

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 46  
3177232

BETWEEN

JOURDAN PIACUN  
Applicant

AND

RAUKURA HAUORA O TAINUI  
TRUST  
Respondent

Member of Authority: Peter van Keulen

Representatives: Allan Halse, advocate for Applicant  
Shona-Ranai Fraser, counsel for the Respondent

Investigation Meeting: 13 September 2023 in Hamilton

Submissions Received: 29 September 2023 and 3 November 2023 from the Applicant  
27 October 2023 from the Respondent

Date of Determination: 30 January 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Jourdan Piacun worked for Raukura Hauora O Tainui Trust. Ms Piacun says she was bullied and harassed whilst she worked at Raukura.

[2] Ms Piacun says that she first complained about bullying in 2018 and her complaints culminated in her raising a personal grievance in July 2019 for unjustifiable action causing disadvantage.

[3] Ms Piacun also says Raukura did not do enough to investigate her bullying complaints and did not protect her from ongoing bullying such that she resigned in February 2020. And this is the basis for her claims; Ms Piacun lodged a statement of problem in the Authority claiming unjustifiable dismissal and unjustified action causing disadvantage.

[4] In response to this, Raukura says:

- (a) Ms Piacun's concerns that were raised in 2018 were about actions of the CEO but were not complaints of bullying. It says further that it responded to those concerns by implementing an independent investigation and on completion of that investigation Raukura took appropriate steps to deal with issues.
- (b) Other concerns that Ms Piacun raised about the CEO and the HR Manager, were dealt with through Board Chair who worked with the parties to resolve any issues.
- (c) A second independent investigation was commenced in mid 2019 in response to cross complaints made by Ms Piacun and the HR Manager. It was through this investigation that Raukura became aware of the extent of Ms Piacun's concerns. The result of the investigation was that there had not been any bullying but there were incompatibility issues between Ms Piacun and other employees, which Raukura addressed.
- (d) Its attempts to resolve Ms Piacun's personal grievance were impacted by Ms Piacun's absence from work and her apparent reluctance to engage with it. It was only by the end of 2019 that Ms Piacun agreed to attend mediation and that occurred in February 2020, following which Ms Piacun resigned.

[5] Raukura also said, in relation to Ms Piacun's unjustifiable dismissal claim, that she did not raise a personal grievance for unjustifiable dismissal within the requisite 90-day period. I investigated this issue as a preliminary matter and in a determination dated 26 January 2023, I concluded that Ms Piacun had not raised her personal grievance for unjustifiable dismissal within the requisite 90-day period and therefore I did not have jurisdiction to investigate that part of her claim.<sup>1</sup>

[6] After this determination I investigated the remaining claim based on the personal grievance of unjustified action causing disadvantage and this determination resolves that claim.<sup>2</sup>

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

[7] I investigated Ms Piacun's claim by receiving written evidence and documents, holding an investigation meeting on 13 September 2023 and assessing the oral and written submissions of the parties' representatives.

[8] In my investigation meeting, under oath or affirmation, the witnesses who had provided written statements confirmed their statements and gave oral evidence in answer to questions from myself and the parties' representatives. The representatives then provided written submissions.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

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<sup>1</sup> *Jourdan Piacun v Raukura Hauora O Tainui Trust* [2023] NZERA 37.

<sup>2</sup> In submissions lodged in this investigation Ms Piacun's advocate submitted that I should accept Ms Piacun's claim for constructive dismissal and he traversed his previous submissions on this point. I cannot revisit this aspect of Ms Piacun's claims. I have determined that her unjustifiable dismissal grievance was not raised within the requisite 90 day period and I do not have jurisdiction to investigate that claim - *Jourdan Piacun v Raukura Hauora O Tainui Trust* [2023] NZERA 37.

## **Unjustified action causing disadvantage**

[10] Bullying behaviour toward an employee by a colleague does not give rise to a personal grievance on its own – there is no personal grievance defined in the Act on the basis of bullying as there is, for example, with sexual or racial harassment in sections 117 and 118 of the Act, but bullying can be the basis for an unjustified action causing disadvantage grievance based on a failure by the employer to provide a safe workplace.<sup>3</sup>

[11] An unjustified disadvantage personal grievance is set out in section 103(1)(b) of the Act; an employee may have a personal grievance where the employee's employment or any condition of employment is or was affected to the employee's disadvantage by some unjustified action by their employer.

[12] Based on section 103(1)(b) of the Act, the questions to be addressed in respect of an unjustified action causing disadvantage personal grievance are:

- (a) What does Ms Piacun complain of in terms of Raukura's actions and did Raukura act as alleged?
- (b) If so, did Raukura's actions cause any disadvantage to Ms Piacun's employment or a condition of her employment?
- (c) If so, were Raukura's actions unjustified?

[13] In this case Ms Piacun says:

- (a) Raukura failed to provide her with a safe work environment in that she was subjected to bullying at work and Raukura did not do enough to investigate her complaints.
- (b) Raukura's failures caused a disadvantage to her employment.

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<sup>3</sup> *FGH v RST* [2018] NZEmpC 60.

- (c) And Raukura's failures were not justified as the bullying was a foreseeable risk and it should have done more.

## **What happened?**

### *Was Ms Piacun bullied?*

[14] I had the benefit of very detailed written evidence from Ms Piacun, which she says was drafted from contemporaneous notes. There was also a comprehensive set of documents, including written accounts of the behaviour Ms Piacun had experienced.<sup>4</sup> In contrast Raukura's evidence focused on actions it says it took to deal with any work issues pertaining to Ms Piacun as it understood them to be at the time. This evidence is limited and there is no direct evidence to rebut or challenge Ms Piacun's detailed account of what occurred during her employment.

[15] As I have done with previous bullying claims, particularly where there is a detailed and lengthy narrative of what occurred and limited evidence that contradicts the evidence or challenges the credibility of it, I record that I accept the account of events by Ms Piacun. In doing so I do not feel the need to outline the particular detail but will, instead, outline my key findings in respect of the behaviour Ms Piacun experienced. These key findings are:

- (a) Ms Piacun was initially engaged by Raukura as a contractor in two roles before she commenced as a full-time employee with her role being Personal Assistant to the CEO.
- (b) From the time she first engaged with Raukura through her employment Ms Piacun had concerns about Raukura finances, organisational structure, operations generally and various management decisions and actions.

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<sup>4</sup> A good example is the letter of 17 October 2019 sent by Ms Piacun to her lawyer at that time – it included a comprehensive table of events, the action taken and whether Ms Piacun felt the concern had been resolved or not.

- (c) Ms Piacun's ongoing disclosure of her concerns created an awkward work dynamic for her. I have no doubt she was seen by many employees as efficient and effective at her role and a credible and commendable team player, particularly because she exposed wrongdoings as she saw them. But in doing this Ms Piacun also created some resentment and tension amongst other employees and probably some Board members.
- (d) In the course of her employment Ms Piacun had concerns about the behaviour of three employees directly toward her. These were the CEO from the commencement of her employment through until September 2018, the HR Manager who was briefly acting CEO in September 2018 and a member of the Board of Trustees who was CEO from October 2018 until February 2019.
- (e) The first CEO was rude to Ms Piacun which included swearing at her and ridiculing her in front of others, he made unreasonable and unnecessary demands of her, he undermined her work to her directly and to others and behaved erratically.
- (f) The HR Manager complained about Ms Piacun to other employees, spoke about Ms Piacun in derogatory terms to other employees, spread rumours about Ms Piacun at Raukura, undermined her work generally to others and specifically to the CEO, excluded her from work meetings, and was rude in many different ways both directly to Ms Piacun and behind her back.
- (g) The Board member and then CEO behaved insensitively toward Ms Piacun, made inaccurate accusations about Ms Piacun, made derogatory remarks about Ms Piacun, unnecessarily interfered with Ms Piacun's work, changed work requirements without reason, was overly critical of Ms Piacun's work, and did not support Ms Piacun.

[16] The question of whether these actions amount to bullying turns on the definition of bullying. The definition adopted by WorkSafe New Zealand is not controversial. At its simplest bullying is about behaviour that:

- (a) Is repeated and unreasonable.
- (b) Is directed at a worker (or group of workers).
- (c) Can lead to physical or psychological harm.

[17] The behaviour Ms Piacun was subject to was:

- (a) Repeated – it was ongoing over the period of Ms Piacun’s work and occurred frequently.
- (b) Unreasonable – the behaviour undermined Ms Piacun, had an impact on her ability to do her job, left her unsure of herself at times, left her feeling threatened at times, alienated her from the Board (in particular) and also other employees, was intimidating and humiliating, generally had a significant emotional impact on her, and at times it amounted to a form of verbal abuse.
- (c) Was directed at Ms Piacun – this was both directly and indirectly.
- (d) Could and did lead to psychological harm to Ms Piacun - she was undermined and lost confidence and she became anxious and stressed to the point she was unable to work and had to take time off.

[18] In short, Ms Piacun was bullied at work.

*Was Raukura aware of the bullying?*

[19] As I have already stated bullying on its own does not give rise to a personal grievance. Bullying can form the basis on which an employer might fail to provide a safe workplace as it

failed to protect and employee against the harm of bullying; this failure then providing the basis for the personal grievance (and claim). However, there is a key aspect to this type of grievance – an employer is only bound to provide a safe workplace in terms of protecting an employee against foreseeable risks of harm.

[20] So, having established that bullying occurred I now need to decide if that bullying was foreseeable to Raukura such that it should have taken steps to protect Ms Piacun.

[21] Raukura says it did not know Ms Piacun was being bullied until the investigation in 2019 and then it responded appropriately to her complaints.

[22] I do not accept Raukura's evidence on this point. I find that Ms Piacun told Raukura of her concerns of bullying. This includes that Ms Piacun:

- (a) Confided to the first CEO over concerns about the HR Manager's behaviour toward her.
- (b) Confided to the Board Chair on numerous occasions in one-on-one meetings, by text and by email, often referring to the behaviour as bullying and describing the effect on her.
- (c) Explained and set out her concerns to the independent investigator in both investigations.
- (d) Formally raised concerns through her lawyer.

[23] All of this means: Ms Piacun was bullied at work; Raukura was told about this so most of the bullying was foreseeable; Raukura did not do enough to protect Ms Piacun from this harm which was foreseeable; and therefore, Raukura failed to provide Ms Piacun with a safe workplace.



### **Disadvantage to employment or conditions of employment and justification?**

[24] In terms of Ms Piacun's claim that she was unjustifiably disadvantaged by Piacun's failure to provide her with a safe workplace, the other aspects are self-evident. Being bullied at work or more broadly not being provided with a safe workplace causes a disadvantage to an employee's employment and this failure is not justifiable.

### **Conclusion on unjustifiable action causing disadvantage**

[25] Therefore, I find that Ms Piacun was unjustifiably disadvantaged in her work by Raukura's actions.

### **Remedies**

[26] As Ms Piacun has been successful with her personal grievance, I may award any of the remedies provided for under s 123 of the Act. Ms Piacun seeks compensation and reimbursement.

#### *Compensation*

[27] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers and is made pursuant to s 123(1)(c)(i) of the Act

[28] As I have set out before when dealing with compensation, I view my task as being to consider the effects of Raukura's actions, in this case the failure to provide a safe workplace, on Ms Piacun. Then I must identify the harm caused to Ms Piacun and the loss she suffered as a result. Then I must quantify that harm and loss by assessing where that sits on the spectrum of harm and loss suffered by those that have been unjustifiably dismissed. Then I must consider where that corresponds to the spectrum of quantum awarded as compensation.<sup>5</sup>

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<sup>5</sup> *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71; *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132; *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

[29] Ms Piacun's evidence shows that she suffered from the following effects of Raukura's unjustified actions

- (a) Anxiety and fear manifesting in tension in her neck and shoulders, skin irritations, insomnia and nausea.
- (b) Sadness and deep hurt causing her to cry, feel depressed, become withdrawn and suicidal.
- (c) Feeling unsafe, unheard, victimised and vulnerable.

[30] These effects show that Ms Piacun suffered the following harm and losses:

- (a) Humiliation – the bullying damaged Ms Piacun's status, her self-worth and her confidence.
- (b) Loss of dignity – she was harmed as her complaints were ignored and she was exposed to more bullying, she felt unsafe, victimised and vulnerable. Ms Piacun also felt worthless and became suicidal.
- (c) Injury to feelings – predominantly shown by feelings of anxiety and fear manifesting in physical symptoms, depression and sadness and feeling vulnerable.

[31] After undertaking the comparative exercise described above, I conclude that Ms Piacun's loss is quantified at, and therefore compensated by payment of, \$36,000.00.

#### *Reimbursement*

[32] Ms Piacun also seeks reimbursement for the earnings she has lost as a result of her personal grievance.

[33] I am not satisfied that there is any lost remuneration for Ms Piacun that flows from her unjustified disadvantage personal grievance and will not award any sum to her for this.

### *Contribution*

[34] As I have awarded remedies to Ms Piacun, I must now consider whether she contributed to the situation that gave rise to her dismissal.<sup>6</sup> This assessment requires me to determine if Ms Piacun behaved in a manner that was culpable or blameworthy, and this behaviour contributed to her grievances.<sup>7</sup>

[35] I have reflected on what occurred to Ms Piacun and how she acted throughout the events. I am satisfied that Ms Piacun did not act in a blameworthy or culpable manner. There was no contributory behaviour from her and therefore no reduction in remedies.

### **Breach of duty of good faith**

[36] Raukura says that Ms Piacun failed to properly engage with it after she formally raised a personal grievance and through this she created a barrier that prevented her grievance from being resolved. And, Raukura says this is a breach of the duty of good faith set out in s 4(1A) of the Act. Raukura seeks a penalty against Ms Piacun for the alleged breach because it says Ms Piacun's breaches were deliberate, serious and sustained or the failure was intended to undermine the employment relationship.<sup>8</sup>

[37] I accept that there may have been some delay by Ms Piacun in engaging with Raukura over her personal grievance but do not find that this is sufficiently serious or culpable to meet the test of being deliberate, serious and sustained or intended to undermine the employment relationship.

[38] I will not impose a penalty against Ms Piacun as sought by Raukura.

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<sup>6</sup> Section 124 of the Act.

<sup>7</sup> *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136.

<sup>8</sup> Section 4(1A) of the Employment Relations Act 2000; and *Maddigan v Director-General of Conservation*

## **Conclusion**

[39] Raukura acted in an unjustified manner toward Ms Piacun and this caused disadvantage to her employment. In satisfaction of this personal grievance Raukura must pay Ms Piacun \$36,000.00 without any deductions for compensation pursuant to s 123(1)(c)(i) of the Act.

## **Costs**

[40] 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, Ms Piacun may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum Raukura will 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.

[41] If the Authority is asked to determine costs, the parties can expect the Authority to apply its usual daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.<sup>9</sup>

Peter van Keulen  
Member of the Employment Relations Authority

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<sup>9</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).