

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 279
3321780

BETWEEN AVINASH SINGH
Applicant

AND WINDCAVE LIMITED
Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person
Scott Wilson and Nicole Meech counsel for the
Respondent

Investigation Meeting: 30-31 July and 22 October 2025 in Auckland

Submissions and other information received: 4 September 2025 and 28 January 2026 from the
Applicant
18 September 2025 and 4 February 2026 from the
Respondent

Determination: 5 May 2026

DETERMINATION OF THE AUTHORITY

Application for a non-publication order is declined

[1] As part of her case in the Authority, Avinash Singh applies for a non-publication order of her name as she fears that publication of her name online would jeopardise her chances to establish a meaningful career. In her written submissions dated 28 January 2026, Ms Singh refers to her previous employment with Hilti New Zealand (Hilti) being unexpectedly cut short after Windcave Limited (Windcave or the company) reached out to them to retrieve its client information. This resulted in Ms Singh's resignation from Hilti and she is concerned that any subsequent employer or future work colleague might see her as troublesome or litigious which would then adversely affect her career.

[2] Ms Singh's concerns around her future job prospects, reputational harm and being perceived as troublemaking or litigious are acknowledged but nevertheless

remain hypothetical and does not show a specific adverse consequence that would justify a departure from open justice which is of fundamental importance.¹ Without more; how publication might reasonably affect Ms Singh to find future employment remains speculative. As the grounds for a non-publication order are not made out, the application for such an order is declined.

What is the employment relationship problem?

[3] These are claims of unjustified disadvantage and unjustified dismissal brought by Ms Singh against her former employer Windcave which deny the claims and say, by way of counterclaim, that Ms Singh accessed and disseminated highly confidential and sensitive client information without its consent and in breach of her individual employment agreement (IEA). This is rejected by Ms Singh who says that the information she accessed comprised documents that are relevant in proving her personal grievances.

How has the Authority investigated?

[4] For the Authority's investigation written witness statements were lodged from Ms Singh who was supported at the investigation meeting by her husband, Himanshu. For Windcave, written witness statements were received from its chief financial officer, Justin Drake, and head of people and capability (P&C), Sunithi Sathiachander.

[5] All witnesses answered questions under oath or affirmation from me and the parties' representatives. Written closing submissions from the parties were also filed and have been considered.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

¹ *MW v Spiga* [2024] NZEmpC 147 at [87]-[89].

What are the issues?

[7] At a case management conference with the parties on 20 December 2024, the issues for investigation and determination were agreed upon. In broad terms those issues were as follows:²

- (a) Was Ms Singh unjustifiably disadvantaged by Windcave failing to act on or investigate her harassment complaint from March-April 2024?
- (b) Was Ms Singh unjustifiably disadvantaged because of her 'suspension' from employment?
- (c) Was she unjustifiably dismissed and was Windcave's redundancy process what a fair and reasonable employer could have done in all the circumstances at the time?
- (d) Has Ms Singh obtained and disseminated highly confidential information belonging to Windcave without its authority?
- (e) In terms of remedies, Ms Singh is seeking lost wages and compensation but is no longer seeking to be reinstated. What remedies (if any) should be awarded if she is successful with any of her claims?
- (f) What efforts has she made to mitigate her loss and find alternative employment?
- (g) If any remedies are awarded, should this be reduced (under s 124 of the Act) for blameworthy conduct by Ms Singh that contributed to her own grievance?
- (h) Should either party contribute to the costs of representation of the other party?

What happened?

[8] Windcave is a New Zealand-based global business that provides a uniform platform for processing credit cards, debit cards, digital wallets, and contactless payments across multiple channels.

[9] Ms Singh commenced employment at Windcave in August 2021 as a recruiter. Her IEA recorded a starting salary of \$75,000 per annum plus a further \$5,000 following a successful review after her first six months. Ms Singh's line manager and

² Second Minute of the Authority, 23 December 2024, at [3].

to whom she reported was Sunithi Sathiachander who at that time was the recruiting manager.

[10] In March 2023, Ms Singh was promoted to the role of P&C advisor before she was further promoted to Lead P&C advisor (US and NZ) in June 2023. As a result of being promoted, Ms Singh's salary was increased to \$100,000 per year and as Lead P&C, her primary focus was on recruitment, HR support, business change management, and leave and absenteeism management.

[11] In April 2023, Windcave's HR generalist in the United States resigned and Ms Singh inherited that person's responsibilities for tax work for California to Arizona. The work was highly technical because of the federal tax regulations and because each state had their own local tax laws as well. It was work that Ms Singh came up to speed with and successfully undertook in short order.

[12] In November 2023, Ms Singh volunteered to do the US fortnightly payroll for some (then) 38 Windcave staff based in the United States. Working from Auckland and being 24 hours ahead of United States local time, Ms Singh came under some pressure to complete her payroll work on time. For this additional responsibility, she requested an additional salary increase which, with Ms Sathiachander's support, was approved by Windcave's chief executive officer, Andy Cullen. Consequently, Ms Singh's salary increased to \$110,000 per annum, effective December 2023.

[13] Around this time, Ms Sathiachander established a two-person quality check process for the US payroll which involved, as a first layer, Windcave payroll lead for Asia Pacific, Aachal Lal. A second check would be performed by the company's chief financial officer, Justin Drake, who would be the final approver before payment of wages and salaries were made.

US payroll incidents in January/February 2024

[14] Matters appear to have come to a head for Ms Singh and her US payroll work in late January 2024 in which she worked during the Auckland Anniversary long weekend (Saturday 27 and Sunday 29 January) to get her work done in time for it to be checked by Ms Lal and then having to wait for her to respond which did not occur until Tuesday 30 January 2024.

[15] The following fortnightly pay due Thursday 15 February 2024 appears to have been particularly stressful for Ms Singh. On Tuesday 13 February at 10.20 am, she emailed her payroll work to both Ms Lal and Ms Sathiachander. At 12.12 pm that same day, Ms Lal emailed Ms Singh that she had detected 10 variances with the payroll which while minor, were nevertheless a variance, and had to do with the use of decimals with respect to hours worked.

[16] Almost immediately after receiving Ms Lal's email, Ms Singh emailed Mr Drake at 12.14 pm on Tuesday 13 February 2024 stating that the deadline for the payroll was 'today' and that there were too many approval layers that shortened the time she had to do her side of the US payroll work. Consequently, Ms Singh advised Mr Drake that she could no longer continue and requested that he speak with Ms Sathiachander to initiate a transition.

[17] Mr Drake replied shortly afterwards by email at 12.17 pm indicating to Ms Singh that he would do so but cognisant for the current pay cycle to run on time and wanting to avoid any criminal sanctions in some states for the non-payment of wages, he asked Ms Singh if she could persevere with the payroll work so that US-based staff could be paid. Ms Singh agreed to do so and actioned the pay run later that same day.

[18] On 15 February 2024, Ms Singh spoke with her reporting manager, Ms Sathiachander on Teams about Ms Lal's approach around the US payroll work and audit. When Ms Sathiachander mentioned that Ms Lal had picked up discrepancies with her payroll report, Ms Singh became upset and exited the video call. She would later message Ms Sathiachander in the evening to apologise to which Ms Sathiachander responded by inviting Ms Singh to lunch to discuss matters further.

[19] On 23 February 2024, Ms Sathiachander had an in person meeting with Ms Singh to discuss various updates. During the meeting, Ms Sathiachander raised their telephone discussion on 15 February which resulted in Ms Singh becoming upset and mentioning that she wanted to raise an HR issue against Ms Lal and that she felt unsupported by Ms Sathiachander. The meeting ended when Ms Singh left abruptly. Ms Sathiachander considered it best that she was given some space.

[20] On 13 March 2024, acting on Mr Drake's instructions, Ms Sathiachander asked Ms Singh to hand over her US payroll work to Ms Lal. The following day, Ms Singh sent Ms Sathiachander a lengthy email claiming that she was really happy doing the US payroll work but that everything had changed when Ms Sathiachander had introduced Ms Lal and herself as an approval layer to the process but with incomplete information on US payroll processing dates. Ms Singh stated that she had experienced delays on their part which meant that she had less time to action any changes that needed to be made resulting on two occasions where Ms Singh needed to work over the weekend.

[21] Ms Singh further stated that the situation had become overwhelming for her and this was the reason behind her decision to email Mr Drake. It seemed to Ms Singh that a pattern was emerging where Ms Sathiachander would dilute the quality of her work by not providing her with clear timelines and instructions. Ms Singh's email ended with her confirming to Ms Sathiachander that she was, among other things, happy to continue with the US payroll work.

[22] Ms Sathiachander emailed Ms Singh on 14 March 2024 that she understood from Mr Drake that she wanted to be taken off that work and that she would be referring the matter to Mr Drake and Ms Lal for further clarification. Ms Singh said that her earlier email to Mr Drake (see [16] above) was sent when she was under stress after being asked by Ms Lal to provide "in-depth clarifications" to the variances she found.

Ms Singh's email communications with CEO

[23] The following day, 15 March 2024, Ms Singh sent a lengthy email to Windcave's chief executive officer, Andy Cullen, to formally request a change in reporting line without dilution of any of her current duties, including the US payroll work. Ms Singh stated that she had been feeling isolated for quite some time and had recently reached out to Ms Sathiachander who Ms Singh claimed had been dismissive of how she felt and asked for her to set out all of her concerns in an email.

[24] Ms Singh's email to Mr Cullen referred to the US payroll incident and how Ms Sathiachander's decision to introduce Ms Lal and herself as a first layer check, and as New Zealand was already a day ahead of the US, this made Ms Singh's payroll work more time sensitive during certain pay runs. Ms Singh referenced the list of variances in February 2024 that Ms Lal had asked her to address on the day that payroll was due,

which put her under a lot of pressure to amend at the last minute. Ms Singh also took exception to Ms Lal directing her to send the changes to Mr Drake for final approval.

[25] In her email, Ms Singh referred to a historical matter concerning Ms Sathiachander in 2022 where she offered a temporary backup position for NZ payroll to an individual who had since become the senior P&C advisor. Ms Singh alleged that Ms Sathiachander had appointed someone whom she knew personally.

[26] On 18 March 2024, Mr Cullen replied to Ms Singh's complaint by referring her to her email exchange with Mr Drake on 13 February 2024 with Mr Cullen noting that in that email she effectively quit from doing any further US payroll work. Mr Cullen went on to state:

The issue for [Mr Drake] and Finance Dept. is we need to have absolute trust in the capability and dedication of a payroll position. Because it can affect timeliness and accuracy of staff pay and that's absolutely critical. Seems we may need to ensure the USA processes are with somebody who can guarantee focus.

I hope you can appreciate that turning around later and saying you want the work and the role, after twice saying you don't want to do it, on the day before its due, must create doubt and issues for the company.

[27] Ms Singh replied to Mr Cullen's email later that same evening reiterating that the emails she had sent to Mr Drake about not being able to continue with the US payroll work were written under stress.

20 March 2024 meeting

[28] On 20 March 2024, Ms Sathiachander and Mr Drake met with Ms Singh to discuss the US payroll work. Mr Drake noted that Ms Singh had made a strongly worded request to remove US payroll from her responsibilities, which he approved at the time. At the meeting, Ms Singh stated that she had now changed her mind and wanted to continue with US payroll work. Mr Drake declined to do so on the basis that if she changed her mind again, this would place the company in an unsatisfactory position. He asked that she hand over the US payroll and when she refused, Mr Drake directed Ms Singh to hand over that work to a member of Ms Sathiachander's team. At that point, Ms Singh sought to leave the meeting which she did before her concerns about her working relationship with Ms Sathiachander could be discussed.

[29] On 25 March 2024, Ms Singh emailed Mr Cullen to respond to the concerns she had raised with him about Ms Sathiachander which were: preferential treatment at work with regards to work distribution and work opportunities; lack of clarity around processes; lack of clarity with respect to her duties in the company; and significant delays in emails impacting her work.

[30] Mr Cullen replied the following day on 26 March 2024 noting that many of Ms Singh's concerns were very old (over a year) and seemed to be triggered by something that had happened recently. Mr Cullen speculated that it was the mid-February 2024 payroll when Ms Singh had reached out to Mr Drake on a Saturday. Mr Cullen stated that he saw no reason for urgency as there was plenty of time for Ms Singh to meet that payroll before the cutoff by waiting until Monday. Mr Cullen did not get the sense from the emails that Ms Singh was acting reasonably. He considered her claim that her role had been changed without consultation as "just absurd" as she had requested in writing that she wanted to abandon the US payroll work. Mr Cullen stated:

The business needs to safeguard a reliable process for such a critical task as Payroll. I don't get the sense that any new process is disadvantaging you; quite the reverse you claimed the payroll was stressing you (or you were too stressed to handle the payroll), so [Mr Drake] has worked to resolve that.

[31] Mr Cullen stated that he was not a manager and was just the CEO. As he did not manage anyone, and as HR policy for these matters was clear, he nominated Mr Drake to progress Ms Singh's concerns to resolution.

[32] On 26 March 2024, Ms Singh emailed Ms Sathiachander to request to work from home, citing stress and anxiety to recent in-person meetings (with Mr Drake and Ms Sathiachander). In response, Ms Sathiachander offered to provide Ms Singh with one weeks' special paid leave which she declined, electing instead to work from home.

[33] On 27 March, Ms Singh responded to Mr Cullen's email of 26 March 2024. Briefly stated, she felt that she had been disadvantaged in her work, disagreed that her concerns were absurd or unreasonable, that there had been no efforts by Mr Drake to understand the source of her stress, that she was uncomfortable with having him mediate having directed her to handover the US payroll work, and that Windcave's HR policy was not clear about whom she could reach out to where the grievance was with the HR manager.

[34] On 28 March 2024, Ms Sathiachander emailed Ms Singh that she was traveling to the United States but upon her return she wished to meet with her in person together with Mr Drake, who would act as mediator to discuss and sort any pending issues. Ms Singh replied asking for a different mediator as she considered the last in-person meeting regarding the US payroll was not a two-way discussion. Ms Singh stated that she did not feel heard and that there was a lack of effort in trying to understand her concern.

[35] When Ms Sathiachander was in New York where Mr Cullen is based, he asked whether the company might achieve operating efficiencies and cost savings by outsourcing the recruitment function to the US. Ms Sathiachander stated that Mr Cullen had asked her to consider this further because having someone on the ground there with knowledge of the local job market and operating within the same time zone could benefit the business.

[36] As instructed by her CEO, Ms Sathiachander made further enquiries including meeting with a New York recruitment firm and found that outsourcing the US recruitment function could result in a cost saving of between NZD30,000 and NZD80,000. In combination with having someone in the same time zone, Ms Sathiachander formed the preliminary view that business efficiencies and cost savings could be made. With the CEO's approval, the restructure process was initiated.

[37] On 2 April 2024, Mr Cullen responded to Ms Singh's email dated 27 March 2024, stating somewhat emphatically, that he did not see any issues that amounted to anything substantive or proven. It seemed that she had a personal issue with Ms Sathiachander whom she no longer wished to report but proposed no alternative reporting line herself. Mr Cullen further noted that Ms Singh did not want to discuss the matter with Mr Drake whom he had nominated to mediate.

[38] Mr Cullen stated in a curt manner that Ms Singh had manufactured problems where none existed, was given multiple opportunities to speak with Mr Drake and Ms Sathiachander but refused to engage, had twice raised with Mr Drake her US payroll work which made it necessary for the company to rework the process, and while that took a few weeks to implement, Ms Singh's request to remove the US payroll work from her had been fulfilled with no effect on her pay or hours of work. Mr Cullen

disagreed with Ms Singh that she had been disadvantaged and noted that she had previously said that the time difference between New Zealand and New York time did not suit her current situation at home. Mr Cullen stated that having considered Ms Singh's concerns, he considered them now closed.

Ms Singh advised of restructure of her role

[39] On 26 April 2024, Ms Singh received a proposal for change document to disestablish her role as lead P&C Advisor (US & NZ). Ms Sathichander was managing the restructure process. According to the proposal document, the rationale behind the change was maximising efficiency as it was considered that, with Ms Singh being based in New Zealand, the different time zone with the United States was a "vital factor" that impaired her ability to work to full capacity. As a result, the company was looking at potentially outsourcing Ms Singh's US recruitment function, which constituted 30 percent of her role, to other P&C team members who were resident in New York:

If the proposal is adopted, we believe that we would be able to achieve efficiencies and cost savings, particularly the remuneration costs associated with the role were taken into account.

If the proposal is implemented, you may be made redundant subject to any redeployment opportunities within the business.

[40] The proposal document further stated that it was a proposal only and that no decisions would be made until Ms Singh had been given the opportunity to respond. The proposal set a proposed timeline for the process which included meeting Ms Singh for her initial feedback, consideration of any feedback received, and any further consultation with her as appropriate and necessary.

Personal grievance raised and proposal feedback received

[41] On 14 May 2024, Ms Singh's then lawyer wrote to Mr Cullen to raise a personal grievance of unjustified disadvantage which concerned the company's failure to take reasonable and practicable steps in resolving her concerns with Ms Sathichander who had made her feel unsafe.

[42] Regarding the redundancy proposal, it was submitted that Ms Singh's role was still required and was not superfluous because the majority of her duties would simply be redistributed to her team; the company had not provided a genuine commercial justification for its decision to make her role redundant; it was not clear why she was

the only employee who was significantly affected by the proposal; it had not been explained how redundancy would achieve the company's objectives; and there was a paucity of information to support the proposal. It was further submitted that Windcave was using redundancy as a mechanism to get rid of Ms Singh rather than address and fairly investigate her concerns. The letter ended with the statement that this constituted Ms Singh's feedback to the restructure proposal.

[43] Ms Sathiachander responded to the representative's letter stating that a substantive response from the company's lawyers would follow. She emphasised that the change proposal was just that, a proposal, and that no final decisions had been made. Ms Sathiachander stated that the rationale behind the proposal was operational efficiency and that outsourcing would potentially result in savings NZD30,000 to NZD80,000 per year. Using an external recruiter based in the US would have the advantage of local knowledge and expertise in the same time zone and one-off recruitment fees. Ms Sathiachander further stated that no one else in the P&C team handled the US region which was why Ms Singh was the only employee being consulted about the proposal. When asked for a definition of 'maximum efficiency', Ms Sathiachander stated that continual reliance on one single point of contact could be a liability to the company if that person was unable to deliver.

[44] On 31 May 2024, Windcave decided to proceed with its proposal to disestablish Ms Singh's role. Windcave subsequently consulted with Ms Singh in respect of redeployment opportunities within the business. This included meeting her on Teams on 6 June 2024 and providing her with a list of current vacancies. Ms Singh expressed interest in two roles: that of chargeback and reconciliation officer, and project coordinator. Although Ms Singh applied for these roles, Windcave considered her curriculum vitae but determined that she was not suitable for the project coordinator role as that required experience in project management. Similarly for the chargeback and reconciliation role, Ms Singh lacked experience or a background in accounts/finance or reconciliation.

Breach of confidential and sensitive client information

[45] On 4 and 14 June 2024, Ms Sathiachander emailed and issued a letter to Ms Singh expressing concern that it appeared she had accessed personal information about

company employees and sending this sensitive information externally to her private email address.

[46] On 20 June 2024, Ms Singh's representative responded stating that she had sent the information to her personal email address as a safeguard by ensuring that she had all the relevant information she needed to support her application.

[47] Ms Singh's employment ended due to redundancy on 19 June 2024. Ms Sathiachander states that had she still been employed, the company would have commenced a disciplinary process against her which may have resulted in her employment being terminated.

[48] Shortly after her redundancy, Windcave advertised a recruiter – intern role via Seek on 30 July 2024, listing duties that Ms Singh says were central to her role. Ms Singh questions the genuineness of the restructure proposal which claimed to save costs and achieve efficiency.

[49] On 11 July 2024, Ms Singh's representative raised a further personal grievance on her behalf of unjustified dismissal alleging that the predominant motive for the redundancy was Windcave's negative view it held of Ms Singh following her recent workplace issues with Ms Sathiachander which meant that the restructure process was designed from the outset to remove Ms Singh from her employment.

Was Ms Singh unjustifiably disadvantaged by Windcave failing to act on or investigate her harassment complaint from March-April 2024?

[50] The test of justification at s 103A of the Act requires that an employer's actions, and how the employer acted, must be what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred. Ms Singh submits that Windcave failed to provide her with a safe and healthy workplace and that Mr Cullen, the company CEO, had failed to properly investigate her harassment complaint against her manager, Ms Sathiachander.

[51] At the investigation meeting, Ms Sathiachander described Ms Singh as an excellent recruiter who had put her hand up for the US payroll work which was highly technical requiring the incumbent to have knowledge of federal and local state tax laws.

When I asked Ms Sathiachander about her working relationship with Ms Singh, she stated that it was good up until Tuesday 30 January 2024. A text message from Ms Singh to Ms Sathiachander at 11.09 pm that evening indicated that something had happened at home that caused Ms Singh to be stressed and she asked if she could come into the office just for one day that week. Apparently, Himanshu, Ms Singh's husband had fractured his finger by accident with the garage door.

[52] Ms Singh submits that she has been exposed to multiple psychosocial hazards from Ms Sathiachander and says that her concerns were raised with Windcave multiple times since 2022. The test of justification at s 103A explicitly states that whether a dismissal or an action was justifiable must be determined on an objective basis. In the circumstances of this case, what this means is that I must evaluate how Windcave acted with respect to Ms Singh's claim of alleged harassment by her former manager.

[53] The difficulty with Ms Singh's claims of having raised multiple concerns since 2022 is the paucity of documentary evidence. While there is a Teams chat exchange between Ms Singh and Ms Sathiachander from 4 November 2022, at its highest, all this shows is a thinly veiled criticism by Ms Singh of her manager's process in recruiting a senior HR role internally rather than advertise the position. There is nothing in the exchange that is of a disparaging nature which would give Ms Singh reasonable cause to be concerned that she was being harassed by her manager.

[54] Ms Sathiachander has supported past salary increases for Ms Singh. Such support is incongruous with harassment which is behaviour that is unwelcome or offensive to an employee and which has a detrimental impact on their employment, job performance, or job satisfaction. Matters appear to have come to a head for Ms Singh on 13 February 2024 when she emailed the chief financial officer, Mr Drake, directly that she could no longer continue with the US payroll work.

[55] At the investigation meeting, Mr Drake gave evidence that, from memory, he did not really interact with Ms Singh and when she emailed him, it was very much out of the blue. Mr Drake stated that he would normally receive an email from Ms Singh when payroll was due for the 30 to 40 employees of Windcave had in the United States. Mr Drake stated that he tried to help Ms Singh and assuage her of her concerns while

ensuring that at least that payroll could be completed before the role could be transitioned from her.

[56] Given that Windcave had no one else who could complete that pay run in time, objectively considered, I am satisfied that the actions Mr Drake took upon receipt of Ms Singh's email were what a fair and reasonable employer could have done at that time.

[57] When looking into her complaint, Windcave's CEO, Mr Cullen, reviewed the email correspondence and essentially found that Mr Drake had done what Ms Singh had requested him to do, which was to remove the US payroll work from her. Concerned for her welfare, Mr Drake did that by instructing Ms Sathiachander to take the US payroll work from Ms Singh. Ms Sathiachander was not the decision maker but merely complied with what she was instructed to do. Mr Cullen will have read a very detailed complaint letter and subsequent reply emails from Ms Singh.

[58] Mr Cullen looked at the issues for himself and was sufficiently independent and removed from the February payroll incident and Ms Singh's written request to Mr Drake for that component of her work to be removed from her. Although Ms Singh has raised matters from 2022 onwards, the catalyst was the payroll incident and removal of the role from Ms Singh in March 2024 which has resulted in her falling out with Ms Sathiachander. Given the lack of documented evidence of harassment and the chronology of events around the removal of the US payroll work from Ms Singh, it was reasonably open to Mr Cullen to conclude that her issues were personal in nature for which the company had proposed mediation facilitated by Mr Drake.

[59] Although Ms Singh chose not to participate in mediation on account of Mr Drake, it was his evidence that, in his mind, he believed that he was helping Ms Singh by removing the US payroll work from her. His immediate concern on reading her email was her welfare and having received her request, acknowledging there was a need to implement it. Objectively considered, Ms Singh's claim of unjustified disadvantage by her employer's failure to investigate her harassment complaint from March-April 2024 is not made out and is declined.

Was Ms Singh unjustifiably disadvantaged because of her ‘suspension’ from employment?

[60] The test of justification at s 103A of the Act applies equally to suspensions as an employer’s decision to suspend an employee, and how the employer acted, must be both substantively and procedurally fair, taking into account the circumstances of the case, the resources of the employer, and the principles of natural justice.

[61] The suspension claim relates to Windcave’s decision to pause Ms Singh’s login credentials and access to its IT system in late May 2024. The decision was conveyed to her representative in an email from Ms Sathiachander in which she explained that Ms Singh had continued to share confidential Windcave employee information to her personal email without her employer’s consent or permission. Ms Sathiachander’s email further stated that until the breach was internally investigated, Ms Singh’s credentials and access would be paused to avoid any further breaches.

[62] Windcave’s actions were entirely orthodox in the circumstances. A fair and reasonable employer can be expected to take such preventative measures to protect its confidential information regarding other employees which justified the pausing of Ms Singh’s login credentials and access until further inquiries could be made. In any case, she continued to be paid during the period of the “suspension”. I find no unjustified disadvantage with this action.

Was Ms Singh unjustifiably dismissed and was Windcave’s redundancy process what a fair and reasonable employer could have done in all the circumstances at the time?

[63] The test for whether a dismissal is justified is set out in s 103A of the Act which requires an objective assessment of whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal. In relation to a dismissal for redundancy the Court of Appeal has described the test of justification in this way:³

... If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it

³ *Grace Team Accounting v Brake* [2014] NZCA 541 at [85].

could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s 4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s 103A test.

Redundancy was for genuine reasons

[64] In some respects, Ms Singh has contributed to her being restructured out of her role. Had she not emailed Mr Drake in February 2024 that she no longer wished to continue with the US Payroll work, Windcave's CEO Mr Cullen would not have seen a need to make the business more efficient by outsourcing the US recruitment function altogether to someone based locally in New York, and having Ms Singh's NZ recruitment work absorbed by other members of the P&C team.

[65] The reasons for the restructure were set out in a letter from Ms Sathiachander to Ms Singh dated 26 April 2024 with management raising the concern whether the current arrangement of a having a New Zealand-based staff member being responsible for the US regional recruitment work was efficient. While the restructure would result in savings of NZD30,000 to NZD80,000 are arguably modest, the savings are year on year and not a one-off. Further, at the investigation meeting, Ms Sathiachander's oral evidence to the Authority was that, while on a business trip to New York in April 2024, Mr Cullen wanted to grow the New York office and wondered whether having someone operate in the same time zone would benefit the business. He instructed Ms Sathiachander to look into this.

[66] Ms Singh strongly believes that the disestablishment of her role as P&C lead – US and NZ, was in retaliation for having made a complaint against her manager, Ms Sathiachander. However, Windcave's expansion into New York had been planned well before any of Ms Singh's matters came to a head and although she takes issue with her manager leading the restructuring process, as P&C head, Ms Sathiachander was well placed to lead the process. It should be noted that she was not the decision maker concerning the removal of Ms Singh's US payroll work. This was Mr Drake. I am satisfied that there was not ulterior motive to the restructure and that there were genuine business reasons for change.

[67] With respect to redeployment opportunities, Ms Singh expressed interest in two roles within the business: the chargeback and reconciliation officer, and project

coordinator. While unsuccessful with her expressions of interest for these roles, Ms Singh contends that Windcave hired two new recruiters in September 2024, some two months after her employment ended. However, it is Ms Sathiachander's evidence that two roles in P&C had been disestablished globally through informal processes. While two new recruiters were recruited, the head count for P&C remained the same.

[68] While understandably Ms Singh is disappointed with the outcome of the restructure process, it was nevertheless one that set out a process and a proposed timeline for her to provide feedback, which she did with the assistance of her then legal representative. Although Ms Singh considers the final outcome as predetermined, the process was transparent and Windcave shared with her information that was relevant to the continuation of her employment. The standard is not one of perfection but of overall fairness and reasonableness which is the case here.

Has Ms Singh obtained and disseminated highly confidential information belonging to Windcave without its authority?

[69] This issue relates to Windcave's counterclaim against Ms Singh that she accessed confidential company information without authority which she emailed to herself and her husband. There is no dispute that Ms Singh accessed information from Windcave's computer system in April and in May 2024, and while the clear majority of that information does not appear to be directly relevant to Ms Singh's employment relationship problem, her actions had the potential to expose her employer to legal action in New Zealand, the United States, and in the United Kingdom for a GDPR breach.

[70] I accept that Ms Singh accessed her employer's information to safeguard information for her case in the Authority and that she was not motivated by commercial gain. However, the information remains the property of Windcave and the investigation meeting was adjourned part-heard in an effort to retrieve that which was accessed so that the company could be put back at ease. In the course of doing so, it became apparent that the laptop Ms Singh used to store the Windcave data was a work laptop belonging to her now former employer, Hilti. Fortunately, Windcave has since retrieved that information from Hilti's computer system.

[71] While Ms Singh's actions were potentially serious for Windcave and constitutes a clear breach of her employment obligations, because of intervention at a low level by the Authority, the data breach has been resolved and there is no evidence that Windcave is at risk of any legal consequences arising from Ms Singh's actions. Although Windcave has requested that I impose a penalty, I decline to do so but make the following orders instead, which would result in a penalty in the event of a breach:

- (i) That Ms Singh complies, in full and without exception, with the enduring obligations in her employment agreement with Windcave which survive termination, including clause 16 to her IEA regarding confidentiality;
- (ii) That Ms Singh immediately returns and does not retain or use any and all confidential information belonging to Windcave, which still remains in her possession, power, or control;
- (iii) That Ms Singh does not disclose or disseminate any confidential information to any third party.

Conclusion

[72] As will now have become apparent, and for the reasons given, Ms Singh's claims of unjustified disadvantage and unjustified dismissal are not made out and are unsuccessful. While the Authority understands Ms Singh to be no longer in possession of any confidential employee or client information belonging to Windcave, the above orders are made out of an abundance of caution.

Costs

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

[74] If they are not able to do so and an Authority determination on costs is needed Windcave may lodge, and then should serve, a memorandum on costs within 21 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Singh would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[75] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁴

Peter Fuiava
Member of the Employment Relations Authority

⁴ See www.era.govt.nz/determinations/awarding-costs-remedies.