

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 392
3319440

BETWEEN

CRAIG WEBBER
Applicant

AND

WAIKATO HOCKEY
ASSOCIATION
INCORPORATED
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Erin Burke, counsel for the Applicant
Jessie Laphorn and Nikita Bartlett counsel for the
Respondent

Investigation Meeting: 11 and 12 March 2025 in Hamilton

Submissions: 28 March 2025 from the Applicant
3 April 2025 from the Respondent

Determination: 3 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Webber (also known as Hemi) was employed by Waikato Hockey Association (WHA) as the CEO from early 2022 until his dismissal for serious misconduct on 19 December 2023. He has raised personal grievance claims in relation to both the dismissal and his suspension from work while an employment investigation was underway. He seeks compensation, lost wages and wage arrears for time in lieu. A claim for reinstatement was withdrawn.

[2] WHA says it had concerns about Mr Webber's management and control of finances and investigated those. At the conclusion of the investigation it reached the conclusion some of the conduct amounted to serious misconduct and that collectively that WHA could no longer have trust and confidence in Mr Webber. He was summarily dismissed. It says the process it followed and the decisions it made were justified and at all times it acted as a fair and reasonable employer.

The Authority's investigation

[3] For the Authority's investigation written witness statements were lodged from Mr Webber, Joanne Webber, Kristian Fraser, Aidan Mc Manus and Declan Wyndham Smith. On behalf of WHA, Ethan Hohneck and Ashley Burkhart provided written statements. The witnesses attended in person other than Mr Wyndham-Smith and Ms McManus who gave evidence by AVL. All witnesses answered questions under oath or affirmation and the parties' representatives. The representatives also gave oral and written closing submissions.

[4] As permitted by s 174E of the Employment Relations Act 2000 (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.

The issues

[5] The issues requiring investigation and determination were:

- (a) Was the dismissal of Mr Webber's employment and how it was carried out, what a fair and reasonable employer could have done in all the circumstances at the time?
- (b) Was Mr Webber disadvantaged by being placed on suspension?
- (c) Did Mr Webber contribute to the situation he found himself in?
- (d) Should any remedies be awarded?

Mr Webber was employed by WHA

[6] WHA is an incorporated society and it provides hockey services to the community including schools. A trust owns the buildings and the turf and leases

those assets to WHA which is governed by a Board made up of seven elected voluntary members. The CEO reports to the Board with the day to day liaison occurring between the CEO and the chairperson of the Board. Mr Hohneck became chairperson of the Board in June 2022. The holds monthly meetings and the CEO provided a written and oral report at each meeting.

[7] WHA's main funding comes from turf fees as well as contracts with Sport Waikato. It also receives grants and sponsorship. WHA runs several tiers of League competitions and is involved in national tournaments, holiday programmes and a hockey academy. Staff from WHA visit schools, implement coaching programmes and assist with development.

[8] Mr Webber and his family have a long association with WHA. Before being appointed as CEO Mr Webber had been a Board member and he and his family had and still do play hockey.

[9] Mr Wyndham-Smith was the chairperson of the WHA Board until March 2022 and Mr Webber replaced him as the chairperson until Mr Webber was appointed as the interim CEO in July 2022. Mr Webber was appointed permanently as CEO in December 2022. There was a financial officer (CFO) and an executive manager also employed by the Board and who worked closely with Mr Webber.

Total Help Limited

[10] Prior to becoming CEO at WHA, Mr Webber's company Total Help Ltd (THL) entered into a sponsorship agreement with WHA's Board. THL sponsored WHA in the amount of \$10,000 per year for three years. This was an "in kind" agreement with no cash to be exchanged. THL was required to do repairs and maintenance and certain projects for WHA. In return THL received free advertising.

[11] Mr Wyndham-Smith gave evidence about THL and the sponsorship agreement with WHA. He said WHA approached THL to enter into the sponsorship deal because there were always a number of repairs and maintenance issues involved in running a venue such as the Gallagher Hockey Centre. There were also future projects planned and having a general contractor on board who would offer a contra service rather than WHA having to pay for a service was

seen as desirable. Mr Wyndham-Smith also said these types of agreements where no money changed hands are common in sport.

[12] THL went into voluntary liquidation on 23 March 2023 and this is significant because WHA raised concerns with Mr Webber about managing the conflict of interest arising from his role as CEO of WHA on the one hand and the director and shareholder of THL on the other. WHA also alleged THL owed WHA services in the form of “in kind work” under the sponsorship agreement between the two entities. Mr Webber denies anything was owing under the sponsorship agreement at the time THL went into liquidation. I will return to this below because the allegations about THL were found by WHA to be serious misconduct on the part of Mr Webber.

[13] In December 2022, the Board was notified WHA was forecast to be operating at a loss for the year ending 31 March 2023. As a result, the Board asked Mr Webber to review staffing levels and business expenses. The Board agreed to a restructure proposal. An HR company was engaged for a 12 month period to assist Mr Webber with the process. Two personal grievance claims were raised against WHA and payments Mr Webber authorised to settle these were later found to exceed the CEO’s financial delegations. This was considered to be misconduct by Mr Webber.

[14] In August 2022 a lease WHA had in place with Go Hockey was about to expire and was up for renewal. Mr Webber was instructed to see if he could renew the lease on more favourable terms and evidence was given that he was also instructed to use an ADLS lease document when the new lease was entered into. When it was subsequently discovered an ADLS lease was not used, WHA found that Mr Webber had failed to follow a reasonable instruction from the Board and this was also considered this to be misconduct.

[15] In November 2022 a new lease was entered into with a different entity Just Hockey. In December 2022 the Board received a complaint about the way Mr Webber had handled negotiations between the outgoing lessee and the prospective and ultimately successful lessee. One party believed they had been misled. Mr Hohneck says he and Mr Burkhart questioned Mr Webber about the matter and Mr Webber gave them a response. In December 2023 after

investigation WHA found Mr Webber's part in these negotiations was dishonest and this amounted to another instance of misconduct by Mr Webber.

Background to WHA's concerns

[16] In early 2023, Mr Hohneck telephoned Mr Webber when he discovered a liquidator had been appointed in relation to THL. His understanding was that Mr Webber had told the Board he was no longer part of THL before being appointed as CEO so there was no longer a conflict. Mr Hohneck says he discovered in that phone call Mr Webber was still the director and shareholder of THL. He told Mr Webber that he needed to bring THL's liquidation to the attention of the Board. He recalled Mr Webber said he was too embarrassed and Mr Hohneck accepted this was fair but said Mr Webber still needed to inform the Board.

[17] Mr Hohneck's evidence is that the Board started asking questions about THL when they found out Mr Webber was still involved and the issue came up that THL "potentially owed WHA money". Mr Hohneck stated:

The Board knew it would have been at the bottom of the list in terms of being a creditor. Our main concern was with the fact that he hid this from us and didn't report the conflict or come clean. The liquidation of his company may have been fine if he had front-footed it, but he never did. Then other things, like the lack of updates on settling the PGs started snowballing and there were too many concerns that we had to investigate.

[18] In January 2023, Mr Hohneck said he knew one personal grievance had settled in December 2022 and he was enquiring about both grievances on behalf of the Board with Mr Webber. By June 2023 he says he did not have any information about the personal grievances and he sent a text message to Mr Webber on 2 June to enquire:

Hey bro had [name of employee] PG been resolved? And is there anything at the turf this weekend? Was hoping to do some training as I missed last weeks game ...

[19] Mr Webber replied;

Hey mate, turf is free and [name of employee] was sorted a while ago so all over.

[20] A review of Mr Webber's performance was scheduled for 6 June 2023 but was cancelled by Mr Hohneck. Mr Hohneck accepted the performance review was never rescheduled but indicated he thought the biweekly catchups were sufficient despite the performance review never being rescheduled at a time when the Board had several concerns about Mr Webber's performance.

[21] On 19 August 2023, the Board resolved to commence an independent investigation into concerns about Mr Webber. Mr Hohneck said there had been discussions within the Board about how it needed to do something about the issues regarding Mr Webber's performance that had come to its attention. He said these seemed to be dishonest on the face of it but the Board did not have enough information to understand if anything untoward had occurred.

[22] Mr Hohneck and Mr Burkhart gave evidence they regularly asked Mr Webber about all issues but other than Mr Hohneck's text to Mr Webber on 2 June about the personal grievances, none of these communications were documented. Mr Hohneck asked Mr Webber to tell the Board about the liquidation of THL but there is no evidence that his failure to manage the conflict of interest was raised as an issue.

[23] The documentation shows a CEO report dated 18 November 2022 reports about the restructure but nothing after that. The banner sponsorship matter was not raised with Mr Webber until disciplinary allegations were drafted but it was known to Mr Hohneck because it is in his statement to the private investigator and recorded in the CEO reports dated 17 March 2023, 21 October and 18 November 2022. Mr Webber denies any matters of concern were raised with him as concerns until he was handed the 25 August 2023 letter at which time a decision had already been made to appoint an independent private investigator to investigate wrongdoings by Mr Webber.

[24] Mr Webber knew about the complaint received about renewal of the lease so Mr Webber did know about the background to that allegation.

[25] An independent private investigator was tasked with a fact finding investigation into four issues. The issues were THL's liquidation and whether this brought WHA into disrepute, settlement of a grievance in an amount exceeding the CEO's financial delegations, the issues raised in the complaint

about the lease entered into in November 2022 and whether two construction projects Mr Webber was overseeing for WHA exceeded his financial delegations and had been built in compliance with legal requirements.

The letter dated 25 August 2023

[26] On 25 August 2023, Mr Hohneck phoned Mr Webber and asked if he was in the office. He replied that he was and 15 minutes later Mr Hohneck and Mr Burkhart arrived at WHA offices and took Mr Webber outside. They handed him the letter raising concerns about his conduct and told him a private investigator had been engaged to investigate the four allegations against him.

[27] They gave evidence that Mr Webber did not respond well to receiving that information. Mr Hohneck said Mr Webber took a moment to read the letter and then became agitated, raised his voice and swore at them. He then threw the letter on the table and picked it up again and left to go into the office. They observed Mr Webber showing staff in the office the letter, despite being marked as private and confidential.

[28] Mr Webber says he was shocked and blindsided by the news he was being investigated and to know other staff would be interviewed by a private investigator. He accepts he was angry and a verbal exchange took place between them. When he returned to the office his evidence was staff asked him what had happened as they had heard the commotion and he showed the letter to them as he had been informed they would be spoken to so they would get to hear about it anyway.

[29] The letter set out the four concerns to be investigated as follows:

1. The liquidation of your company Total Help Ltd which you are listed as a director and shareholder, and the relationship between the sponsorship money owed to Waikato Hockey Association by a signed agreement, and how this was settled and whether this brings Waikato Hockey into disrepute given you are the CEO of Waikato Hockey.
2. The finalisation of an ex-employee who settled their personal grievance claim with Waikato hockey Association and whether the amount agreed was more than your delegated authority as per the current policy, and whether your communication throughout the process was acceptable.

3. The understanding as to 2 construction projects you have approved and are overseeing and whether these are over your delegated authority and whether these projects are built in line with our legal requirements.
4. The relationship and commitments between Waikato Hockey and Go Hockey and why there was no lease agreement put in place as directed.

[30] The letter recorded the independent investigator's investigation was not a disciplinary action and this is consistent with submissions on behalf of WHA it was a fact finding exercise at that stage. Mr Webber was informed he could participate and no decisions had been made at that stage.

[31] Mr Webber says he was not informed of any updates or whether the investigation was proceeding or not and was stressed. On 7 November 2023, Mr Hohneck called him to ask him to coffee that day. During the coffee meeting, Mr Webber says Mr Hohneck told him to stop stressing and that everything had been sorted, advised him that it would not be a good idea for Mr Webber to participate in an interview with the private investigator because it would delay matters. Mr Webber also says Mr Hohneck also said to leave it to him (Mr Hohneck) to tell the Board and the investigator that Mr Webber would not be interviewed. Mr Hohneck also noted how stressed Mr Webber looked and told him to take some leave and look after his mental health. Mr Webber went on leave from 7 to 16 November 2023.

[32] All the matters Mr Webber said were discussed at that coffee meeting were confirmed in the text message exchange between them other than Mr Hohneck telling Mr Webber not to be interviewed. Mr Hohneck denies he said that.

[33] The private investigator called Mr Webber while he was on leave to organise an interview time and Mr Webber declined to be interviewed. Despite contacting Mr Hohneck on more than one occasion over the next three weeks, evidenced in part by some text messages, Mr Hohneck and Mr Webber did not meet again until the Board had drafted a formal letter advising him the Board had decided to commence an employment investigation and setting out detailed allegations and inviting Mr Webber to a disciplinary meeting.

The draft report

[34] On 16 November 2023 the private investigator's draft report was submitted to the WHA Board. The findings were that the second two years under the sponsorship agreement had not been fulfilled nor had an additional contract with THL for \$7,500.00 and the liquidator was not advised of these. Go Hockey were supplied untrue information during lease negotiations for the shop space, with an additional matter raised about a further conflict of interest pertaining to Mr Webber, and as ADLS lease was not used. Two personal grievance claims for more than the CEO's financial delegation authorised and in relation to the projects one was a café upgrade project and more information was required and the second was a dugout upgrade project. There was no evidence this was 'in kind' work by THL.

[35] A new concern was raised about Mr Webber supplying the 25 August letter to staff and discussing the matter with them and this was said to have caused "significant consternation by staff as to the future of themselves at WHA." No evidence was provided. It was also recorded that Mr Webber had made disclosures and personal attacks in relation to Board members and the private investigator and this was recorded as an attempt to manipulate the outcome of the private investigator's enquiry. No evidence was provided.

[36] The private investigator recorded Mr Webber's response when he telephoned him to set up a time to be interviewed:

He advised me he did not wish to be interviewed. He told me that the issues outlined were because he had not had an induction when he commenced in the role, or had ongoing meetings around the role he was performing, and has made mistakes as a result. He did not wish to comment further. It was a polite conversation.

Allegations and invitation to disciplinary meeting

[37] On 7 December, Mr Webber was called to a meeting at work with Mr Hohneck and Mr Burkhart and hand delivered the letter setting out the disciplinary allegations and invited to attend a disciplinary meeting. Based on the draft report a decision had been made by the WHA Board to commence an employment investigation. Mr Hohneck and Mr Burkhart would be the decision makers. Mr Webber was informed he needed to bring a support person or a lawyer and he arranged at very short notice for a lawyer to attend the meeting

with him that day. The purpose of the meeting that day was to put WHA's proposal to suspend Mr Webber to him and to convey that an employment investigation had been commenced with the allegations recorded as follows:

- (a) Breach of good faith obligations in failure to manage a conflict of interest, failure to ensure prudent financial management of WHA;
- (b) Breach of good faith obligations and obligations regarding financial management of WHA;
- (c) Breach of good faith obligations, departure from delegated authority in relation to the settlement terms of two personal grievances, and a failure to follow reasonable instruction;
- (d) Breach of reasonable instruction to enter into a lease agreement, and actions that may bring WHA into disrepute with stakeholders;
- (e) Failure to follow reasonable instruction in breach of confidentiality

[38] The first two allegations of breaches of good faith were about THL. The first related to \$7,500.00 being owed to WHA under the sponsorship agreement and Mr Webber failing to alert WHA to THL's liquidation meaning WHA was now barred from making a claim against THL as a creditor. It was alleged he did not communicate proactively with WHA meant he had also failed to manage the conflict of interest between THL and WHA given his roles in both.

[39] It was also recorded these actions constituted failures of Mr Webber in terms of his responsibilities as CEO to:

- (i) enhance existing revenue streams;
- (ii) ensure the financial resources of the organisation were used efficiently and to maximum benefit in accordance with WHA's strategic direction; and
- (iii) ensure the prudent and efficient management of WHA.

[40] The second allegation about THL referred to 2023 financial recordings about invoices for THL's sponsorship of WHA. An invoice was recorded as being written off. It was alleged Mr Webber instructed the CFO the payment had been made in kind but she was not provided with any documentation. The Board alleged the THL sponsorship contract and associated invoice owed to WHA was unfulfilled by THL. It was recorded in the particulars that multiple requests had been made to Mr Webber in relation to the movement of the unpaid invoice in the accounts to the figure being included in repairs and maintenance and he had

not provided any information to explain the fulfilment of the THL contract or to enable the accurate management of finances/accounts of WHA. It was also stated the manner in which this invoice was dealt with was inconsistent with Mr Webber's obligations to ensure the prudent and efficient financial management of WHA. The evidence did not disclose multiple requests to Mr Webber to explain the financial records.

[41] Mr Webber was invited to provide all relevant documentation in relation to the invoice for \$7,500.00 and in his response he said he had no knowledge of it. There are difficulties with that because it was recorded in several of his CEO reports but this had not been highlighted.

[42] Allegation three was about two employment relationship problems resolved by way of settlement payments in amounts above the CEO's delegations. Mr Webber did not seek Board approval or provide information about these matters when he was instructed by the Board to do so. This was also said to be inconsistent with the CEO's obligations to ensure prudent and efficient financial management of WHA.

[43] The Fourth allegation related to lease negotiations and that Mr Webber had provided false information to two stakeholders who he was in discussions with about lease of the shop space at WHA. The allegation was because they were stakeholders in WHA Mr Webber was not acting in the best interests of his employer. In addition, it was set out that Mr Webber failed to comply with an instruction of the Board to use an ADLS lease for the shop space. This was recorded as a breach of a reasonable instruction to Mr Webber by the Board and inconsistent with the expectation that he lead a successful commercial business.

[44] Allegation five was failing to keep the first letter advising him of the fact finding investigation dated 25 August 2023 confidential because he had shown it a staff of WHA and discussed it with them. This was considered to be a serious breach of an instruction to Mr Webber to keep the investigation into his conduct private and confidential.

[45] The allegations were considered to be serious and unless Mr Webber could provide a sufficient explanation it was stated these matters had the ability to undermine the Board's trust and confidence in Mr Webber as the CEO:

21. The Board considers that individually, and collectively, the allegations set out in this letter are serious. The conduct alleged may be considered: serious misconduct; breaches of good faith; breaches of your Employment Agreement (we draw your attention to clause 24 of your Employment Agreement) and the Employee Handbook (clause 15).
22. Alongside considering all relevant information, if a sufficient explanation is not received from you, these matters have the ability to fundamentally undermine the relationship of trust and confidence the Board has in you as CEO.
23. The potential outcomes of this investigation process could include disciplinary action up to and including termination of your employment.

Mr Webber was suspended from work

[46] The letter also set out the proposal to suspend Mr Webber, given the nature of the allegations until the disciplinary investigation meeting. Mr Webber's lawyer indicated the suspension would not be challenged and Mr Webber left the workplace that day. Further information was emailed to Mr Webber's lawyer that night. That was the first time Mr Webber had been provided with the private investigator's investigation material and draft findings.

Mr Webber's response to the allegations

[47] On 14 December 2023, Mr Webber's lawyer sent a detailed written response to the allegations and requested further information including emails between the CFO and the auditors.

[48] On 18 December 2023, the Board's lawyer wrote back thanking Mr Webber for his initial response. The Board had instructed its lawyer to request a further response from Mr Webber, provide WHA's preliminary views in relation to the allegations and send the further information Mr Webber had requested. A meeting was to be held the next day (19 December 2023).

Mr Webber was summarily dismissed

[49] The meeting on 19 December 2023 was recorded and a transcript provided to the Authority. Mr Webber was informed in writing on 20 December 2023 the Board had decided based on the findings of its investigation given the nature, seriousness and multiple breaches, that the outcome of the investigation was termination of Mr Webber's employment by way of summary dismissal.

The letter confirmed his employment had ceased the day before on 19 December 2023 and his final pay would be processed.

[50] He was also informed his final pay would include a “reasonable and justifiable” amount of time in lieu that Mr Webber had sought.

[51] On 17 January 2024, an unjustified dismissal grievance was raised with WHA on Mr Webber’s behalf. Mr Webber’s suspension was raised as an additional grievance with WHA on 18 March 2024. On 26 August 2024, Mr Webber lodged a statement of problem in the Authority claiming he was unjustifiably suspended and dismissed.

The justification test

[52] Assessment of the employment relationship problems raised by Mr Webber in the Authority requires consideration of Mr Webber’s suspension and dismissal and the justification test. Section 103A of the Act provides this is to be determined on an objective basis, by applying the test of whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[53] In applying this test of justification the decisions made and the process followed by WHA, the Authority must consider the matters set out in 103A(3);

103A Test of justification

- (3) In applying the test in subsection 2, the Authority or the court must consider –
 - (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
 - (b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
 - (c) whether the employer gave the employee a reasonable opportunity to respond to the employer’s concerns before dismissing or taking action against the employee; and
 - (d) whether the employer genuinely considered the employee’s explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

[54] The Authority may also consider any other factors it thinks appropriate (s103A(4)). Minor defects in the process followed by the employer cannot in and of themselves, render an action unjustifiable if these did not result in the employee being treated unfairly (s103A(5)). In applying the test of justification, the Authority does not substitute its own view for that of the employer but, rather, considers whether what the employer in fact did and decided was within the range of responses open to a fair and reasonable employer in that situation.

Unjustified dismissal

[55] WHA says it put Mr Webber on notice of the four things it had concerns about. Mr Webber chose not to participate in the fact finding investigation and once that was completed the Board drafted detailed allegations for Mr Webber to respond to. It met with Mr Webber to inform him he was the subject of an employment investigation and sought his views on suspension while it carried out the investigation. Mr Webber submitted a written response and they met on 19 December 2023. Mr Webber had requested some further information and WHA confirmed it was satisfied it had provided all relevant information to Mr Webber before it met with him.

[56] The Board reached the conclusion Mr Webber had breached his good faith obligations as an employee in several ways. The allegations concerning THL were considered to amount to serious misconduct. The allegations about exceeding the financial delegations (in settling two personal grievances), the lease and a new matter not investigated by the independent investigator of failing to keep the investigation (into Mr Webber) confidential were not found to be serious but amounted to misconduct. The concern about Mr Webber's oversight of two projects did not form the basis for any allegations. WHA did not accept the change in approach at WHA was a significant factor in the matters it had investigated and covered this off in its termination letter:

WHA considered that the disciplinary action was fair and reasonable given its findings from the investigation. It considered all circumstances, including those raised by Hemi. WHA did not accept that the change in sector was a significant factor in these breaches. As a previous company director, Hemi was negotiating commercial arrangements, and required to meet reporting obligations, including finance.

[57] WHA submitted Mr Webber's position required a large amount of trust due to its autonomous nature. His actions were said to be misleading and deceptive and undermined WHA's ability to continue to place trust and confidence in him. WHA says the decision to dismiss Mr Webber on 19 December 2023 was both substantively and procedurally justified.

The sponsorship agreement

[58] Starting with the concerns about THL the Employee Handbook sets out that it was vital for the employer to manage conflicts of interest. Mr Wyndham-Smith's evidence was the written sponsorship agreement was put in place for exactly that reason given Mr Webber was on the Board and then became CEO. The allegations against Mr Webber related to THL are failures to manage the conflict of interest and ensure prudent financial management of WHA. The underlying reasons for the concerns about THL are explained in Mr Hohneck and Mr Burkhart's evidence as starting with not being informed of THL's liquidation and then after the fact finding investigation was completed that \$7,500.00 was owed by THL to WHA.

[59] The allegation was the written sponsorship agreement and an invoice for \$7,500.00 remained unfulfilled and in not notifying WHA of THL's liquidation, WHA was now time barred from making a claim against THL as a creditor.

[60] There was clearly a dispute between WHA and THL about whether there was anything owing under the agreement at the time THL went into liquidation. A dispute resolution clause in the written sponsorship agreement required the parties to attend mediation and then arbitration in the event of a dispute. I note the timing was such that by the time WHA started to look into the issue and discovered a lack of a paper trail to demonstrate the full \$30,000.00 had been provided, THL was already in liquidation meaning the dispute resolution clause was not available to it. Ultimately a dispute about fulfilling the obligations under the written agreement were matters between WHA and THL and to be resolved in accordance with the dispute resolution clauses.

[61] Mr Webber's evidence was that he did not believe there to be anything owing under the sponsorship agreement and Mr Wyndham-Smith's evidence tends to support that regardless of whether there was a paper trail or not.

Mr Webber's written response on 14 December 2023 provided a list of services THL provided. In 2022 he said no services were provided and in 2023, removal of scaffolding to the value of approximately \$6,000 and provision and removal of skip bins were provided. He said he and Mr Hohneck had a discussion prior to the work undertaken for the Premier Hockey League and Mr Hohneck verbally agreed this work would be in kind for the first 2 years of sponsorship under the agreement. He also said the work undertaken in 2023 in relation to removal of the scaffolding was discussed with Mr Hohneck and at the Board meeting in February 2023.

[62] In its response to Mr Webber's written response the focus shifted to financial records and a debt remained owing in the 2022 financial year. Further information was sought from the CFO and auditor and provided to Mr Webber. A further email dated 15 December was provided by the CFO in which she confirmed:

Hemi advised me that while Declan was the CEO THL had purchased and done a number of jobs and kind. Declan had not advised me in writing of all of this, but I knew THL had provided a big skip and there work was work they had done, something in relation to the scaffolding. This I remember well is the staff from THL got this truck stuck in the mud, and it was too wet to get out for a number of days.

Hemi did show me a schedule from Declan of a summary of work/purchases that THL did, but not the email from Declan. I presume Declan had drawn it up and sent before he left Waikato hockey. The summary I kept an email to Mark after my interview.

I assume Hemi showed the summary to the auditors as well when he talked with them.

The scaffolding towers became too dangerous and had to be dismantled and taken away. THL paid for this to be done, I assume. I saw a copy of the quote that THL accepted, the figure was around 7500, I pieced together that this was second sponsorship agreement or amount that was talked about. WHA never paid any money scaffolding towers being dismantled and scrapped.

[63] This email tends to confirm services in the form of scaffolding and skip bins were provided. There is also reference to a schedule from Mr Wyndham-Smith that Mr Webber had shown to the CFO. To confuse matters Mr Hohneck's email to the CFO asks about a line item in the accounts of \$7,500.00 plus GST that was an aged receivable February 2023 but written off to repairs and maintenance in the financial accounts. The CFO appears to be referring to the

original agreement for \$10,000.00 each year when she describes what she thought was services provided by THL and she corrects Mr Hohneck that the invoice he was asking about was for a different amount so it does not appear to have related to the banner sponsorship.

[64] A follow up enquiry was made with the auditor about the movement of the receivable being written off as repairs and maintenance after the CFO's email confirmed she advised Mr Webber it was a related party transaction and it would be looked at by the auditors. She attached invoice in question which was an invoice for \$8,413.00. The auditor was also asked about whether Mr Webber informed the auditor of his conflict of interest in relation to this line item and this became a concern.

[65] Of note the auditors emails were received by WHA on 18 December and Mr Webber on the same day ahead of the disciplinary meeting the next day where he was notified the outcome of the investigation was dismissal.

[66] WHA also says Mr Webber had an obligation to tell WHA about THL's liquidation as part of managing the conflict of interest. Mr Webber says he did not inform WHA because it was a difficult time for him, he had been unwell and told Mr Hohneck he was embarrassed when THL went into liquidation. Nonetheless WHA knew about the liquidation from others and not from Mr Webber and I agree Mr Webber should have informed the Board.

[67] In reaching its conclusion that the allegations regarding THL were serious misconduct, the decision makers place emphasis on Mr Webber failing to manage the conflict of interest when in fact there were obligations on both Mr Webber and WHA to manage it. If Mr Hohneck was unaware Mr Webber had remained as a director and shareholder of THL and this was a surprise to him as he suggested in his evidence, then he has also failed to properly discuss the matter with Mr Webber. Mr Webber may well have said he was no longer involved but whether that meant active management or as a director and shareholder was never asked. Either may have been sufficient to manage the conflict. That would have been up to WHA to discuss and decide with Mr Webber. The short point is that WHA also had obligations to manage that conflict on behalf of WHA. The fact no further questions were asked at the time Mr Webber became the CEO and that nothing was recorded in writing rests also with Mr Hohneck and the Board not

solely on Mr Webber. WHA took the position during the investigation the conflict was Mr Webber's to manage and that is not entirely correct.

[68] There was evidence at the investigation meeting that the way WHA conducted its business in terms of sponsorship arrangements changed after Mr Wyndham-Smith stepped down as chairperson. Mr Wyndham-Smith's evidence generally about the character of sponsorship arrangements in community sports organisations and specifically at WHA was directly relevant at both the fact-finding stage and the employment investigation stage but he was not spoken to at any stage of WHA's investigation.

[69] This was particularly important when it is noted in the CFO's email dated 15 December, that Mr Webber had shown her a schedule she thought had been created by Mr Wyndham-Smith because that Mr Webber told her that, and she had kept that summary and emailed it to the private investigator after her interview with him at the fact-finding stage. I will return to this below.

[70] WHA's evidence was of multiple requests being made to Mr Webber about THL's services and whether the sponsorship agreement had been fulfilled. Mr Webber says there were no requests for information from him about that and the concern about the line item in the financial records was not sufficiently investigated for WHA to make a positive finding in relation to that.

[71] A number of text messages between Mr Hohneck and Mr Webber indicate Mr Hohneck had no concerns about the provision of services by THL. In September after the fact finding investigation had been initiated Mr Hohneck sent the following to Mr Webber:

An example of my interview were around the THL sponsorship. As far as I can see and know it was fine. Yes maybe more communication could have been beneficial, but you and I already talked about that and I understood your answer when we talked. So for me it's a no brainer. Try not to stress Hemi and you do have support. You always have. Thanks Ethan,

Mr Webber replied:

All good you know me, I wear my heart on my sleeve, I'm very passionate.

Mr Hohneck replied:

I know you do and that's a good trait about you. All the peoples minds on the board think differently. That a given.... If we all thought the same it would be bad. You have support from all Board members in some shape or form. You have done a great job Hemi, that is obvious....You turned this organisation around and its been a great year.... So don't stress, do the interviews , we will analyse the date, come up with new processes to hopefully make us even better.

[72] Mr Hohneck was satisfied with Mr Webber's answer about THL's sponsorship but this is not included in the investigation material or factored into the allegations and this is a problem for WHA. Mr Hohneck was also responsible for liaising with the CEO. He was also responsible for conducting the annual performance review.

[73] In addition, WHA knew the Board's previous governance style was characterised by "gentlemens" agreements and handshake deals because Mr Hohneck and Mr Burkhart had also had long associations with WHA and spoke of the change in approach the new Board was hoping to achieve. It wanted to tighten up the financial management particularly given the financial picture in late 2022.

[74] Mr Wyndham-Smith's evidence that THL had fulfilled the requirements under the sponsorship agreement and further that none of the sponsors received what they were due during 2021 because Covid-19 impacted on games being played was relevant. Mr Wyndham-Smith was not spoken to at any stage during any of WHA's investigation. He had relevant information about the performance of services by THL under the sponsorship agreement and confirmed he had not required any documentation from Mr Webber regarding the services provided. Mr Wyndham-Smith just kept an eye on that. It was not open to WHA to give no weight to that context as recorded in the termination letter.

[75] In the end, it appears it was accepted that THL had fulfilled its obligations under the written sponsorship agreement but the concern became about \$7,500.00 banner sponsorship that Mr Webber had recorded in his CEO reports to the Board. Mr Webber's evidence about this was confusing but the thrust of it was a formal agreement had not come to fruition. WHA appeared to agree there was no banner with THL on it meaning it is difficult to understand what benefit there could be. Mr Webber would need to explain why he recorded it for several months in the CEO report and conversations about managing conflicts of interest

if such an agreement was to be entered into should have been had but this was not sufficiently investigated at the time it was decided Mr Webber's conduct reached the threshold of serious misconduct resulting in a summary dismissal.

[76] Having said that Mr Webber should have informed WHA about the liquidation and that is wrongdoing on his part but was unlikely to amount to serious misconduct in the overall circumstances if no financial wrongdoing was able to be proven.

[77] In addition, the shifting focus of the concerns to what was recorded in the financial records was not sufficiently developed or articulated for WHA to be in a position to make a disciplinary finding on that. The allegation referred to \$7,500.00 but the line item recorded a different amount (\$9,764.95). It was only in the preliminary view letter the day before the disciplinary meeting that this was referred to as the uniform costs that remained owing in the 2022 financial year. Mr Webber said THL had paid for that in accordance with the sponsorship agreement.

[78] The initial allegation was in relation to not fulfilling the obligation to provide \$30,000.00 worth of services in kind but that was not established and in any event the investigation failed to obtain relevant information from Mr Wyndham-Smith. It was not hidden by Mr Webber because it was recorded in his CEO reports. Mr Webber could have rightly been asked questions about the banner sponsorship by the Board and Mr Hohneck but that never occurred. In any event by the time the preliminary view letter was drafted it had changed to an amount totalling \$9,764.95 said to be uniform costs. This was not raised in a sufficiently clear way have given Mr Webber a meaningful chance to respond. He was summarily dismissed the day after the preliminary view letter.

Exceeding the financial delegation

[79] Mr Webber says the Board had authorised him to implement the restructure and he phoned Mr Hohneck prior to signing each settlement agreement. While Mr Hohneck accepts he knew about the first one, he denies he received a phone call about the second one. This represents a conflict in the evidence between what Mr Hohneck and Mr Webber say. Mr Webber also relied on the comments of the Board as authority for him to settle the matters and spoke

to a range of figures. He said he had to act pragmatically and somewhat swiftly in the situation to deal with those matters and he did not provide specific details of the settlements because he was advised by the HR advisors the claims had to be kept confidential. He says the Board did not ask him about these matters.

[80] The genesis of this allegation can be found in Mr Hohneck's evidence where he says he was asking for information from January to June 2023 but not being provided with any information from Mr Webber. He sent a text message on 2 June and received a very brief answer to the question he asked and did not follow up.

[81] Taking into account Mr Hohneck's evidence that he met biweekly with Mr Webber it is difficult to understand that he was in a position where he was unable to receive information from Mr Webber about any matters. Mr Webber reported to the Board but also through Mr Hohneck and they met regularly. If Mr Hohneck had concerns about how a personal grievance matter was being handled it fell to him to follow that up with Mr Webber. There is no record of Mr Hohneck or the Board instructing Mr Webber to provide an update. The CEO report on 20 February 2023 provides an update in relation to one of the personal grievances so the suggestion Mr Hohneck had no updates is undermined by that.

[82] Also relevant is that the amount by which the payments exceeded the CEO's delegation. They do not appear to be so significant that a Board would not have authorised these payments if it had been asked although I accept that is a matter for a Board at any given time. However, in the context of settlements for grievances that arose out of a restructure proposal the Board had signed off on, this was something relevant to the investigation of Mr Webber in relation to these allegations.

[83] Mr Webber said he thought he had to keep the amounts confidential. To a certain extent this is true and the email from the HR company did not advance the issue for WHA. Having noted the context and Mr Hohneck's failure to raise questions with Mr Webber before they became concerns this does not take away from the fact Mr Webber had a part to play and should not have exceeded the financial delegations. However, the seriousness should have been considered in light of the context. On 18 December the Board's preliminary view letter on this allegation recorded the following:

It approved that Hemi implement a restructure process. However it did not agree to a specific restructure approach. Prior to the proposed restructure, the Board thought it was prudent to engage employ [an HR company] for all HR matters to provide support for Hemi. The Board expected Hemi to follow a lawful justifiable process in relation to the proposed restructure, with the assistance of contracted, specialist HR advisors. It does not accept any implication that it knew about or agreed to the process Hemi intended to or subsequently followed, which was unjustifiable and from which personal grievance was raised.

[84] Concerns the entire restructure process was unjustified were never raised with Mr Webber. This indicates the Board had in its mind something different to the allegation Mr Webber was dismissed in relation to the next day. This is confirmed by reference to Mr Burkhart's comments in the transcript of the dismissal meeting on 19 December including:

Its absolutely illogical, and you know, we spent \$6000 in employing [name of HR company] to make sure we got a through process.

...

But given the structure that we were going to go to, if we followed that , there should be no PG's there should be no money out of the back end of this. No. I don't accept that, like, the, I disagree with what because [sic].

[85] It is fundamental to a fair process that any employment allegations against an employee fairly represent the issue and there is sufficient information for them to be satisfied the concern was broader than the settlement payments.

Negotiations about the lease

[86] The concerns about the lease arose from the letter of complaint. Mr Webber was spoken to about the complaint and responded. The allegation was focussed on Mr Webber failing to follow an instruction from Mr Burkhart to use an ADLS lease and dishonesty which was said to have brought WHA into disrepute.

[87] Mr Webber explained the background to the negotiations in his written response. He said was not aware of the instruction to use an ADLS leave document and set out the approach made to him by Just Hockey and that he felt he needed to allow Go Hockey the courtesy of making a counter offer.

[88] There was no evidence of a formal instruction to use an ADLS lease. In forming its preliminary view of this allegation the Board is recorded preferring the evidence of Mr Burkhart. There is a problem with that because Mr Burkhart

was one of the decision makers making a decision about his own evidence that conflicted with Mr Webber's on a key point and resulted in a finding that Mr Webber failed to follow a reasonable instruction.

[89] Secondly, the finding regarding dishonesty appears not to have taken Mr Webber's response into consideration or WHA has discounted it. The context again appears to have been missed. The Board had instructed Mr Webber to get a better deal with the lease at the time of renewal. The finding was in relation to what was said in negotiations to obtain a better deal for WHA. The new lease did in fact provide a better deal for WHA and I note this allegation was found to be misconduct and not serious misconduct.

Failing to keep Mr Webber's investigation confidential

[90] This allegation arose from the meeting on 25 August after Mr Webber got upset having been told he was under investigation albeit a fact-finding investigation at that stage. Mr Hohneck and Mr Burkhardt said they saw him showing staff in the office the letter they had just given him when they had told him to keep it confidential and the letter itself recorded that it was to remain confidential.

[91] Again, Mr Webber should have kept the letter confidential but he was upset and correct when he says he was blindsided because there was a gulf between what the Board was discussing and what Mr Hohneck had discussed with Mr Webber at their regular catch ups. Mr Hohneck's evidence was that Mr Webber did a great job as interim CEO and "nailed all the KPIs that were set for him by the WHA Board". Mr Hohneck continued to hold that view and conveyed that to Mr Webber as evidenced by the text messages he sent Mr Webber in September 2023.

[92] No concerns had been raised with Mr Webber so he had no opportunity to know the Board had escalating concerns that had developed to the extent it thought an independent investigator should be engaged to look into wrong doing by Mr Webber. It was not unreasonable that Mr Webber was upset and this was the context in which the letter was shown to others.

[93] The organisation was small and the CFO and Executive Director held relevant information for the investigation regardless of whether Mr Webber

asked them for it or WHA asked them for it. It was unrealistic to expect Mr Webber not to speak to others about the investigation given how small the organisation was and the nature of the allegations.

Procedural flaws

[94] The test for justification requires the Authority to consider whether the employer's concerns were raised with the employee before dismissing or taking action against the employee. While WHA provided the four matters to be investigated to Mr Webber in August and the written allegations on 7 December, I am satisfied it had not raised the issues that became concerns other than in passing. Mr Hohneck's text messages in September 2023 in no way alert Mr Webber to the level of concern the Board says it had by that stage and that is a problem for WHA.

[95] WHA then adopted the findings from the private investigator's investigation and formulated allegations of serious misconduct with no communication with Mr Webber or any further steps taken to ensure it agreed with those findings. It was Mr Webber's choice not to participate, however, the Board needed to have satisfied itself there was a degree of proof before moving to formal allegations which is difficult with no response from the person being investigated.

[96] It is also commonplace for draft investigation reports to be provided to the person being investigated before decisions are made about next steps. This did not occur and was likely a required step to take given Mr Webber had not participated. This becomes apparent when information from Mr Webber and the CFO is received that shows it is likely not possible to make a factual finding that there was money owing under the written sponsorship agreement with THL. Even if there was money owing, that was a matter between WHA and THL. The focus of the investigation then changed to the financial records in relation to an invoice that was written off as repairs and maintenance.

[97] The allegations about THL were the most serious but no information was gathered from Mr Wyndham-Smith even though he entered WHA into the sponsorship agreement and could confirm there was no formal record of the "in kind" services. The CFO also referred to a document of Mr Wyndham-Smith's

that Mr Webber had shown her setting out the services THL had provided. This was an important document to obtain if Mr Webber was not participating in the investigation. Mr Wyndham-Smith may have also have had information about what he did to ensure the financial records showed evidence of the “in kind” work that he said was common place but he was never spoken to by the private investigator or the Board. It transpired the financial record of concern related to the original sponsorship agreement making it even more important that Mr Wyndham-Smith was spoken to.

[98] Mr Webber and Mr Hohneck disagree that Mr Hohneck told Mr Webber not to participate in the investigation. There is a disconnect between Mr Hohneck’s text messages to Mr Webber and the allegations that were drafted. If Mr Hohneck did not advise Mr Webber not to participate in the fact finding investigation, he did nothing to alert Mr Webber to the seriousness with which the Board was taking the issues. As well as the text messages above Mr Hohneck conveyed the following to Mr Webber:

Honestly Hemi if we all just did our interviews and the information came in then the Board can analyse the results and make decisions on the end of this years season and plan for next year. I’ve done 2 interviews with the guy and it was easy. There was nothing damaging to anyone in in my interviews I just told it like I saw it.

...

As far as I can see there is nothing “bad” that will cause any change at all. So if that is stressing people out then there is no need at all. This is simply a formal process to gather information so we can move forward. Put better processes in so that all the niggles that we have been experiencing between the Trust, WHA, WHA Board and the Community can be laid to rest and we move forward together. This year there has been so much disharmony across these four groups that it has needed to be addressed.

[99] In the same text message conversation he also conveyed to Mr Webber he had done a great job, turned this organisation around and that he should not stress and do the interviews so WHA could analyse the data and come up with new processes to improve. In his evidence he says he was tasked by the Board to follow up with Mr Webber about doing the interview. That was not conveyed to Mr Webber.

[100] These text messages are also completely at odds with the statement Mr Hohneck gave to the private investigator where he set out that the financial

delegations had not been complied with, raised concerns about THL and whether the sponsorship agreement had been complied with, raised issues with Mr Webber's work on a project for WHA as a director of THL and said he thought it was "dodgy" Mr Webber was the CEO and getting contracts with THL. He suggested Mr Webber was the reason WHA accounts were not provided to the Trust Board Member who was the representative on the WHA Board, raised issues he had with the banner sponsorship for \$7,500.00, despite knowing about it because it had been mentioned, and suggested the Board "just signed off on the new lease" because at the time thought it had been a good idea. This implied the Board now did not think it was a good idea.

[101] Mr Hohneck says he had an open mind until he read the private investigator's report and once he did he was concerned and it confirmed some dishonest things had probably happened. This makes no sense because Mr Hohneck knew about the things recorded in the draft investigators report which is evidenced by his statement to the investigator.

[102] In addition, regarding sponsorship I note in the meeting on 19 December the transcript shows Mr Burkhardt said the following:

Heather created that sponsorship spreadsheet, because we were trying to track through the money. Because it wasn't, it started to, we're like we can't, we couldn't add what the sponsorship was saying to what the ledgers were saying. That the instigator of that. And so that's what we were trying to figure out.

[103] This represents a significant problem for WHA in terms of the process it followed. If a sponsorship spreadsheet was created to track the sponsorship because it was not adding up, Mr Webber could have expected to have been provided with that. That also puts Mr Hohneck's gentle communications with Mr Webber into a different context if the Board knew it was concerned about sponsorship adding up well before the private investigator was engaged to investigate the same issue, the question of full disclosure and fairness arises.

[104] I also note the speed at which the decision to dismiss was made. Mr Webber did not participate in the fact finding investigation, however, at the point in time when he did participate he was entitled to a reasonable amount of time to provide a response and to consider any new information. Mr Webber's response to the detailed preliminary finding letter is dated 14 December 2023. He received

further information on 18 December and attended the disciplinary meeting on 19 December and this was his first opportunity to meet with WHA. He was dismissed in the same meeting. New information from auditor and CFO had been provided the night before. This was not enough time to respond to the employer's new information and the allegations in general.

[105] In addition, the information provided between the allegations letter and the disciplinary meeting showed the investigation starting to look into a new concern that Mr Webber had not disclosed to the auditor his conflict of interest arising from THL, that he had not disclosed a new conflict of interest when negotiating the new lease and there was an email that suggested anomalies with insurance payments. Although WHA was careful to state these were not formally allegations, the decision makers knew about them and it is undoubtable they cast Mr Webber in a poor light.

[106] Furthermore, there were allegations in relation to the lease negotiations and the settlement payments that Mr Webber had failed to carry out lawful instructions from his employer. The lawful instructions were from Mr Hohneck and Mr Burkhart. Appointing Mr Hohneck and Mr Burkhart as decision makers when they were also witnesses is unlikely to be a step a fair and reasonable employer is likely to take. Those under investigation are entitled to the principles of natural justice and having decision makers who are directly involved in incidents under investigation is likely to taint what could otherwise be considered a fair process.

[107] Although employers are not required to follow a perfect process, when investigating misconduct there are a number of flaws in the investigation into Mr Webber's conduct. These were compounded by the speed of the investigation that meant Mr Webber did not have a reasonable opportunity to respond to the allegations against him. Collectively these were more than minor and resulted in unfairness to Mr Webber.

[108] I am satisfied Mr Webber's dismissal was both procedurally and substantively unjustified.

Suspension

[109] A disadvantage was also claimed in relation to Mr Webber's suspension. The individual employment agreement between Mr Webber and WHA provided for suspension:

23. SUSPENSION

The Employer may suspend you from work or from any of your standard duties and responsibilities, for health and safety reasons or to enable the Employer to investigate any employment issue. The employer will seek your comments prior to a decision being made about suspension.

[110] The Employee Handbook also provided for suspension in the disciplinary procedure section in clause 15.1:

On some occasions temporary suspension may be necessary in order that an uninterrupted investigation can take place. This should not be regarded as disciplinary action or a penalty of any kind.

[111] WHA says it complied with the requirements on it to give notice to Mr Webber of the proposal to suspend and to seek his views. At the meeting on 7 December a break was taken after which Mr Webber's lawyer returned to the meeting and said something along the lines of "Hemi accepts he is being suspended". Later that day WHA's lawyer emailed Mr Webber's lawyer and confirmed in writing that following an adjournment to the meeting it was agreed Mr Webber would be suspended during the WHA's employment investigation. No objection or comment was raised in the subsequent correspondence between their lawyers.

[112] Submissions on behalf of Mr Webber are that the suspension was not justified. He was only given 90 minutes notice. The letter handed to Mr Webber and his lawyer was a seven page letter with four and a half pages setting out the allegations relating to the investigation and a summary of findings of the independent investigation. Notably at that point the independent investigation report had not been provided to Ms Webber.

[113] Additional procedural flaws were submitted to be that Mr Webber had insufficient time to read through the information to ascertain the seriousness of the allegations, not all the information was provided at that meeting and that no reasons were given for the proposal to suspend. While Mr Webber accepted he

was to be suspended it was submitted on his behalf his lack of objection was conveyed and that cannot be read as agreement. In the circumstances there was no meaningful comment Mr Webber could make.

[114] Mr Webber's lawyer confirmed his evidence at his level of distress which is why they took a break after only 10 minutes and it was his lawyer that returned alone to convey his acquiescence to suspension because of how upset he was.

[115] There was a transcript of the meeting but what Mr Webber's lawyer said when she returned to the room is recorded as "...not recorded, advising no objections to suspension. Consent to record agreement to suspension..."

[116] WHA submits in these circumstances it did not need to reach a decision on suspension because it was an agreed action and therefore suspension was substantively justified to enable the WHA to investigate the issues that had been raised. In submissions confidentiality concerns were also raised to support the suspension but it is not clear these were raised on 7 December.

[117] Mr Hohneck and Mr Burkhart also raised their concerns about how Mr Webber had reacted on 25 August when they first told him concerns were to be investigated. It is not clear this was raised with Mr Webber at the meeting on 7 December either.

[118] For Mr Webber it was submitted the case of *E tu v Singh* is similar to his matter in that both involved employees being handed a lengthy document on the spot with no time to read through it and both matters relate to alleged historic events, they were not able to have the representative of their choosing; and the employer pushed to make an urgent decision that day. In *E tu v Singh* CJ Inglis stated:¹

[54] It is well-established that an employer is generally required to give notice of a proposal to suspend and seek the employee's view. Adequate opportunity to respond to suspend depends on the circumstances... It is also true, as Mr Mitchell pointed out, that Mr Singh did not go on the front foot and argue against suspension. The context is, however, relevant.

[55] While an employees lack of objection may be relevant as signalling agreement to a proposed course, that will not always be a reasonable inference to draw. Although employees owe

¹ *E tu v Singh* [2024] NZEmpC 84

obligations to their employer to be responsive and communicative, it does not follow that a lack of action engagement (which may be prompted by a number of things) justifies an employer's actions. It should not be forgotten that it is an employer's obligation to conduct a fair process – the Act is very clear about that.

[119] WHA drew a distinction between the facts in *Singh* and Mr Webber's matter saying Mr Webber was represented by his chosen representative, in *Singh* no comment was made on the suspension and agreement to suspension was instead inferred in that case. In the current matter agreement to the suspension did not have to be inferred because it was conveyed. Also WHA was not pushing to make a decision on the spot. WHA communicated it would make a decision by the end of the day. WHA says Mr Webber had an opportunity to take advice during the break in the meeting and after doing so WHA says it was conveyed to WHA that the suspension was agreed to.

[120] Suspension is not disciplinary in nature and both the employment agreement and the Employee Handbook referred to that and that the employer could suspend the employee during an employment investigation. The obligation is to give notice of the proposal to suspend and seek the employee's views which WHA did. Mr Webber was legally represented and while what was conveyed in response to the proposal is not agreed, at the very least acquiescence to suspension was conveyed. I agree with WHA that in these circumstances what was conveyed was that suspension would not be opposed and WHA was entitled to rely on that.

Remedies

[121] Mr Webber seeks lost wages and compensation for humiliation, loss of dignity and injury to feelings caused by his dismissal. He says the stress of the way the investigation was conducted impacted on his health and wellbeing. He described this impact on him. His wife gave evidence that was consistent with Mr Webber's evidence. Mr Webber and his family had a long standing history with the hockey community and the impact was accentuated because of that. He says he and his family were largely shunned by the hockey community.

[122] Given the findings above and the stress and humiliation experienced by Mr Webber and with reference to other similar cases, I consider an appropriate award under s 123(1)(c)(i) of the Act to be \$25,000.00.

[123] Mr Webber also seeks compensation for lost wages. He did not start new work until 10 June 2024 and seeks lost wages for the 22 weeks he was unemployed. Submissions were made that Mr Webber's efforts to obtain new employment were thwarted by references given by WHA and that he had to remove WHA from his CV in order to find new work. There was not enough evidence to support this submission and WHA denied this had occurred.

[124] The Act permits reimbursement to the employee of lost wages in an amount that is the lesser of the sum equal to lost remuneration or to three months ordinary time remuneration. The Authority has discretion to order compensation for lost remuneration in an amount greater than three months wages.

[125] Mr Webber provided evidence of his efforts to find employment after his dismissal from WHA. I consider an award equivalent to four months lost wages is appropriate.

[126] Mr Webber also claimed he was owed five weeks time in lieu for longer hours he worked during the season. He says employees were generally permitted to work less hours in the off season to account for this. A book in the CFO's office recorded their hours but because Mr Webber was dismissed, he never got to take those hours.

[127] Noting that an additional payment was made by WHA in Mr Webber's final pay towards time in lieu that was said to be outstanding I decline to make an order in relation to this.

[128] Under s 124 of the Act, contribution to the situation that gave rise to the personal grievance must be considered. I have found above the investigation was flawed both procedurally and substantively. While Mr Webber himself accepted to a degree he could have done things differently and the way in which the Board had previously operated with verbal agreements was not optimal for the future of WHA, he is not responsible for the failures to raise these matters with him at an earlier stage.

[129] The type of communication in the text messages together with the underlying concerns evidenced by the transcript have an air of entrapment and predetermination about them. There was also a failure by WHA to consider the Board's new approach. In those circumstances it would be unfair to attribute blameworthiness to Mr Webber.

[130] Mr Webber has not contributed to his personal grievance.

Orders

[131] Waikato Hockey Association is ordered to pay Craig Webber within 28 days of this determination:

- (a) Compensation under s 123(1)(c)(i) of the Act in the amount of \$25,000.00 for unjustified dismissal.
- (b) Lost wages under s 124(1)(b) and 128 of the Act in an amount equivalent to 4 months wages.

Costs

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

[133] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Craig Webber may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Waikato Hockey Association will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[134] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.²

Sarah Kennedy-Martin
Member of the Employment Relations Authority

² www.era.govt.nz/determinations/awarding-costs-remedies