

**NOTE: This determination
contains an order prohibiting
publication of certain
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 633
3372243

BETWEEN EDWARD LAWRENCE JOHN
HOPPING
Applicant

AND FIRE & EMERGENCY NEW
ZEALAND
Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Mitchell KC and Angus Drumm, counsel for the
Applicant
Tanya Kennedy, counsel for the Respondent

Investigation: 29 - 31 July 2025 in Hamilton and 6 August 2025 by AVL

Submissions and Other
Information Received: 6 and 18 August 2025 from the Applicant
13 and 20 August 2025 from the Respondent

Date of Determination: 8 October 2025

DETERMINATION OF THE AUTHORITY

Non-publication order

[1] Pursuant to clause 10 of Schedule 2 of the Employment Relations Act 2000 (the Act), the Authority issued an interim non-publication order on 19 May 2025 that prohibited the publication of the names, identifying information and medical information of the two complainants whose bullying complaints against Mr Hopping were upheld by Fire & Emergency New Zealand (FENZ), and resulted in his dismissal.

[2] These individuals have therefore been referred to as Witness A and Witness B.

[3] On 28 May 2024 this interim non-publication order was extended to also cover the name and identifying information about the member of the public who made a complaint on 16 October 2022 about Mr Hopping. This third-party individual is referred to as Person C, because they are not connected to FENZ or these proceedings.

[4] These interim non-publication orders are now made final, subject to the condition that they do not apply to the employment institutions and do not cover any information in this determination, which is a matter of public record.

Anonymisation of names

[5] In addition to Witness B, three current FENZ employees gave evidence opposing Mr Hopping's reinstatement. These employees have been referred to as Employee D, Employee E, and Employee F to protect their privacy.

[6] The Authority has been mindful of the longstanding workplace tensions in the Hamilton office, so where possible has not used the names of other employees in an attempt to deescalate the conflict that has developed within this workgroup.

Employment Relationship Problem

[7] The applicant, Mr Edward (Ed) Hopping started work for FENZ in May 2019 as a Fire Risk Management Officer. In August 2021 Mr Hopping was redeployed into the role of Advisor Risk Reduction, which he remained in until his dismissal.

[8] Mr Hopping is a member of the New Zealand Professional Firefighters Union (NZPFU), so he was covered by the FENZ and NZPFU Collective Agreement dated 1 July 2021 to 30 June 2024 (the CA).

[9] After taking more than two years to investigate complaints made by Witnesses A and B, FENZ concluded Mr Hopping had engaged in bullying, harassment and inappropriate behaviour towards them.

[10] FENZ said Mr Hopping's actions had breached its Standards of Conduct Policy (the Standards Policy), the Policy to Address Bullying, Harassment and Victimisation (the Bullying Policy) and the Code of Behaviour (the Code), and that had amounted to serious conduct.

[11] FENZ said Mr Hopping's actions had fundamentally undermined the trust and confidence inherent in the parties' employment relationship. He was dismissed for serious misconduct on 2 April 2025, and paid four weeks' pay in lieu of notice.

[12] Mr Hopping sought interim reinstatement, but that was declined by the Authority in a preliminary determination dated 28 May 2025.¹

[13] Mr Hopping claimed his dismissal was procedurally and substantively unjustified. He denied the allegations against him and disputed that they were capable of amounting to serious misconduct. He also said the investigation and disciplinary process had taken so long that the disciplinary allegations against him were stale, so could not have fairly or reasonably resulted in his dismissal.

[14] Mr Hopping sought permanent reinstatement along with lost remuneration and distress compensation for his unjustified dismissal grievance claim.

[15] FENZ stood by its finding of serious misconduct and its decision to dismiss Mr Hopping. FENZ said Mr Hopping's conduct had caused Witnesses A and B stress and anxiety and that his interactions with colleagues had shown a concerning pattern of exclusionary and intimidating behaviour.

[16] FENZ opposed reinstatement. It denied that the length of its investigation had made Mr Hopping's dismissal unjustified. FENZ also attributed approximately eight months of the delay that occurred to the actions of Mr Hopping, his representatives, and his supporters.

The Authority's investigation

[17] The Authority held a three-day in-person investigation meeting (IM) in Hamilton in July 2025, during which the IM started early, finished late, and had shorter than usual breaks.

¹ *Hopping v FENZ* [2025] NZERA 297.

[18] The following witnesses for FENZ gave evidence in person during the IM in Hamilton:

- (a) Mr Bruce Stubbs, Region Manager Te Upoko Region and Assistant National Commander;
- (b) Mr David Guard, Region Manager Region 5 (now Te Kei) for the Nga Tai ki te Puku region;
- (c) Mr Michael Balmer, Assistant Commander/Group Manager Nelson Marlborough District;
- (d) Witness B, is one of the complainants;
- (e) Employee D, who works in the same office as Mr Hopping;
- (f) Employee E, who works in another team;
- (g) Employee F, who is in Mr Hopping's team.

[19] Witnesses provided witness statements, and some had also provided affidavits for the interim reinstatement application. Witness A provided an affidavit but did not give evidence, due to health reasons.

[20] Mr Hopping lodged two witness statements and two affidavits. The Senior Advisor Risk Reduction (SARR) Waikato Fire District and the Senior Risk Advisor Risk Reduction based in the Waikato District both lodged witness statements and affidavits, and they gave evidence in-person in support of Mr Hopping.

[21] At the end of the IM in Hamilton the Authority decided it wanted to hear from Mr Tinworth, who is the current Community Risk Manager, to better understand the practicalities associated with the various arguments the parties had made for and against the remedy of reinstatement.

[22] Mr Tinworth has been in the CRM role from around September 2023, so he had been Mr Hopping's manager since then. He did not report having experienced problems in managing Mr Hopping.

[23] Mr Tinworth said he was aware his direct reports have experienced significant stress as a result of FENZ's BCO investigation and these proceedings, however he said he had been careful to adopt a neutral stance. Mr Tinworth therefore asked to be witness summonsed to attend the IM so he could maintain his neutrality, so that occurred.

[24] All participants in this reconvened IM on 6 August 2025 attended remotely.

[25] Mr Tinworth was not required to provide a witness statement, he was not provided with any documents prior to him giving evidence via a Teams link on the afternoon of 6 August 2025. He was not referred to any documents when giving his evidence.

[26] Mr Tinworth has purposely kept himself away from the details of this matter, instead focusing on looking forward with the team he is managing. Witnesses who gave evidence to the Authority spoke highly of Mr Tinworth. Both employees and management expressed confidence in his abilities as a manager. Mr Tinworth expressed confidence in his ability to manage Mr Hopping and Mr Hopping expressed confidence in him as a manager.

[27] The parties lodged in excess of 1,000 pages of relevant documents, which excluded statements and affidavits, some of which were lodged during or after the IM in Hamilton.

[28] Both parties provided written submissions. FENZ also lodged an updated chronology after the parties had lodged their submissions.

Issues

[29] The following issues are to be determined:

- (a) Did FENZ meet the standards it had set itself in its relevant policies?
- (b) Was the duration of FENZ's investigation and disciplinary process justified?
- (c) Could a fair and reasonable employer have concluded that the allegations against Mr Hopping had been substantiated?
- (d) Could a fair and reasonable employer have concluded Mr Hopping's actions amounted to serious misconduct?
- (e) If so, was dismissal within the range of responses available to a fair and reasonable employer in all the circumstances?
- (f) If Mr Hopping's dismissal was unjustified, what remedies should be awarded? In particular:

- (i) Should Mr Hopping be permanently reinstated?
- (ii) What lost remuneration should be awarded?
- (iii) What distress compensation should be awarded?
- (g) Should remedies be reduced on the grounds of contribution?
- (h) What costs and disbursements should be awarded?

Why was Mr Hopping dismissed?

[30] FENZ dismissed Mr Hopping for serious misconduct consisting of breaches of the Standards Policy, the Bullying Policy and the Code. Mr Hopping was found to have not:

- (a) Maintained appropriate standards of personal behaviour at work;
- (b) Treated colleagues with fairness and respect;
- (c) Avoided behaviour that caused stress or disruption to the workplace;
- (d) Taken steps to ensure his actions did not harm any other person;
- (e) Met the obligations in the Code and Bullying Policy.

[31] Mr Stubbs' dismissal letter stated:

I have come to this final view because the substantiated allegations demonstrate a pattern of behaviour that is fundamentally incompatible with Fire and Emergency New Zealand's values and expectations. My view also reflects the seriousness with which Fire and Emergency New Zealand views bullying and harassment, and our commitment to maintaining a safe and respectful workplace for all employees. Your interactions with colleagues, particularly with [Witness B], show a concerning pattern of exclusionary and intimidating behaviour. The evidence supports that you:

- Deliberately excluded colleagues from communications and meetings.
- Exhibited hostile body language and inappropriate responses in professional settings.
- Made concerning comments about workplace safety in relation to colleagues.
- Engaged in behaviour that created an uncomfortable and hostile work environment.
- Demonstrated inappropriate emotional reactions to workplace decisions.
- Made inappropriate comments about colleagues to others.

These behaviours are particularly serious given your experience and position at Fire and Emergency New Zealand.

...

I note there is an overall lack of accountability on your end, and this is through me observing your lack of interest throughout this process in addressing the substance of your conduct and reflection of the impact of your conduct i.e., the harm it has had on the two complainants and your colleagues.

[32] Mr Stubbs said he had considered alternatives to dismissal, but did not consider such options would resolve concerns about Mr Hopping's conduct, as FENZ considered his actions had caused a fundamental breakdown in the trust and confidence required for an employment relationship.

Justification test

[33] The justification test in s 103A(2) of the Act requires the Authority to objectively assess "the employer's actions, and how the employer acted", to determine whether it was what a fair and reasonable employer could have done in all the circumstances.

[34] A fair and reasonable employer is expected to comply with its statutory obligations. These include the statutory duty of good faith in s 4(1A)(c) of the Act and with each of the four procedural fairness tests in s 103A(3) of the Act. A fair and reasonable employer is also expected to comply with its contractual obligations and with relevant policies and procedures. Failure to do so could undermine its ability to establish it had met its obligations under the statutory justification test.

[35] Assessment of justification is to occur at the time Mr Hopping was dismissed, so it is based on the information that was available to FENZ when he was dismissed on 2 April 2025.

[36] The Authority is not permitted to substitute its own subjective view for that of the employer, rather it is assessing what options within a range of possible responses could be open to a fair and reasonable employer in all the circumstances.

Material background

[37] When Mr Hopping started work with FENZ he reported to Employee D. Following a restructure in August 2021, Employee D declined redeployment into another role that required him to manage Mr Hopping because of concern about his

behaviour. Employee D obtained another role in the same office as Mr Hopping, but they do not work in the same team. Employee D and Mr Hopping apparently keep their distance from one another.

[38] The September 2021 restructure resulted in a newly restructured management role of Community Risk Manager (CRM) for the Waikato District, into which Witness A was appointed. There was dissatisfaction about this appointment among some employees who had apparently wanted the union delegate in their team to get this role.

[39] From September 2021 to September 2023 Mr Hopping reported to Witness A. Before that he had reported to Employee D, and prior to that Mr Hopping had reported to Witness A's manager. There was evidence Mr Hopping and others would go directly to Witness A's manager to overturn decisions Witness A had made that they did not like. Witness A's manager and Mr Hopping had a friendly relationship.

[40] Witness B commenced work in Mr Hopping's team on 16 August 2022. In September 2022 they were promoted into a role that some members of the team had wanted to go to a colleague.

[41] Witness B's appointment to the Senior role was successfully reviewed, on the basis it had not been advertised as being capable of being done from Thames as well as Hamilton. That resulted in the Senior role having to be readvertised, which required Witness B to reapply for it.

[42] Witness B said that because of the problems they had experienced with Mr Hopping's conduct towards them, they did not reapply for the role. The Senior role after being readvertised was given to one of Mr Hopping's close friends and supporters.

[43] Witness B claimed that Mr Hopping's alleged bullying of them started on 17 August 2022, which was their second day in their new role in the Hamilton office. Witness B said that a rude comment Mr Hopping made to them (which he denied) on 19 August 2022, the day of the NZPFU strike, caused them to start keeping a chronological record of their concerns (referred to as "the diary notes").

[44] Witness B said their health suffered to the point where they required two weeks sick leave, and they had to have counselling and obtain medical assistance which they attributed to Mr Hopping's conduct towards them. Witness B said their career

opportunities were curtailed due to their desire to avoid Mr Hopping because of “the stress and toxic bullying environment” they claimed he had created.

[45] Witness B said they initially moved to another office in Hamilton and then moved to work from the Thames office in order to get away from Mr Hopping. In January 2023 Witness B obtained a role in a different team in a different district, which they started in February 2023. However, this role required additional commuting time in the early hours of the morning, which had placed a significant unwelcome burden on them. Witness B’s plans to live in Hamilton had also been undermined.

[46] In October 2022 Person C made a formal complaint that Mr Hopping had swerved across the centre median and verbally abused them. On 20 October 2023 (one year later), FENZ upheld Person C’s complaint and issued Mr Hopping with a verbal warning that remained in effect for 12 months. The verbal warning had expired before Mr Hopping was dismissed.

[47] Mr Hopping raised a disadvantage grievance about this warning, but that claim was not part of these proceedings. It was raised as relevant background. Mr Stubbs was aware of the verbal warning but said it did not affect his decision to dismiss Mr Hopping because it had expired before he had dealt with the disciplinary allegations that are the subject of these proceedings.

[48] Witness A sent a memorandum dated 19 December 2022 to Human Resources (HR) about an interaction Mr Hopping had with him on the afternoon of 9 December 2022. This memorandum was treated by FENZ as Witness A’s complaint about Mr Hopping. Witness A’s complaint to HR said that Witness B and Employee D had reported similar behaviour by Mr Hopping, which needed to be acted upon.

[49] HR had told Witness A to put his concerns about Mr Hopping’s conduct in writing, but Witness A said he did not know that was going to be passed to the Behaviour Conduct Office (the BCO) for investigation. The BCO had been established on 6 October 2021, and it sat outside of the regular HR functions. It has since been disestablished.

[50] Witness A’s memorandum alleged (among other things) that Mr Hopping had acted in a “threatening and bullish” manner towards him on 9 December 2022, which was considered “bullying behaviour”.

[51] Witness A amended the word “threatening” to “forthright” during his interview with the BCO investigator on 18 May 2023. Witness A also confirmed that amendment during his interview with the external investigator on 26 October 2023.

[52] Some of the FENZ witnesses told the Authority that Witness A believed his health had been so adversely affected by Mr Hopping’s conduct towards him that he had taken early retirement. FENZ had eventually moved Witness A to another role in or around September 2023 to get him away from Mr Hopping, but he had apparently retired shortly after that.

[53] On 20 January 2023 Witness B provided HR with diary notes that recorded concerns about things that had happened in the workplace from their first day of work on 16 August 2022 to around 7 November 2022. This was treated by HR and the BCO as Witness B’s complaint.

[54] Witness B recorded their belief that “there is a culture of bullying in the RR team with the Waikato CRM office.” They named Mr Hopping as the main instigator, but they also said they had been excluded and ignored by two other employees for a significant period of time.

[55] Although other employees were mentioned in these diary notes, no action was taken by FENZ against anyone other than Mr Hopping. The diary notes also included references to information that had been raised during the confidential workshop process Mr Sunny Peters was facilitating, which was information that should not have been disclosed outside of those workshops.

[56] Witness B considered their poor treatment by some employees was likely due to dissatisfaction that they had been appointed to the Senior role instead of another member of the team.

[57] On 14 December 2022 Witness B found out the review of their appointment to the Senior role had been successful, so their appointment had been overturned. The role was to be readvertised, so they would have to had to have reapplied and been re-interviewed for the role if they wanted it. Witness B said they did not feel safe to do so because of the way Mr Hopping had treated them. Witness B said they felt they had been treated so badly they had no alternative but to go and work elsewhere.

[58] HR referred the information received from Witnesses A and B to the BCO on 1 February 2023. On 16 February 2023 the BCO decided a formal investigation was warranted and an internal BCO investigator, Mr Paul Bowman, was appointed to do so.

[59] On 3 March 2023 the BCO advised Mr Hopping of the complaints, gave him copies of Witness A's memorandum and Witness B's diary notes, and invited him to comment on the draft Terms of Reference (the ToR) for the formal investigation into the complaints against him. Mr Hopping was also provided with the Standards Policy, the Bullying Policy, and the Code, which were considered relevant to the BCO's investigation.

[60] FENZ said the period from 10 March 2023 (when NZPFU advised it was representing Mr Hopping) to 12 May 2023 (the date the BCO investigator commenced the investigation) was taken up with consultation over and revisions to the ToR; addressing Mr Hopping's concerns about conflicts of interest; changes in the decision maker; responding to Official Information Act and Privacy Act requests and to NZPFU's other concerns; and the Easter break.

[61] FENZ said it would have started the investigation earlier than 12 May 2023, but Mr Hopping and NZPFU would not engage or finalise the ToR until each of the points they had raised had been responded to. FENZ said that caused a delay of two months.

[62] Mr Bowman started the BCO investigation into the complaints about Mr Hopping on 12 May 2023. Witness A was interviewed on 18 May 2023 and Witness B was interviewed on 19 May 2023 by Mr Bowman. Other witnesses were interviewed by him on 30 May and 31 May 2023, 7 June, 12, 20 and 23 June 2023.

[63] On 6 June 2023 Mr Bowman identified a conflict of interest with the union delegate in the Risk Reduction team, so a new BCO investigator (Ms Rose Ayers) interviewed the union delegate on 11 July 2023. FENZ said the union delegate had delayed the investigation by about a month, by being unavailable to be interviewed and by delaying responding to their interview transcript.

[64] After Mr Bowman resigned in July 2023, NZPFU objected to Ms Ayers taking over the investigation on the grounds she had a conflict of interest. NZPFU said an external investigator was needed. Although BCO did not agree Ms Ayers had a conflict,

it appointed an external investigator. By this time Mr Bowman had interviewed nine witnesses, and Ms Ayers had interviewed one witness.

[65] On 24 July 2024 Mr Hopping was sent disclosure of information ahead of the intended interview with him.

[66] The external investigator is an experienced employment lawyer and independent workplace investigator. She was engaged by FENZ on 10 August 2023 to provide a report on the complaints that had been made by Witnesses A and B about Mr Hopping.

[67] The external investigator was provided with the ToR, the two complaints, ten interview notes, three relevant policies and background documentation, consisting of over 70 documents in total.

[68] The external investigator contacted Mr Hopping's then union representative on 23 August 2023, but did not get a response until 30 August 2023. That union representative was not available until 5 September 2023, so an interview with Mr Hopping was arranged for that date. However, it was subsequently changed at NZPFU's request to 27 September 2023 due to Ms Wattie Watson, the NZPFU National Secretary, taking over as Mr Hopping's representative.

[69] Mr Hopping was interviewed on 27 and 28 September 2023 by the external investigator. FENZ said NZPFU's and Mr Hopping's actions had delayed this interview by approximately six weeks, because if Ms Ayers had taken over the investigation, she would likely have interviewed Mr Hopping within two weeks.

[70] In September 2023 Witness B sought a copy of information the external investigator had about them, and on 18 September 2023 NZPFU objected to that. Four of Mr Hopping's supporters who had been interviewed objected to their interviews being provided to Witness B. This caused further delay. NZPFU's objections to Witness B being given information about herself continued through October 2023, November 2023 and February 2024.

[71] On 20 October 2023 NZPFU raised complaints with FENZ's Chief Executive about the proposal to disclose witness information and interviews to Witness B. This was responded to on 28 and 29 November 2023.

[72] The external investigator decided that Witnesses A and B needed to be reinterviewed in light of Mr Hopping's interview. She interviewed Witness A on 7 December 2023 and Witness B on 8 December 2023, which was based on their availability.

[73] Mr Hopping was provided with transcripts of the external investigator's interviews with Witnesses A and B on 8 February 2024, and he commented on these on 14 February 2024.

[74] Witness B did not have information provided to them until 14 March 2024, which they provided feedback to on 20 March 2024. Witness B also provided further information in emails dated 19 and 20 March 2024.

[75] The external investigator's draft report was released to NZPFU on 28 March 2024, with feedback requested by 11 April 2024. NZPFU asked for an extension of time which was granted, thereby causing a one-week delay. NZPFU provided Mr Hopping with a copy of the draft report on 2 April 2024.

[76] On 8 or 9 April 2024 NZPFU objected for the first time to the decision maker who had been recorded in the ToR since 10 March 2023. On 23 April 2024 FENZ amended the ToR to make Mr Stubbs the decision maker.

[77] On 18 April 2024 Mr Hopping provided feedback on the draft report and identified four additional witnesses he wanted interviewed. The external investigator interviewed these additional witnesses on 15, 17, 22 and 23 May 2024. FENZ said Mr Hopping's failure to make this request earlier caused a delay of approximately two months.

[78] On 28 May 2024 Mr Hopping made comments on the statements that Witness A's manager, Mr Tinworth and another employee from the Hamilton office had made.

[79] As a result of that feedback, the external investigator decided to conduct four more interviews, which were not completed until 23 May 2024. Transcripts of these interviews were provided to Mr Hopping on 31 May 2024 for his feedback.

[80] On 13 June 2024 Witness A and Mr Hopping were provided with a copy of the interview transcript of the interview the external investigator had conducted with Witness A's manager.

[81] The external investigator's report was released to the BCO and NZPFU (to pass to Mr Hopping) on 1 July 2024. Mr Stubbs received the final report on 2 July 2024.

[82] Mr Hopping was given an "Acting Up" role for a Senior position in the Hamilton office from 2 September 2024 to 27 October 2024.

[83] On 13 September 2024 Mr Hopping was invited to a disciplinary meeting to discuss the final report, which occurred on 7 October 2024. On 8 October 2024 Mr Hopping provided written feedback on the final investigation report.

[84] A transcript of the disciplinary meeting was sent to NZPFU and Mr Hopping on 11 October 2024. No changes were requested as a result of that.

[85] Mr Stubbs was on leave from 19 December 2024 to 21 January 2025. On 24 January 2025 FENZ sent Mr Hopping its preliminary findings and the proposed disciplinary outcome of summary dismissal. He was invited to a meeting on 11 February 2025 to discuss that.

[86] This meeting was rescheduled to 7 March 2025. Mr Hopping had instructed counsel Mr Peter Cranney on 24 January 2025 and Mr Cranney said he needed time to review the documentation before he could meet to discuss the disciplinary allegations.

[87] The feedback meeting on 7 March 2025 was attended by Mr Stubbs as the decision maker, Mrs McGovern and Mr Mike Todd as the HR representatives, Mr Hopping, Ms Wattie Watson as Mr Hopping's union representative (she attended by Teams), the local union delegate who attended as Mr Hopping's support person, and Mr Cranney who was Mr Hopping's counsel.

[88] Mr Hopping was advised of FENZ's decision to dismiss him by letter dated 2 April 2025. He has not worked since then.

Did FENZ meet the standards it had set itself in its relevant policies?

The Standards Policy

[89] The Standards Policy stated that FENZ had an obligation to employees to ensure that all necessary guidance, counselling and warnings were given before any other action was taken, unless the conduct was sufficiently serious to warrant summary dismissal. Misconduct was described as behaviour that breached the standards of conduct but was unlikely to justify dismissal on the first occasion.

[90] The behaviour that Mr Hopping was dismissed for had not been raised with him by way of guidance, counselling or informal warnings before FENZ took the disciplinary action against him that resulted in his dismissal.

[91] The conduct on 26 August 2022 that was serious enough for Mr Hopping to have potentially been disciplined over without having first received guidance, counselling or informal warnings was not treated as a misconduct concern at the time it occurred.

[92] The Standards Policy defined serious misconduct as behaviour that breaches the standards of conduct or the law, which may justify instant dismissal. It stated it had to be sufficiently serious to undermine the trust and confidence in the employee so that dismissal is what a fair and reasonable employer could do in the circumstances.

[93] The Standards Policy provided that suspension could occur pending investigation into allegations of serious misconduct. It also provided that formal warnings (whether verbal or written) could be given for misconduct, serious misconduct or poor performance.

[94] Dismissal was stated to be a “last resort” after other disciplinary action had failed or where serious misconduct had occurred. Other possible sanctions were also stated to be available. Dismissal on notice was stated to occur when unacceptable behaviour or poor performance had persisted, following a final warning. Summary dismissal without notice could occur if serious misconduct had been proven.

[95] Contrary to its Standards Policy, FENZ proceeded directly to dismissal without having given Mr Hopping any opportunity to understand that his behaviour was causing upset and distress to other employees. Mr Hopping therefore had no opportunity to correct his behaviour.

[96] FENZ’s policy is to resolve issues at the lowest possible level. FENZ witnesses accepted that many of the disciplinary allegations involved concerns that should have been informally addressed by a manager at the time the problem had arisen. The fact that had not occurred in this case was a fundamental omission.

[97] FENZ acted contrary to its Standards Policy by not first alerting Mr Hopping to concerns it had about what on the face of it looked like relatively minor incidents that

should first been addressed at a low level with him before disciplinary action was pursued.

[98] Instead of addressing such matters close to when they arose, FENZ combined a number of little matters, that could have been unintended to create allegations of ongoing bullying and harassment, which FENZ then took more than two years to address.

[99] FENZ was not justified in escalating the issues of concern in that way. Raising these issues informally first would have been a more effective way of addressing these allegations for all concerned.

The Bullying Policy

[100] The Bullying Policy defined bullying as unreasonable and unwanted, repeated and ongoing behaviour towards a person or group that could lead to physical and/or psychological harm. It covered actions a reasonable person would not do in a similar situation.

[101] The Bullying Policy stated that a single incident would not be bullying but should be addressed by management as inappropriate behaviours could escalate if ignored. A number of non-exhaustive examples of bullying were given in the Policy.

[102] None of these examples included the allegations that had been pursued as disciplinary concerns against Mr Hopping. Although there was evidence that Mr Hopping had shouted during the meeting with Witness A (and other employees) on 26 August 2022, FENZ elected at the time that had occurred not to pursue that as a disciplinary concern.

[103] A fair and reasonable employer could not combine a historical issue that it had elected to take no action over with a new concern in order to turn it into evidence of a pattern of bullying behaviour. If it was not considered serious enough to be addressed at the time it had occurred, it cannot be reactivated later to bolster bullying allegations.

[104] Harassment was defined as unwanted and unwarranted behaviour that a person finds offensive, intimidating or humiliating and which was repeated, or significant enough as a single incident, to have a detrimental effect on a person's dignity, safety and well-being.

[105] The behaviour Witness B alleged Mr Hopping had engaged in towards them was not serious enough to have been viewed by a fair and reasonable employer as bullying or harassment in the first instance. These were issues that could and should have been drawn to Mr Hopping's attention, so he understood how his actions were adversely affecting another employee.

[106] The alleged comment related to the strike action on 19 August 2022 was a one-off comment to Witness B, and did not meet the definition of bullying or harassment in the Bullying Policy.

[107] The Bullying Policy said that when dealing with an allegation of bullying, harassment and victimisation FENZ would (among other things) "investigate promptly and impartially". It stated that Managers agreed to (among other things) "intervene early to call out and deal with any unreasonable behaviour before it escalates" and would:

...look for informal solutions (self-help, giving feedback, mediation or facilitation) before escalating an issue to higher levels (such as an investigation) where appropriate.

[108] The Bullying Policy stated that FENZ was "committed to addressing breaches of this policy promptly and effectively by taking appropriate disciplinary action." FENZ did not act promptly because an outcome to concerns that had arisen over the period 16 August to 9 December 2022 was not provided until 2 April 2025.

[109] FENZ failed to meet the standards it had set itself under the Bullying Policy, by not intervening early to address Witness B's concerns about Mr Hopping's conduct towards them from the outset. FENZ also failed to consider informal solutions to Witness B's concerns at or around the time she said problems were occurring.

[110] The Bullying Policy was stated to support the Code that set out FENZ's values and gave examples of "above the line" and "below the line" conduct and provided prompts to employees to consider "where does my behaviour sit?".

The Code

[111] FENZ said Mr Hopping had breached the Code due to:

- (a) Unsafe behaviour;

- (b) Undermining others;
- (c) Engaging in behaviour which causes harm or had the potential to cause harm, including bullying, harassment and victimisation;
- (d) Behaviour or actions which eroded trust and confidence.

[112] The same concerns that applied to the Standards Policy and Bullying Policy applied to the alleged breaches of the Code. None of these matters were raised with Mr Hopping before he was dismissed, so he did not know how his conduct was being received by others.

[113] That was a fundamental omission by FENZ as it effectively deprived him of any opportunity to understand how Witnesses A and B considered they were being adversely affected by him or to improve how he was engaging with Witnesses A and B.

[114] A closer examination of the disciplinary allegations that follows established a fair and reasonable employer could not have concluded that breaches of the Code, justifying dismissal had occurred.

Evidence from FENZ managers

[115] Mr Stubbs and Mr Guard both agreed that they would have expected that the conduct that had given rise to the disciplinary allegations in this matter and Mr Hopping's dismissal to have been raised with him first, so the behaviour could be addressed quickly without the need for a formal process.

[116] They also both acknowledged that a "pull aside" during which FENZ's expectations of Mr Hopping's conduct in terms of his interactions with others were firmly set and if need be, monitored, so that any repeated conduct could be 'nipped in the bud' would have been appropriate. They accepted there had been some delay in addressing the matters of concern, which had caused stress and distress to some employees, but did not consider FENZ was responsible for that.

[117] Regarding Mr Hopping's conduct in the 26 August 2022 meeting, Witness A told the BCO investigator on 18 May 2023 he had "wanted to follow through with the main issues of how he behaved as it was totally unacceptable" and:

I wanted some disciplinary action, I felt it was appropriate for a formal warning about his behaviour. I was convinced by [his manager and HR] to undertake a trust cultural workshop (sic) which was led by Sunny Peters. I think that was

a mistake, I believe there should have still been a warning which might have solved some of the issues that have come up now.

[118] Mr Tinworth, the current CRM, acknowledged to the Authority that it was important to address poor or unsatisfactory conduct at or around the time it arose, to prevent it escalating. Mr Tinworth said that was something he felt able to do with Mr Hopping, as his manager.

[119] Witness A correctly identified during his interview on 26 October 2023 with the external investigator that Mr Hopping's misconduct during the 26 August 2022 meeting "was appropriate for just a verbal warning at that stage", but that his manager and HR came up with an alternative, which was the "cultural workshops" process Mr Peters facilitated in late 2022. FENZ was therefore aware of Mr Hopping's conduct but did not allow Witness A to pursue it as a disciplinary concern.

[120] Witness A was excluded from that "cultural workshop" process. However, adverse comments that Mr Hopping had made about Witness A during the confidential process Mr Peters was facilitating were passed on to Witness A during a meeting he had with HR, his manager and the Regional Manager which had occurred "after Christmas" 2022. FENZ was therefore aware that there were problems that needed to be addressed.

[121] FENZ's submissions suggested Mr Hopping had been informally spoken to about his conduct prior to Witness B's employment, however that was not accepted. There was no evidence to support that submission and no details of what was discussed, or when, was produced to the Authority.

[122] Mr Hopping's evidence that no-one had raised concerns about his conduct or behaviour in terms of his interactions with Witnesses A and B with him before the BCO investigation, which resulted in formal disciplinary action and sanctions, was accepted. Mr Hopping told the Authority he was shocked to hear how Employees D, E and F and Witness B felt about him and by the emotion they exhibited when giving their evidence.

Was the duration of FENZ's investigation and disciplinary process justified?

[123] Mr Hopping said the delay from 3 March 2023, when he was first told he was under investigation, to being informed of the disciplinary outcome on 2 April 2025

made his dismissal unjustified, because it established trust and confidence had not been fundamentally undermined.

[124] Mr Hopping pointed out he had continued to work in his role without incident during the entire investigation and disciplinary process. FENZ had been provided with the external investigator's final report on 1 July 2024. On 28 August 2024 Mr Hopping was authorised to "Act Up" in a Senior role (to cover the incumbent employee's leave) from 2 September 2024 to 27 October 2024.

[125] This "Acting Up" role was effectively a 'promotion', even though it was only for approximately eight weeks. It was also a decision by FENZ that was fundamentally inconsistent with trust and confidence having been broken beyond repair.

[126] FENZ acknowledged the investigation had taken longer than expected, but said there were good reasons for that, many of which it claimed were beyond its control. It also pointed out that Mr Hopping had not complained about the delay prior to his dismissal. FENZ said the delay that occurred was explainable and had not made Mr Hopping's dismissal unjustified.

[127] FENZ said some reasons for the delay included that Mr Hopping was consulted over the ToR, at times his representative was not available to meet or provide feedback, Mr Hopping changed representatives and new representatives needed time to 'get up to speed' with the matter before engaging with FENZ.

[128] Witnesses were not available, or did not respond to requests to meet. People involved in the investigation were on leave. Mr Hopping raised conflict of interest allegations more than once. He requested information under the OIA and Privacy Act 2020 before the investigation commenced, which had delayed the start of the investigation.

[129] During his interview Mr Hopping identified four extra witnesses he wanted interviewed, which caused three months' delay. The BCO investigator left FENZ, the external investigator had a compulsory sabbatical, witnesses wanted time to review the transcripts of their interviews, the complainants wanted to review the other witnesses' statements which was objected to by NZPFU, the Christmas holiday period intervened, the decision maker had other work commitments and there was extensive documentation that FENZ had to consider.

[130] None of these reasons put forward by FENZ were sufficient to justify the duration of its investigation and disciplinary process. A fair and reasonable employer could not have taken as long as FENZ did to investigate the complaints Witnesses A and B had made.

[131] Allowing matters to drag on so long was a breach of good faith. It caused disharmony in the workplace and Witnesses A and B and Mr Hopping all reported suffering considerable stress and anxiety because of the excessive time FENZ was taking to resolve matters.

[132] Even if eight months of the delay that occurred could be attributed to Mr Hopping, that still left a period of eighteen months for which FENZ was solely responsible. The nature of the complaints that were made did not justify FENZ taking so long to address the concerns that had been raised.

[133] As the employer, FENZ was in control its investigation so, it was responsible for ensuring Witnesses A and B received a timely outcome to their complaints. Mr Hopping was also entitled to have the disciplinary concerns against him addressed within a fair and reasonable timeframe. That did not occur. That way FENZ dealt with the complaints failed Witnesses A and B, and Mr Hopping. FENZ must bear full responsibility for that.

[134] The conduct for which FENZ dismissed Mr Hopping had occurred in Witness A's case more than two years, three months, and two weeks prior. The conduct Witness B had complained about had occurred more than two years four months, and three weeks previously.

[135] Given the nature of the allegations, these disciplinary concerns were therefore stale by the time FENZ dismissed Mr Hopping.

Could a fair and reasonable employer have concluded that each of the disciplinary allegations against Mr Hopping had been substantiated?

Allegation 1 - Ed smirked, audibly sighed and stared at the floor during a meeting to welcome [Witness B] to the team on 17 August 2022

[136] This allegation related to a coffee the Risk Reduction team had at a cafe next door to the workplace to welcome Witness B to the team. Mr Hopping denied Witness B's allegation he had smirked, audibly sighed and had looked at the floor. The café was

busy and noisy. Mr Hopping said he suffered from industrial deafness which made it difficult for him to hear and engage in this type of environment.

[137] Witness A initiated and attended this café event. Witness A said he did not recall this event, so a reasonable assumption is that he did not notice anything untoward occurring at the café. None of the other employees present noticed Mr Hopping acting in the manner alleged. Those interviewed did not see, hear, or recall anything.

[138] At this time there were already tensions as some members of the team, including Mr Hopping, had issues with Witness A's management style. There was also tension as the team were waiting on the outcome of the Senior role.

[139] The evidence established that this coffee event had an uncomfortable atmosphere. At the time Witness B had attributed that to tensions between Witness A and some of the team. However, after Mr Hopping allegedly told Witness B on 19 August 2022 that they were not welcome at the strike action (an allegation he denied), Witness B felt that Mr Hopping's conduct had been unacceptable, so they began making their diary notes.

[140] Witness B's first diary note was about their first day of work on 16 August 2022. Mr Hopping was not present that day. Witness B reported a "very mixed welcome" and sensed some tension in the team. Witness B reported how one employee (not Mr Hopping) did not want to acknowledge them, and after being introduced had looked them up and down and then ignored them.

[141] Witness A told the BCO investigator that "it was quite challenging" taking Witness B around the office introducing them on their first day of work on 16 August 2022, which Mr Hopping was not present for.

[142] Witness A stated in an email to the BCO investigator dated 19 May 2023 that the welcome from three Risk Reduction team members "was not good". Witness A recalled "feeling absolutely disgusted with the way they would treat someone new to the team, because one of them ... had missed out on the [Senior] job." Witness A acknowledged that Witness B had told him they "felt most unwelcome by some team members" and that "Mr Hopping was the one who concerned her the most."

[143] However, no action was taken to address these concerns with those involved at the time Witness B disclosed this to their manager (Witness A). Although other team

members had acted in a manner that was upsetting and unwelcoming to Witness B, Mr Hopping was the only person who was investigated and subjected to a disciplinary sanction.

[144] Witness B alleged that all of the team were smirking at each other at the café while Witness A was speaking. However, no-one else was disciplined for smirking and, despite being interviewed twice, Witness A did not report any smirking to the investigators during his interviews.

[145] Witness B's complaint said that Mr Hopping was sitting next to them and had sighed "and then he and the rest of the team all just stared at the floor" after Witness A had been speaking to them. Again, Witness A did not report seeing or hearing this and no other employees were disciplined over staring at the floor as Witness A spoke.

[146] The only difference in Witness B's complaint between what Mr Hopping did and the other employees did at the café event was that he was alleged to have made "an audible sigh" after Witness A had spoken. Witness B's complaint had linked this alleged sigh to Witness A, not to them.

[147] No fair and reasonable employer could have treated Mr Hopping's sigh (if it had occurred) after Witness A had spoken as an incidence of bullying or harassment of Witness B. No fair and reasonable employer could have viewed "an audible sigh" as a disciplinary concern in these circumstances. Sighing is a normal human function. People sigh all the time, often without even knowing they are doing it, and for a variety of reasons that have nothing to do with undermining anyone else.

[148] If FENZ had been concerned about Mr Hopping's conduct at the café, then he should have been spoken to about it at the time. No fair and reasonable employer could turn an "audible sigh" in a café into a dismissible offence two years, eight months and two weeks later, which is how long FENZ took to address it (being 17 August 2022 to 2 April 2025).

[149] FENZ's actions, and how it acted, in connection with this allegation was unjustified.

Allegation 2 - While presenting a training session on 18 August 2022, Ed did not look at [Witness B] and just stared at the table in front of him when they asked him direct questions

[150] There was a general group discussion about how to do Fire Engineering Briefs (FEBs) arising from the fact one of the members of the team was working on one but had not been trained up on it. Therefore, members of the Risk Reduction team had a quick run through about the FEB process. It was not a formal training session and Mr Hopping did not set it up or run what has been referred to by FENZ investigators as “the training”.

[151] Witness B said that the Risk Reduction team all got up and left the office without communicating with them. Another employee who was not in the team asked Witness B if they were not invited to the training. At that time one of the Risk Reduction team members had noticed Witness B was missing, so invited them to attend the ‘training’ before it had started.

[152] Witness B said only one member of the team acknowledged them when they arrived, and they did not feel welcome in the room. Witness B said the group ignored them when they [Witness B] pointed out what was wrong with the plan that was being discussed.

[153] Mr Hopping was not presenting the ‘training’. He was not standing at the front of the room, he was not leading the discussion, and he had not set the training up. He was there as a participant in the group discussion, so he just stood up to speak then sat down.

[154] Witness B alleged they had asked Mr Hopping a direct question, but he just looked at the table and did not respond. He was asked a question at the same time other conversations were going on in the room. A fair and reasonable employer could not have ruled out that he had not heard Witness B’s question.

[155] Mr Hopping said he did not recall being asked a question by Witness B as most of his interaction was with the employee the ‘training’ had been intended to assist. Mr Hopping said that if he was looking at the table then he was possibly reading his notes.

[156] When asked by the BCO investigator about Mr Hopping’s demeanour towards Witness B in this meeting, the employee who had invited her to attend it said, “It was

fine, I don't think there was anything untoward, it was just a discussion in the office and [Witness B] was quiet the whole time.”

[157] This employee did not recall Witness B asking Mr Hopping a direct question. This employee also told the investigator there was nothing in relation to that ‘training’ meeting that she was not comfortable with. She also said that it was common for people to look down at the table or write notes in these situations.

[158] The union delegate employee who had set up the ‘training’ said it was not an organised training session but was an impromptu group discussion about how to deal with a specific issue around a specific FEB. He said that Witness B was not deliberately excluded, but “if [they] felt excluded that’s probably an oversight on my part ...”. No-one was disciplined over Witness B feeling excluded.

[159] None of the three employees at the ‘training’ recalled Witness B asking Mr Hopping a question. No-one reported an awkward pause or ‘dead space’. No questions were asked of Witness B about what had happened after their question was not responded to. Did they ask it again, was there silence, did someone else answer or change the topic or did everyone collectively ignore their question?

[160] A fair and reasonable employer in all the circumstances could not have dealt with the complaints, that Mr Hopping had stared at the table in front of him while likely looking at notes and had not answered a direct question he likely did not hear, by initiating a formal investigation and disciplinary process that lasted for more than two years. The excessive time delay between this event and the eventual disciplinary outcome was unjustified. The facts also did not warrant such an approach.

[161] The approach FENZ took to this incident was ‘overkill’ and was inconsistent with FENZ’s policies to address issues promptly and at the lowest level. A fair and reasonable employer should have had conversation with the Risk Reduction team members, about making sure Witness B was included and made to feel welcome, at the time it had occurred instead of alleging it was an instance of bullying by Mr Hopping. The way FENZ dealt with this complaint was therefore unjustified.

Allegation 3(a) - During [Witness B's] first weekly Risk Reduction Team catch up meeting, Ed did not look at [Witness B]

[162] This allegation arose from the Risk Reduction team meeting that occurred on 18 August 2022 after the 'training'. Present were Witnesses A and B, Mr Hopping and four other members of the Risk Reduction team.

[163] Witness B said they sensed tension in this meeting from the outset. Mr Hopping said although it had not been announced, he knew that Witness B had been given the promotion he (and others in the team) had wanted his friend to get. The Authority considered there was likely tension about that.

[164] The meeting attendees were asked to introduce themselves. Witness B said Mr Hopping did not look at them when he did so. He also did not look at them when they introduced themselves but instead appeared to be doodling or making notes in his notebook. None of those present noticed this reported lack of eye contact. Mr Hopping had met Witness B on 17 August 2022 in the office and at the café event, and he had been with her in the FEB 'training' the same day as the Risk Reduction team meeting was held. They therefore already knew who each other was without this extra round of introductions.

[165] An employee told the BOC investigator that "a lot of people in these meetings just sit down looking at the table or writing notes, so it is quite common behaviour, I guess". When asked if that would be normal behaviour for Mr Hopping the employee confirmed it was.

[166] Witness A, as the manager present at this meeting, was not asked during FENZ's investigation process whether he had noticed Mr Hopping not making eye contact with Witness B. Witness A was asked other questions about this meeting, but he did not comment on alleged lack of eye contact. A reasonable assumption from that is Witness A, who was leading the meeting, did not notice it, so it was clearly not obvious.

[167] A fair and reasonable employer could not have treated the complaint that Mr Hopping had not made eye contact with Witness B during introductions as a disciplinary concern in the first instance.

[168] If Mr Hopping was avoiding making eye contact with Witness B, then that was the sort of conduct that needed to be addressed at a low level the time it occurred. As

per FENZ policies it should have been raised with Mr Hopping, so he was aware there was an issue he needed to address. The way FENZ treated this concern was unjustified in all the circumstances.

[169] FENZ was unable to justify its actions regarding this complaint.

Allegation 3(b) - During [Witness B's] first weekly Risk Reduction Team catch up meeting, Ed in a very aggressive tone of voice, asked what was happening with a senior appointment to a role that had been verbally offered to [Witness B]

[170] This allegation related to a question that Mr Hopping asked during the Risk Review team meeting on 18 August 2022. Witness B's complaint said that Mr Hopping had asked Witness A what was happening with the Senior appointment "in a very aggressive tone of voice".

[171] Witness A's complaint did not mention that Mr Hopping had asked this question. Nor did he mention it in the two interviews he did with the investigators. When asked directed questions about this in an email from the BOC investigator dated 19 May 2023, Witness A responded that same day via email saying he could not recall the exact details but had thought at the time that Mr Hopping's question was "a dig to make [him or Witness B] feel awkward."

[172] A fair and reasonable employer could not treat a question from an employee about an outstanding appointment within the team as a disciplinary matter, particularly when the person who had been asked the question was not been concerned about it at the time.

[173] Mr Stubbs concluded that Mr Hopping's tone when asking this question was "forceful" but not "aggressive". FENZ said that was a breach of Code, so this allegation was partially substantiated.

[174] Mr Hopping knew Witness B had got the Senior role (as they had posted about it on Facebook on 10 August 2022), but it had still not been announced. He was entitled to ask this question without being disciplined for doing so. Even if the question had been asked forcefully, that should have been addressed at a low level with Mr Hopping by his manager at the time - if it was of concern. A fair and reasonable employer could not have concluded this was an incidence of Mr Hopping bullying Witness B.

[175] FENZ was not justified in treating this matter as a disciplinary matter.

Allegation 4 – Team photo with [Witness B] in it was removed from the wall

[176] Allegation 4 was not substantiated, so there was no need to address it.

Allegation 5 - On 19 August 2022, Ed interacted with [Witness B] prior to strike action occurring, standing very closely in front of [them] and telling [them]: “What are you even doing here? You know this is for [NZPFU] members only and you’re not welcome”, or words to that effect

[177] Mr Hopping and Witness B were both NZPFU members who participated in strike action on 19 August 2022.

[178] This allegation therefore involved an interaction between two union members about participation in NZPFU’s strike action. It was questionable whether FENZ should have involved itself with an interaction between union members about who was or was not welcome to participate in strike action.

[179] This incident was the catalyst for Witness B to start making diary notes, but it was strongly disputed by Mr Hopping. None of the witnesses who were interviewed saw or heard this alleged exchange.

[180] The people interviewed about this incident were Witness B, Mr Hopping, and two other employees, one of whom was interviewed twice, with the second interview focusing on this allegation. Five other employees did not see any interaction between Mr Hopping and Witness B on that day.

[181] Mr Hopping said there was a conversation at the bottom of the stairs but that it was different to the one Witness B had alleged occurred. Two witnesses Mr Hopping asked to be interviewed about this allegation did not see him have a conversation with Witness B, so their evidence was not helpful.

[182] Mr Stubbs considered that in terms of motive, Witness B had nothing to gain from complaining, and much to lose, but had complained because they were so concerned about the effects of Mr Hopping’s behaviour on them and others. Witness B said they wanted to prevent what had happened to them from happening to anyone else.

[183] Witness B made contemporaneous notes about the incident. It was open to Mr Stubbs to conclude these notes were more likely than not to be an accurate account of

the interactions that occurred between Mr Hopping and Witness B at the bottom of the stairs.

[184] Witness B received a text message that day from another employee who was at the strike, but who had told FENZ's interviewers that they had not seen or heard Mr Hopping and Witness B interacting. However, this employee's text said, "Just wanted to flick a message and say it was great chatting with you today! I know you're in a yukky situation ...". Mr Stubbs said that provided insight that this employee knew there was something going on towards Witness B.

[185] There was sufficient credible evidence from Witness B for Mr Stubbs to have resolved the conflict in the evidence in their favour. Accordingly, it was open to a fair and reasonable employer to have concluded that Mr Hopping more likely than not made this comment to Witness B.

[186] As it turned out at the IM, Mr Hopping's account of that day in terms of his evidence about giving Witness B a union tee-shirt and pin was not correct. That evidence was contradicted by another employee who had given Witness B the union tee-shirt.

[187] However, a fair and reasonable employer could not have considered this one-off comment, to the effect that a non-union member was not welcome to participate in the strike action, as harassment under the Bullying Policy or a breach of the Standards Policy and Code that warranted disciplinary action being taken in the first instance, particularly when this was more properly a union matter for the union to address.

[188] The extensive delay between this incident occurring on 19 August 2022 and the disciplinary outcome on 2 April 2025 meant this conduct was stale by the time Mr Stubbs decided to dismiss Mr Hopping for it. Accordingly, FENZ's disciplinary findings and outcome were therefore unjustified.

Allegation 6 – Inappropriate conversations surrounding historical drug use

[189] Mr Stubbs decided not to pursue this allegation as part of the disciplinary process, so it did not need to be addressed.

Allegation 7 - Ed said to another staff member about them talking to [Witness B], “I don’t know how you do it; you’re a bigger person than me”, and in response to a question from the staff member, Ed said about [Witness B], “Talk to [them]...I can’t even look at [them]”

[190] Witness B was told about this alleged comment on 25 September 2022. This allegation involved Mr Hopping making comments to another employee about Witness B that the other employee passed on to Witness B. No action was taken against the employee who had passed the alleged comment on, even though it should have been obvious to that employee that the comment would likely have been hurtful to Witness B, who was a new employee.

[191] The people interviewed about this allegation were Witness B, Mr Hopping, Witness A and the employee who passed this comment on to Witness B. This employee said, “I cannot recall this conversation – not denying it ever happened, I just do not recall it”.

[192] Mr Stubbs considered that Witness B’s recollection about what they had been told by the employee who had passed on the comment was corroborated by Witness A, as they had told him about the comment at the time.

[193] However, what was significant about that finding was that Witness A, as the manager in receipt of this information, did not consider the matter serious enough to even have a conversation with the employees involved, much less to pursue it as a disciplinary matter.

[194] Because FENZ knew about this incident but elected not to take any action to address it at the time, that prevented it from pursuing this as a disciplinary concern years later. FENZ’s finding that Mr Hopping’s alleged comment to another employee had breached the Standards Policy and the Code, and was an example of bullying, was not justified.

[195] A fair and reasonable employer could not sit on this information for years and then then later decide to treat it as a disciplinary allegation that warranted dismissal. A fair and reasonable employer also could not dismiss an employee for making this comment to another employee, as it was not capable of amounting to serious misconduct. It is not uncommon for co-workers to speak to each other about another colleague where there are issues between them.

[196] Accordingly, FENZ was unable to justify its actions regarding this allegation.

Allegation 8(a) - On 29 September 2022, Ed did not include [Witness B] in an email to the rest of the Risk Reduction Team regarding electric vehicles and lithium-ion batteries

[197] On 29 September 2022 Mr Hopping allegedly sent an email about “EV Fire Safe” to employees who were in the Risk Reduction team excluding Witness B. Mr Hopping said he sent it to the people who were in the fire investigation team, which Witness B was not, and that Witness B was not the only member of the Risk Reduction team who did not receive this email.

[198] The Risk Reduction team has a team email, so Witness B alleged Mr Hopping must have entered each team member’s email address individually for them to have been excluded. Mr Hopping denied that he had intended to exclude Witness B. He said that not sending the email to Witness B was at worst “an omission”, that was not capable of amounting to serious misconduct.

[199] FENZ concluded that Mr Hopping intentionally excluded Witness B from this email, which amounted to bullying and it was a breach of the Standards Policy and the Code. A fair and reasonable employer could not have reached that conclusion in all the circumstances.

[200] Mr Stubbs did not adequately investigate how Witness B had been omitted from the email. He also failed to investigate whether the employees who received the email were fire investigators or whether anyone else on the Risk Reduction team had not received this email. He therefore failed to adequately consider Mr Hopping’s explanation for the omission.

[201] FENZ’s actions regarding this allegation were unjustified.

Allegation 8(b) – Excluded [Witness B] from an email about Fire Engineering Briefs following the team training session in August 2022

[202] This allegation was not substantiated, so it does not need to be addressed.

Allegation 9 – on 29 September 2022, Ed said in relation to a work Christmas day out, where one of the activities was pistol shooting, that he would be attending but “given how I feel about certain people in the office I might not be safe with a gun”

[203] During a discussion in the office on 7 November 2022 about attendance at a work function that was taking place at a pistol range, Mr Hopping allegedly said he would be attending but, “given how I feel about certain people in the office I might not be safe with a gun”.

[204] Mr Hopping recalled the discussion about the event but not the comment he allegedly made about not trusting himself with a gun. He also denied the comment (if it was found to have been made) had been targeted at Witness B.

[205] FENZ said this allegation was partially substantiated. Mr Stubbs concluded Mr Hopping made a comment about not trusting himself with guns, but did not find he had said “given how I feel about certain people” or that his comment had been targeted at Witness B.

[206] Given Mr Hopping’s admission he had participated in a conversation in the office about guns in connection with a social function event at a pistol range, this finding was available to a fair and reasonable employer. This allegation was not treated by FENZ as a breach of policy, so it did not attract a disciplinary sanction.

Allegation 10 – Ed declined to undertake work on a pyrotechnic display application and then subsequently agreed that he would undertake the work

[207] This allegation arose out of communications Mr Hopping and Witness A had on 9 December 2022 about him undertaking the pyrotechnic display application task.

[208] Mr Hopping sent Witness A an email querying if this was a task the Senior Advisors did, and pointing out he had not done the Fire Weather Index Training that was required for this task. Witness A responded to by acknowledging Mr Hopping had raised “some good points in [his] email”. A fair and reasonable employer could not have viewed this email as a refusal to do this task, as it was simply raising questions about it.

[209] Witness A said that after getting Mr Hopping’s email he had allocated this task to Witness B. Mr Hopping then came into Witness A’s office and it was alleged he first verbally said he would not do the task, and then later said he would do this task. Mr

Hopping denied he had declined to do the task and said he had just been seeking clarification about it.

[210] FENZ's conclusion that this allegation was substantiated was unjustified. FENZ said it was not a breach of policy, but it was relevant to substantiating allegation 13(d).

[211] It was not open to a fair and reasonable employer on the available evidence to have concluded that Mr Hopping had declined to do the task, then agreed to do it which is the specific disciplinary allegation that was put to him. Witness A did not claim that in either of the interviews he had with the BCO or external investigators.

[212] Nor did Witness A's memo to HR on 19 December 2022 state that Mr Hopping had declined to do the task. It alleged Mr Hopping's email said he did not have the skills or time to complete the task, which is what they later discussed in Witness A's office that afternoon.

[213] Mr Hopping was entitled to raise his concerns about this task with his manager, which is what the evidence established had occurred. Witness A even responded that Mr Hopping's points were good ones. The communications about this task should not have been made into a disciplinary concern. There was no evidence that Mr Hopping had deliberately refused to engage in this task.

[214] Mr Stubbs' view that the tone of Mr Hopping's email to Witness A was condescending towards Witness A was not a finding that was available to a fair and reasonable employer, based on an objective reading of the email.

[215] Mr Stubbs' finding that the email "aligned with Mr Hopping's pattern of confrontation behaviour towards his manager Witness A when he believes he was in the wrong" was not justifiable on a plain reading of that email, which even Witness A had stated made "some good points".

[216] FENZ's actions regarding this allegation were unjustified. A fair and reasonable employer could not have concluded on the available evidence that Mr Hopping had declined to do this task. Even if he had declined, a fair and reasonable employer could not have disciplined him for that given his valid concerns about his ability to do the task.

Allegation 11 – Ed withdrew from a Fire Weather Index course and grass curing project work

[217] Mr Hopping withdrew from the Fire Weather Index (FWI) course and grass curing project work based on NZPFU’s advice to do so, as his attendance was prohibited by the industrial action that was occurring at that time. FENZ knew that is why Mr Hopping did not attend that course.

[218] Mr Stubbs said that his concern, while not part of this allegation, was that Mr Hopping’s withdrawal from the course was done in a “spiteful manner”. However, as Mr Stubb acknowledged, that did not reflect the specific disciplinary allegation that was put to Mr Hopping to respond to. Furthermore, withdrawal based on specific union advice to do so (due to strike action) could not fairly or reasonably be said to be “spiteful”.

[219] It was not clear why Mr Stubbs said the withdrawal was done in a “spiteful manner”. However, the evidence produced to the Authority about this decision at the time it was made fell far short of establishing the withdrawal due to industrial action, had been done in a “spiteful manner”.

[220] Mr Stubbs’ conclusion that, while not amounting to a breach of FENZ policies, this allegation had been substantiated so was relevant to establishing allegation 13(d) was unjustified. A fair and reasonable employer could not have pursued this matter as a disciplinary concern, so the way FENZ dealt with this matter was unjustified.

Allegation 12(a) – Ed responded to the Senior Advisor role announcement by slamming the door at the meeting so hard that ceiling fragments fell onto the table

[221] On 26 August 2022 Witness A informed the Risk Reduction team that Witness B had been appointed to the Senior Advisor Risk Reduction role. That occurred during two meetings.

[222] Witness A’s first meeting was with the employee who was the union delegate, who had “reacted poorly” to this news and had left the workplace. He therefore was not at the second meeting Witness A had with the other team members.

[223] Witness A’s second meeting occurred the same day with Mr Hopping and two other employees who were in the Risk Reduction team. Witness B was not at this

meeting. These employees' reactions to Witness A's news about Witness B's Senior appointment were described as "also not positive".

[224] Witness A accidentally called Mr Hopping by the wrong name, which led to him screaming "you can't even get my fucking name right" and slamming the door as he walked out so hard that "stuff from the ceiling tiles came down on the desk around the team."

[225] Witness A's allegations about Mr Hopping's inappropriate reaction were corroborated by the two employees who were present. Mr Hopping was described as angry, upset, and as having raised his voice. One employee said he thought to himself "get out of the room before you belt someone" as that was the level of anger Mr Hopping was exhibiting.

[226] Mr Hopping admitted "emotions were a bit high" in this meeting and that "tensions [around that time] were super, super high". Mr Hopping admitted he was upset and had slammed the door. Witness A told the external investigator that Mr Hopping's behaviour was aggressive at this meeting, and he had shouted loudly.

[227] There was sufficient credible evidence for a fair and reasonable employer to have concluded that this allegation had been substantiated. It was also conduct that a fair and reasonable employer could have potentially pursued disciplinary action over, at the time it had occurred.

[228] Mr Hopping's claim that Mr Stubbs failed to consider "provocation" was not accepted. There was no objective evidence of provocation that would have reasonably excused Mr Hopping's inappropriate reaction.

[229] Nor was there any merit to Mr Hopping's claims that Witness A had mishandled the appointment process for the Senior role. The role was readvertised because the original advertisement had not stated the role could be based in Thames and not just Hamilton, not because of any wrongdoing by Witness A.

[230] Witness A said he wanted to take disciplinary action over Mr Hopping's reaction on 26 August 2022, and that he considered a formal warning would have been appropriate, which he considered "might of (sic) resolved some of the issues that have come up now."

[231] Witness A raised the possibility of disciplinary action with his manager and HR. However, Witness A's manager (who had to approve disciplinary action being taken) did not support it.

[232] Witness A's manager instead told Witness A to give Mr Hopping some space and (in conjunction with HR advice) recommended that the Risk Reduction team should undertake a "trust cultural workshop." This was the internal process Mr Peters facilitated in late 2022, which was intended to improve the culture within the team, but which was cancelled after a couple of sessions due to the BCO investigation.

[233] No action about this incident on 26 August 2022 was taken until disciplinary allegations were put to Mr Hopping by letter dated 13 September 2024, which resulted in his dismissal on 2 April 2025. That was clearly unjustified, as this incident had not only already been dealt with, but it was also stale.

[234] FENZ had elected not to treat this incident as a disciplinary matter at the time it occurred, so it could not reverse its decision on that by disciplining Mr Hopping for it more than two years and eight months later. Accordingly, FENZ's decision that Mr Hopping had breached the Code and Standards Policy was unjustified in all the circumstances.

Allegation 12(b) – Ed walked out of the office for 2-4 days

[235] After Mr Hopping left the meeting on 26 August 2022 he did not return to the office for two to four days. The exact amount of time was never clarified.

[236] The union representative in the Hamilton office had spoken to Witness A's manager and asked that Mr Hopping be given permission to work from home, which was approved. Mr Hopping also said he had been told by three Group Managers to "remove himself" from the Hamilton office, so he had worked from the Te Awamutu station (as per their authorisation) for a few days. Mr Hopping's absence from the workplace was therefore authorised.

[237] Witness A initiated a brief call to Mr Hopping on 12 December 2022 to apologise for getting Mr Hopping's name wrong and to follow through on Mr Hopping's unacceptable conduct. Witness A reported that Mr Hopping did not want to engage in conversation, and he said he was not going to apologise. Mr Hopping acknowledged Witness A had asked for an apology, which was not given.

[238] Witness A's manager told him on 14 or 15 December 2022 that Mr Hopping was working from home. Witness A said he was "in the dark" about Mr Hopping's whereabouts until then. Mr Hopping denied that, as he said he had told Witness A during their phone call on 12 December 2022 that he was working from the Te Awamutu station. Mr Hopping said he did not contact Witness A as he had been advised by other managers to "keep his head down".

[239] A fair and reasonable employer could not have treated this as a disciplinary concern. Mr Hopping had permission to work away from the Hamilton office Mr Hopping's evidence that three Group Managers had advised him to work away from the office was not contradicted.

[240] One of these three managers should have informed Witness A that they had authorised Mr Hopping to work away from the office for a period of time. Witness A's manager said he thought he had told Witness A that earlier than 14 or 15 August 2022, but Witness A said he had not. That was a breakdown in communications between Witness A and his manager. FENZ was not justified in holding Mr Hopping responsible for that.

[241] The available evidence had also failed to prove the allegation FENZ had made against him. Accordingly, the way FENZ dealt with this complaint was unjustified.

Allegation 13(a) - Ed stated to [Witness A] on 9 December 2022 that "when someone breaks his trust, he never forgives them; it's like a dead tree with no leaves – he waits for the tree to fall over and for a new seedling to spring out of the ground before he can move on"

[242] Witness A said Mr Hopping told him during their discussion on 9 December 2022 that he did not trust him. When Witness A asked for an example, Mr Hopping claimed Witness A had passed on an adverse comment to Employee D that Mr Hopping had made about him. Witness A said that had not occurred. Witness A later checked with Employee D, who also confirmed that had not occurred.

[243] Mr Hopping told Witness A that when someone broke his trust, he did not forgive them, and he used the dead tree metaphor. Mr Hopping had said he would be sending his training application to Witness A's manager because Mr Hopping did not trust Witness A. When Witness A told Mr Hopping "you need to be able to trust your manager", Mr Hopping said he replied:

Well, I don't have to do anything [name], I don't have to trust you at all, because I can't trust you.

[244] Mr Hopping accepted he made this comment but said it has been mischaracterised as having been made in a hostile manner.

[245] There was sufficient evidence from which a fair and reasonable employer could have concluded that Mr Hopping more likely than not made this comment to convey to Witness A that he considered the trust between them was not salvageable.

[246] Mr Stubb said this comment was substantiated and constituting bullying under the Bullying Policy and was a breach of the Standards Policy and the Code. He said it was also relevant to his consideration of allegation 13(d).

[247] A fair and reasonable employer could not have concluded these comments about trust should have attracted the disciplinary sanction of dismissal, as the conduct was stale by the time FENZ dismissed Mr Hopping for it. FENZ was therefore unable to justify how it treated this comment in all the circumstances.

Allegation 13(b) - Ed stated to [Witness A] on 9 December 2022 in a nasty tone that [Witness B] wouldn't like being told that [they], "[don't] have a job" if [their] appointment to the Senior Advisor role was overturned"

[248] Witness A alleged that on 9 December 2022 Mr Hopping had made "nasty and belittling comments about [Witness B] losing [their] role", as a result of the formal review of their appointment.

[249] Mr Hopping's attempt to characterise this comment as being one of genuine concern for Witness B losing their promotion was not credible in light of the available evidence.

[250] A fair and reasonable employer could have concluded that Mr Hopping made this comment about Witness B in a manner that was unfavourable. However, it was not open to a fair and reasonable employer to have treated this comment as a breach of the Code that warranted disciplinary action, with the sanction of dismissal.

[251] This is the type of concern that should have been raised with Mr Hopping in the first instance at a low level before disciplinary action was pursued. FENZ was not justified in how it dealt with this concern.

Allegation 13(c) - Ed stated to [Witness A] on 9 December 2022 that [Witness B], “likes to walk around with two pips on [their] shoulder and will not like having to wear just the one pip”

[252] It was clear from Mr Hopping’s interview transcripts and written feedback on the disciplinary concerns that he had an adverse view of Witness B wearing their pips, as he suggested they had done so “to wind up other people in the team that weren’t allowed to wear them or couldn’t wear pips.” Mr Hopping described this “as a little mind game” and he suggested Witness B’s wearing of pips had been contrary to FENZ policy as they were not entitled to wear rank.

[253] There was sufficient evidence, based on Mr Hopping’s own admitted comments, that a fair and reasonable employer could have concluded this allegation had been substantiated and that Mr Hopping’s comment was intended to put Witness B down.

[254] It was also open to a fair and reasonable employer to have rejected Mr Hopping’s explanation that he was commenting out of genuine concern for Witness B’s feelings if they had their pips removed (meaning if the review of their promotion succeeded), given his actions and comments were fundamentally inconsistent with that position.

[255] However, a fair and reasonable employer could not have disciplined an employee for this comment more than 37 months after it had been made. Accordingly, the way FENZ dealt with this comment was unjustified in all the circumstances.

Allegations 13(d) - In a conversation with [Witness A] on 9 December 2022, Ed acted threatening (sic) and of a bullish nature, including allegations 13(a)-(c)

[256] FENZ said that allegation 13(d) also included the three sub-allegations in 13(a)-(c) above regarding other comments Mr Hopping had made during his discussion with Witness A on 9 December 2022.

[257] The discussion between Witness A and Mr Hopping on the afternoon of 9 December 2022 was impromptu. Mr Hopping walked to Witness A's office after receiving his email about the pyrotechnic display application and stood in the doorway.

[258] A number of other topics were raised by Mr Hopping, such as Witness A's refusal to send Mr Hopping on a FWI course in Palmerston North; the way he had pulled out of the FWI course and grass curing project; Mr Hopping's slamming of the door on 26 August 2022 when he was told Witness B that had been appointed to the Senior role; the lack of apology for his reaction on 26 August 2022; the fact he did not trust Witness A and that once trust was broken with someone he never forgives them; the review of Witness B's Senior appointment; and claims by Mr Hopping that Witness A had not been doing his job after he had shifted out of the room the Risk Reduction team was in.

[259] In his memo to HR dated 19 December 2022, Witness A when describing the 9 December 2022 discussion with Mr Hopping said, "The way he spoke to me throughout this discussion was threatening and of a bullish nature." Although he later changed the word "threatening" to "forthright", Witness A had reported to HR that he considered Mr Hopping's behaviour was bullying.

[260] Witness A said he could tell as soon as Mr Hopping came and stood in his doorway with negative body language on the afternoon of 9 December 2022 that he was not happy, and it was not a friendly approach. Witness A described Mr Hopping as being forthright and using a slightly raised voice. Witness A described Mr Hopping's conduct towards him as "quite upsetting".

[261] Witness A recorded his concern that Mr Hopping would approach him in such a manner when he (and the team) was at that time undergoing the cultural awareness training being facilitated by Mr Peters. Witness A asked for an apology for the way Mr Hopping had acted on 26 August 2022, to which he replied, "No you are not going to get an apology from that."

[262] Mr Hopping then made a number of unpleasant comments about not trusting Witness A, and about how if someone broke his trust, he never forgives them. Mr Hopping also belittled Witness B and told Witness A he had not been doing his job for the last three months, since shifting offices.

[263] Witness A told Mr Hopping that FENZ had required him to shift offices as part of the cultural awareness and team building process Mr Peters was running. Mr Hopping had not known that, so had unfairly blamed this on Witness A's alleged poor management.

[264] Employee D saw Witness A immediately after Mr Hopping had left. Employee D's evidence was that Witness A was "physically shaking and quite distressed" immediately after this interaction with Mr Hopping.

[265] Another employee in the office next door to Witness A's office described hearing "a heated discussion", and said he had closed his door and put music on his headphones so that he could concentrate.

[266] When interviewed by the BCO investigator on 18 May 2023 Witness A said:

I had it wrong in my original memo, Ed wasn't aggressive, he was forthright ... What concerned me was that ... we were engaging in that cultural awareness training and then he was coming in and behaving like that.

[267] When interviewed by the external investigator on 26 October 2023, Witness A said he had retracted the allegation that Mr Hopping had been "aggressive" during their discussion on 9 December 2022, and instead said he had been "forthright". Witness A said Mr Hopping had been aggressive during the meeting on 26 August 2022 and described him as shouting, which was distinguished from his conduct during the 9 December 2022 discussion.

[268] Mr Hopping's written response in his 8 October 2024 feedback document was to reinforce that "trust is something [he] takes seriously" and that he thought his comments were acceptable because he did not trust Witness A. He also continued to try to excuse his actions due to his adverse views of Witness A as a manager.

[269] Mr Stubbs did not consider Mr Hopping's adverse views of Witness A as a manager excused the behaviours FENZ was concerned about, which was a conclusion that was available to a fair and reasonable employer.

[270] Mr Hopping disputed this allegation. He said there had been a “robust discussion” which was not malicious. Mr Hopping said his actions had occurred within the broader context of workplace tensions, what he claimed were “managerial missteps”, and Witness A’s alleged poor handling of team dynamics. Mr Hopping said these factors played a significant role in the strained workplace environment.

[271] It was open to a fair and reasonable employer at the time to have concluded that Mr Hopping’s behaviour towards Witness A on 9 December 2022 was disrespectful and bullish, and therefore inappropriate.

[272] Mr Hopping used a raised voice, he had undermined Witness A within hearing of others by standing in the doorway of Witness A’s office with the door open and making adverse comments about Witness A and his decision-making and management of the Risk Reduction team.

[273] Mr Hopping was clearly unhappy about a number of matters he raised with Witness A, so it was likely this dissatisfaction was strongly conveyed to Witness A, who Mr Hopping viewed was to blame for the matters he was concerned about. Mr Hopping admitted the conversation was heated.

[274] The way Mr Hopping interacted with Witness A was inappropriate. Witness A found their exchange upsetting and other employees noticed that both participants had been left shaken by this encounter. One witness described Witness A as being “visibly distressed” and upset. Witness A said he had lost sleep over it. Other witnesses told the external investigator that Witness A appeared to be afraid of Mr Hopping.

[275] There was sufficient evidence for a fair and reasonable employer to have concluded that this allegation had been partially proven. While Witness A may have felt “threatened” and vulnerable by criticisms Mr Hopping had made of him as a manager, there was insufficient evidence for a fair and reasonable employer to have concluded that Mr Hopping had “acted threatening”, which is what FENZ had alleged.

[276] Witness A specifically withdrew the word “threatening” from his complaint and substituted it with “forthright”, which more closely aligned with Mr Hopping’s description of the exchange as “robust”. Mr Hopping was critical of Witness A, he was likely confrontational in his approach and demeanour towards Witness A, and he made

adverse comments about Witness B. However, there was no evidence he had “threatened” Witness A or had “acted threatening”.

[277] In such circumstances, a fair and reasonable employer could not make a finding that Mr Hopping had “acted threatening” when the complainant had expressly said he had not. FENZ’s conclusion regarding this allegation was unjustified.

Summary of findings

[278] A fair and reasonable employer could not have pursued disciplinary action in the first instance for allegations 1, 2, 3(a) and (b), 5, 6, 7, 8(a), 10, 11, 12(b) or 13(a)-(c).

[279] A lack of eye contact; making a new employee feel unwelcome; not copying someone on one email; making a comment that had upset the person it was made to; commenting in an unfavourable way about one colleague to another colleague or manager; making a ‘joke’ that was not well received; interacting with the manager in a way that was upsetting to them; and discussions relating to the allocation of work tasks; are all examples of conduct that should be addressed with an employee at a low level in the first instance.

[280] A fair and reasonable employer could not discipline an employee for such matters without having first made the employee aware that their conduct and behaviour fell short of what was expected and required of them.

[281] However, prior to the BCO investigation no-one had put Mr Hopping on notice that his conduct was inappropriate, unacceptable or had been upsetting some employees and his manager.

[282] A discussion, expectation setting, informal counselling, a performance appraisal or even performance management process were examples of ways in which a fair and reasonable employer could have potentially addressed these sorts of concerns in the first instance. Such an approach would have been consistent with FENZ’s policies, but did not occur. Mr Hopping heard about these concerns for the first time during the formal BCO investigation process, which had a disciplinary focus.

[283] The conduct associated with these disciplinary allegations was not serious enough to objectively amount to bullying or harassment under the Bullying Policy in

the first instance. These were the sorts of concerns that should have been raised with an employee before formal action was taken.

[284] A fair and reasonable employer could not have addressed these concerns by embarking on a lengthy investigation and disciplinary process that lasted for more than two years. FENZ's actions, and how it acted, regarding these allegations was not what a fair and reasonable employer could do in all the circumstances.

[285] Even if the conduct involved in these allegations had breached FENZ's policies, these allegations could not in the first instance justify findings of serious misconduct or the disciplinary sanction of dismissal.

[286] While it would have been open to a fair and reasonable employer to have potentially pursued disciplinary action for allegations 12(a) and 13(d), had it done so at or around the time these issues occurred, that is not what happened.

[287] However, FENZ was not justified in doing so in all the circumstances of this case. Mr Hopping's manager, Witness A's manager and HR were aware of the misconduct in allegation 12(a) at the time it occurred but considered it did not even warrant a conversation with Mr Hopping. Instead, a decision was made to address this incident via the workshop process Mr Peters facilitated in late 2022.

[288] Accordingly, disciplinary action had been considered and ruled out as a suitable response to the incident that arose on 26 August 2022, which was allegation 12(a). FENZ had not considered allegation 12(a) sufficiently serious to even warrant an expectation setting meeting with Mr Hopping, so it cannot two years and eight months later use it to justify its dismissal of him for bullying.

[289] The incident in allegation 13(d) arose on 9 December 2022. Mr Hopping's conduct towards Witness A was clearly unsatisfactory. However, he should have been spoken to by management about it at that time but was not. This incident was stale by the time FENZ took disciplinary action against Mr Hopping over it, so FENZ's actions in doing so were not justified in all the circumstances.

[290] Also, the evidence did not support FENZ's disciplinary finding for allegation 13(d), because it did not establish he had acted "threatening", so it was not a conclusion that a fair and reasonable employer could have reached in all the circumstances.

Could a fair and reasonable employer have concluded that Mr Hopping’s conduct amounted to serious misconduct?

[291] Serious misconduct is conduct that fundamentally undermines the trust and confidence inherent in the employment relationship. It strikes at the heart of the relationship and is so serious it cannot usually be dealt with by a graduated warning process.

[292] The fact that Mr Hopping had worked as normal after the incident on 9 December 2022 until he was dismissed on 2 April 2025 without any further complaints established that trust and confidence had not been fundamentally undermined as a result of the 9 December 2022 incident.

[293] FENZ did not act consistently with allegation 13(d) being an instance of serious misconduct. Mr Hopping was not suspended. He was also given a Senior “Acting Up” role from 2 September 2024 to 27 October 2024, which occurred after FENZ had received the findings the external investigator had made against him as a result of the lengthy BCO investigation.

[294] It was fundamentally unfair for Mr Hopping to have proceeded to work for FENZ for two and a half years with no issues raised to management, then suddenly find himself dismissed. In such circumstances it was not open to a fair and reasonable employer to have viewed the partially substantiated allegation 13(d) as serious misconduct that justified dismissal.

[295] Accordingly, FENZ was not justified in concluding that Mr Hopping had engaged in serious misconduct, so it was unable to justify his dismissal. Accordingly, Mr Hopping’s unjustified dismissal personal grievance claim succeeded.

What remedies should be awarded?

Reinstatement

[296] FENZ strongly opposed reinstatement.

[297] However, FENZ had been unable to establish on the balance of probabilities that Mr Hopping had engaged in serious misconduct, so dismissal was not a sanction a fair and reasonable employer could have imposed in all the circumstances. Mr Hopping’s dismissal was therefore substantively unjustified.

[298] The Authority recognised that Witnesses A and B and Employees D, E and F all strongly opposed Mr Hopping's permanent reinstatement.

[299] Witness A no longer works for FENZ. In his interview with the external investigator Witness A commented about Mr Hopping:

He does his job really quite well and I always thought he had a really good future and that until all this sort of thing came out. He probably still, hopefully, will do.

[300] Witness B currently works outside the Hamilton District and wanted nothing to do with Mr Hopping. They did not believe an apology would be sincere and they do not want to be around him at all for their own wellbeing. Witness B wanted to return to the Hamilton office but would not be prepared to do that if Mr Hopping was there.

[301] Employee D is not in the same team as Mr Hopping and although they share an office, there is no reporting line between them. Employee D had previously managed Mr Hopping and there appeared to be ongoing tension between them dating back to that. They would sometimes exchange brief greetings in the mornings, but apart from that did not interact with each other. Employee D called Mr Hopping a "nice guy" in his BCO interview on 31 May 2023.

[302] Employee E is not in Mr Hopping's team, and she was usually based in Thames, although she had been spending more time in the Hamilton office since Mr Hopping was not there. Employee E said she had raised some concerns about Mr Hopping with Witness A in 2022. Employee E had not made a formal complaint about Mr Hopping and did not appear to have raised any issues about him from 2023 onwards.

[303] The issues Employees D and E have with Mr Hopping appeared to have arisen from longstanding workplace tensions that have remained unresolved, so FENZ needs to bear responsibility for that.

[304] Employee F was based in the Hamilton office but had also worked in Thames. Employee F would have to work with Mr Hopping. They had previously worked well together, so Mr Hopping was surprised by Employee F's evidence. Employee F had not personally had issues with Mr Hopping (although he had been unhappy with a comment Mr Hopping had made), so he said he was speaking out to support others who had.

[305] The Authority considered the relationship between Employee F and Mr Hopping could be reestablished, with appropriate support. FENZ has the resources and internal expertise to be able to facilitate that.

[306] It is not unusual for employees to resist reinstatement of a former colleague who has been dismissed. FENZ has the internal resources to be able to adequately support these employees with their fears and adverse feelings about Mr Hopping's return to the workplace. FENZ must also bear some responsibility for how these employees feel, by not adequately addressing workplace concerns as and when they arose, at the lowest level, which would have benefited everyone more than the approach that was taken.

[307] Section 125 of the Act provides that reinstatement is the primary remedy, provided it is practicable and reasonable. FENZ did not establish that reinstatement was not practicable or reasonable. Mr Hopping's role is still available for him, his skills are current, and his reintegration into the team was considered manageable by the manager he would be reporting to.

[308] Mr Tinworth, who had managed Mr Hopping since September 2023 and who would be continuing to manage him if reinstatement was granted, gave evidence that his permanent reinstatement could be managed, if that was what the Authority ordered.

[309] Witnesses described improvements in the team that had occurred since Mr Tinworth had been managing them, while recognising there was still considerable work to do to resolve the outstanding conflicts in the teams he managed. No complaints about Mr Hopping had been made since Mr Tinworth had been managing him.

[310] Mr Hopping should not have been dismissed in the first place, so it is only fair he is restored to the situation he would have been in had he not been unjustifiably dismissed.

[311] On 10 November 2025, or by such later date the parties mutually agree on, FENZ is ordered to reinstate Mr Hopping to the Advisor Risk Reduction role he had prior to his dismissal, subject to the following conditions.

Conditions of reinstatement

[312] Mr Hopping is not permitted to attend the Hamilton office prior to 10 November 2025.

[313] From the date of this determination up to and including 7 November 2025, Mr Hopping should not undertake any of his usual work duties, but should focus on:

- (a) Attending mediation to discuss with FENZ how his reinstatement can be successfully managed; and
- (b) Addressing the recommendations that have been made in this determination to support his effective reinstatement.

[314] Mr Hopping is to return to the workplace and to commence undertaking the usual duties of his Advisor Risk Reduction role from 10 November 2025 onwards.

[315] For up to the first three months of Mr Hopping's reinstatement back into the workplace (i.e. over the period from 10 November 2025 to 10 February 2026), he is to be primarily based in the Chartwell Brigade Office, or such other location as is mutually agreed by the parties.

[316] During this three months' period, there is to be a gradual reintegration of Mr Hopping back into working alongside the Risk Reduction team and towards him being permanently based back in the Hamilton office. This reintegration should start off slowly and build up to Mr Hopping's full return to the Hamilton office by no later than 10 February 2026, or such earlier period the parties mutually agree on.

[317] This will allow time for the employees who opposed Mr Hopping's reinstatement to adjust to his return to the office by seeing and being around him for initially short periods of time. This order has been made in recognition of the genuine distress that the four employees who had opposed his reinstatement exhibited when giving their evidence.

[318] This gradual reintegration process will give the parties time to work through in a considered way how they can make Mr Hopping's reinstatement successful. The parties have been directed to mediation to occur on or before 7 November 2025 to assist them with that.

Reinstatement recommendations

[319] The Authority recommends that the parties should take the following actions to help make reinstatement successful:

- (a) By 10 February 2026, if possibly or promptly thereafter, FENZ has all employees, including managers, who work in or from the Hamilton office or who are in Mr Hopping's reporting line, complete the cultural workshop process that Mr Peter was facilitating.
- (b) FENZ provides Mr Hopping with individual training and guidance on the standards of behaviour expected in a modern office environment.
- (c) FENZ provides Mr Hopping with individual training on how to effectively communicate and engage with others in the workplace, including on how to effectively deal with conflict or differences of opinion.
- (d) Mr Hopping is required to familiarise himself with FENZ's Standards Policy, Bullying Policy and Code and to complete any training modules that FENZ offers on these policies.
- (e) FENZ provides the employees who opposed Mr Hopping's reinstatement with written guidance on what the process is if they want to raise any future concerns, (for example, written complaint to their manager and/or HR as close to the incident/event as possible).
- (f) FENZ is to offer to have individual meetings with each employee who opposed Mr Hopping's reinstatement to discuss how they can be supported in light of the Authority's reinstatement order.
- (g) Mr Tinworth has at least fortnightly one on one meetings with Mr Hopping during his gradual reinstatement process, over the period from 10 November 2025 to 9 February 2026, so that any issues that have arisen can be discussed and addressed at the lowest level.

Lost remuneration

[320] Mr Hopping is to be reinstated to the payroll before the next usual pay run. From FENZ's next usual pay run, Mr Hopping is to be paid his usual remuneration which is the remuneration (including any pay raises) he would have received had he not been dismissed.

[321] Within 28 days of the date of this determination, FENZ is ordered to pay Mr Hopping lost remuneration pursuant to s 128(3) of the Act equivalent to what he would have received had he not been dismissed. This will cover the period from 2 April 2025 to the date he receives his next pay.

[322] The four weeks' pay in lieu he received on termination is to be credited against the amount of lost remuneration he is to receive. The parties have leave to revert to the Authority within 28 days of the date of this determination, to fix Mr Hopping's award of lost remuneration if they are unable to agree on it themselves.

Distress compensation

[323] Mr Hopping gave detailed evidence about the hurt, humiliation and distress his dismissal has caused him. He said how incredibly hard it had been for him to go to his wife and advise her that he had been dismissed as the primary breadwinner in the household.

[324] Mr Hopping also said how emotional and upsetting it was to have to tell his children that he had been dismissed from his employment and to explain that he would have a limited ability to support them financially as a result of that. In particular, he had been unable to continue financially supporting his daughter while she was studying at university which was distressing to him.

[325] Mr Hopping said he had been stripped of the ability to volunteer for the Te Awamutu Fire Brigade as a result of the dismissal, which was a significant part of the way that he gave back to his local community.

[326] FENZ is ordered to pay Mr Hopping \$25,000.00 under s 123(1)(c)(i) of the Act to compensate him for the hurt, injury to feelings and humiliation his unjustified dismissal caused him.

Should remedies be reduced on the grounds of contribution?

[327] Section 124 of the Act requires the Authority to assess the extent to which Mr Hopping's actions contributed to the situation that gave rise to his dismissal grievance, and if contribution was established to reduce remedies accordingly. Contribution denotes blameworthy conduct which has been proven on the balance of probabilities.

[328] Mr Hopping's interactions with Witness A on 26 August 2022 and 9 December 2022 was rude, confrontational and inappropriate. Mr Hopping acted aggressively, shouted and swore at Witness A on 26 August 2022. Mr Hopping also slammed the door so hard that parts of the ceiling fell down as he left the meeting with Witness A.

[329] Even though FENZ elected not to discipline Mr Hopping for his misconduct on 26 August 2022 (when in the Authority's view it could have), Mr Hopping still unreasonably refused to apologise on two occasions when an apology was understandably sought by Witness A.

[330] On 9 December 2022 Mr Hopping raised his voice to Witness A and criticised him within earshot of other staff. Mr Hopping also made adverse comments to Witness A about him as a manager and about him being untrustworthy. Mr Hopping also made adverse comments about Witness B losing their promotion and pips.

[331] Mr Hopping spoke rudely to Witness B about her not being welcome at the strike if she was not a union member. He was also one of a number of employees in the Hamilton office who acted in an unfriendly manner that made Witness B feel unwelcome in her new job. Mr Hopping made unfavourable comments about Witness B to another colleague, which hurt Witness B when those comments were passed on to her. Mr Hopping's actions, comments and demeanour in the workplace have also hurt Employees D and E, and have concerned Employee F.

[332] A deduction of twenty per cent, which amounts to \$5000.00, from Mr Hopping's award of \$25,000.00 distress compensation was sufficient to reflect the extent of his blameworthy conduct.

[333] Accordingly, after s 124 has been applied to his remedies FENZ is ordered to pay Mr Hopping \$20,000.00 distress compensation.

Outcome

[334] FENZ's dismissal of Mr Hopping for serious misconduct was substantively unjustified. FENZ is ordered to reinstate Mr Hopping to his previous role and to the payroll subject to the prescribed conditions.

[335] Within 28 days of the date of this determination, FENZ is ordered to pay Mr Hopping lost remuneration from 2 April 2025 to the date he is next paid. It is also ordered to pay him \$20,000.00 distress compensation.

What costs and disbursements should be awarded?

[336] Mr Hopping as the successful party is entitled to a contribution towards his legal costs. This is to be assessed based on the notional daily tariff of \$4,500.00 for the first day of the investigation meeting then \$3,500 for each subsequent day.

[337] The parties are encouraged to resolve costs by agreement. If that does not occur, then Mr Hopping has 28 days from the date of this determination to lodge costs submissions and FENZ has 14 days from receipt of his costs submissions to respond.

[338] The parties are invited to identify any factors they say should warrant any changes that should be made to the notional starting tariff.

[339] FENZ is entitled to a contribution towards its legal costs of \$2,250.00 for its success on the interim reinstatement application, so that amount should be deducted from the costs FENZ is required to pay Mr Hopping.

Rachel Larmer
Member of the Employment Relations Authority