmer**  
**Member of the Employment Relations Authority**