

Attention is drawn to  
orders prohibiting  
publication of certain  
information in this  
determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 242  
3293099

BETWEEN FVG  
Applicant  
AND YJN  
Respondent

Member of Authority: Nicola Craig  
Representatives: The applicant in person  
G for the respondent  
Investigation Meeting: 11, 12 and 13 February and 18 July 2025 in Auckland  
and by audio-visual link  
Submissions and further information received: 21 July, 10 and 25 August and 1 December 2025 from  
the applicant  
30 July, 18 August and 3 December 2025 and 27  
January 2026 from the respondent  
Determination: 22 April 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] A structural engineer referred to by the randomly chosen letters FVG, was employed from early 2022 by a company YJN, also identified by such chosen letters.

That company had recently become part of an international engineering and professional services firm.

[2] After initially being without a manager, YJN appointed W as manager of FVG's team. There were tensions between W and FVG which impacted the small office. Ultimately FVG was dismissed in March 2024 for breaching the company's Code of Conduct.

[3] FVG comes to the Authority with personal grievances and argues her employer breached its good faith obligations to her. YJN responds that it dismissed FVG after a series of staff and client complaints and observations by the country manager, along with a careful consideration of all the evidence.

### **Non-publication order**

[4] FVG requested her case not be publicly available. This was taken as an application for a non-publication order as the Authority's determinations are, as a matter of course, made public.

[5] The Authority has the power to make non-publication orders.<sup>1</sup> The process involves identifying specific risks of harm then weighing the reasonable likelihood of occurrence against the open justice principle.<sup>2</sup>

[6] FVG is concerned about the potential damage to her professional reputation and future career.

[7] While there was some strength to her arguments there, perhaps more significantly there was also substantial evidence heard about her health and personal life.

[8] YJN did not seem opposed to a non-publication order.

[9] There are sufficient grounds to warrant permanent non-publication orders being made, including covering the organisation and its witnesses, as publication of those names could identify FVG. The evidence regarding FVG's personal situation would be reasonably likely to cause her significant harm, if published.

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<sup>1</sup> Employment Relations Act 2000 (the Act), Sch 2, cl 10.

<sup>2</sup> *Erceg v Erceg* [2016] NZSC 1335 and *MW v Spiga Limited* [2024] NZEmpC 147.

[10] I order that the names and identifying details of the employee, the employer and its witnesses shall not be published.

### **The Authority's process**

[11] An investigation meeting set in 2024 was adjourned at FVG's request due to her health concerns.

[12] The investigation meeting commenced on 11, 12 and 13 January 2025 in Auckland with attendance in person from those based in New Zealand and by audio-visual link from Australian staff on YJN's behalf.

[13] The HR manager from Australia (referred to as B), who had been involved with FVG whilst she was employed, was to give evidence but was on parental leave and at some point returned to her country of origin. Her replacement attended the meeting via AVL and provided some helpful co-ordination but was not involved with FVG's employment so could not provide evidence in that regard.

[14] The agreed plan was for B to give evidence when the meeting resumed, after she was able to do so. However, B resigned from employment and YJN did not seek for her to attend the Authority. As she was not in New Zealand the Authority decided the meeting should conclude without her evidence, setting aside her witness statement.

[15] The meeting was set to resume in May 2025 to hear another remaining witness by audio-visual link but it was adjourned after FVG sought an adjournment for personal reasons.

[16] The meeting resumed on 18 July 2025 by audio-visual link to hear the remaining witness. FVG however also wished to ask some additional questions in writing to a witness who had appeared earlier. With YJN's agreement she was allowed to do that and the witness responded in writing.

[17] Through the various investigation meeting days, evidence was heard from FVG, the company's country manager (referred to as G), Australian CEO (referred to as K), associate director-structural engineering (W), senior structural engineer (E) and an associate director in another work stream (S).

[18] The parties then put in written submissions.

[19] The Authority requested a document referred to as an annexure to YJN's investigation report sent to FVG shortly before her dismissal. This was provided but FVG indicated she had not seen the annexure at the time the letter was sent. It took some time to get a response from YJN on this point, due to changes of personnel and extended staff absences over the Christmas and New Year period.

[20] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination does not record everything received but states findings and conclusions and specifies orders made as a result.

### **Issues**

[21] As set out in directions after discussion at a case management conference with the parties, the issues for investigation and determination are:

- (a) Was FVG disadvantaged by unjustifiable action of YJN regarding:
  - (i) failure to investigate her bullying complaints against W;
  - (ii) lowering of her employee classification unfairly without consultation;
  - (iii) suspension; and
  - (iv) investigation and disciplinary process leading to dismissal?
- (b) Was FVG unjustifiably dismissed by YJN?
- (c) If FVG establishes a grievance, what remedies should she receive, including consideration of:
  - (i) reinstatement to her former position;
  - (ii) lost wages regarding the employment classification issue;
  - (iii) lost wages after her dismissal; and
  - (iv) compensation for humiliation, loss of dignity and injury to feelings?
- (d) Did YJN fail to act in good faith, breaching s 4 of the Act and if so, should a penalty be imposed on it?
- (e) Should either party be required to contribute to the costs of the other party?

[22] FVG raised in submissions to the Authority the warning she was given in June 2023 but she did not raise a grievance about this within the 90 day period in s 114 of the

Act, nor apply for an extension of time to raise this out of time. However, it does form part of the history as set out below.

### **FVG's background**

[23] FVG has worked as an accountant but decides to change course. She graduates in 2015 with a Bachelor of Engineering degree. She works for other organisations for periods before coming to YJN.

### **FVG's commencement with YJN**

[24] FVG starts work with the company in January 2022.

[25] FVG told the Authority that she was not shown its code of conduct nor was it sent to her at this time. An administration assistant M gave her a form to fill in as part of her induction, which she did. FVG asks where the code was for her to read and M tells her it is M's job to ensure FVG fills out that form. FVG signs it. M also seems to have been new as she is unable to answer FVG's query about where the fire escape is.

[26] The employment agreement which FVG signs includes an acknowledgement by her of the company's right to introduce reasonable policies and procedures into the workplace and/or amend existing ones from time to time. Clause 19 continues that it is FVG's responsibility to read, understand and comply with these policies and procedures.

[27] For the first few months FVG recalls having no direct manager. She appears to have expressed some frustration about not being given work. There is tension with the assistant M. By 1 April 2022 email M complains to YJN's country manager G about FVG – alleging loud and rude behaviour and demeaning comments. M requests a meeting with him.

[28] FVG is not provided with a copy of the M's complaint and says she was not aware of it until February 2024. FVG also describes finding M difficult although she does not raise this formally at the time.

[29] W is appointed in May 2022 and the structural department re-establishes. W is responsible for that small team, including FVG.

[30] A series of events occur about which FVG expresses concern to the Authority, many but not all involving W. There were difficulties for the Authority establishing the purposes of some meetings during FVG's employment with no agenda or notes available and witnesses having somewhat different impressions.

### **Email concern**

[31] The most significant early example is in July 2022. FVG and W have an interaction - including where she sees him as pretending to be her by asking her to give him control of her computer, then sending emails to a client with what she sees as an improper element. W's explanation is that while he and FVG are talking via Teams, he asks her to draft an email to a client. This takes her a while, with the client waiting for the communication, so W asks FVG for control of her screen and finishes the email which he asks her to send if she was comfortable with that. He denies he presses the Send button.

[32] A couple of weeks later FVG emails W, describing him as "pretending you are me" during that interaction, copying in the country manager G, who works in the same office.

[33] G has some discussions, with no formal action taken regarding either W or FVG.

### **Missing purse**

[34] FVG loses her purse. She reports this to the police in November 2022, mentioning the company's office address. This is not reported to YJN. Country manager G does not find out for many months afterwards until FVG mentions it at a meeting implying staff involvement in the loss. G is understandably very concerned as the possibility of theft occurring on the company's premises was not passed on to him or administration.

[35] Once he finds out, G meets with FVG on 21 May 2023. She tells him she knows who (at work) has stolen her purse but does not name them. Later, she told the Authority she was now not sure about who took it. This point could thus not be taken further.

### **Issues discussed with FVG**

[36] FVG describes trying to talk to W in 2022 and 2023 about their work relationship as well as complaining to G many times about W. There was little documentary evidence to support this complaining although I accept there were some verbal concerns raised about how her interactions with W were going.

[37] There is also evidence of M and FVG having tense interactions.

[38] Country manager G says he spoke to FVG many times about the tone of voice she used, particularly asking her not to raise her voice. G refers to there being two or three what I describe as informal warnings to FVG not to shout in the office. FVG accepts there had been some mention of tone of voice but not seeing there being a formal complaint from G. FVG told the Authority she had a “weak ear” and could not always hear, however, perhaps unfortunately, she did not tell her employer about this.

[39] W describes FVG shouting at him, leading to others in the office telling him he should complain about her. He is reluctant to, thinking about her personal financial situation and ruining her career. He describes FVG getting so loud at their project meetings that G is asked to attend and G tells them to meet in a private area of the office as there is too much disturbance from FVG’s voice. W also recalls FVG spending a lot of time talking herself up and being critical of the experience of others in the team. She largely denies these allegations although they are broadly supported by colleagues S and E.

[40] W describes bringing E in to support FVG as he does not see her work always being up to the level he expects. FVG denies these difficulties and rather sees W as denying her a proper share of work.

### **23 May 2023 meeting**

[41] Country manager G calls a meeting with FVG, W and the administrator M. There appears to have been no formal agenda or the like. G describes arranging this meeting due to there being too much noise/shouting in the office. Another employee is noise sensitive and becomes anxious if there is too much noise.

[42] FVG is uncertain whether this meeting is set up because she wants it or because W asks for it. She is aware that W has complained that she shouts at him. G asks her what she wants and she says for W to treat her better and give her jobs.

[43] At this time there is a scarcity of work generally, with the department making a loss. W says there was no intention to treat her badly or deprive her of work.

[44] At the meeting, there is mention by FVG of her having to go to court regarding landlord matters, which W took as threatening in the sense of him feeling she might take him or the company to court.

[45] G asks W to encourage FVG more in her work. He also speaks about people trying to positively resolve issues in future.

### **20 June 2023 meetings and warning issued**

[46] Likely as a follow up to the 23 May meeting, when the HR manager B is in New Zealand she meets with FVG and separately with W. FVG refers to having made verbal complaints but accepts she has not made a written one. G accepts she made some verbal references to being dissatisfied but that he found W's explanations clear.

[47] A meeting between the HR manager, G and FVG is held. It is not evident that FVG is informed either verbally or in writing that a disciplinary process is underway although she is told that someone has complained. She thinks the meeting with B and G is about a heated argument M and she had.

[48] Then the HR manager sends FVG a letter on 26 June 2023 :

I refer to our meeting on 20<sup>th</sup> June..., which was held to discuss matters relating to the issues happening in Auckland office.

We have carefully considered your responses and as a consequence, this letter serves as a formal first written warning. Your unprofessional behaviour and misconduct in relation to approaching other employees, and interactions with other staff members is unacceptable.

In particular, the concerns are unnecessary, arguing with other staff members, making personal comments, being aggressive and disrespectful towards other employees of the firm. We have received multiple

complaints towards your misbehaviour, making personal comments to staff members and shouting in the office premises.

... request that you adjust your behaviour in the office to be in-line with our general code of conduct.

Your compliance with the above will be formally reviewed in four weeks' time on 24<sup>th</sup> July 2023. We expect to see an improvement in your behaviour in each of the areas outlined above.

Please be advised that should your behaviour not improve and/or no serious attempt from your side being observed to correct this then further disciplinary action will be taken, which may include the termination of your employment. ...

### **Subsequent period**

[49] FVG sees the warning as unrelated to the May and June 2023 meetings, although the timing makes that unlikely. Despite not having received advice of the possibility of disciplinary action or a warning, she does not notify her employer at the time that she thinks the warning is unfair. Rather she just ignores it, telling the Authority she did not think the company would do anything if she complained and it was only a month until her review.

[50] For reasons unknown the review set for 24 July 2023 is not carried out, at least on that date, although G refers to later meetings arranged by B with FVG, which he turned up to but FVG did not. FVG denies failing to attend meetings. There was little to establish the setting up of these meetings with identification to FVG of the review topic.

[51] There is some evidence of YJN managers seeing FVG's behaviour as improving for a short period after the warning with her saying she would work on it. However, at one point M complains to G about FVG starting an argument with her, noting her view that it disturbed the whole office.

[52] FVG accepts that W's treatment of her does improve for a bit.

### **Employee classification**

[53] Another strand of FVG's concerns relates to the classification system. Her apprehensions about this run through much of the same time period as she is having

difficulties with W. This appears to have resulted in her connecting the two issues when on the evidence there was little or nothing to establish that was the case.

[54] The CEO K starts with the group in mid-2023 and notices there are inconsistencies in the employment classification levels.

[55] As B explains by 4 September 2023 email to FVH, the Australian arm is working on a broader simplification project, including to align staff classification levels across the business. Some legacy businesses have different levels.

[56] B says FVG's level now is E5 (intermediate engineer). A few days later FVG talks to the CEO when he is in the Auckland office. B emails FVG on 12 September 2023 upgrading her to E6 (senior engineer). The same day FVG sees when filling out her timesheet that she is listed as E3 (graduate with 3 to 4 years' experience). FVG sees this as a sign they were trying to move her out.

[57] G refers to a message from HR about them possibly being mistaken during the classification process so people should go back to HR if that occurred. The person undertaking FVG's classification does not know about her and seemingly rates her too highly based on her age, assuming she has been working in the field for some time. G speaks to that person and explains that FVG has trained relatively recently. He speaks to FVG and explains with her experience she should be an E4 (graduate chartered), with her replying "ok". G denies FVG was ever an E3.

[58] On 10 or 11 October 2023 FVG meets with B and G about her complaints and employee classification problem.

### **Further difficulties between FVG and W**

[59] On 7 September 2023 when the CEO is in the Auckland office, FVG takes the opportunity to talk to him about her concerns with W – including that she was not getting her fair share of work and was being unfairly supervised. The following day the CEO emails her suggesting likely four steps - a meeting with FVG to document her concerns, a meeting with W, a meeting with people all together and then scheduling of follow up meeting to keep on track.

[60] A few days later W complains officially in writing about FVG to HR, the CEO and G. This focuses on FVG's alleged "unprofessional behaviour" and "threatening fellow staff" including himself. References include shouting, arguing unconstructively, having no control over her anger and threats of legal action. He notes he has advised FVG to seek professional medical advice to resolve her behavioural issues but she replies that the New Zealand medical system is not capable. W refers to the impact on his health, work and reputation of FVG's conduct. He told the Authority that he saw FVG's behaviour as "mafia like", with her looking at his screen a lot, complaining about what he was doing, hysterical shouting, making threats (about court action or going to the police) and creating a scene where people are all scared to talk to her.

[61] On 13 September 2023 FGV emails HR and the CEO, focusing firstly on the staff classification issue. She also says she needs help to resolve the issues between her and W – after the last meeting he had improved but recently his attitude has changed a lot. This covers him being angry with her and not seeking her work. She acknowledges it is usual for people to argue about technical issues but it should not become a personal attack.

[62] As HR manager B is based in Australia, in person meetings do not occur as promptly as they might otherwise have done. Although this could on occasions be seen as resulting in concerns by or about FVG not being dealt with quickly, it may also have resulted also her employment continuing for a longer period than might otherwise have been the case.

[63] On 10 October 2023 W meets with B and country manager G to explore his complaint.

[64] On the following day, 11 October 2023, FGV meets with B and G about her complaints, focused on W. G's evidence is that despite him mentioning many times to FVG that her voice is loud, once she starts she cannot stop. G observes difficulties with others working in the open plan office with so much shouting. FVG acknowledges her tendency to raise her voice during arguments and describes herself as having a high voice.

[65] FVG is advised that G and B will meet to discuss the points mentioned by her and W in the separate meetings. G's understanding is that HR has to deal with the complaints by W and FVG separately and the focus becomes on concerns about FVG as events described below develop.

## **Further concerns about FVG's behaviour or health**

[66] On 14 November 2023 FVG provides her feedback for the staff annual performance review process. Her comments include:

I will try to be stronger, not mentally collapse when being pushed harshly constantly, learn to seek help from policeman for mental violence.

[67] On 17 November FVG receives a calendar invite from W for a meeting with him. The invite is for a standard all day meeting - 24 hours. W says he forgot to change the meeting time to a specific time period before sending it to her, which is credible. Unexpectedly, FVG thinks he is requiring her to attend a meeting which will last 24 hours. FVG becomes very upset, saying she will go to the police and mentions the possibility of self harm. FVG described to the Authority having a racing heartbeat and feeling scared. The administrator M calls the HR manager and the country manager saying FVG is shouting. An ambulance is called due to concern about FVG's mention of self harm. FVG is offered some leave but is reluctant to take it.

[68] FVG tells the Authority that she does not believe now that the meeting invite was intended to be set up for a 24-hour period.

[69] W sends an apology about the meeting invite. That day he also reports incidents from the 13 to 17 November period to B and G. B and G have a discussion including about what FVG wrote about the police on her performance review form. They are concerned about her mental health.

[70] G feels the New Zealand branch with about 15 staff does not have a lot of capacity to deal with possible mental health issues but the Australian business has better capacity. G does not know any of FVG's family to contact but does take some steps. Around this time, he asks a couple of YJN staff who are closer to FVG to suggest to her that she sees a doctor, talk to Lifeline or the like. When he first gave evidence he did not know if they did so, but later checked with them and they said they did. Albeit hearsay, I accept that evidence although FVG may not have received the same impression from her interactions with those staff as they intended.

[71] B tells FVG in early December that a meeting will be held for everyone together, but that did not occur seemingly because B did not arrange it. As set out below, it appears

YJN shifted focus through events in December to considering the situation was less one of interpersonal tensions to be resolved, to one of FVG being unable to conduct herself to an acceptable standard.

[72] There is a fire incident in the office on around 5 December 2023. The next day G arrives at work and after a while notices a smoke smell again. So he notifies staff on Teams that they should not come into the office. G says when FVG arrives and G tells her she has to leave, she immediately starts shouting at him and he has to raise his voice to be heard. She is insistent that he or YJN pay for her (wasted) bus trip into work. Colleague S comes in and G asks him to take FVG outside, with her saying “sorry, sorry”.

[73] During a discussion between W and another staff member on 8 December, FVG decides to jump in and intervene. The discussion became difficult and according to one of the other staff FVG says “I don’t want to work with you” to W and “I will take you to court and demand significant compensation”. He finds her tone quite frightening. This was an employee who at other points tries to advise FVG to adjust her loud volume and aggressive manner downwards. Despite this he did not see much improvement.

[74] G’s experience is that work is not progressing in the office because of all the arguments and he needs the team to be working. At times he has to say to FVG “stop it, stop it” to try to get her to calm down.

[75] W gets to the point where what he sees as FVG’s violent and threatening manner, including in front of clients and other staff, results in him telling G he does not want to work for YJN in New Zealand if FVG is there.

## **January 2024**

[76] On 13 January 2024 a client issues a trespass notice against FVG preventing her from entering its construction site. The notice refers to the decision being made due to “unauthorised entry, disruptive behaviour, misbehaving with me and my project Manager”. FVG is surprised to learn this. Another staff member E who was at some of the meetings with the client did not speak to the Authority of behaviour in quite the same way as the client but did say FVG broke an agreement with him that she would not speak to the client (to avoid difficulties) and “might” instead have spoken to the client in an aggressive way. This was informed by his experience of FVG in the office.

[77] On about 16 January 2024 the country manager G calls a meeting, telling people about possible redundancy. However, by the end of January they win a contract and the outlook is better so the redundancy process does not proceed.

### **YJN suspends FVG**

[78] Between about early December 2023 and early February 2024, G describes YJN getting advice from a few sources about how to deal with the situation, including some which said that FVG should be given another warning. G described to the Authority, the approach involving considering FVG's continued "insane" behaviour and the difficulty of controlling her, along with other people's safety.

[79] On 8 February 2024 B flies to New Zealand and calls FVG into a meeting. The CEO K refers to the group obtaining legal advice about undertaking the process. K believes B would have advised FVG of the investigation before travelling to New Zealand.

[80] In the absence of hearing from B or seeing the legal advice, it is unclear if B understood there was any obligation in this country to discuss suspension with an employee before deciding to go ahead and suspend. The absence of any advanced notice is reinforced by G's concern that if FVG is given notice before the meeting she would come in and cry in the office, exemplifying the time when the one day performance review invite was sent. "She can do anything insane if given a chance to comment".

[81] I conclude that FVG was not given the opportunity to comment on the possibility of suspension before she was suspended.

[82] Rather FVG is given a letter suspending her. G and B speak to her about concerns she may have a serious health situation, demonstrated by the reference to going to the police (about mental violence), so it is better for her not to be in the office. They suggest she should see a doctor. FVG is given time to comment on the suspension letter.

[83] The suspension letter refers to several complaints from staff and clients, alleging unprofessional behaviour, misconduct and threats to other staff. Written complaints are not provided. But a summary is given with a few lines about each of the following incidents/complaints:

- 1 April 2023 (should have been 2022) from M (misbehaviour, aggressive and unprofessional language)
- 20 June 2023 from W
- 26 June 2023 written warning (unprofessional behaviour and misconduct, approaching other employees, making personal comments and shouting in the office)
- 26 June 2023 further complaint from M (accusations, arguments, disruption in the office)
- 11 September 2023 complaint from W (unprofessional behaviour and threats to fellow staff members)
- 17 November 2023 incident report from W (aggressive behaviour, profanities, threats to involve police/lawyers/committing suicide/legal action against him)
- 17 November 2023 from other staff (shouting and yelling prompting an ambulance to be called for FVG).

[84] Due to the “severity of these incidents and our concerns about the well-being of all staff involved” FVG is “temporarily suspended”. An investigation is expected to last between 7 and 14 days. FVG will be on full pay.

[85] FVG’s responds in detail to the suspension letter, which is acknowledged by YJN on 19 February 2024.

### **YJN’s investigation**

[86] B undertakes an investigation. On the evidence before the Authority this primarily involves her talking to 12 people over the course of a day. A summary of what these people say is attached to the subsequent investigation report, up to around 18 lines per person. FVG and the Authority were not provided with a more detailed written record of these discussions.

[87] Colleagues S and E are recorded as saying FVG persisted with disruptive shouting and yelling behaviour in meetings and her disruptive behaviour is negatively impacting on the work.

[88] On 12 February 2024 B sends the investigation report to the CEO.

[89] FVG responds to the suspension letter on 14 February 2024. She receives an automated email message saying FVG no longer worked at YJN. The company accepts this is an IT mistake, which is rectified once FVG complains.

[90] B then investigates further, speaking to W about his response on six issues from FVG, with W also sending in earlier some emails and texts as part of his reply. B also speaks to the administrator M regarding several points FVG has raised.

[91] On 26 February 2024 the company sends FVG an investigation report and invitation to respond to proposed disciplinary action. Notes of B's interviews referred to above, along with FVG's response on suspension are attached. Appendix 2 is referred to as a detailed report to the CEO but this is, seemingly deliberately, withheld from FVG.

[92] The letter informs FVG that there is a preliminary decision to recommend to management that her employment be terminated with notice. She is given an opportunity to respond in writing and also an opportunity to meet B via Teams to discuss FVG's response, including with a legal or union representative.

[93] There appears to have been no meeting between B and FVG, even online, since the 8 February suspension meeting. The CEO says he understands B tried to contact FVG and FVG constantly cancelled meetings, leading to the suggestion that FVG was avoiding meeting. It is not evident whether this occurred during this particular period or earlier. It is fair to say that FVG focused on providing detailed and documented written responses rather than seeking to meet.

[94] On 1 March 2024 FVG responds in detail about the proposed termination and also sends a personal grievance regarding unjustified disadvantage and dismissal. This includes reference to YJN not following up on her bullying complaint. She writes a few days later that she has a bullying personal grievance. On 5 March 2024 the company acknowledges FVG's communications.

[95] At some point G proposes to the CEO there is no need to offer notice, it is better to terminate immediately. This may well have been to avoid FVG returning to work out a notice period. It is not clear whether the possibility of paying out notice was canvassed. It seems G and B then recommend summary dismissal.

[96] B met the CEO K and country manager G. K told the Authority that some of FVG's comments were deemed quite serious and could be seen as racially biased, which they do not tolerate. The only specific example provided was a time some heard FVG referring to W as an animal. FVG's version is that she said "are you human?" when W

asked her provide a response within what she regarded as a very short period of time. G's evidence was the question was "are you an animal?". Only one interviewee refers to this situation in the Appendix 1 notes and does not refer to it as racist or racially biased.

[97] A decision was made to dismiss.

### **Dismissal**

[98] YJN sends FVG a summary dismissal notification letter on 8 March 2024. Termination is for breaching the code of conduct in contravention with her employment contract.

[99] YJN's letter sets out steps in the process undertaken and the conclusion that FVG:

- exhibited unprofessional behaviour towards her colleagues, including yelling, use of inappropriate language, aggressive/threatening and disrespectful remarks
- behaved in an aggressive and rude manner to clients
- failed to adhere to instructions and procedures resulting in errors and delays in project deliverables
- behaved in a way which created an inappropriate work environment, causing discomfort and stress to her colleagues.

[100] The letter continues that, in the absence of a substantive reason which could be validated to justify the breaches of the code of conduct, a final recommendation to management was made, considering all the information, for contract termination due to multiple breaches of the code.

### **Conclusion on grievances**

[101] The test to be examined is whether, on an objective basis, YJN acted as a fair and reasonable employer could have done in all the circumstances – s 103A of the Act. In addition, good faith obligations under s 4 of the Act, including to be constructive and communicative, are to be considered.

[102] I now provide conclusions on each of the disadvantage grievances FVG pursues as well as the dismissal grievance.

## **Failure to investigate bullying allegations**

[103] In terms of bullying FVG told the Authority she sees W as having isolated her, been very picky, not given her work and not talked to her. At this stage the company was short of work in the structural team W ran. FVG accepts that point. This absence of work was a cause of tensions although likely there were others.

[104] G was aware of tensions between FVG and W and took some interventionist steps, although not well documented, but was unable to ensure a productive lasting resolution.

[105] I accept FVG was unhappy at work but that is insufficient to establish that she raised a bullying complaint which YJN failed to investigate.

[106] On the evidence before the Authority FVG did not raise a bullying complaint in writing during the two years of her employment until a few days before she was dismissed in March 2024. This absence of writing can be contrasted with the material she provided at multiple points to the employer and to the Authority which was detailed, indexed and highlighted.

[107] Although a written complaint is not necessarily required for an employer to take action, it is also not clear that FVG used the word 'bullying' which may well have generated a more active response from YJN.

[108] FVG did express some concerns in October 2023 but events got overtaken by W's complaints and serious incidents involving FVG's behaviour and/or health. YJN had written concerns from W about his own mental state as a result of dealing with FVG. He had formally complained about her and she had more informally raised issues about him.

[109] There was some evidence of YJN deciding to defer investigation into FVG's concerns raised in September 2023 that W was angry with her and not giving her work. There was however, no explicit reference by her to bullying until her grievance of 4 March 2024. It seems likely that YJN was considering the investigation it undertook into FVG's behaviour would give at least an indication of whether bad behaviour by W was present or was the cause of FVG's behaviour. The investigation did not support that.

[110] In conclusion, it was not established that there was an unjustifiable failure by YJN to investigate FVG's bullying complaints against W in the particular circumstances which existed here.

### **Employee classification grievance**

[111] It is unfortunate that the changes were perhaps not communicated or described to FVG entirely clearly but it was difficult to see any impact on or disadvantage to her. There was a period of adjustment to the relatively newly acquired company's classification approaches. There was no impact on FVG's pay and at one point in her evidence when asked what the downside was for her, she replied that she did not mind.

[112] There could be seen as a minor failure of good faith by YJN to communicate clearly but that does not meet the tests in s 4A of the Act to warrant a penalty. Once FVG raised her questions there were written and verbal discussions with her and she got to a level she was seemingly satisfied with at the time.

[113] There may also be a limitation issue with amended statement of problem which sought penalties being lodged in December 2024. Penalty actions must be brought within 12 months of when the event becomes known or should reasonably have become known to the person bringing the action.<sup>3</sup>

[114] I am not satisfied that there was an unjustified action to FVG's disadvantage regarding the classification system.

### **Suspension grievance**

[115] The general suspension requirements are:

[80] An employer is required to be fair to an employee when considering suspension. But that issue must be looked at in a sensible, flexible, and reasonable way to ascertain what the requirements of fairness are on the particular occasion and in the particular surrounding circumstances. By its nature, suspension often needs to be considered and implemented quickly, and the Court may need to take this into account in assessing the requirements of natural justice in any particular case.

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<sup>3</sup> The Act, s 135(5).

[81] A suspension is not justifiable on the basis of suspicions of misconduct but may be justifiable where the employer has good reason to believe that the employee's continued presence in the workplace will or may give rise to some other significant issue. This would include, for instance, creating adverse impacts on other employees, which should be handled promptly.<sup>4</sup>

[116] Regarding FVG's suspension, on the evidence before the Authority YJN's representative B handed over the letter advised FVG of her suspension without giving her the opportunity to comment on a proposed suspension.

[117] B's email to the CEO on 12 February 2026 describing the meeting with FVG on 8 February also supports that view – B records that she informed FVG that “the purpose of” her visit “was to deliver the letter of suspension” as well as to conduct an investigation.

[118] This predetermination is also supported by references in the investigation report to various steps, with agreement with management to temporarily suspend coming before the bullet point referring the temporary suspension of FVG.

[119] There is also a question about whether there was a sufficient need to suspend FVG at the time YJN took that action. The suspension relied on a series of complaints and events, the oldest of which had occurred over 20 months before in April 2022 and for which the complaint letter had not been provided to FVG at the time. And at the other end of the time spectrum, the most recent events referred to in the letter were in mid-November 2023, but were some three months before the suspension was imposed. Having decided to focus on a disciplinary track, it may have been trying to avoid references to events which could have been mental health related.

[120] Taking into account the difficulties identified above, FVG was disadvantaged by YJN's unjustifiable action in suspending her without giving her the opportunity to comment before deciding to suspend and relying on information almost two years old and most recently almost three months before.

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<sup>4</sup> *Mutonohori v Wairoa District Council* [2025] NZEmpC 44, including citations from *Tawhiwhirangi v Attorney-General, in respect of the Chief Executive, Department of Justice* [1993] 2 ERNZ 546 at 559, *Graham v Airways Corporation of New Zealand Ltd* [2005] ERNZ 587 at [104] and. *Singh v Sherildee Holdings Ltd* EmpC AC53/05, 26 October 2005 at [91].

## **Dismissal grievance**

[121] I now examine aspects of the investigation, disciplinary process and dismissal.

### *B's absence*

[122] YJN was at somewhat of a disadvantage without B to give evidence in the Authority. As HR manager she had run the suspension, investigation and disciplinary processes, although she was not the final decision maker. Some gaps were able to be filled by G and the CEO, who had involvement in the process. The CEO described B's recommendation, to dismiss for repeated breaches of the code of conduct, as coming to G and himself.

### *Investigation process*

[123] From B's notes in Appendix 1 of the investigation report, interviews with staff do not focus on investigating by identifying details of particular events, such as dates when the events occurred, who else was involved etcetera. Some particular events are referred to but there are also broad descriptions of staff members' impressions of FVG's behaviour. This was a broadbrush approach.

[124] Under other circumstances this may have been more problematic but FVG still managed to provide a 25 page response to the investigation report and preliminary decision, including inserted texts and emails. However, she does ask for details at points of her response.

[125] HR manager B interviewed 12 people in one day, predominantly staff and one client. FVG was critical of the feasibility of this. However, from Appendix 1 to the investigation report this was not 12 sessions, as a group of two staff and another group of four staff interviewed collectively. Those staff appear to have had less direct contact with FVG.

[126] What came out of the investigation, was the description of FVG's conduct as "disruptive, disrespectful" etcetera, rather than identifying specific events of concern.

*Code of conduct and employment agreement*

[127] YJN relied on its code of conduct in dismissing FVG which FVG says she has never seen.

[128] It was not established that FVG had ever been provided with the code of conduct, with no hard copy provided on appointment, her evidence of finding it difficult to find documents online, nor soft copy linked to her during the suspension, investigation and disciplinary processes. However, she signed the agreement giving the company the right to introduce reasonable policies and procedures and requiring her to read and understand these policies. She had also received a warning referring to the code without her requesting it. It was thus not surprising YJN understood she was aware of it.

[129] The dismissal letter does not identify which parts of the code FVG is said to have breached. The code contains a number of sections discussing the expectations of staff in particular topic areas. However, the investigation report refers to:

- Clause 6 – Occupational Health and Safety – “... Each employee has responsibility for maintaining a safe and healthy workplace by following environmental, safety and health rules and practices...Violence and threatening behaviour is not acceptable.”
- Clause 7 – Discrimination and Harassment – “Our employees are our most important asset and we are committed to maintaining a diverse workplace where every employee is treated with respect and fairness, free from harassment. We will not tolerate any discrimination or harassment.”

[130] It would have been better for the dismissal letter to identify those clauses as being the ones YJN was relying on. However, responsibility for taking steps to ensure the health and safety of herself and others is identified in the employment agreement.<sup>5</sup> However, depending on the circumstances, breach of that responsibility may not always be a matter justifying summary dismissal.

[131] Under the agreement YJN is permitted to terminate employment immediately without notice payment for serious misconduct or any serious breach of this agreement which is defined to include committing serious or persistent breaches of the agreement,

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<sup>5</sup> Employment agreement, cl 28.

disobeying a lawful and reasonable instruction, dishonesty or theft, and engaging in threatening behaviour.<sup>6</sup>

#### *Conduct with clients*

[132] There is an element of conduct referred to in the termination letter which is not fully identified in the investigation – rude and aggressive behaviour towards clients. The investigation report refers to “interviews with clients who made complaints to management” (emphasis added) about FVG being undertaken and included in an appendix. However, the only identification in the appendices of interviews with a client is notes regarding one client in Appendix 1. I accept there are occasional references by staff to clients in the staff interviews. No written complaints from clients were provided to FVG.

[133] The investigator B may have been relying on the trespass notice although that only relates to one client, rather than “clients” and is from the same client who was interviewed.

#### *Lack of information provided*

[134] YJN generally did not provide primary documents to FVG relying on summaries instead.

#### *Reliance on historic events*

[135] YJN relied on events over an extended period of time, most of which G was aware of around the time the events occurred.

[136] Although the investigation report refers to the 2022 email from M and the June 2023 warning in the background section it is not clear that these were effectively excluded from consideration of disciplinary action in early 2024.

#### *Additional grounds*

[137] The termination letter was inconsistent with the preliminary decision in the investigation report - there was an addition of FVG failing to follow instructions that was

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<sup>6</sup> Employment agreement, clause 24.3.

not explicitly identified in the preliminary decision in the investigation report. The focus there is disruptive, disrespectful, offensive and aggressive behaviour.

[138] G told the Authority the issue about not mentioning to YJN making a police report about her missing purse, with the suggestion the theft may have occurred at the office, did contribute to the decision to dismiss. However, there is no suggestion of that in the suspension or investigation report/preliminary decision documents.

[139] In addition, the statement in reply contained another reason that was not specified previously – losing 2 major clients – which FVG was not aware of before.

*Change from termination on notice to summary dismissal*

[140] YJN's 26 February 2024 letter describes the preliminary decision to recommend to management being termination with notice whereas FVG was ultimately summarily dismissed. No reason was provided in the communications for that change and FVG was not given a chance to comment on the change.

*Auto response*

[141] FVG's receipt of the email auto response that she no longer worked at YJN was distressing for her and reinforced her concerns about predetermination.

*No opportunity to have discussion with the decision-maker*

[142] Effectively the CEO, in discussion with G, made the decision on recommendation from B.

[143] The CEO K never met with FVG about the investigation or disciplinary action. It was not evident she was offered the opportunity to do so. After the suspension meeting FVG had no opportunity to meet with G either. Given that the suggestion of racial bias was not identified in the investigation report or associated letter, FVG did not have the opportunity to comment on it.

**Conclusion on dismissal**

[144] YJN was in a challenging position dealing with behaviour which could, at least in part, potentially have been interpreted as health related. It was not necessarily a new

health issue as the use of aggression and shouting featured in the June 2023 warning but may have been a health problem exacerbated more recently. However, despite more than one suggestion to seek medical help, FVG was not acknowledging physical or mental health issues, seemingly not seeking medical assistance, nor asking for sick leave.

[145] YJN decided to go down the investigative and then disciplinary track. There are some significant inadequacies identified above:

- in the invitation to respond to proposed disciplinary action identifying termination with notice, then proceeding to dismiss without notice, including without informing FVG in advance of that proposed change or providing a reason
- introducing a new concern in the dismissal letter – failure to follow instructions – which perhaps not coincidentally is one of the grounds of permitted summary or immediate dismissal in the employment agreement
- not establishing why there was serious misconduct so as to justify summary dismissal without notice
- failure to identify particular instances in its investigation, particularly where most or all of the formal complaints were not provided to FVG
- reliance on historic events, on concerns of “clients” when only one client was seemingly contacted and on issues which were not raised with FVG as part of the process (the missing purse and losing two clients)
- no opportunity to meet the decision maker, particularly when a suggestion of racial bias appears only to have come up at the final stage.

[146] I do not consider the difficulties with YJN’s treatment of FVG to be minor and not resulting in FVG being treated unfairly.<sup>7</sup>

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<sup>7</sup> The Act, s 103A(5).

[147] In conclusion YJN did not act in the manner which a fair and reasonable employer could have done. FVG was unjustifiably dismissed by YJN.

[148] As FVG is found to be unjustifiably dismissed, the unjustified disadvantage grievance regarding the investigation and disciplinary process leading to dismissal have already been covered.

### **Remedies sought**

[149] FVG has established grievances for unjustifiable disadvantage regarding suspension and unjustified dismissal. She has not done so regarding the failure to investigate a bullying complaint and the classification status so no remedy is awarded regarding those allegations.

### **Reinstatement**

[150] FVG seeks to be reinstated to her role at YJN along with the company being ordered to deal with her bullying complaint. She describes this as at least enabling her to look for other work from the stability of another role.

[151] Reinstatement is a primary remedy which the Authority must order if it is practicable and reasonable to do so.<sup>8</sup>

[152] FVG admits that reinstatement would be extremely difficult. When asked about it being a small workplace to return to, she acknowledged that and said people always gossip.

[153] Country manager G expresses concern about whether FVG would be able to behave in a professional manner in the workplace and with clients. Further, to be employed again she would have to change her behaviour, which requires treatment and an examination to see if she is fit to be professional.

[154] G is worried about the impact on staff if FVG is returned, with experience of her not only speaking loudly but in a tone expressing her critical and negative attitude to

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<sup>8</sup> The Act, s 125.

people, interrupting others' work. He found her assumptions that people were out to get her difficult to deal with.

[155] One of the staff members who gave evidence felt it would be unhealthy for other staff to have FVG to return to the workplace and he would not feel comfortable or safe to be working with FVG again. W no longer works in the Auckland office so that is not a complication.

[156] FVG's health status is a substantial issue. She did not acknowledge that her health impacted her behaviour whilst at YJN, instead stressing that the conduct of W and YJN caused her serious health problems especially after her dismissal. At one point during the Authority's meeting FVG expressed distress about her situation if she could not get sleep, to the point where it was suggested we should not continue the meeting, although FVG indicated she wanted to keep going.

[157] FVG has had some counselling and her GPs are aware but there was little further detail provided.

[158] I conclude that the ship has sailed. In the absence of any acceptance by FVG that her behaviour or some unwellness by her was a contributing factor to her behaviour whilst with the company, along with evidence about her current fitness to return to work, particularly in the same workplace, it is not reasonable or practicable to reinstate her.

### **Lost wages**

[159] FVG seeks a substantial period of lost wages due to being unable to find other work.

[160] FVG has made substantial efforts to mitigate her loss, applying for at least 170 jobs, in both her more recent engineering work area as well as accounting jobs. FVG feels that her age made it not easy to get a job. She went back to university in the hope that further study may help.

[161] The counterfactual analysis is that, as FVG seemed unwilling to recognise that her behaviour and/or health contributed negatively to the workplace situation, if YJN had started with a more health focused approach and/or undertaken a longer disciplinary

process, the company may have got to the point where it was justified to dismiss her some time down the track.

[162] I consider that an award of six months' lost wages is the starting point before consideration of contribution.

### **Compensation**

[163] Her suspension from work was shocking for FVG. She had only recently been told by country manager G, in conjunction with the redundancy process, that he would give her a good reference and then all of a sudden she was suspended. This does need to be balanced with more than one other YJN staff member telling her over a period that she needed to adjust her workplace behaviour.

[164] FVG was deeply impacted by her dismissal. Her work was a very significant part of her life and then it was gone. She felt very sad, ashamed and that no one liked her, seeing no future to her life. She withdrew socially.

[165] FVG reports suffering frequent and severe insomnia including around the time of the Authority meetings, along with nightmares and racing heart beats. According to medical notes, she reported these, along with stress about the work issues, to a doctor and some sleep treatment was arranged. FVG also spoke to a doctor about employment events impacting her mental health with her feeling anxious, scared and constantly sad. She had a number of counselling sessions, including through a telehealth provider. By November 2024 a GP advised that she is suffering from depression.

[166] Also FVG is worried about damage to her professional reputation from her dismissal. She has struggled to find other work.

[167] Consideration has been given to other cases with similar circumstances when assessing appropriate levels of compensation in this matter. Before consideration of contribution, amounts of \$7,000 for the suspension grievance and \$27,000 for the dismissal grievance are warranted.

## **Contribution**

[168] The Authority must consider whether the employee contributed to the situation giving rise to the grievance.<sup>9</sup> Remedies are to be reduced where the employee's conduct was blameworthy and contributed to the situation giving rise to the action or dismissal.

[169] FVG recognised in her evidence that she confronts things if there is a problem. The investigation report as well as evidence from several staff given directly to the Authority provides multiple instances of shouting, yelling or loud and aggressive reactions by FVG from 10 people in an office of around 15 staff.

[170] There are multiple references to this being disruptive in the open plan office, with witnesses to the Authority confirming that. Some chose to work from home to avoid it. This is in circumstances where FVG had been informally warned on several occasions about her volume and tone, including from a colleague she saw as supportive. In addition she received a written warning of a similar nature.

[171] Some of these instances related to W and could be seen as connected with the challenging relationship between them. But not all. There were incidents with administrator M and with others.

[172] If FVG's behaviour of shouting and yelling aggressively was caused or contributed to by health problems it may well not have been seen as blameworthy. However, that was not the case.

[173] It was suggested to FVG by several people, including in the suspension meeting, that she seek medical assistance but she seems not to have done that until after her dismissal.

[174] I am obliged to conclude that FVG did contribute to the situation giving rise to her suspension and dismissal. On the face of the material available to the Authority, she must bear a degree of responsibility for that, in the absence of recognition of the difficulties her conduct imposed and the degree to which this lack of recognition meant

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<sup>9</sup> The Act, s 124.

she did not take steps to ameliorate her behaviour. A deduction to her remedies of 30% is warranted.

### **Good faith**

[175] FVG alleges breaches of good faith by YJN but these are closely entwined with the grievance allegations and are covered above. Given the findings above a separate penalty award would not be warranted.

[176] Some of FVG's concerns also related to YJN's actions during the Authority's process, after the duty of good faith had concluded with the end of employment.

### **Costs**

[177] As neither party was represented by an external advocate or lawyer in this matter it may be that neither have incurred costs of representation which are claimable in the Authority. FVG does not seek any costs other than disbursements referred to below.

[178] FVG, having had some success, is entitled to be reimbursed for the Authority's filing fee of \$71.55 and is to be reimbursed for that by YJN. Her other claim for fees appears pre-emptive.

### **Orders**

[179] YJN is ordered to pay FVG within 28 days of the date of this determination:

- (a) Six months' lost wages less a deduction of 30%;
- (b) \$4,900 without deduction for compensation for the suspension grievance;
- (c) \$18,900 without deduction for compensation for the dismissal grievance;  
and
- (d) \$71.55 for the Authority's filing fee.

Nicola Craig  
Member of the Employment Relations Authority