

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 610  
3313080

BETWEEN	DAVID BAHLER Applicant
AND	TRANSPORTATION AUCKLAND CORPORATION LIMITED (trading as NZ BUS) Respondent

Member of Authority:	Peter Fuiava
Representatives:	Gary Froggatt, advocate for the Applicant Simon Lapthorne, counsel for the Respondent
Investigation Meeting:	4 February and 2 May 2025 in Auckland
Submissions received:	9 June 2025 from the Applicant 30 June 2025 from the Respondent
Determination:	30 September 2025

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**DETERMINATION OF THE AUTHORITY**

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**What is the employment relationship problem?**

[1] This is a claim for unjustified dismissal. David Bahler was employed as a full-time bus operator for Transportation Auckland Corporation Limited (NZ Bus or the company) from June 2021 to 25 June 2024 when he was dismissed for serious misconduct in relation to what he says was a minor vehicle accident at an Auckland roundabout.

[2] NZ Bus denies the grievance and says that this is not the first time that Mr Bahler has been involved in an at-fault accident. The company further submits that its decision to terminate his employment on this occasion was both procedurally and substantively justified in all the circumstances.

### **How has the Authority investigated?**

[3] For its investigation, Mr Bahler provided the Authority with a written witness statement. For NZ Bus, briefs of evidence from its service delivery manager, Nicola MacKenzie, and employment relations manager – HR business partner, Angie Ronke were provided. In addition, oral evidence was received from the other driver involved in the motor vehicle accident, David Arama, who attended the investigation meeting via speaker phone.

[4] All witnesses answered questions under oath or affirmation from me and the parties' representatives. 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.

### **What were the issues?**

[5] As agreed during a case management conference with the representatives on 9 October 2024, the issues requiring investigation and determination were:

- (a) What happened regarding the collision/accident on 27 April 2024?
- (b) Who is at fault for it?
- (c) If Mr Bahler, did this give rise to serious misconduct?
- (d) Was he unjustifiably dismissed?
- (e) What efforts has Mr Bahler made to mitigate his loss and find alternative employment?
- (f) If any remedies for lost wages and compensation for hurt and humiliation are awarded, should this be reduced (under s 124 of the Act) for blameworthy conduct by Mr Bahler that contributed to his own grievance?
- (g) Should either party contribute to the costs of representation of the other party

[6] It may be noted that one of Mr Bahler's remedies included permanent reinstatement which he voluntarily withdrew at the investigation meeting.

### **What are the relevant facts?**

[7] On 27 April 2024, while on normal shift, Mr Bahler was driving a company bus on Denbeigh Avenue, Auckland and was approaching the intersection with Dominion Road. The Denbeigh Avenue and Dominion Road intersection is controlled by a roundabout and it may be noted that heading south after the roundabout, Dominion Road continues towards the Southwestern motorway, a busy area designed to handle high volumes of traffic.

[8] The entry to the Denbeigh Avenue and Dominion Road roundabout (the roundabout) from Mr Bahler's westerly direction of travel is regulated by two lanes that end immediately before entering the roundabout proper and marked by a limit line. The left inside lane is generally used by traffic intending to turn left from Denbeigh Avenue and onto Dominion Road heading towards the Southwestern Motorway as noted above. The right inside lane is generally used for traffic intending to either travel straight ahead to the other side of Denbeigh Avenue or to turn right onto Dominion Road and towards Auckland city.

[9] As Mr Bahler came up to the roundabout, he entered the right-hand lane of two and stopped at the limit line to check for other traffic approaching from his right. In his left small side mirror he noticed the driver of a motor vehicle which had stopped at the rear of his bus on the left inside lane. As will be seen, the driver of that car, Mr Arama, had stopped behind the bus as the available width of both lanes at the entry point to the roundabout was not wide enough for both vehicles to use at the same time.

[10] With the way to Mr Bahler's right clear, he proceeded to drive into the roundabout but stops halfway through due to a minor collision with Mr Arama's car. The bus has stopped in a position that blocks west and southbound traffic from Denbeigh Avenue and Dominion Road from driving through the intersection. However, this is not the case for northbound traffic from the Southwestern motorway.

[11] While the CCTV footage is not clear, there is a minor collision between bus and car that has caused a side panel from the bus to fall off. CCTV footage from within the bus shows Mr Bahler stopping his bus, looking briefly into his rear mirror and open the front driver's door before exiting. This all occurs within a matter of seconds. While Mr Bahler says that he told his passengers to remain seated, his face is not clearly visible

from the CCTV footage which records visual images only and not sound. However, he is recorded leaving the front passenger door of his bus open as he exits the bus. Shortly afterwards, some 25 seconds after the collision, several passengers start to alight from the bus and onto Dominion Road.

[12] Mr Bahler returns to the bus but those passengers who have exited do not return inside and are seen walking on Dominion Road to the other side of Denbeigh Avenue. With the fallen side panel secured, Mr Bahler drives his bus forward to a nearby bus shelter situated some five metres on the other side of Denbeigh Avenue after the roundabout. It is here that he gets off the bus to exchange details with Mr Arama. While Mr Bahler takes a screenshot of his mobile phone number, he would innocently transpose that number incorrectly by one digit on NZ Bus's vehicle event notification form otherwise known as a "KNZ 59".

[13] The error is only discovered at the investigation meeting during my questioning of Mr Bahler. Up until this point, attempts by NZ Bus to contact the other driver had been unsuccessful because of the incorrect number on the KNZ 59 form. With the correct number now found, arrangements are made for me to speak with Mr Arama as part of my investigation.

[14] Sometime after the accident but on the same day, Mr Bahler completes the KNZ 59 in which he states:

"Stopped at roundabout. Waited for right side to clear then proceeded into roundabout. Had noticed a car on the left at rear but was looking to right and ahead when car on the left moved into the left lane as I was turning from right lane to go around roundabout. He hit the side of my bus."

[15] The KNZ 59 form includes boxes that Mr Bahler could tick to demonstrate the event. When asked to describe what happened, he initially ticked "Collision with another vehicle" which he crossed out in order to tick a box that said, "Hit by another vehicle." When asked about this during cross-examination, Mr Bahler said that he had done so as this was the appropriate response.

[16] When asked to state his opinion as to who was at fault for the event, Mr Bahler ticked the box "An identified Third Party." As to his opinion of what caused the event, he ticked the box "An Identified Person."

[17] In 2021, Mr Bahler was assaulted by a passenger and suffered a serious traumatic brain injury that required extended hospital treatment. It is understood that he was unable to work for some 14 months but advised NZ Bus that he wished to resume working which he was allowed to do after passing the necessary medical and driving assessments. In 2023, after being deemed fit to work as a bus operator once more, he returned to work.

[18] NZ Bus says that in the preceding 12 months before the roundabout incident, Mr Bahler had been involved in seven other at-fault accidents or near misses. The first two occurred in March and April 2023 which included the double decker bus that he had been driving hitting a height restriction sign pole which resulted in a broken windscreen. For these two at-fault accidents, he received a verbal warning.

[19] In September 2023, Mr Bahler received the first of two 12-month written warnings with the first written warning being backdated to 13 August 2023. This was for three separate incidents of driving in an unsafe manner the first of which occurred in July 2023 and involved unsafe driving that caused damage to a parked car. In May 2023, Mr Bahler performed a three-point turn in an unsafe place and in August 2023, he hit a power pole that damaged both the bus and the power pole which needed to be replaced at significant cost to NZ Bus.

[20] On 25 October 2023, Mr Bahler was involved in another at-fault accident in which the bus he was driving hit a vehicle parked outside a school. The driver of the vehicle needed to run after Mr Bahler's bus to let him know that he had damaged her vehicle.

[21] A few days later on 30 October 2023, Ms Mackenzie received an email from Auckland Transport regarding a near-miss incident that involved a bus that Mr Bahler had driven at the time. A member of the public reported that he:

... ran the red light and ploughed through the intersection straight through on Khyber pass from the Symonds Street end towards Broadway. Very very poor driving from this bus driver - I would like to report this is a near miss to ensure these driving incidents are avoided in the future. Bus drivers should be amongst the safest on the road – it is literally their job not to kill people and ensure public safety.

[22] Due to delays attributable to Mr Bahler, NZ Bus was not able to conclude its investigation of these concerns until 3 May 2024 the end result of which was a second 12-month written warning backdated to 2 November 2023. It is understood that Mr Bahler has internally appealed some of the above findings but that these were not determined before his employment ended.

[23] At the time of Mr Bahler's most recent incident at the Denbeigh Avenue/Dominion Road roundabout, he was still subject to his first written warning. He would later receive his second 12-month written warning from NZ Bus.

[24] On 29 April 2024, NZ Bus's service delivery manager, Nik Mackenzie, provided Mr Bahler with a letter that was headed "Investigation/Disciplinary meeting." The letter alleged that he had driven in an unsafe and careless manner that resulted in damage to one of its buses as well as damaging a vehicle belonging to a member of the public. It was further alleged that he had created an unnecessary health and safety risk to both himself and other road users.

[25] Ms MacKenzie's letter informed Mr Bahler that if the allegations were proven, his behaviour may constitute misconduct, or other serious misconduct and could result in disciplinary action up to and including dismissal.

[26] On 6 May 2024, an investigation meeting took place and notes were taken. Mr Bahler was accompanied by his representative, Mr Froggatt. Ms Mackenzie and Ms Ronke appeared on behalf of NZ Bus. The CCTV footage was played and Mr Bahler provided some photographs and responded to the allegations that had been raised. He said that he was checking for a gap in the traffic with the intention to go slightly left without curbing the bus on the roundabout. He then heard a loud noise, stopped the bus, turned on his hazard lights and got out. Mr Bahler denied that he was negligent or that he had caused any safety risk to his passengers.

[27] After the disciplinary meeting, Ms Mackenzie considered Mr Bahler's comments that he was not at fault, that he had the right of way and that the collision was minor. However, having also reviewed the CCTV footage, she was of the view that the driver of the other vehicle (unknown at that time) was in the inside left-hand lane intending to turn left at the roundabout but as Mr Bahler's bus entered the

roundabout, he veered into the other driver's lane causing the collision. In Ms Mackenzie's view, Mr Bahler appeared to be at fault for the accident and not the other driver.

[28] On 30 May 2024, Ms Mackenzie informed Mr Bahler in writing that she had reached the preliminary view that the allegations of driving in an unsafe and careless manner and creating an unnecessary health and safety risk to himself and other road users were substantiated. Her letter stated:

... In my view you veered into the left-hand lane (before the roundabout) when you should have stayed in the right lane; and you demonstrated that you were not spatially aware of your surroundings. This was not a minor accident and your cavalier attitude towards this matter is of great concern to me. It is my view that your passengers and other road users were in danger of being injured or harmed as your passengers began to exit the bus straight onto the road to take pictures and videos. Their health, safety, and well-being was at risk, as was the health and safety of other road users.

...

The comment you made that "nobody's safety was at risk" concerns me, so I asked why and how you reached that conclusion. In response, you said, "I do not have the power to restrain people on the bus, I asked them to stay where they were, I do not have the physical or people power to keep them on the bus." The footage clearly shows the passengers exiting the bus in the middle of a busy intersection and your actions were unsafe and dangerous as evidenced in the footage. I am of the view that you did not speak to the passengers on the bus as you are seen to exit the bus quickly and without turning to speak to your passengers for their safety and informed them of what was happening. It is luck that no one was harmed or injured, including the driver of the car.

...

I raised my concerns with you in my letter dated 16 May 2024, about the pattern of unsafe driving behaviour which has resulted in training and written warnings during your employment with Kinetic (now NZ Bus). Specifically, this unsafe driving behaviour continues to happen with at-fault accidents, and I have concerns about your ability to drive safely to avoid incidents and accidents to keep you, your passengers, and other road users safe.

[29] Mr Bahler was subsequently invited to a meeting on 11 June 2024 to provide his response to the company's preliminary view and after considering his feedback, NZ Bus wrote to him on 25 June 2024 to advise that summary dismissal was the appropriate disciplinary sanction. The final outcome letter records:

At Kinetic we have high standards when it comes to your safety and that of our passengers and other road users. Safety at Kinetic is paramount and forms a critical part of everything we do, and this includes making safe decisions. There is an identified pattern of unsafe driving behaviours and you have shown a blatant disregard for our Company policies, your terms and conditions of employment, and you fail to be accountable and responsible for your actions.

You have undermined the trust and confidence we have in you as a Bus Operator, an employee of Kinetic.

**What happened regarding the collision/accident on 27 April 2024?**

[30] The background facts to the accident are set out above. The CCTV footage records the following sequence of events:

- (a) At 15:13:55, Mr Bahler looks in his interior rear vision mirror.
- (b) At 15:13:56, a car appears on the left-hand side of the bus and at 15:14 drives alongside the front doors of the bus in the left inside lane of two. The vehicle stops at the rear of the bus.
- (c) At 15:14:03 Mr Bahler starts to move into the roundabout and while the CCTV does not appear to show contact, there is contact sufficient enough to dislodge a side panel from the bus causing a loud bang and startling at least one female passenger sitting inside the bus.
- (d) At 15:14:05 Mr Bahler stops his bus in the middle of the roundabout, gets off leaving the front entrance door open. Outside the bus, he uplifts the dislodged side panel and approaches the driver of the other vehicle.
- (e) The footage then shows that at 15:14:41, several passengers exit the bus in the middle of the roundabout and some start to take videos and photographs.

**Who is at fault for the collision/accident?**

[31] It was fortunate that Mr Bahler still had the screenshot of the other driver's contact details which led to further inquiries being made. Eventually the other driver, Mr Arama, was contacted with the agreement of both parties in an effort to find out what happened. Mr Arama gave evidence under affirmation and confirmed for me over speaker phone that he was the other driver and that he was driving his brother's vehicle.

[32] When I questioned Mr Arama further, he said that he had arrived at the entry point to the roundabout from the Onehunga side and was in the left inside lane intending to turn left onto Dominion Road. However, he was not able to get to the entrance way

of the roundabout as he (Mr Bahler) had crowded the entry point with his bus. Consequently, Mr Arama said he had to wait for the bus to move but as it pulled away, it started to veer towards him resulting in contact while Mr Arama's vehicle remained stationary.

[33] When asked who caused the accident, Mr Arama said that Mr Bahler's bus hit him and that he was "absolutely" at fault. Mr Arama rejected any suggestion that he was in the wrong and considered it "ridiculous" that Mr Bahler would blame him for the accident.

[34] To have avoided the collision altogether, I find that Mr Bahler could have straddled both lanes leading up to the roundabout so as to prevent any vehicle from accessing the left inside lane. He could then safely manoeuvre around the roundabout without the tail of his bus swinging out as it did to make contact with Mr Arama's vehicle.

[35] Alternatively Mr Bahler could have, as I have seen other bus operators do when I undertook a site visit of the roundabout, remained completely in the right-hand lane upon entry to the roundabout and mount the curb of the roundabout whose bricks are sufficiently recessed to allow a bus to go over it without causing damage.

[36] Mr Arama's evidence is consistent with the CCTV footage and I agree with him and with Ms Mackenzie that Mr Bahler was solely at fault for the causing the accident at the Denbeigh Avenue/Dominion Road roundabout on 27 April 2024.

### **Did the accident give rise to serious misconduct?**

[37] Generally serious misconduct is behaviour by an employee that fundamentally breaches the trust and confidence essential to the employment relationship rendering its continuation untenable. It is more than mere inadvertence, oversight or negligence and the Court of Appeal has said that summary dismissal usually involves conduct "that deeply impairs or is destructive of that basic trust that is an essential of the employment relationship."<sup>1</sup>

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<sup>1</sup> *BP Oil New Zealand Ltd v Northern Distribution Union* [1992] 3 CRNZ 483.

[38] Mr Froggatt submits that even if “guilty” of the minor collision, the penalty of termination was extreme in the circumstances particularly as Mr Bahler was only on a second written warning, had appealed some findings and was waiting for a hearing. However, to determine whether a dismissal for serious misconduct is justifiable, the Authority or the Employment Court must evaluate the nature of the obligations imposed on the employee by the employment agreement, the nature of the breach, and the circumstances of the breach.<sup>2</sup>

[39] In the present case, Mr Bahler was employed as a driver and his terms and conditions of employment are those set out in the NZ Tramways Union – Auckland First Union Incorporated Collective Agreement dated 1 April 2023 – 29 March 2025 (the Agreement). Clause six of the Agreement sets out its general principles in which both parties are committed to “[e]nsuring a safe and healthy working environment”.<sup>3</sup>

[40] At cl 46.6, the Agreement overcomes the problem of a precise definition for serious misconduct by setting out a non-exhaustive list of behaviours that may meet the threshold. Among this inclusive list is “a negligent or deliberate act which may affect public safety, such as leaving a bus unattended in an unsafe condition, or interfering with safety devices fitted on buses in order to defeat their purpose.”<sup>4</sup> While there is no suggestion that Mr Bahler interfered or tampered with a safety device, it was Ms Mackenzie’s evidence that by allowing passengers to walk off his bus at a busy intersection put their health and safety at risk as well those of other road users. He had failed to adequately control the situation.

[41] Mr Froggatt submitted that having stopped the bus halfway through the roundabout following the minor collision, Mr Bahler had blocked access to any other vehicles thereby keeping himself and those other passengers who did get off the bus safe. However, there was still the danger of city bound traffic from the Southwestern motorway for the disembarking passengers to contend with. That no one was hurt including other vehicle users was a matter of good luck rather than good management particularly as it was Mr Arama’s evidence that traffic that Sunday afternoon was busy.

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<sup>2</sup> *Chief Executive of the Department of Inland Revenue v Buchanan (No 2)* [2005] NZCA 428.

<sup>3</sup> The Agreement, cl 6.2.h.

<sup>4</sup> At cl 46.6.j.

[42] While Mr Bahler stated previously during NZ Bus's investigation that he could not physically restrain passengers, he could have stopped them altogether from exiting the bus by closing the front entrance door behind him when he disembarked the bus. Mr Bahler could have done this from the outside of the bus as well. If a passenger somehow managed to open the doors from the inside, this would then be on them and not Mr Bahler's responsibility. However, that did not happen and several passengers were simply allowed to leave the bus through the door that Mr Bahler had left open behind him.

[43] Mr Bahler claimed that after he stopped his bus following the collision, he told his passengers to remain seated. This could not be seen on any of the CCTV footage from within the bus and while absence of evidence is not necessarily evidence of absence, I can reasonably infer that Mr Bahler had failed in his duty to inform passengers to remain in the bus because some 25 seconds after he got off, several had exited and were walking on a busy road with some taking videos and photos.

[44] Not only did Mr Bahler's actions fall short of the Agreement's general principles around a commitment to safety, it was inconsistent with NZ Bus's Employee Handbook that contains its Code of Conduct,<sup>5</sup> his position description summary which required him as a Bus Operator to operate the company's buses in a safe, efficient and customer-orientated manner, and the HSSE (Health, Safety, Security, and Environment) objectives in his employment agreement to "have no accidents."

[45] Although Mr Bahler's stated that this HSSE expectation was "an unachievable objective," NZ Bus was not seeking from its drivers a standard of perfection but rather an expectation that its bus operators, Mr Bahler included, would take reasonable care of their own health and safety as well as those of passengers, colleagues, and other road users while on duty.

[46] Although I agree with Mr Froggatt that the collision for which Mr Bahler was responsible for causing was relatively minor, it was his failure to manage the situation that firmly plants what occurred into the serious misconduct category. Leaving the front door open which allowed passengers to disembark the bus in front of ongoing

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<sup>5</sup> The Code of Conduct states that "We always put safety first."

traffic from the Southwestern motorway offramp may not have been deliberate but it was negligent which is enough under cl 46.6.j of the collective agreement to constitute serious misconduct.

[47] Finally, it was submitted that there was disparity of treatment for Mr Bahler with respect to another driver who received a final warning. I disagree. Unlike Mr Bahler, the other bus operator in question had worked longer for NZ Bus, had not been involved in an accident before, had done everything correctly after the accident occurred, and most importantly in my view, expressed remorse and accepted responsibility.

### **Was Mr Bahler unjustifiably dismissed?**

[48] The statutory test of s 103A of the Act is well understood and employment institutions cannot substitute its own view for that of an employer. Put differently, I am required to assess NZ Bus's actions on an objective basis and so long as what the company did (and how it did it) falls within the range of outcomes of what a fair and reasonable employer could have done in all the circumstances, the outcome will be justified.<sup>6</sup>

#### *Dismissal was substantively justified*

[49] NZ Bus is a large public transport company that treats safety as its number one priority. It expects its bus operators to meet the company's health and safety standards and to comply with its Code of Conduct. Mr Bahler's failure to control the situation and to keep himself, his passengers and other road users safe has been well covered. But what I find particularly concerning is Mr Bahler's lack of remorse for the incident at the roundabout because he blamed Mr Arama for it which was incorrect and took no responsibility for his passengers for leaving his bus.

[50] I agree with Ms MacKenzie that taking responsibility for one's actions is key to learning from past mistakes and this is a genuine concern for NZ Bus because by not taking responsibility, Mr Bahler is not able to learn and improve. This quality goes to whether the company can have trust and confidence in him as a bus operator.

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<sup>6</sup> The Act, s 103A.

[51] If Mr Bahler had been put on a performance improvement plan, his lack of docility and his belief that he had done nothing wrong would have compromised the effectiveness of any improvement process. In any event, there was no time for Ms MacKenzie to put a PIP process in place for Mr Bahler because following the investigation meeting on Monday 6 May 2024, he called in sick for the rest of the week and during the week commencing 12 May he was rostered off on Sunday and Monday, and was on scheduled leave on Tuesday 14 May and Wednesday 15 May. He was then suspended on full pay on 16 May 2024. He remained on paid suspension pending the outcome of NZ Bus's disciplinary process on 25 June 2024.

[52] Mr Bahler's lack of insight into his conduct and his denial that anybody's safety was at risk is problematic for NZ Bus because at the time of the accident on 27 April 2024, he was on a 12-month written warning. Ms MacKenzie gave evidence that Mr Bahler had received remedial training as recently as 1 February 2024 as well as other "driver in service" assessments and route training as documented by NZ Bus.

[53] Despite the additional training, previous disciplinary processes in which expectations around health and safety were clarified with Mr Bahler, there continues to be a pattern of unsafe driving which has not abated but increased in seriousness over time. Cumulatively considered, I find that Mr Bahler's conduct has undermined the essential trust necessary in an employment relationship to the extent that NZ Bus can no longer have confidence in him to drive safely. The decision to dismiss Mr Bahler was substantively justified.

*Dismissal was procedurally fair*

[54] Mr Froggatt submits that NZ Bus's invitation letter of 29 April 2024 had the heading "Investigation/disciplinary meeting." However, cl 46.9.g of the Agreement required the company to hold a disciplinary hearing first before an investigation meeting was held. It followed that NZ Bus's letter showed that the company had already made up its mind to proceed to an investigation meeting.

[55] However, there was evidence by Ms MacKenzie that union representatives have previously wanted a preliminary indication from the company with a view to holding the disciplinary hearing later that same day. I find her explanation plausible and find

the letter to be evidence of a typographical error as opposed to a predetermined outcome resulting in unfairness.

[56] Mr Froggatt submitted that Mr Bahler was prejudiced as a result of not being provided with a copy of the CCTV footage for him to take away and have analysed or examined in greater detail presumably by an independent forensic expert. However, there was no unfairness. It was made clear to Mr Bahler that he could view the footage on NZ Bus's premises. This was to protect the privacy of those passengers onboard. A copy of the company's CCTV policy was provided to the Authority to consider which supports the company's position. In any case, Mr Bahler did not inform Ms Mackenzie or NZ Bus that he had a forensic expert to view the footage. No such request was made.

[57] NZ Bus raised its concerns with Mr Bahler who was afforded the opportunity to respond which he did at the investigation meeting on 6 May 2024, the disciplinary meeting on 24 May 2024 and preliminary view meeting on 11 June 2024. Having regard to the evidence of Ms MacKenzie, who was the decision maker, I am satisfied that she genuinely considered the feedback that was provided which included submissions from Mr Froggatt. The process NZ Bus followed was comprehensive, detailed and procedurally fair for Mr Bahler.

[58] It was submitted that Mr Bahler was somewhat taken by surprise by his suspension. However, given his absence from work as noted above, the nature of the accident in which passengers were allowed to disembark from the bus from an unsafe position with oncoming traffic from a busy motorway, and this being Mr Bahler's eighth incident with NZ Bus involving unsafe or careless driving, Ms Mackenzie's decision to suspend on full pay pending the outcome of the disciplinary process was a decision that a fair and reasonable employer could have made in all circumstances.

## **Conclusion**

[59] For the reasons given, I am satisfied that, under the test of justification at s 103A of Act, the process NZ Bus followed was one that gave Mr Bahler access to relevant information concerning the continuation of his employment and an opportunity for him to comment which was considered by the company before it made its decision to end the employment relationship for serious misconduct. The application is unsuccessful and is declined.

## **What about costs?**

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

[61] If the parties are unable to resolve costs, and an Authority determination on costs is needed, NZ Bus may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum, Mr Bahler will 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.

[62] 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.<sup>7</sup>

Peter Fuiava  
Member of the Employment Relations Authority

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<sup>7</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).