

NOTE: This determination contains an order prohibiting publication of certain information referred to at paragraph [7] below.

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 635
3327580

BETWEEN YOLIND STRYDOM
Applicant

AND KINGSWAY SCHOOL
BOARD OF TRUSTEES
Respondent

Member of Authority: Andrew Gane

Representatives: Keziah Singleton, counsel for the Applicant
Stephen Corlett and Phillipa Couldwell, counsel for the Respondent

Investigation Meeting: 20-22 May 2025 in Auckland

Submissions received: 4 June and 14 July 2025 from Applicant
2 July 2025 from the Respondent

Determination: 9 October 2025

DETERMINATION OF THE AUTHORITY

Non-publication order

[1] On 18 February 2025 an interim non-publication order was issued prohibiting the publication of the identities of Yolind Strydom, the KingsWay School Board of Trustees (KingsWay), the KingsWay School (the school) and its witnesses to this employment relationship problem.¹ They were identified only by randomised initials

¹ *DBY v SLN* [2025] NZERA 86.

which had no correlation to their actual names and any information referencing them was prohibited from publication.

[2] Pursuant to s 10(1) Schedule 2 of the Employment Relations Act 2000 (the Act), KingsWay applied for the interim non-publications order to be made permanent on the basis that publication would prejudice and damage the reputations of those who are named.

[3] In the alternative, KingsWay submitted all staff and witnesses save for the school principal Graham Budler and the school board chairperson Paul Claydon, should have their identifying details suppressed, or anonymised. KingsWay also sought for Mr Budler and Mr Claydon to be referred to only by role designation and not name.

[4] Ms Strydom initially consented to the interim non-publication order being made. In the interests of open justice, she withdrew her consent and opposed KingsWay's application for permanent orders for all parties involved in these matters. However she did consent to an order for non-publication of the identifying details of persons who were not witnesses but were referred to as part of the Authority's findings.

[5] In the recent Employment Court decision, *MW v Spiga Ltd* the full court confirmed that open justice is a fundamental principle.² An exception should only be ordered when strictly necessary to serve the ends of justice. There needs to be compelling evidence that specific adverse consequences could reasonably be expected to occur. This affirmed the existing leading authority of the Supreme Court.³

[6] After reviewing the detailed submissions of the parties, I find that in the interests of open justice, Ms Strydom, KingsWay, the school, Mr Budler and Mr Claydon should all be named as part of this determination. Taking into account the circumstances of this case and the principles of equity and good conscience, a non-publication order is appropriate to protect the identity of KingsWay's other witnesses and of persons who were not witnesses, but were referred to as part of the Authority's findings. These persons were in non-senior leadership roles and disclosing their identities would add little to the resolution of this employment relationship problem.

² *MW v Spiga Ltd* [2024] NZEmpC 147.

³ *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [13].

[7] The interim non-publication order I issued on 18 February 2025 is vacated and pursuant to Clause 10 of schedule 2 of the Act, I grant a permanent non-publication order prohibiting the publication of the identity of KingsWay's other witness. They will be identified only by randomised initials which have no correlation to their actual name. I also grant a permanent non-publication order prohibiting the publication of the identity of persons who were not witnesses, but were referred to as part of the Authority's findings, any information referencing them is prohibited from publication.

Employment relationship problem

[8] Ms Strydom started her employment for KingsWay on 14 April 2022. On 19 September 2024 KingsWay dismissed Ms Strydom from her employment. As a result of her dismissal, Ms Strydom lodged a statement of problem at the Authority raising claims of unjustified disadvantage, wage arrears, breach of contract and unjustified dismissal.

[9] KingsWay opposed Ms Strydom's claims and said Ms Strydom was justifiably dismissed for serious misconduct and incompatibility. It also opposed Ms Strydom's claims for wage arrears and damages and denied all liability for these claims.

Interim reinstatement application

[10] Upon making her claims to the Authority, Ms Strydom also made an application for interim reinstatement. In a determination issued on 18 February 2025, the Authority declined Ms Strydom's application.⁴ The background narration to this employment relationship problem and reasons for declining her application was set out in that determination.

The Authority's Investigation

[11] By the end of 2024, Ms Strydom had lodged several applications to the Authority against KingsWay. On 6 March 2025 Ms Strydom lodged an amended statement of problem which combined her previous applications into a single claim and withdrew her application for permanent reinstatement.

⁴ *DBY v SLN* [2025] NZERA 86.

[12] After issuing the preliminary determination, the Authority arranged a case management conference making timetabling directions for the Authority's investigation into Ms Strydom's substantive claims. This determination resolves those claims.

[13] During the course of investigating this employment relationship problem the Authority heard evidence from Ms Strydom and her husband. In support of KingsWay the Authority heard from Mr Budler, Paul Claydon and a KingsWay board member.

[14] All witnesses answered questions under affirmation. After the close of hearing evidence, the parties lodged written submissions.

[15] As permitted by s 174E of the Act, this determination does not record all the evidence and submissions received and fully considered during the Authority's investigation, but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Issues

[16] The issues for investigation and determination are:

- (a) Was Ms Strydom paid the correct salary by KingsWay in 2023?
- (b) Did KingsWay breach the terms of Ms Strydom's employment agreement when it failed to pay her overtime and a higher duties allowance?
- (c) If KingsWay is found to have breached Ms Strydom's employment agreement, is Ms Strydom entitled to:
 - i. be paid overtime and if so, what amount is she owed; and
 - ii. receive a higher duties allowance and if so, what amount is she owed?
- (d) Was Ms Strydom unjustifiably disadvantaged by KingsWay as a result of KingsWay's alleged actions:
 - i. during its 2023 restructure; and
 - ii. in failing to provide Ms Strydom a healthy and safe working environment?

- (e) Was Ms Strydom unjustifiably dismissed by KingsWay?
- (f) If any of KingsWay's actions were unjustified, what if any remedies should be awarded to Ms Strydom?
- (g) What costs and disbursements should the successful party be awarded?

Background

Ms Strydom's employment arrangement

[17] The background narration to this employment relationship problem was initially set out in the Authority's preliminary determination. For the sake of convenience, certain facts from that determination are restated below.

[18] Ms Strydom started working full-time at the school on 14 April 2022 in a senior management role as the school executive officer. Prior to starting this role, Ms Strydom briefly worked for the school on a voluntary basis.

[19] Upon starting her employment Ms Strydom was employed pursuant to an individual employment agreement that was based on the terms set out in the Support Staff in Schools Collective Agreement 2022-2024 (SSCA). Her salary of \$130,000 per annum was on par with the associate principal's salary.

[20] As part of her role Ms Strydom was a member of the executive leadership team (ELT) and was responsible for managing the school's support staff, its financial and property affairs, and engaging contractors. She reported to the school principal Mr Budler. Other staff, including the finance team reported to Ms Strydom.

Alleged changes to Ms Strydom's role

[21] From November 2022 to June 2023 Ms Strydom claimed her workload increased considerably. Around this time Ms Strydom proposed changes to address various workload issues within her team.

[22] KingsWay responded by arranging additional support staff to assist Ms Strydom. It also made changes to the scope of Ms Strydom's role (upon her request) and removed some duties on a temporary basis. Ms Strydom claimed the changes led to extra tasks related to:

- (a) a project organised by her and Mr Budler to move school cleaning duties from a contractor to an inhouse employee. As a result of issues with the contractor, Ms Strydom alleged she had to carry out some of the cleaning duties;
- (b) her being responsible for the school security including ensuring the school was properly locked up at the end of the school day from January 2023; and
- (c) undertaking payroll tasks as a result of the payroll administrator's resignation.

[23] During this time Ms Strydom claimed she felt she had no choice but to carry out the extra work and work over and above her contracted hours.

The review of the school's operation

[24] On 15 August 2023 Mr Budler met with Ms Strydom and advised that due to the workload issues within the team, and the recent significant growth of the school roll, it had engaged Resolve Consulting (Resolve) to review its operations and to provide it with advice about what if any changes could assist the school moving forward.

[25] Mr Budler advised Ms Strydom that KingsWay would not be looking to reduce the number of roles overall and would engage in a feedback process with staff prior to making any decisions about the next steps. He said he advised Ms Strydom it was important that she and her team were involved in that process.

[26] Later in August 2023, Ms Strydom met with Resolve and provided her views about the issues she was seeing at the school. Ms Strydom's feedback was incorporated into the report.

[27] On 6 September 2023 Resolve submitted its report to the school (the Resolve report). The key recommendations in the Resolve report included:

That the current executive officer role be split into two positions; Director of Finance and Director of Operations;

That the school moved to splitting the role of executive officer into two new roles - Director of Finance and Director of Operations. The first role to focus only on the finances of the school, the second role takes on areas including: Property, Cleaning, Uniform Shop, Health & Safety as well as other school operational issues that are not educational. It is recommended that both roles report to the Executive Principal, with the Director of Finance and the Director of Operations being invited in as required (as is the current case for the Director of HR)".

[28] Its primary recommendation was for Ms Strydom's executive officer role to be split into two positions, the director of finance and the director of operations. Its recommendation was based on the size of the school and concluded that the span of the executive officer role was unsustainable for a single person.

The restructuring process

[29] On 8 September 2023 the Resolve report was finalised. On 14 September 2023 KingsWay wrote to Ms Strydom, providing a copy of the Resolve report and advising that it intended to initiate a restructuring process. KingsWay intended to follow the process as set out in Part 10 of the SSCA relating to restructuring, and surplus staffing, in consultation with Ms Strydom.

[30] On 22 September 2023 Ms Strydom provided preliminary feedback on the review. She confirmed that she had read and understood the Resolve report.

[31] On 20 October 2023 KingsWay met with Ms Strydom to explain the proposal and subsequently sent her a letter setting out the detail of the restructuring proposal. The proposal included the disestablishment of the executive officer role and creation of two lower-level director roles with lower salaries. This was essentially KingsWay's formal initiation of its restructure process and proposal.

[32] On 30 October 2023 Mr Budler confirmed to Ms Strydom that the salary for the director roles would be approximately \$115,000 per annum, but would be negotiable with the person who ultimately accepted the role.

[33] On 30 October 2023 Ms Strydom submitted further feedback including that she wanted to be considered for the Director of Finance position and supported the change in allocation of responsibilities.

[34] On 1 November 2023 Ms Strydom provided a further eight pages of feedback on the proposal. Ms Strydom attached a spreadsheet indicating that she believed a salary of \$139,393 should be allocated to the Director of Finance position.

Ms Strydom's first personal grievance

[35] On 8 November 2023 Ms Strydom's legal representative raised a personal grievance on Ms Strydom's behalf regarding the restructuring process.

[36] In response to a request by Ms Strydom the consultation process was extended to give her additional time until 17 November 2023 to respond to the proposal. Ms Strydom submitted a further 12 pages of submissions and two spreadsheets by way of feedback.

[37] On 17 November 2023 KingsWay issued its proposal outcome letter, which was to proceed with its proposal and included offering Ms Strydom redeployment into a new role. She would also receive a redundancy payment as compensation for the proposed disestablishment of her executive officer role. As a result Ms Strydom withdrew her personal grievance on 22 November 2023.

[38] On 24 November 2023 Ms Strydom accepted a new role as Director of Finance and commenced working in the role on 28 January 2024. On 6 February 2024 Ms Strydom received her redundancy payment of \$20,832 (gross).

Ms Strydom's second personal grievance

[39] On 4 March 2024 Ms Strydom engaged new representatives and raised a second personal grievance in the form of a bullying complaint against both Mr Budler and another KingsWay staff member, BCA. In response KingsWay set up an investigation team led by Mr Claydon to investigate Ms Strydom's claims. The team investigated Ms Strydom's complaints by interviewing relevant witnesses, and consulting Ms Strydom.

[40] Between 6 March and 16 April 2024, the parties through their legal representatives unsuccessfully attempted to resolve the employment issues between them.

[41] On 29 April 2024 KingsWay received a letter of complaint from four members of the ELT against Ms Strydom raising serious concerns about Ms Strydom's workplace conduct. As part of the complaint, the ELT members also said they no longer had a compatible working relationship with Ms Strydom.

[42] On the same day, Ms Strydom lodged a statement of problem with the Authority in respect of the issues she raised in her first and second personal grievances.

[43] On 8 May 2024 Ms Strydom's representative was provided with a copy of KingsWay's investigation report into Ms Strydom's bullying allegations (the bullying

complaints report). The bullying complaints report concluded that there was no evidence of bullying, and therefore no further investigation or action was required by KingsWay.

Ms Strydom's third personal grievance

[44] In June 2024 a separate investigation team also led by Mr Claydon was assigned by KingsWay to carry out an investigation into the ELT's allegations against Ms Strydom. The investigation team conducted interviews with members of the ELT and KingsWay employees.

[45] On 21 June 2024 Ms Strydom raised a third personal grievance raising claims of bias against those engaged in the internal investigation of her alleged actions. On 8 July 2024 Ms Strydom also provided submissions to the investigation team along with further evidence refuting the allegations against her.

[46] On 13 August 2024 the investigation team issued to KingsWay their final report (misconduct report) in respect of ELT's allegations against Ms Strydom. The investigation team found Ms Strydom engaged in serious misconduct and that her behaviour resulted in her being incompatible with the other ELT members. KingsWay reviewed and approved the misconduct report on 19 August 2024 and the findings were sent to Ms Strydom (through her third representative) on 22 August 2024.

[47] On 9 September 2002 KingsWay met with Ms Strydom and her representative to obtain further feedback from her in respect of potential outcomes of its misconduct investigation. In response to the allegations of misconduct and incompatibility, Ms Strydom proposed that she would accept a lesser role, not report to the ELT or Mr Budler, but rather report to an assistant director. The next day, Ms Strydom formally sent her proposal in writing to all KingsWay board members.

KingsWay's disciplinary process

[48] On 12 September 2024 KingsWay met to discuss the outcome of the misconduct report and confirmed its preliminary decision to dismiss Ms Strydom. During the meeting, KingsWay stated that they had considered alternatives to dismissal, including each of Ms Strydom's proposals, but ultimately did not consider any of them workable or appropriate. It also said that there were ELT members and a senior staff member who stated they would leave KingsWay if Ms Strydom was allowed to return to work. As a

result, KingsWay concluded the relationship between Ms Strydom and KingsWay was irreparable.

[49] On 16 September 2024 KingsWay confirmed its preliminary decision in writing to Ms Strydom. The decision was to terminate Ms Strydom's employment with immediate effect and sought feedback from Ms Strydom by 17 September 2024.

[50] On 17 September 2024 Ms Strydom submitted a response to KingsWay's proposed disciplinary sanction, challenging the efficacy of the investigation, the findings and KingsWay's reliance on the conduct report.

[51] KingsWay considered Ms Strydom's feedback and on 19 September 2024, it confirmed to Ms Strydom its decision to terminate her employment. On 26 September 2024 Ms Strydom raised a fourth personal grievance for unjustified dismissal and lodged an application for interim reinstatement.

Was Ms Strydom paid the correct salary in 2023?

[52] While engaged in her executive officer role, Ms Strydom claimed she was entitled to an annual salary increment. She also said she was assured by KingsWay that she would be entitled to salary increments which were matched to the associate principal's gross salary (which included several salary components).

[53] Ms Strydom said KingsWay led her to believe that when her salary increment was determined, it would be backdated to April 2023. However, when she received her salary increase on 12 December 2023, it was only backdated to October 2023.

[54] Ms Strydom also submitted that the increase was based on a monthly match of just one component of the associate principal's salary, rather than the full gross salary for that position. As a result, she claimed she was underpaid the amount of \$5,782.40 gross of tax (being her salary increment of \$2.78 per hour, or \$222.4 per week, for 26 weeks between 1 April 2023 and 3 October 2023).

[55] In assessing Ms Strydom's claim, it appears a key aspect of her claim arose from a \$5,000 payment received by all associate principals on 12 December 2023. This payment was in lieu of salary increases associate principals had not received during the Area School Teachers' Collective Agreement (ASTCA) collective negotiation period.

These were increases which related to bargaining matters which applied directly to those who were subject to the ASTCA.

[56] KingsWay submits that it did not undertake to ensure that Ms Strydom was paid every sum to which the associate principals were entitled. It also argued Ms Strydom was employed under the terms of the SSCA as compared to the associate principals who were employed under the ASTCA. KingsWay submitted that as Ms Strydom was not employed under the terms of the ASTCA she was therefore not entitled to all the benefits which may arise through the terms of the ASTCA.

[57] I accept KingsWay was not obliged to backdate her salary increment to April 2023 nor grant Ms Strydom the benefit of the \$5,000 under the ASTCA, because it did not apply to her as she was not covered by that agreement.

[58] I find KingsWay did not breach Ms Strydom's employment agreement. Ms Strydom was paid her correct salary for 2023 pursuant to the terms of her employment agreement.

Was Ms Strydom entitled to receive a higher duties allowance and if so, in what amount?

[59] Ms Strydom submits that she was required to perform the duties and carry out the responsibilities of the principal in respect of the cleaning project and security management role. She claimed the duties were Mr Budler's responsibility as school principal and therefore she was entitled to receive a higher duty allowance.

[60] In support of her claim, Ms Strydom relied upon clause 3.11.1 of the SSCA which sets out higher duty allowance as follows:

3.11.1 An employee who is required by the employer to substantially perform the duties and carry out the responsibilities of a higher graded position for five consecutive working days or more shall be granted a higher duties allowance.

3.11.2 The amount of the higher duties allowance will be an additional 5% on the employee's existing pay/rate salary (excluding allowances) for the period when the employee performs the duties and carries out the responsibilities of the higher graded position.

[61] In accordance with clause 3.11.1 of the SSCA, Ms Strydom claimed she was owed a sum of \$13,870 reflecting higher duties allowances of 5 per cent for each of the additional roles she undertook over the course of 54 weeks.

[62] KingsWay submitted the specific duties referred to by Ms Strydom as extra duties were not duties which fell within the principal's role. They were duties that Ms Strydom had oversight of in her role as executive officer, which included obligations for her to oversee the school's cleaning and security arrangements.

[63] KingsWay also submitted it neither required nor expected Ms Strydom to carry out the security and cleaning operations. Ms Strydom was expected to engage contractors to perform that work, and to manage any failure by contractors to perform work appropriately.

[64] Although Ms Strydom was responsible for the school's cleaning and security arrangements, this did not mean she was required to carry out the duties herself. These duties were also not the responsibility of the school principal, nor the responsibilities of a higher graded position. For these reasons, Ms Strydom "higher duties" claims did not meet the requirements of the higher duty provisions of her employment agreement. Therefore, she was not entitled to be paid the higher duties allowance.

[65] I find KingsWay did not breach Ms Strydom's employment agreement.

Was Ms Strydom entitled to be paid overtime and if so, in what amount?

The overtime provisions of the SSCA

[66] The terms of the SSCA confirm that overtime is payable to an employee if required to work in excess of 40 hours of work per week. In Ms Strydom's case, to be paid for any authorised overtime, she needed to follow KingsWay's policy and submit a timesheet to KingsWay through her line manager Mr Budler for approval within the applicable pay period. This is then supplied by the manager to payroll for processing.

[67] Clause 2.7 of the SSCA also provides that:

All time required by the employer to be worked in excess of 40 working hours or 8 hours per day or outside of Monday to Friday inclusive shall be deemed to be overtime. Computation shall be on a daily basis and payment for overtime shall be at time and a half or alternatively, by mutual agreement, time off in lieu may be taken"

The parties' overall views about overtime

[68] KingsWay submits the purpose of clause 2.7 of the SSCA was to allow KingsWay to be able to verify any required overtime work was carried out. It also submitted that it was not aware Ms Strydom was carrying out her claimed overtime work and did not instruct her to do so.

[69] Ms Strydom accepted that she did not seek nor obtain any prior consent from Mr Budler or anyone else with authority to carry out overtime work. She also confirmed she was aware of the formal approval process for overtime and time in lieu requests.

[70] In considering the evidence before the Authority and the parties' views, it should be noted that there was almost no independent evidence to support Ms Strydom's claims.

Ms Strydom's claims for overtime hours

[71] On 27 November 2023 Ms Strydom submitted to Mr Budler a spreadsheet in support of her claim that she was entitled to payment for her overtime work through both 2022 and 2023 for various reasons. The parties disputed aspects of Ms Strydom's calculations and claims arising from her spreadsheet. As a result, it was difficult to properly assess the factual basis under which her claims were made.

[72] At the very least both parties agreed that Ms Strydom was claiming for overtime arrears of about 192 hours. Given the difficulties in assessing Ms Strydom's overall overtime arrears claims, the investigation into these claims is limited to her claim for 192 hours.

[73] Ms Strydom's claim for arrears of 192 hours overtime was made up from her calculation of 316 hours of overtime work (recorded up to 14 December 2023) less 124 hours she was given by KingsWay of time off in lieu (taken after that date). Taking into account the overtime rate of \$62.33 per hour (which is normal rate of \$51.05 multiplied by the time and a half), Ms Strydom claimed a total amount of overtime arrears at \$17,951.04 gross (being 192 hours multiplied by the overtime rate of \$62.33 per hour).

[74] In the alternative, Ms Strydom claimed that the outstanding claim of 192 hours could be treated as untaken time in lieu at the date her employment ended would be paid at her normal rate. Under her alternative argument she claimed a total amount of arrears at \$9,801.16 (being 192 hours at her then rate of \$51.05 per hour).

[75] Ms Strydom's various overtime claims for overtime fall under the following headings and will each be addressed accordingly:

- (a) Voluntary hours
- (b) Calls to Parents
- (c) Tonga mission trip
- (d) Work meetings
- (e) Cleaning/Security/Payroll

(a) Voluntary hours

[76] Due to issues obtaining her visa, Ms Strydom was not legally entitled to work in New Zealand before 14 April 2022. However, Ms Strydom confirmed that she asked KingsWay if she could undertake work on a voluntary basis. This was accepted by KingsWay on the basis that she would not be paid any form of remuneration for the work. Ms Strydom then claimed she was entitled to be paid for the voluntary work which amounted to 80 volunteer hours.

[77] I accept Ms Strydom was not employed by KingsWay at the time she undertook voluntary work. There was also little evidence or submissions from Ms Strydom to clarify why she believed she was entitled to payment for her voluntary work. Given Ms Strydom worked as a volunteer, she was not entitled to payment of this work. For this reason I find she has no legal claim for arrears for her voluntary work hours.

(b) Calls to Parents

[78] Around 2023 Ms Strydom made various phone calls to student parents to consider the possibility of making what was described as "special character donations". As a result of the time involved with making the calls, Ms Strydom initially approached BCA to recognise her work by reducing her hours to four days a week in May 2023. KingsWay declined her request and the matter was referred to a later date.

[79] Ms Strydom now claims she should have been given time in lieu or paid overtime for her phone calls and has claimed she was owed 21 hours of arrears for this work.

[80] KingsWay said Ms Strydom was told not to make these phone calls. This was supported by Ms Strydom at the investigation meeting where she accepted KingsWay's instructions not to initiate the calls. I find that Ms Strydom was not required to make

these calls to parents and did so on her own volition. For this reason her claim for overtime fails.

(c) School mission trip to Tonga

[81] Ms Strydom claimed for 19.5 hours of arrears for the time while she was on a school mission trip to Tonga between 3 to 14 July 2023. Ms Strydom asked KingsWay whether she could attend as a “parent helper”. However, upon attending the trip she claimed she was “required” to carry out work which she claimed was overtime hours.

[82] KingsWay said Ms Strydom was initially not supposed to be paid for attending the trip and the agreement between it and Ms Strydom was documented and initially accepted by Ms Strydom. However, they eventually agreed for Ms Strydom to receive payment on a full-time basis as a type of special leave which was also in excess of her leave entitlements.

[83] It should also be noted that the SSCA excluded school trips from “overtime” entitlements, Clause 5.5.1 provides that:

For any school camp or school trip, where the employee is required to be in attendance (including staying overnight.) the employee is not entitled to overtime under clause 2.7 but will be paid at the minimum adult wage rate for any hours worked between 6 pm and 8 am”.

[84] Given Ms Strydom was fully paid for attending the trip in her personal capacity and the SSCA excluded overtime payments for overtime, Ms Strydom’s claim for overtime for attending the Tonga trip fails.

(d) Overtime hours for attending work meetings

[85] Ms Strydom also claimed approximately 28 hours of overtime for work meetings she was required to attend during her usual 40 hours of work per week.

[86] KingsWay disputed Ms Strydom’s claims on the basis she was granted flexitime to account for attending these meetings after usual working hours. Flexitime meant she was allowed to start late either the day of, or the day following such meetings to make up for time spent attending any meeting outside her 40 hours of work.

[87] There was little independent evidence to confirm when these meetings took place and whether Ms Strydom worked flexitime. However, I accept Kingsway’s evidence

that Ms Strydom utilised flexitime to make up for any meeting outside of normal working hours on the basis there was little evidence to show Ms Strydom had objected to attending these meetings at the time the meetings took place.

[88] Furthermore, as Ms Strydom did not apply for 'overtime' in accordance with KingsWay's policy and the provisions of her employment agreement, her claim to be paid for overtime for work meetings fails.

(e) Ms Strydom's claims relating to cleaning, security and payroll duties

[89] Ms Strydom claimed she was owed 89 hours of overtime arrears in respect of work she carried out which related to cleaning, security work and administering payroll.

[90] KingsWay opposed each of Ms Strydom's claims for this on the basis that as the executive officer, Ms Strydom was responsible for the oversight of the cleaning contractor, security staff, and payroll duties. She was responsible for engaging contractors to carry out cleaning and security work at the school. She was not required, nor expected to do the work herself.

(i) The parties' arguments for Ms Strydom's work cleaning claims

[91] In terms of hours relating to cleaning duties, Ms Strydom claimed she had to undertake cleaning duties after KingsWay's had replaced its contracted cleaning and security company (the contractor) in January 2022.

[92] This led to KingsWay employing a full-time cleaning controller (starting 16 January 2023) and a full-time assistant cleaner (starting on 7 February 2023). KingsWay also arranged for a large number of school students as employees to clean before and after school for one-hour shifts from 31 January 2023.

[93] As a result of the cleaning changes, Ms Strydom said she carried out certain tasks which used to be carried out by the contractor which included, reviewing complaints, recalculating costs, organising rosters, purchasing cleaning products and training students.

[94] Given Ms Strydom was responsible for engaging contractors to carry out cleaning and security work at the school, KingsWay said the onus was on her to ensure this was arranged. If the work was not being carried out correctly by contractors, it was

her role to manage any performance issues which arose from their work. KingsWay also said it did not expect Ms Strydom to do the work herself.

(ii) The parties' arguments for Ms Strydom's security claims

[95] As a result of the replacement of the cleaning contractor, Ms Strydom claims she took over the responsibility for ensuring that the school was locked up from January 2022. She said this added to her workload and she should be paid for this responsibility.

[96] KingsWay said the oversight of school security was part of Ms Strydom's role as the ELT member overseeing the property portfolio, and from the outset of her employment.

[97] KingsWay also submitted that the security issue as raised by Ms Strydom arose from her decision to end the schools' engagement with the cleaning contractor (who was responsible for the school lock up). Instead she engaged her daughter to undertake locking up the school.

[98] KingsWay reiterated its view that Ms Strydom was responsible for arranging security for the school and said the school lock up duty was not something it asked, expected, nor instructed Ms Strydom to do.

(iii) The parties' arguments for Ms Strydom's payroll claims

[99] Also in January 2023 KingsWay's payroll administrator resigned. In response, Ms Strydom told Mr Budler she could carry out the payroll duties until a replacement arrived.

[100] Ms Strydom claimed that after the payroll administrator resigned there was a period of about three weeks when she (along with the finance team) had to cover all the payroll tasks. Even when a consultant was hired to work in the interim, that person went on leave for 6 weeks. As a result, Ms Strydom claimed she continued to carry out payroll related duties until June 2023. She claimed she should have been paid overtime for the extra payroll work.

[101] In line with its previous arguments, KingsWay disputed Ms Strydom's claims and said she was responsible for ensuring that someone was employed to administer the payroll. She was not required, nor expected to do this work herself.

(iv) Analysis and outcome of the cleaning, security and payroll claims

[102] Ms Strydom made several further points in support of her already stated arguments which included the following:

- (i) she disagreed with KingsWay arguments and claimed she was not responsible for the management of the school's security and cleaning operations, and the administration of the payroll. She said these tasks were not part of her position description.
- (ii) she had no choice but to carry out the extra work because she was working within difficult circumstances involving unanticipated increases in work volume for critical tasks.
- (iii) KingsWay was aware that she was doing the tasks she has listed in her claim, and KingsWay received a benefit from the work being done.
- (iv) She accepted she did not apply for 'overtime' in accordance with the provisions of her collective employment agreement but expected to be paid for working beyond her contracted hours. She expected payment to be in the form of either time off in lieu or as overtime.

[103] As already stated, KingsWay maintained its views that the work fell within her responsibility and she had to ensure that the appropriate people were engaged to carry out the work. Her failure to do so did not mean she was required to carry out the tasks herself.

[104] I find that Ms Strydom's claims for working overtime in regard to the cleaning, security and payroll portfolios fail because she did not raise these issues at the time she carried out the extra work. Taking into account how late she made her claims, it would have been difficult for KingsWay to make any useful decisions now about her claims for overtime well after the fact.

[105] In support of my finding I note also Ms Strydom was aware of the overtime application policy and failed to make any applications for overtime work. As a result, there was little corroborative evidence to help clarify Ms Strydom's claims.

[106] I also accept Ms Strydom was responsible for arranging the right people (whether a contractor or employee) was available to carry out the tasks associated with these claims. There was no expectation for her to carry out the tasks herself.

[107] In terms of Ms Strydom's time in lieu claims, there was no documented agreement which explained the time in lieu arrangement between her and KingsWay. I accept this arrangement existed and was an informal good faith relationship between the parties.

[108] Because of the informal nature of the time in lieu arrangement and the delay in Ms Strydom raising her concerns about extra tasks (and the lack of evidence), no orders can be made in regard to any arrears arising from this arrangement. In any event, I also find Ms Strydom was adequately compensated for all aspects of her work for KingsWay in accordance with her employment agreement.

[109] For these reasons, I find Ms Strydom was not entitled to any overtime (or time in lieu) arrears associated with her claims for overtime for her cleaning, security and payroll claims. Reaffirming also my findings on her other overtime and time in lieu arrears claims, all Ms Strydom's claims in this respect are unsuccessful. I find that KingsWay did not breach Ms Strydom's employment agreement.

[110] For the sake of completion, given the difficulties in clarifying what Ms Strydom's actual overtime claims were, I am satisfied that even if Ms Strydom was entitled to overtime payments, she has been adequately compensated during her employment. She was compensated with time off in lieu, paid discretionary leave and paid special leave.

Unjustified disadvantage claim relating to the restructure

[111] Ms Strydom claimed that when KingsWay commenced its restructuring consultation on 14 September 2023, it did not advise her that a possible outcome would be the disestablishment of her role, and redeployment to a less advantageous one, until 20 October 2023.

[112] She stated important information about the salary for the proposed new role was not provided until 31 October 2023. She claims that the provision of this information had an adverse effect on her and caused her significant distress.

[113] KingsWay disputed Ms Strydom's claims on the basis that its actions in respect of the restructure process were reasonable and that that her former executive officer role was genuinely surplus to KingsWay's requirements. It also said it provided Ms Strydom with all relevant information in a timely manner during the feedback process, and prior to any final decisions being made.

[114] KingsWay stated that it advised Ms Strydom on 15 August 2023 that it would be undertaking a review, including the executive office and that it was important that she and her team were involved in that process. The Resolve report was finalised on 8 September 2023. On 14 September 2023 KingsWay commenced its restructuring consultation and provided the report to Ms Strydom.

[115] A key recommendation in the Resolve report was that the executive officer role be split into two positions; director of finance and director of operations. Paragraphs [24-38] of this determination set out the restructuring process undertaken by KingsWay, highlighting the review, engagement with relevant parties as part of preparation of the Resolve report, considering the Resolve report and finally initiating the findings of the report as part of its restructure process.

[116] After reviewing the restructuring process, I find that KingsWay had genuine reasons for proposing its restructure, which Ms Strydom was aware of having previously raised issues about the size of the executive officer role. KingsWay extensively consulted with Ms Strydom providing relevant information at times extending the time for her responses. and genuinely considered and responded to her feedback,

[117] I find Ms Strydom was not unjustifiably disadvantaged by KingsWay's actions as part of the 2023 restructuring process.⁵

Unjustified disadvantage claim relating to a healthy and safe workplace

[118] Ms Strydom claims she was also unjustifiably disadvantaged by KingsWay's actions in not providing her with a healthy and safe work environment. In support of her claims, she relied on a number of various allegations against Mr Budler and KingsWay.

⁵ Employment Relations Act 2000, s 4 and 103A.

Allegation of being provided misleading information by KingsWay

[119] Ms Strydom claimed she was provided with misleading information by Mr Budler on 17 November 2023 about the amount of the redundancy payment she would receive. She claimed Mr Budler incorrectly advised her that any redundancy payment she would receive would be tax-free. Mr Budler denied this claim.

[120] Ms Strydom was sent a letter advising her that her redundancy pay would be in accordance with clause 10.2.12 of the SSCA. This meant she was entitled to:

six weeks' pay for the first year of service and two weeks' pay for every subsequent year or part thereof to a maximum of 30 weeks' pay in total

[121] Apart from Ms Strydom's claims there was insufficient evidence to show Mr Budler provided Ms Strydom with advice on taxation of her redundancy payment. KingsWay stated she was encouraged to get advice regarding the redundancy. However, even if he had, Ms Strydom as the person responsible for KingsWay's finance team and administering payroll, likely had sufficient expertise on the tax requirements of wages and salary payments.

[122] I find Ms Strydom claims that she was disadvantaged by the provision of information from Mr Budler or KingsWay regarding her redundancy was unsuccessful.

Ms Strydom's allegations that KingsWay failed to properly address her concerns around time in lieu and underpayment of salary

[123] Ms Strydom claimed KingsWay failed to address her requests for a time in lieu arrangement when she first raised it around May 2023. The time in lieu request was related to extra hours Ms Strydom had worked calling parents.

[124] In assessing Ms Strydom's claims, I find her requests were not left unaddressed for a considerable period of time and Ms Strydom's grievance claim is unsuccessful in this respect because:

- (a) Ms Strydom first requested a time in lieu arrangement from BCA while Mr Budler was on sabbatical in May 2023, and I accept they expressly agreed 'to park' the issue until after Mr Budler returned;

(b) Ms Strydom first formally presented her issues of overtime claim to Mr Budler on 27 November 2023; and

(c) Ms Strydom agreed to accept 19.5 days as time off in lieu between 15 December 2023 and 28 January 2024.

[125] The evidence showed that during this period KingsWay and Ms Strydom were actively engaged in attempting to resolve this employment relationship problem.

Mr Budler agreed to a restorative meeting, then reneged

[126] Ms Strydom claimed Mr Budler on behalf of KingsWay agreed, but then decided not to proceed with a restorative justice meeting at the end of 2023.

[127] KingsWay disagreed and said it discussed the purpose of mediation and invited Ms Strydom to mediation in early December 2023. The parties subsequently attended mediation on 20 February 2024.

[128] Based on the above, the evidence showed KingsWay had engaged with Ms Strydom in a reasonable manner to try and resolve the employment relationship problem between them in late 2023. For this reason, I do not find that Mr Budler or KingsWay reneged on an agreement to undertake a restorative meeting in an attempt to resolve Ms Strydom's employment relationship problem.

Allegations of hostile conduct from Mr Budler and BCA towards Ms Strydom from November 2023 to February 2024.

[129] Ms Strydom alleged that she was the recipient of hostile conduct from Mr Budler and an ELT member, BCA from November 2023 to February 2024. The conduct during this time relates to Ms Strydom's bullying allegations.

[130] KingsWay submits its actions were reasonable in dealing with how it and Mr Claydon (and his team) investigated Ms Strydom's allegations.

[131] I find that the actions KingsWay undertook in investigating the allegations of bullying behaviour were of which a fair and reasonable employer could have done in the circumstances.⁶ Ms Strydom was not disadvantaged by Kingsway's actions.

⁶ Employment Relations Act, 103A.

Allegations relating to payment of overtime and salary were not investigated.

[132] Ms Strydom's overtime claims have been addressed in paragraphs [66-110] above. As part of her unjustified disadvantage claim Ms Strydom claimed KingsWay failed to properly investigate her claims about overtime.

[133] KingsWay disagreed and said it had at all times responded to her claims throughout her employment. KingsWay also submitted that Ms Strydom's objection as part of this claim was not that KingsWay failed to consider her claims, but that it did not accept them.

[134] I accept KingsWay's position, and the evidence shows it responded and investigated Ms Strydom's complaints relating to overtime reasonably. Ms Strydom was not disadvantaged by KingsWay's actions.

Allegation the ELT made retaliatory complaints against her

[135] Ms Strydom claimed that all four members of the ELT made retaliatory complaints against her to the Board of Trustees using "very hostile language and demanding an end to her employment".

[136] KingsWay submitted that members of the ELT raised complaints as individuals, because they were concerned by the breakdown of their individual working relationships with Ms Strydom.

[137] KingsWay submitted that the main driver for the timing of the complaint was Ms Strydom's behaviour and her interactions with ELT had led ELT members to be overly cautious in all interactions with Ms Strydom, and as a consequence ELT was no longer able to function as required.

[138] I find that ELT's concerns were legitimate and serious enough to warrant action. KingsWay had an obligation to investigate the complaints, and I accept the complaints and KingsWay's response was reasonable and not retaliatory.

Allegations against KingsWay asking Ms Strydom to stay away from the workplace and threatened with suspension if she did not do so

[139] Ms Strydom claims she was repeatedly asked to stay away from the workplace, and threatened with suspension if she did not agree to do so.

[140] KingsWay submits that its lawyers' letter of 10 May 2024 advised Ms Strydom that the board would be investigating the ELT complaints and proposed Ms Strydom accept special leave for the duration of the investigation.

[141] Ms Strydom failed to respond regarding the special leave proposal and KingsWay wrote again on 27 May 2024 stating that as Ms Strydom had failed to accept the special leave proposal, it was proposing to suspend her on full to pay while the investigation was undertaken.

[142] Ms Strydom then agreed to be placed on special leave from 28 May 2024 during the employment investigation process.

[143] In the circumstances I do not find that Ms Strydom was unjustifiably disadvantaged by agreeing to be placed on special leave.

Conclusion on Ms Strydom's unjustifiable disadvantage claims for failure by KingsWay to provide a healthy and safe working environment

[144] After having reviewed the evidence and the extensive submissions from the party's representatives I find Ms Strydom was not unjustifiably disadvantaged by KingsWay not providing a healthy and safe working environment. Accordingly, no remedies are ordered in Ms Strydom's favour.

Was Ms Strydom unjustifiably dismissed?

Confidential investigation report (misconduct report)

[145] KingsWay found Ms Strydom's conduct constituted serious misconduct, and significantly impaired KingsWay's trust and confidence in the employment relationship so as to justify termination of her employment. In summary the misconduct reports findings were;

(a) Ms Strydom made unfounded, malicious and vexatious allegations against colleagues.

The investigation panel (panel) found that Ms Strydom persisted in making unfounded allegations against some colleagues, some of which had been malicious and vexatious, and that this amounted to serious misconduct, because of their destructive impact on the employment relationship with KingsWay. Also,

that each member of the ELT team had now lost trust and confidence in Ms Strydom.

(b) Ms Strydom escalated issues well beyond what was necessary, and in a manner that brought humiliation to her colleagues.

The panel found that Ms Strydom escalated a financial issue about a senior employee and a colleague in a way that far exceeded what was necessary or reasonable in the circumstances and was unfair to her colleague. Accordingly, the panel considered that Ms Strydom has brought unwarranted hurt and humiliation to her colleague, and this constituted serious misconduct by Ms Strydom in the course of her employment.

(c) Ms Strydom engaged in repeated and ongoing dishonesty in the workplace surrounding trust, relationships and work efficiencies.

The panel found there were numerous and complex allegations made by both the ELT and the finance team on this issue, that revealed a concerning pattern of alleged dishonest behaviour by Ms Strydom in the work environment. The panel accepted that the instances cited by the complainants and witnesses about Ms Strydom's alleged dishonesty did occur, and that in the panel's view this amounted to serious misconduct by Ms Strydom in the course of her employment. This conduct significantly eroded the trust and confidence that Ms Strydom's colleagues had in her, and had been extremely destructive to Ms Strydom's employment relationship with the school.

The panel found that there were a number of allegations made in the complaints that on the balance of probabilities were substantiated by their investigation, and that those individually and cumulatively constituted serious misconduct by Ms Strydom in the course of her employment with KingsWay.

The panel found that the conduct of Ms Strydom deeply impaired and had been destructive of the basic confidence and trust essential to Ms Strydom's employment relationship with KingsWay, and in particular of her relationships with the members of the ELT and by extension, with the school's board, and therefore amounted to serious misconduct by Ms Strydom in the course of her employment.

(d) Incompatibility; Ms Strydom's conduct had resulted in severe incompatibility between Ms Strydom and the ELT and a senior member of staff.

The panel found that the conduct of Ms Strydom as described above and as elaborated on in the report resulted in severe incompatibility between Ms Strydom and the ELT and also with a senior employee. The panel found that Ms Strydom's actions were the primary cause of this incompatibility.

Ms Strydom's submissions

[146] Ms Strydom claimed KingsWay's decision to dismiss her was flawed for several reasons. Firstly, she claimed the ELT complaints leading to the dismissal process were retaliatory, malicious and vexatious and were in response to her bullying complaints and her claims which were lodged before the Authority at the time.

[147] Secondly Ms Strydom claimed KingsWay's misconduct investigation and the dismissal process was not carried out in a procedurally fair manner because:

- (a) the investigation into her actions was not independent as it was carried out by Mr Claydon a school board member. Accordingly, Ms Strydom claimed the outcome of the investigation was always going to be an adverse finding against her and it was unreasonable to rely on the misconduct report;
- (b) the outcome of the disciplinary process was focussed primarily on incompatibility and "findings about the complaints" were predetermined from the outset of the investigation;
- (c) KingsWay should have treated her actions as performance concerns (as opposed to misconduct) and should have been dealt with via a performance improvement process; and
- (d) Ms Strydom submitted that dismissal cannot be justified on grounds of incompatibility, because KingsWay failed to show that there had been an irreconcilable breakdown in the employment relationship, and that the breakdown was attributable wholly or substantially to Ms Strydom.⁷

⁷ *Walker v Procare Health Ltd*, [2012] NZEmpC 90.

KingsWay's submissions

[148] KingsWay submitted it undertook a fair investigation process in respect of the ELT complaints against Ms Strydom. This included initially writing to Ms Strydom on 10 May 2024 setting out what allegations were being investigated. KingsWay also said it was communicative and responsive to Ms Strydom throughout the investigation process, providing numerous extensions for Ms Strydom to respond. Ms Strydom was legally represented throughout the investigation process and subsequently provided KingsWay with a significant volume of feedback and submissions before findings were confirmed.

[149] KingsWay also noted that the panel issued its final report on 14 August 2024 to the board and discussed the report with Ms Strydom on 19 August 2024.

[150] KingsWay submitted that the panel also did not uphold all allegations in the final report. Ms Strydom had an opportunity to provide feedback on KingsWay's proposal to dismiss from 22 August 2024.

[151] KingsWay submitted it genuinely considered whether it was necessary for an independent investigator to be appointed but determined that it was not necessary in the circumstances. KingsWay submitted that as decision maker it kept an open mind throughout the investigation.

[152] KingsWay submitted it made the decision to terminate Ms Strydom's employment, because it had lost trust and confidence in Ms Strydom, and that there was significant incompatibility between Ms Strydom and the ELT.

[153] KingsWay submitted that Ms Strydom failed to acknowledge, or take any responsibility for her conduct and contribution to the breakdown in her relationships with the members of the ELT.

[154] KingsWay submitted that incompatibility with a co-worker is a justifiable ground for dismissal. Each case needs to be considered on its own facts, and broadly, the legal test requires that KingsWay reasonably concluded that the employment relationship is irreparable, that the irreconcilable breakdown is attributable substantially to Ms Strydom and that KingsWay effected the dismissal in a fair manner.⁸

⁸ *Mabry v West Auckland Living Skills Home Trust Board (Inc)* [2001] EMH NZ 1233

[155] KingsWay submitted it had genuinely considered whether any other sanction rather than dismissal was appropriate in the circumstances, including by considering the alternative proposals submitted by Ms Strydom. Ultimately it concluded the alternatives to dismissal were not appropriate for reasons which included the seriousness of the proven allegations, impact upon staff and Ms Strydom's colleagues, and potential ramifications for the school.

Conclusion on unjustified dismissal

[156] In assessing whether the dismissal and KingsWay actions were procedurally justified, the Authority must consider the matters set out at s 103A(2) of the Act, which sets out the test for justification. The Authority must consider, on an objective basis, whether KingsWay actions, and how KingsWay acted, was what a fair and reasonable employer could have done in all of the circumstances at the time the action occurred.⁹

[157] The other relevant aspect here is that my role is not to commence a re-hearing of the disciplinary processes, and therefore replacing the outcome with my own findings on what occurred and any sanction to be imposed. In applying the matters set out in s 103A(3)(a)-(d) of the Act I need to have consideration whether having regard to the resources available, KingsWay sufficiently investigated the allegations, raised their concerns with Ms Strydom, gave her a reasonable opportunity to respond and genuinely considered her explanation prior to dismissal. A failure to meet any of the s 103A(3) tests that is more than minor and results in actual unfairness to an employee will in most cases render the conclusions reached and the action taken by the employer unjustifiable, because the scope and quality of information on which they are based will be less than it ought to be.¹⁰

[158] KingsWay's initiation of the disciplinary investigation was done so in a manner that a fair and reasonable employer could have acted in the circumstances. I am satisfied that it undertook an objective approach in appointing the investigation panel and appropriately engaged with Ms Strydom throughout the process.

[159] It should also be noted that Ms Strydom was legally represented throughout the process and had the fullest opportunity to understand what was alleged and respond to it. Ms Strydom was able to raise any concerns about the process and the outcomes at the

⁹ Employment Relations Act, s 103A(2).

¹⁰ *De Bruin v Canterbury District Health Board* [2012] NZEmpC 110 at [39].

time, with any concerns being reviewed by KingsWay. She provided a significant amount of feedback throughout the investigation and made submissions, prior to findings being made.

[160] Ms Strydom's conduct was objectively reviewed by KingsWay. Her behaviour reasonably fell within the category of a serious breach of both professional practice and KingsWay's policies.

[161] Ms Strydom gave explanations for her actions and ongoing feedback. She believed her explanations justified her actions and explained her conduct. The consequence of KingsWay not accepting her explanations is that she does not accept dismissal was an available option. Just because Ms Strydom thought she was right and therefore KingsWay was wrong does not mean the outcome is unjustified.

[162] I accept that based on the evidence in the investigation and the subsequent findings of the misconduct report regarding Ms Strydom's behaviour, there was sufficient evidence for the KingsWay to conclude that serious misconduct had occurred.

[163] I also agree with KingsWay's findings that there was an irreconcilable breakdown in the relationship between the ELT and Ms Strydom that was substantially attributable to Ms Strydom's behaviour. Although Ms Strydom refused to acknowledge the issues that were raised with her regarding the breakdown in relationship between herself and ELT, I accept that Kingsway determined that the level of incompatibility between Ms Strydom and the ELT had reached a stage where it found it was no longer possible for her to continue in her employment at KingsWay. KingsWay had lost trust and confidence in Ms Strydom and that the employment relationship had ended.

[164] Turning to the substantive justification, my conclusion is that KingsWay's finding that the dismissal was justified, was an outcome that a fair and reasonable employer could have come to.

[165] In conclusion I find there was sufficient evidence from the employment investigation for KingsWay to make the findings it did, and that serious misconduct had occurred, and incompatibility was present, and that KingsWay effected the dismissal in a fair and reasonable manner.¹¹

¹¹ *Mabry v West Auckland Living Skills Home Trust Board (Inc)* [2001] EMHNZ 1233

[166] I accept KingsWay considered whether alternative sanctions rather than dismissal were appropriate, but it concluded the alternatives to dismissal were not appropriate in the circumstances.

[167] Having heard from the parties and having assessed the evidence I determine Ms Strydom was justifiably dismissed by KingsWay.

Special damages

[168] Ms Strydom has made a claim for special damages for legal costs incurred prior to the filing the second Statement of Problem. This concerned Ms Strydom engaging legal support through the disciplinary process and subsequent lodging of proceedings in the Authority.

[169] Ms Strydom was entitled to engage legal advisors and representatives, but KingsWay is not obliged to pay for the cost of her doing so. Ms Strydom has been unsuccessful in claims for unjustified dismissal and unjustified disadvantage. I decline to make an order for special damages.

Counselling Costs

[170] Ms Strydom has made a claim for reimbursement of \$5,900 in counselling costs.

[171] KingsWay states it was aware that Ms Strydom had sought counselling assistance, but not that it resulted from any work-related issues. At the time she requested counselling support, she advised KingsWay it was for personal issues. KingsWay had previously voluntarily paid for counselling sessions for Ms Strydom in August 2023 and July 2024.

[172] Kingsway submitted that if Ms Strydom believed that she was entitled to additional counselling, then she should have raised that with the school at the time.

[173] Ms Strydom was unsuccessful in her unjustifiable disadvantage claims for failure by KingsWay to provide a healthy and safe working environment, under which she made this further claim for counselling costs. In the circumstances I agree with KingsWay that it was not reasonable to expect KingsWay to reimburse Ms Strydom for further counselling costs incurred, and I decline making an award for counselling costs.

Outcome

[174] Ms Strydom was not successful in her claims for unjustified disadvantage, breach of contract and wage arrears. Ms Strydom's dismissal was both substantively and procedurally justified. As such she is not entitled to any remedies.

Costs

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

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

Andrew Gane
Member of the Employment Relations Authority

