

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 326
3288219
3310200

BETWEEN

REGINA RASHEED
Applicant

AND

COMMISSIONER OF
ZAYED COLLEGE FOR
GIRLS
First Respondent

AOTEAROA CHARITABLE
FOUNDATION TRUST
Second Respondent

Member of Authority: Marija Urlich

Representatives: Richard Harrison, counsel for the Applicant
Joseph Williams, counsel for the First Respondent
Tim Clarke, counsel for the Second Respondent

Investigation Meeting: 11, 12, 16 - 18 December 2025 and 20 – 22 January 2026

Submissions and information received: 5 and 26 February 2026, from the Applicant
19 February 2026, from the First Respondent
19 February 2026, from the Second Respondent

Determination: 27 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Regina Rasheed was employed as the principal of Zayed College for Girls (the college) from June 2011 until 17 June 2025 when she was dismissed. Mrs Rasheed says her dismissal was unjustified and that the actions of her employer have unjustifiably disadvantaged her in her employment. She seeks remedies including reinstatement to the position of principal. Mrs Rasheed also seeks findings of breach of the employment

agreement and statutory obligation of good faith and orders for penalties against the College for breach of the duty of good faith and the employment agreement and Aotearoa Charitable Foundation Trust (the Trust) for aiding and abetting breaches of her employment agreement.

[2] The Commissioner of Zayed College for Girls (the Commissioner) says it has always acted towards Mrs Rasheed as a fair and reasonable employer could have in all the circumstances and its actions are consistent with obligations owed to her under the duty of good faith and under the parties' employment agreement. It says there is no basis to award the remedies sought.

[3] The Trust is the proprietor of the college – it owns the land and buildings and is responsible for the special character of the college. It says the penalty claim against it should be dismissed because it is time barred, or in the alternative, a breach by the employer cannot be established. The Trust opposes reinstatement on the grounds the relationship between it and Mrs Rasheed has irrevocably broken down.

The Authority's investigation

[4] This matter has some procedural history before the Authority. On 28 August 2024 Mrs Rasheed's application for interim reinstatement from suspension was granted.¹ In a preliminary determination issued on 16 April 2025 jurisdictional matters raised by the Commissioner regarding the scope of the personal grievances raised were resolved in Mrs Rasheed's favour.²

[5] During the investigation of Mrs Rasheed's substantive matters the Authority received lengthy and detailed evidence from a significant number of witnesses. In addition to the evidence of Mrs Rasheed, Lynley Myers, the Commissioner and Taoufik Elidrissi, a former trustee and spokesperson of the Trust at the relevant times evidence was received from 19 other witnesses. The supporting documentation provided by the parties was extensive. 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 information received.

¹ *Regina Rasheed v Commissioner of Zayed College for Girls* [2024] NZERA 516.

² *Regina Rasheed v Commissioner of Zayed College for Girls* [2025] NZERA 213.

Issues

- [6] The issues identified for investigation and determination are:
- (i) Was Mrs Rasheed disadvantaged in her employment, by way of unjustifiable actions in relation to:
 - a. the alleged failure of the employer to investigate and conclude the disciplinary process commenced in August 2022 in a fair and timely manner;
 - b. her suspension on 1 July 2024;
 - c. her suspension on 15 September 2024.
 - (ii) Was Mrs Rasheed unjustifiably dismissed on 17 June 2025?
 - (iii) If so, is Mrs Rasheed entitled to a consideration of remedies sought including:
 - a. Reinstatement to the position held at date of dismissal;
 - b. Reimbursement for lost wages from 17 June 2025 to reinstatement under s 123(1)(b) of the Act;
 - c. Compensation of \$75,000 under s 123(1)(c)(i) of the Act for the unjustified actions and unjustified dismissal; and
 - d. Reimbursement of 23 days sick leave;
 - (iv) Should any remedy awarded be reduced (under section 124 of the Act) for blameworthy conduct by Mrs Rasheed which contributed to the circumstances which gave rise to her grievance?
 - (v) Has the College breached obligations owed to Mrs Rasheed to deal with her in good faith and the employment agreement?
 - (vi) If so, should a penalty to order?
 - (vii) Has the Trust aided and abetted breaches of Mrs Rasheed's employment agreement?

- (viii) If so, should a penalty be ordered against the Trust?
- (ix) Should any party contribute to the costs of representation of another party?

The parties' employment agreement and relevant policies

The parties' employment agreement

[7] Mrs Rasheed's terms of employment are set out in the Secondary Principals' Collective Agreement 2022 – 2025 (the collective agreement). The general provisions and those concerning performance management and discipline seek to support employment relations and balance the privileges a principal enjoys as a school and community leader and the vulnerability and exposure inherent in holding such a position:

- The employer shall act as a good employer in all dealings with the principal and treat the principal fairly and properly in all aspects of employment.³
- Where an issue or concern arises then the employer shall initiate informal discussions with the principal and attempt to resolve the matter in an informal way.⁴
- Questions of competence, conduct and discipline shall be handled in a manner which, as far as possible, protects the mana and dignity of the principal.⁵

[8] Part 6 deals with matters concerning disciplinary provisions and includes:

6.1 General provisions/process

6.1.1 The following principles shall be used in addressing complaints, discipline, and concerns regarding competence, to ensure that such matters are, in the interests of all parties, fully and fairly addressed:

- a. Where issues or concerns arise the board shall initiate informal discussions with the principal in an attempt to resolve the matter in an informal manner. This applies following receipt of a complaint and /or concern(s) being raised. This occurs prior to formally commencing a disciplinary or competency process, unless the nature of the complaint or concern(s) is such that this would be inappropriate;
- b. Questions of competence, conduct and discipline should be handled in a manner which, as far as possible, protects the mana and dignity of the

³ Collective agreement clause 2.1.1.

⁴ Collective agreement, clause 6.1.1(a).

⁵ Collective agreement, clause 6.1.1(b).

principal concerned. Principals may seek whanau, family, professional and / or other support in relation to such matters (refer Part Eleven).

6.2 Competency

6.2.1 Where there are matters of competency which are causing concern (for example failing to meet the secondary principals' professional standards), the board shall put in place appropriate assistance and guidance to assist the principal and for that purpose, may seek such appropriate professional advice as may be required.

6.2.2 Where this assistance and guidance has not remedied the situation, the board shall initiate a competency process and the following provisions should govern the action to be taken:

- a. The principal must be advised in writing of the specific matter(s) causing concern and what, if any, corrective action is required.
- b. The principal is to be given a reasonable opportunity to remedy the matter(s) causing concern. This timeframe shall be determined by the board, may take into account any previous support or guidance, and shall be relevant to the matter(s) causing concern;
- c. The process and results of any evaluation are to be recorded in writing, sighted and signed by the principal;
- d. A copy of any report made to the board shall be given to the principal;
- e. No action shall be taken on a report until the principal has had a reasonable time to comment (in writing, orally or both);
- f. If the above steps (a-e) fail to resolve the matter(s) of concern, the board may, where justified, dismiss the principal without notice and pay them two months salary in lieu, without the need to follow the provisions of 6.3 below; and
- g. copy of any report given to the New Zealand Teaching Council shall be given to the principal.

6.3 Discipline

6.3.1 For the purposes of this part, the term misconduct includes:

Any material breach of the terms of this agreement; or

Any continued non observance or non performance of any of the terms of this agreement, or

Any offence for which the principal may be proceeded against by way of indictment; or

Any conduct by the principal (whether within the principal's professional capacity or otherwise) that is unbecoming of a principal or which demonstrates that the principal is unfit to remain in the position of principal.

6.3.2 The principal must be advised of the right to have representation at any stage.

6.3.3 The principal must be advised in writing of the specific matter(s) causing concern and be given a reasonable opportunity to provide an explanation. Before making a final decision, the board may need to make further inquiries in order to be satisfied as to the facts of the specific matter(s) causing concern.

6.3.4 If the misconduct is found to have occurred then the corrective action(s) that may be imposed, following an opportunity for the principal to comment, include:

Counselling and/or mentoring intended to assist the principal amend his/her conduct and/or change particular behaviours;

A verbal or written warning that includes advice of any corrective action required to amend his/her conduct and a reasonable opportunity to do so; and

A final written warning which includes advice of any corrective action required to amend his/her conduct and given reasonable opportunity to do so.

6.3.5 The board may also consider that the misconduct warrants dismissal with or without notice.

6.3.6 The process and any resulting action(s) are to be recorded, then sighted and signed by the principal, and placed on his/her personal file.

6.3.7 A copy of any report made to the board or provided to the New Zealand Teaching Council shall be given to the principal.

[9] In respect of suspension, the collective agreement provides:

6.4 Suspension

If the alleged conduct is deemed sufficiently serious a principal may be either suspended with or without pay or transferred temporarily to other duties while the allegations are investigated.

The board shall not, unless there are exceptional circumstances, suspend the principal without first allowing the principal a reasonable opportunity to make submissions to the board about the alleged misconduct and the appropriateness of suspension in all of the circumstances. The board shall take into account any submissions made by the principal before determining the matter of suspension.

The board shall use its best endeavours to ensure that the period of suspension is kept to the minimum possible time consistent with ensuring that the allegations of misconduct are properly investigated and that the principal is treated fairly.

If the allegation that led to suspension is found to be without substance the principal shall, unless they have resigned in the interim, be entitled to resume duties immediately and, if suspended without pay, to have that pay re-instated from the date of suspension.

[10] Clause 11 of the collective agreement deals with employment relationship problem resolution.

[11] The parties have a concern and complaints policy and a complaint checklist for the Board on steps to take when receiving a complaint. This checklist includes:

Should the Board receive a complaint regarding the Principal or determine that any policy violation may have occurred, the Board in the first instance will consider whether this may be dealt with in an informal manner (as per the employment agreement provisions that apply to the Principal).

[12] Parties to these collective arrangements have entered provisions which require scrutiny to ensure compliance.⁶

The law

The test for justification

[13] In considering personal grievances for unjustified action and dismissal, as here, the Authority must apply the test for justification set out at section 103A of the Act. The Authority must carefully assess the reasons given to the employee by the employer and decide, on an objective basis, whether the employer's actions were reasonable. In addition, a fair and reasonable employer is expected to comply with its statutory obligations which include the good faith obligations which include at s 4(1A)(b):

The duty of good faith in subsection (1)—

...

(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative;

...

[14] Failure by an employer to comply with these obligations may fundamentally undermine its ability to justify a dismissal or other action “because a fair and reasonable employer will comply with the law”.⁷

[15] In assessing the fairness and reasonableness of the employer's actions in a s 103A setting focus is required on the employment relationship overall. In *FMV v TZB*

⁶ *Marlene Campbell v The Commissioner of Salford School* [2015] NZEmpC 122 at [124].

⁷ *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825 (EmpC) at 842 [65].

the Supreme Court discussed this emphasis in the Act and its relationship with the statutory good faith obligations:⁸

[46] ...As its name suggests, the current Act takes a relational approach, insisting that employment is more than a market transaction theoretically conducted at arm's length between individuals with equal bargaining power. The result is that while the employment agreement remains very important, it is the employment relationship that is the real focus under the current Act. The scope of the employment relationship is wider than the employment contract and it adds an additional dimension to contractual rights and obligations. This is reflected in two important ways.

[47] The first is the statutory incorporation of the principle of good faith into the employment relationship. This principle underpins the Act's relational approach.

[48] Part 1, "Key provisions", begins by stating that the object of the Act is:

to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship...

[49] This is to be done, first and foremost, by:

... recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour...

[50] Section 4 then provides that parties to an employment relationship "must deal with each other in good faith". This means, of course, that parties must not mislead or deceive one another, but its effect is wider than that. Parties must also actively and constructively establish and maintain a productive employment relationship; they must be responsive and communicative; and employers must comply with procedural fairness requirements...Parliament was at pains to ensure that the principle of good faith should be the driver of all employment relationships, independently of and in addition to obligations in the employment contract.

[16] When decisions involve teachers whose livelihood are affected by a dismissal and the consequences may be significantly more serious including professional discipline, the decision maker must act to a high standard.⁹

[17] When performance and misconduct issues are identified they should be dealt with separately in accordance with the collective agreement and misconduct concerns

⁸ *FMV v TZB* [2021] NZSC 102, [2021] 1 NZLR 466, [2021] ERNZ 740 at [46].

⁹ *Edwards v The Board of Trustees of Bay of Islands College* [2015] NZEmpC 6.

must be specifically identified if they become subject of investigation and the disciplinary process.¹⁰

Background

2022 – the Board of Trustees commences a disciplinary investigation

[18] Mrs Rasheed was the principal of the college, an equity index 447 state integrated special character Islamic secondary school for girls, for 14 years. It is the only school of this type in New Zealand. The college is not large – the role sits at about 200 students and the staff body is proportionate. In more recent years there has been disharmony in the management and governance of the college and in particular tension between Mrs Rasheed and Mr Elidrissi who was elected chair of the Board of Trustees (BoT) in May 2022. Mr Elidrissi had earlier come onto the BoT as is a proprietor representative following the appointment of new trustees to the Trust in 20 August 2021.

[19] On 18 August 2022 the BoT commenced a disciplinary investigation into alleged misconduct of Mrs Rasheed by way of a subcommittee of three which included two proprietor representatives. The subcommittee wrote to Mrs Rasheed setting out the allegations for her response. The BoT was given the authority to take disciplinary action against Mrs Rasheed up to and including dismissal following the appointment of a lawyer on 24 August. The allegations included those from a current and former staff member. Further allegations were advised to Mrs Rasheed by the BoT. Mrs Rasheed provided a detailed response by letter dated 18 October. On 19 October the BoT met, following parent elections and appointment of a new presiding member and resolved to request the subcommittee provide a full report to the next BoT meeting and the complaint checklist and process. The BoT also removed the subcommittee's delegated authority to take disciplinary action up to dismissal.

[20] On 25 September the subcommittee postponed a meeting scheduled for 26 October with Mrs Rasheed. Mrs Rasheed was advised the BoT had resolved to change the powers of the subcommittee, removing its disciplinary power and the subcommittee was waiting on legal advice on the best way to proceed.

¹⁰ *Campbell v The Commissioner of Salford School* [2015] NZEmpC 122 at [295].

[21] From late October 2022 the BoT took no further steps to investigate the allegations or to complete the investigation. For example, the BoT did not reply to Mrs Rasheed's response.

[22] On 27 October the Trust wrote to the Minister of Education requesting the Minister dissolve the BoT and appoint a Commissioner. The grounds included the special character of the college was in jeopardy, there was a breakdown in the relationship between the college management and the Trust and:

...the presiding member is the Principal's cousin who unravelled the current complaint investigation against the Principal.

[23] The presiding member requested the Subcommittee's report before the next meeting. Arrangements were made regarding BoT member attendance including attending remotely.

[24] On 3 November the Trust, removed its representatives from the Board which included Mr Elidrissi. On 7 November the BoT requested the report from the remaining subcommittee member. On 9 November the BoT acknowledged receipt of the Trust notice of withdrawal, resolved to dissolve the subcommittee and recorded that the BoT would discuss the complaints at the next meeting.

[25] On 14 November the Trust wrote to the Associate Minister of Education that its concerns had increased since its last communication including matters concerning the BoT's decisions about attendance at meetings. On 16 November the Trust met with Ministry of Education officials making representations about difficulties with Mrs Rasheed and the Board and represented the Trust would withdraw from the integration agreement unless a commissioner was appointed. The effect of withdrawing from the integration agreement would likely be to shut down the college.

[26] On 16 November the remaining subcommittee member resigned as a BoT member.

[27] On 7 December the Trust notified the Associate Minister of its intention to cancel the integration agreement due to the deteriorating situation at the college and breakdown in communication with management of the college.

[28] On 13 December the director of education wrote to the Trust about matters concerning the appointment of a commissioner. On 16 December the Trust replied withdrawing formal notice to cancel the integration agreement.

[29] Also on 13 December Mrs Rasheed and her husband were invited to attend a meeting with community members involved in Islamic schools in Auckland. Mr Elidrissi attended the meeting remotely by way of telephone. The discussion is disputed. Mrs Rasheed says at the meeting Mr Elidrissi advised Mrs Rasheed of his intention to proceed with an application to the Ministry of Education to terminate the integration agreement unless she resigned as principal. An offer of one year's salary payment was made if Mrs Rasheed resigned. Mr Elidrissi says they discussed how to resolve the issues between the parties, that from his perspective a deadlock had been reached making it difficult for Mrs Rasheed to work with the Trust, that Mrs Rasheed would not budge and did not want the Trust to interfere in the operations of the college. Mr Elidrissi says it was one of the community members present who made the one year's salary payment suggestion.

March 2023 – Commissioner is appointed to the College

[30] On 24 March 2023 the BoT was dissolved and on 28 March Mrs Myers was appointed as Commissioner. The appointment of a commissioner is a statutory process overseen by the Ministry of Education. Mrs Myers is a very experienced educator and a former principal of many years. Prior to the college she had not had huge involvement in special character schools. She described in her evidence that the college significantly animated by its special character Islamic values and the special character is an important part of the school.

[31] On appointment as Commissioner Mrs Myers immediately undertook a scoping exercise which included meeting with staff and in June 2023 initiated an anonymous staff survey. The staff survey results recorded critical comments about Ms Rasheed's leadership and the health and safety of the work environment. Mrs Myers continued to seek to understand matters within the school.

[32] Also in the first few months of her appointment as Commissioner, Mrs Myers became aware the previous Board had commenced a disciplinary process into conduct of Mrs Rasheed. Mrs Rasheed understood the disciplinary process would be part of Mrs Myers' scoping exercise to understand the college and the issues it was facing.

[33] On 17 May Mrs Meyers met with Mrs Rasheed who asked what was happening with the disciplinary investigation. The following day Mrs Rasheed facilitated Mrs Meyer's communication with a third party to access information regarding the disciplinary investigation. Mrs Meyer's told Mrs Rasheed she would look into the matter and come back to her. Mrs Rasheed understood Mrs Myers had received the information regarding the disciplinary investigation and was reviewing it.

[34] On 15 June Mrs Myers provided the scoping report to the Ministry. The report identified strengths and issues in the college, included a staff survey and outlined professional standards Mrs Rasheed in her role of principal was not meeting.

[35] On 26 June Mrs Rasheed took sick leave due to stress. She returned from sick leave on 2 August.

July – personal assistance and guidance programme initiated

[36] On 31 July 2023, after a period of familiarisation with the college and having carried out the scoping exercise, Mrs Myers wrote to Mrs Rasheed outlining matters which required immediate attention and included advice she would be placed on a personal assistance and guidance programme (PAG programme). A PAG programme is a process provided under the competency provisions of the collective agreement. The 31 July letter did not refer to the disciplinary investigation of the previous BoT.

[37] Through 2023 and into 2024 Mrs Myers received and responded to communications from staff, either individually or in groups, about matters impacting their work including matters concerning Mrs Rasheed. Mrs Myers' said some of the matters raised in these communications informed the PAG programme but were not directly provided to Mrs Rasheed because of concerns about confidentiality.

August – Mrs Rasheed raises a personal grievance

[38] On 28 August Mrs Rasheed wrote to Ms Myers raising personal grievances in regard to it the PAG programme, the unresolved BoT's disciplinary investigation and Mr Elidrissi's involvement in employment matters. The remedies sought included:

Confirmation that the disciplinary process initiated by the previous Board and committee is at an end and will not be the subject of further investigational process.

[39] On 30 August the PAG programme was confirmed and implemented.

[40] On 13 September, Mrs Myers responded to the personal grievance letter. She stated Mrs Rasheed was outside the 90-day timeframe to raise a personal grievance regarding concerns with how the BoT's investigation into her conduct arose and the college did not consent to a raising out of time. The letter stated the events which Mrs Rasheed relied on as a basis for the personal grievance arose prior to Ms Myers involvement in the school. The letter also addressed the remedies sought including:

I intend to finalise the College's response to the complaints no later than Friday 6 October. As matters stand, I do not intend to make any formal findings against you or take formal action that may affect your employment.

[41] On 22 September Ms Myers wrote to Mrs Rasheed advising she had thoroughly investigated the complaint of one of the employees, who had raised a complaint with the BoT on 24 June 2022 and who by 2023 was no longer an employee of the college, had listened to Mrs Rasheed's explanation and proposed she would write to the complainant to apologise for the distress she had experienced and would make a plan to review policies and practices at the college. The letter continued that Ms Myers did not intend to take the matter any further and sought Mrs Rasheed's feedback on the proposal.

[42] On 17 October Mrs Rasheed responded including the proposal was flawed because it did not take into account the "harm caused" by the Board's approach to the complaint investigation and "I have raised a personal grievance about my concerns around the unfairness of this process and the failure to bring it to a conclusion which to date has not been responded to by you". Mrs Rasheed's letter then sought further information from Ms Myers about her review of the co-worker's complaint and the Board's investigation including matters stretching back to at least 18 October 2022 when Mrs Rasheed provided a response to the Board to the complaint.

[43] The parties attended mediation on 9 November 2023. The employment relationship problem was not resolved.

[44] On 28 November Mrs Myers proposed extending the PAG programme, attached an outcome document of the 12-week programme and a summary of feedback from earlier teacher one on one meetings and the staff survey summary. On 30 November Mrs Rasheed responded to the proposal, set out her concerns about the analysis of

feedback from the staff survey and attached a table of responses supporting her engagement in the PAG programme.

[45] On 14 December Ms Myers wrote to Mrs Rasheed. The letter is headed “[Co-workers’ name] Complaint and Disciplinary Investigation by previous Board”. With respect to the BoT’s actions the letter includes:

At the outset, I am now aware that this [the co-worker’s complaint] (together with other matters) were previously the subject of a disciplinary investigation initiated by the previous board in 2022. I understand that no disciplinary finding was ever reached by the previous Board, and that the process was not formally concluded. Given the time that has passed, I can confirm (for the avoidance of any doubt) that there has not been any finding of wrongdoing in relation to that process, nor do I intend to revisit any of the allegations made against you in the absence of any new material arising. I consider the matter closed.

[46] Mrs Rasheed was dissatisfied with this response. She did not know what investigation Mrs Myers had undertaken into the complaint or what review had been made of the BoT’s investigation and subsequent handling of the matter.

2024

1 April – Mrs Rasheed lodges an application in the Authority

[47] On 1 April Mrs Rasheed lodged an application in the Authority seeking resolution of an employment relationship problem including unjustified disadvantage personal grievances in respect of the BoT’s disciplinary investigation initiated in August 2022, the ongoing investigation following Mrs Myer’s appoint as commissioner and the PAG programme.¹¹ Alleged breaches of the employment agreement and good faith obligation were also included in the application and penalties sought against the Trust for aiding and abetting alleged breaches of the employment agreement. The Commissioner and Trust have been on notice for some time that Mrs Rasheed considered an employment relationship problem was between the parties and had taken steps to progress its resolution. The Commissioner and Trust lodged statements in reply and have engaged fully with the Authority investigation.

[48] The PAG programme extended into the first school term of 2024. Mrs Rasheed responded to the competency process by making changes to her practice and undertook steps to address issues identified in the advice and guidance programme.

¹¹ Statement of problem 1 April 2024.

[49] On 12 April Ms Myers wrote to Ms Rasheed advising she was happy to conclude the PAG programme due to the changes Mrs Rasheed had made and reflections she had undertaken to address matters raised. The letter acknowledged Mrs Rasheed's continued difficulties with the Trust and that she hoped they could be resolved. In her evidence to the Authority Mrs Myers said while she had decided to conclude the PAG programme she still had reservations about aspects of Mrs Rasheed's practise.

29 April – 5 July – Mrs Rasheed takes sabbatical leave

[50] From 29 April until 5 July Mrs Rasheed took sabbatical leave which had been approved by Mrs Myers. Mrs Rasheed intended to return to the college on 22 July 2024 at the commencement of term three. During her sabbatical Mrs Rasheed engaged in deep reflection on the events at the college and her role as principal and sought support to develop her spiritual practise.

[51] During Mrs Rasheed's sabbatical Mrs Shea was appointed acting principal.

19 June – Mrs Shea raises concerns

[52] On 19 June Mrs Shea wrote to Mrs Myers setting out references to staff concerns which had been raised with her about communication and transparency and included phrases in quotation marks critical of Ms Rasheed's leadership. The letter ends:

Regina's reported behaviour breaches the Health and Safety Act, and all four of the Professional Standards for Secondary principals.

[53] On 25 June Mrs Myers advised Mrs Rasheed of the letter of complaint received from Mrs Shea. A copy of Mrs Shea's letter was attached. Mrs Myers letter expressed concerns about health and safety in the workplace stemming from Mrs Rasheed's leadership and proposed special leave on pay or suspension under clause 6.4 of the collective agreement. The letter also advised her intention to engage an independent workplace investigator to make findings in relation to the complaint.

[54] Though the themes raised in Mrs Shea's letter are I find themes broadly raised with Mrs Rasheed through the PAG programme, Mrs Myers said on receiving the letter she viewed matters in a different light. It is not entirely clear why Mrs Shea's letter elevated the issues for Mrs Myers thought I accept the issues are serious and conveyed as such. That said Mrs Shea's complaint does not reference a health and safety report

made under the college policies and procedures and there was no specificity as to what the allegation of misconduct by Mrs Rasheed was in relation to the report to Mrs Shea of a staff member "...feeling panic rise in her – a "panic attack...".

[55] On 26 June Ms Rasheed's lawyer responded that suspension would be unjustified in the circumstances, including that the investigation was not necessary or appropriate and opposed suspension on the basis it was a punitive approach. The letter asserted there was no discernible misconduct allegation and no justifiable basis for investigation into alleged misconduct.

1 July – Mrs Rasheed is suspended (1st suspension)

[56] On 1 July Mrs Myers wrote to Mrs Rasheed advising her she was suspended pursuant to clause 6.4 of the collective agreement. The letter included reference to Mrs Rasheed's feedback on the proposal had been considered, confirmed the decision to engage a workplace investigator to ascertain the precise nature of what was alleged and that Mrs Rasheed would be suspended for the duration of the workplace investigation. The letter also directed Mrs Rasheed not to discuss the workplace investigation with anyone other than her representative and support person to ensure the integrity of the workplace investigation could be maintained.

15 July – Mrs Rasheed applies for interim reinstatement

[57] On 15 July Mrs Rasheed applied to the Authority for interim reinstatement. The parties attended mediation as directed. This did not resolve the employment relationship problem. The application was granted on 28 August.¹²

5 August – workplace investigator appointed

[58] On 5 August Mrs Myers provided Mrs Rasheed the terms of reference for the workplace investigation for comment. The scope of the workplace investigation included the investigator considering the available information and assessing whether, and if so, what, specific matters were alleged by the complainant who is identified as Mrs Shea. The workplace investigator was appointed that day.

[59] On 9 August Mrs Rasheed, through her lawyer, wrote to Ms Myers including that she had no issue with the Commissioner investigating and understanding the

¹² N1.

concerns staff had expressed to Mrs Shea as set out in her letter of 19 June but opposed the appointment of a workplace investigator. She wrote Mrs Myers could use the processes available under the collective agreement to undertake consideration of the matters raised in Mrs Shea's letter and also raised serious concerns as to the workplace investigator's role in undertaking an initial scoping of allegations which they would then be charged with investigations.

3 September – Mrs Rasheed returns to work

[60] After the grant of interim reinstatement, the parties entered a memorandum of understanding on 2 September with respect to Mrs Rasheed's return to work. Around this time Mrs Shea announced to staff Mrs Rasheed's return to work during which she was tearful. Mrs Rasheed said in her evidence when she heard this, she thought an environment was being created at the college where the complaints were supported and was concerned this may create division amongst staff.

[61] On 3 September Mrs Rasheed returned to work under the terms agreed in the memorandum of understanding which included limited physical presence at the college.

[62] On 6 September the Commission's lawyers wrote to Mrs Rasheed's lawyer notifying of alleged breaches to the memorandum of understanding and sought Mrs Rasheed's feedback which she provided by letter of 9 September. The Commissioner has not engaged further with Mrs Rasheed on these issues.

September - the workplace investigation continues

[63] On 10 September the workplace investigator wrote to Mrs Myers to advise they had completed interviews with staff and had formulated a number of specific allegations which were set out in a table. Mrs Myers did not consider the detail of the allegations at this stage though she was concerned by the number and volume of the allegations including what appeared to be new allegations. She said in her evidence to the Authority it would not have been appropriate for her to delve too deeply in the matters within the scope of the workplace investigation given she would be the ultimate decision-maker and she did not wish to unreasonably influence the workplace investigator's investigation.

[64] On 12 September the workplace investigator forwarded to Mrs Rasheed the table of concerns. It is a lengthy document containing 171 allegations. Under the terms

of reference, the scope of the allegations was to be determined by the Commissioner following the workplace investigator's initial inquiry, or as appropriate through the process. Mrs Rasheed raised detailed concerns including there were issues which had been raised before and either addressed or were matters within Mrs Myers knowledge and not raised with her. Mrs Rasheed also raised concerns about the proper application of the collective agreement.

15 September – Mrs Rasheed suspended

[65] On 15 September Mrs Rasheed was suspended for a second time. The grounds of the suspension were that the workplace investigator had produced a table of allegations of substantial breadth and seriousness which engaged health and safety concerns.

[66] Mrs Rasheed raised a personal grievance in respect of the second suspension.

October – April 2025 - the workplace investigation continues

[67] On 3 October the Commissioner through her lawyer acknowledged the allegations identified in the workplace investigator's first table included matters previously dealt and proposed limiting the scope as described in an attached table. Mrs Rasheed was invited to provide further comment on "this proposed narrowing of the scope of the investigation..."

[68] Mrs Rasheed held similar concerns with the second table including that stale matters had been included. On 11 October the Commissioner through her lawyer agreed to remove further concerns and to otherwise proceed to instruct the workplace investigator on a revised scope of investigation.

[69] 25 November a third table of concerns was provided by the workplace investigator to Mrs Rasheed. Additional interviews had been undertaken to investigate

[70] Mrs Rasheed again challenged the table on grounds that stale matters were being considered and repeated her fundamental concerns about the constitution of the workplace investigation including the workplace investigator was effectively soliciting complaints. A further comprehensive response was provided.

2025

21 February – Mrs Rasheed is interviewed by the workplace investigator

[71] 21 February Mrs Rasheed attended an interview with the workplace investigator held by audio-visual technology having provided them on 18 February with a comprehensive response to the table of allegations.

[72] On 18 March the parties attended a further mediation.

26 March – draft investigation report for comment

[73] By letter dated 11 April Mrs Rasheed provided a comprehensive response to the draft investigation report dated 26 March which had been provided to her for comment.

16 April – workplace investigator’s final report

[74] In the final report the workplace investigator found 30 of the 47 allegations were proven and amounted to breach of school policies. The workplace investigator found Mrs Rasheed’s actions had created a culture of fear at the college and her conduct amounted to bullying.

[75] On 30 April Mrs Myers wrote to Mrs Rasheed advising a disciplinary process would commence based on the workplace investigator’s report and requesting her response to the workplace investigator’s final report.

May - the Commissioner’s investigation commences

[76] By letter dated 28 May Mrs Myers wrote to Mrs Rasheed advising she proposed to accept the workplace investigator’s findings of material breaches of terms of employment, conduct unbecoming or demonstrated unfitness to remain in the role of principal.

[77] Mrs Rasheed responded by letter dated 5 June including matters could not reasonably amount to material breaches of the employment agreement and they were well able to be addressed through a PAG programme.

17 June – Mrs Rasheed is dismissed

[78] On 17 June Mrs Myers wrote to Mrs Rasheed advising her she was summarily dismissed for serious misconduct.

Discussion

- (i) *Unjustified action – failure to fairly constitute and conclude disciplinary investigation*

[79] There is no dispute in August 2022 the BoT commenced a disciplinary investigation into alleged conduct of Mrs Rasheed which was not formally concluded until the Commissioner wrote to Mrs Rasheed by letter dated 14 December 2023 confirming the matter was resolved. On its face this is a considerable period particularly given the limited activity by the employer in investigating the allegations.

[80] The Commissioner submits Mrs Rasheed suffered no unjustified disadvantage caused by the investigation itself or delay:

- (i) the offer to take money to leave the college was made by the proprietor Trust and not the remainder of the BoT and the employer is not responsible for the Trust's actions in this regard;
- (ii) Mrs Rasheed was aware by November 2022 that the disciplinary investigation posed no threat to her;
- (iii) the claim of harm does not align with the medical certificates produced or with Mrs Rasheed's evidence of what she told the Commissioner in May 2023; and
- (iv) Mrs Rasheed did not raise the matter again with the Commissioner until August 2023.

[81] I do not accept the evidence establishes by November 2022 Mrs Rasheed knew the disciplinary investigation posed no threat to her. Her evidence that the proprietors had abandoned the investigation is not the same as acceptance of the likelihood that the disciplinary investigation was over. The impact on the subcommittee of the Trust's representatives' withdrawal from the BoT was not a matter Mrs Rasheed was responsible for, nor the report of the subcommittee not being made to the BoT. The evidence shows Mrs Rasheed cooperated with the BoT when it later took over the process which was not completed when the BoT was dissolved. In these tumultuous circumstances I am satisfied Mrs Rasheed could not know with any certainty the disciplinary matter was closed. Further, I am satisfied Mrs Rasheed's wish to see the investigation concluded was motivated by a desire to clear her name. This was reasonable and understandable particularly given the serious and personal nature of the allegations which included as well as former staff, a current staff member.

[82] The employer BoT and Commissioner had a duty to fairly and faithfully investigate the disciplinary matters raised and conclude them as soon as reasonably practicable. When the Commissioner was appointed, it was Mrs Rasheed who drew her

attention to the matter, seeking an update. Mrs Rasheed then facilitated the Commissioner's access to the material. These actions are consistent with the obligation to be open and constructive. They are also actions consistent with someone who is concerned these serious matters remain outstanding. Further delay was occasioned by the Commissioner's non-engagement with the issue which appears to have been activated by Mrs Rasheed taking the very serious step of raising a personal grievance. The delay was significant, even given the circumstances of the college at this time and was not consistent with the collective agreement provisions which require processes including disciplinary processes to seek to maintain the dignity and mana of the principal. It is clear to the Authority on the information presented that it has had a negative impact on Mrs Rasheed including undermining her health.

[83] Mrs Rasheed has suffered a disadvantage in her employment as a consequence of the delay in progressing and concluding the 2022 disciplinary process.

[84] The delay has been compounded by the Commissioner's failure to deal fairly and reasonably with the subsequent matters apparently reactivating the complaints or aspects of the complaints of two staff members, one former and one current. This is relevant to how the employment relationship problem subsequently developed between the parties. Having undertaken to investigate the allegations raised by the subcommittee Mrs Myers was obliged to do so fairly and reasonably. The allegation concerning the former staff member was demonstrably not resolved for the employer despite her advice to Mrs Rasheed that it had been closed. For example, the former staff member was referred to the workplace investigator by the college, where they re-aired their concerns including serious matters of alleged religious discrimination by Mrs Rasheed. These were matters which had been considered earlier and closed by Mrs Myers. I acknowledge the condition placed on this closure on further information. This must reasonably relate to factual matters concerning the complaint itself, rather than its apparent relevance to matters within a subsequently convened disciplinary process. It is not clear though how this matter resurfaced or what new information may have triggered its relevance to the workplace investigation. With regard to the current staff member, despite advice those matters had been resolved to the Commissioner's satisfaction, the investigation was not disclosed to Mrs Rasheed for consideration or comment and those matters then too appear to have resurfaced through the workplace investigation without a clear explanation as to how or why.

(ii) *Unjustified action – suspension #1 and suspension #2*

Suspension #1

[85] The Commissioner submits that in all the circumstances the decision to suspend Mrs Rasheed's following her refusal of paid special leave, so it could conduct an investigation into Mrs Shea's complaint was reasonable:

- (i) the drivers for the proposal to suspend were the serious nature of Mrs Shea's complaint including that Mrs Rasheed posed a health and safety risk to the college and the nature of the matters for investigation including that staff were fearful of Mrs Rasheed which required steps to be taken to preserve the integrity of the investigation;
- (ii) Mrs Rasheed's proposed interpretation of *Salford* would render suspension nugatory because the issues raised in Mrs Shea's letter reasonably amount to serious allegations; and
- (iii) the process followed to suspend Ms Rasheed was fair and reasonable.

[86] There are significant deficiencies with how the Commissioner proposed and implemented the first suspension. The plain wording of clause 6.1.1(a) of the collective agreement requires an informal discussion be held with the principal unless the nature of the complaint or concerns are such that it would be inappropriate. Such a discussion did not occur. On the evidence I find it could have been possible given the following:

- (i) there was no practical impediment to the Commissioner meeting with Mrs Rasheed informally to discuss Mrs Shea's letter including that Mrs Rasheed was about to return to work from a period of sabbatical and had gone on sabbatical with the Commissioner's approval following discharge of a PAG programme;
- (ii) the themes raised in Mrs Shea's letter mirror to a significant degree matters Mrs Myers had considered and dealt with within the PAG programme. The informal discussion could have included the obvious issue of what had happened among or between Mrs Myers signing Mrs

Rasheed off the PAG programme in April 2024 and Mrs Shea's complaint three and a half months later;¹³

- (iii) the concerns raised in Ms Shea's letter are high level and broad making it readily apparent they would be difficult to provide specific responses to;
- (iv) the likely build-up of staff frustration over the preceding year creating a perception of unresolved issues and staff lack of knowledge of the PAG programme were matters within the Commissioner's knowledge at this time and weighs towards a more objective approach to Mrs Shea's letter and careful consideration of compliance with the collective agreement; and
- (v) also within the Commissioner's knowledge at this time was the existing employment relationship problem between the parties concerning the BoT's disciplinary investigation which the Commissioner represented to Mrs Rasheed she had investigation and closed. The matters raised in Mrs Shea's letter echo or were likely to echo matters already before and considered by the Commissioner.

[87] The submission is not accepted that the assertion of serious allegations, whether sincerely held or otherwise, vitiates the obligation under clause 6.1.1. The application of clause 6.1.1 is the first step in a process which may lead to suspension after a process of determining whether the concerns raised are matters of competence or discipline. Further, under the terms of the parties' collective agreement suspension is only available if a disciplinary process has been initiated under clause 6.3.¹⁴ Though the suspension correspondence from the Commissioner refers to clause 6.3 under which the suspension was proposed and implemented, it is not clear in the face of the correspondence that a disciplinary process under the collective agreement had been commenced. Indeed, the Commissioner refers to the purpose of appointing the workplace investigator was to "...ascertain the precise nature of what is alleged...". It follows, at this stage in the process that Mrs Myers had not formed a view as to the nature of the allegations, disciplinary or otherwise, because their precise nature was not

¹³ There is no suggestion in the evidence that the concerns raised by Mrs Shea involved interactions with staff while Mrs Rasheed was on sabbatical.

¹⁴ *Salford* paragraphs [182] and [183].

apparent to her on the face of Ms Shea's letter. The collective agreement had a process to work through such matters which has not been followed by the Commissioner.

[88] Mrs Rasheed was entitled to expect her employer to scrupulously adhere to those provisions. This did not occur and caused Mrs Rasheed disadvantage in her employment. Ms Rasheed has established a personal grievance of unjustified disadvantage by way of suspension with respect to the first suspension.

Suspension #2

[89] With regard to the second suspension, the concerns as to lack of specificity as to whether the allegations are competence or discipline, stale or resolved are borne out when the workplace investigator produced a table of 171 alleged concerns about Mrs Rasheed's conduct spanning a period back to 2015. The production of the table followed the workplace investigator's interviews with people referred to them by Ms Shea. A correlation between the quotes in Ms Shea's letter of 19 June does not seem to have been a particularly animating feature of the table. Rather the issues set out in the table arise from the interviews conducted by the workplace investigator.

[90] I am satisfied the Commissioner's obligation under clause 6.1.1(a) was triggered on receipt of the workplace investigator's table. It is plain on its face that matters included in the workplace investigator's table included matters which were stale, had been covered by the PAG programme or had been formally closed by the Commissioner following her investigation of the BoT's disciplinary allegations. Such an assessment of the table, to see what should be in or out or what might reasonably be competency or disciplinary was all reasonably within the Commissioner's ability given the assessments she had already made with respect to Mrs Rasheed's performance and her engagement with the college. The collective agreement required the Commissioner to consider, within the boundaries of the collective agreement, the nature of the concerns and unless inappropriate, the next step required was an informal discussion with Mrs Rasheed. This was possible and appropriate particularly given Mrs Rasheed was back at work under the memorandum of understanding performing restricted or alternate duties as the parties had agreed. This initial assessment within the terms of the collective agreement was also important because ensuring a proportional response is fundamental to a fair and reasonable process.

[91] With regard to the Commissioner's response to the characterisation in the workplace investigator's table of alleged concerns of health and safety risk and a culture of fear, there is force in Mrs Rasheed's submission that in the absence of specific factual conduct, for example an event notified under the Health and Safety at Work Act 2015 or evidence of engagement with staff under that legislation, such matters describe the effect of proven behaviours which may be performance, conduct or a combination of both.

[92] Mrs Rasheed was entitled to expect her employer to scrupulously adhere to those provisions. This did not occur and caused Mrs Rasheed disadvantage in her employment. Ms Rasheed has established a personal grievance of unjustified disadvantage by way of suspension with respect to the second suspension.

(ii) *Was Mrs Rasheed unjustifiably dismissed?*

[93] The Commissioner says on the face of the complaints the matters raised were serious and she was obliged to undertake an investigation. She says having taken legal advice the investigation was fair and reasonable and sufficient safeguards were in place including engaging an independent third-party experienced in workplace investigations to undertake a fact-finding investigation.

[94] The Commissioner was obliged to make a preliminary assessment of concerns prior to embarking on a significant process of investigation and such an assessment would need to be compliant with the parties' collective agreement and informed by the relevant, known factors in the employment environment. This did not occur in a manner that could reasonably have been expected as detailed in the consideration of the suspension process above. The failure to fairly assess the concerns raised – performance and/or conduct – using the informal discussion mechanism within the collective agreement means the disciplinary process was flawed from the outset. The subsequent actions of the Commissioner once she received the investigation report, some 8 months later do not cure this flaw. For example, matters considered by the Commissioner in her disciplinary investigation process following the workplace investigation were considered performance matters which could be dealt with by continued performance management and excluded then from the allegations. This mixing of conduct and

performance issues may have been avoided by compliance with the collective agreement provisions.¹⁵

[95] The Commissioner told the Authority they had not read or reviewed any of the interview notes or evidence compiled by the workplace investigator and relied upon in relation to their findings. The Commissioner submits she has demonstrated she did not slavishly follow the finding of the investigator, and that review of all the underlying material was not required.¹⁶ This is not accepted. The Commissioner's failure means she is unable to discharge the requirement under clause 6.3.3 of the collective agreement to make further enquiry "...in order to be satisfied as to the facts of the specific matter(s) causing concern". This requirement was triggered because Mrs Rasheed had responded in detail to the investigator raising detailed and serious concerns including contested evidence and conflicts in the response which required further inquiry. That further inquiry was the Commissioner's to make and which she is unable to demonstrate she has made because she did not look beyond the workplace investigator's final report and review the information which had resulted in that report. This a fundamental and serious breach of obligations under the collective agreement.

[96] The Commissioner upheld 13 of the findings of the workplace investigator as amounting to a material breach of the college's health and safety policy (bullying) and conduct unbecoming of a principal. These are matters which could amount to serious misconduct justifying dismissal. The matters were:

- (i) frequently yells at students in the school reception area;
- (ii) accusing a staff member of dishonesty;
- (iii) reprimanding staff in front of students;
- (iv) yelling to a staff member "[name] come here" from her office;
- (v) discussing the Trust with a staff member;
- (vi) yelling at an identified staff member about their lieu day;
- (vii) telling off, humiliating and putting identified staff member down in a loud and aggressive tone;
- (viii) yelling at the same staff member about a PPTA issue;

¹⁵ Refer *Salmond* [278] – 277].

¹⁶ *Smithson v Wellington College Board of Trustees* [2021] NZEmpC 114.

- (ix) falsely telling staff she had to readjust the college's finances regarding use of management units in 2023 and 2024;
- (x) using staff job security as leverage;
- (xi) instructing a staff member to take her personal car from the college to get its warrant of fitness during school hours;
- (xii) unilateral decision making; and
- (xiii) scolding an identified staff member for advertising a role at the Commissioner's request.

[97] Four of the allegations involved a finding of "yelling". This was contested by Mrs Rasheed who said in her responses to the workplace investigation process and the disciplinary process that she accepts she has a forceful voice and can use a firm and assertive manner, but it was difficult to respond to the allegations which on the whole lacked specificity and/or context. Mrs Myers was unable to explain what benchmark she had used to assess yelling in respect of the allegations which she found upheld. In respect of (iv) above the staff member concerned told the workplace investigator they had not heard Mrs Rasheed yell at staff and did not raise this as a complaint or concern. This disconnect, which is apparent on the face of the workplace investigator's interview records and the allegation summary was not tested by the Commissioner. Such testing could reasonably be expected of a fair and reasonable process. With respect to the third allegation involving yelling at (iv) above, a review of the workplace investigator's interviews and supporting information shows the staff member had reported the incident to Mrs Myers on 19 September 2023. In that contemporaneous email there was no reference to yelling or expression of fear. The matter was clearly within Mrs Myers knowledge, but this knowledge was not disclosed to the workplace investigator or Mrs Rasheed. The fourth upheld allegation of yelling at (viii) above involves a complex dynamic with a staff member and Mrs Rasheed which Mrs Myers was aware of and was supporting Mrs Rasheed to manage. This was part of the employment environment in which the issues the workplace investigator was considering were nested and which a fair and reasonable employer in assessing the finding would have sought to contextualise. I am not satisfied this occurred to the degree which could reasonably be expected coupled with the failure to test the finding by considering the underlying information gathered by the investigator means a fair and reasonable employer could not have found this or the other yelling allegations amounted to misconduct or serious misconduct.

[98] Two of the upheld findings involve use of college resources. The finding concerning management units contained a significant mathematical error. This was important because Mrs Myers could reasonably have questioned and assessed the methodology used by the workplace investigator because they do not have a professional education background she does. Given the clear factual error, which the Commissioner could likely reasonably have assessed if they had reviewed the supporting material, a finding of misconduct or serious misconduct cannot be upheld.

[99] The allegation at (xi) above concerning staff and Mrs Rasheed's car's warrant of fitness is one of the most serious allegations. The information before the Authority does not support the Commissioner's decision to uphold the workplace investigator's finding. The workplace investigator did not interview the staff member concerned nor did Mrs Myers. This was in the face of Mrs Rasheed's strong denial of the allegation and her identification in her responses, including directly to Mrs Myers of the evidential gap. At the Authority investigation the staff member, a witness called by the Commissioner, gave clear evidence that he volunteered to help Mrs Rasheed in this way, they had a long family and community association, and he saw it was a discharge of his religious obligations. He denied college funds were used. His evidence confirmed Mrs Rasheed's response to the allegation. Given the seriousness of the allegation, evidence of equally probative value could be expected to have been considered by the decision maker. At a minimum this could reasonably include speaking to the person alleged to have been directly affected. I am not drawn to the proposition that the allegation concerned a power imbalance. This is not how the allegation was formulated, what Mrs Rasheed responded to, or an element of the allegation upheld by the Commissioner. Further, the fact the alleged effected person was not interviewed still remains. In the circumstances a finding of serious misconduct in relation to the warrant of fitness is not one a fair and reasonable employer could have reached in the known circumstances.

[100] For completeness Mrs Rasheed raises concerns about communications the Commissioner engaged in with the Ministry in the period July 2023 to April 2024 and with staff in 2023 through to early 2024 which were not disclosed to Mrs Rasheed either at the time or through the workplace investigation process. The emails to staff demonstrate a building engagement with Mrs Myers to address concerns about the college and Mrs Rasheed's management. Mrs Myers said these issues were not directly

raised with Mrs Rasheed but were folded into the PAG programme. The difficulty is some of these matters found their way into the workplace investigator's process, who had not been provided with information about the PAG programme or Mrs Myer's engagement with staff during that process.

[101] It is difficult given the email communications between the effected staff and Mrs Myers not to consider the matters raised in (v), (vii) and (xiii) above where fairly and reasonably nested in the PAG programme and/or a process of engagement with staff Mrs Myers used to inform that process. Given this information and its wider context were within Mrs Myers knowledge at the time she considered the matters in the disciplinary process, a fair and reasonable response could have been to have raised these issues and sought Mrs Rasheed's response. Mrs Myers said she did not because she did not want to cloud the disciplinary process by making herself part of the information provision. I accept she conceptualised the matters in that way however, when it was apparent the PAG process and matters feeding into it were "leaking" into the matters before her in a disciplinary context, Mrs Myer's had an obligation to provide the information at the very least to be open and communicative about matters within her knowledge which may be relevant to the issues under consideration and to provide Mrs Rasheed an opportunity to comment.

[102] Given the findings above it is unnecessary to consider the balance of the allegations further because the findings of serious misconduct which led to dismissal was a response based on the cumulative findings of misconduct and/or serious misconduct. Even if such an approach is permissible in law, as a number of those findings have been found to be unjustified the decision to dismiss, based on an accumulation of findings, cannot be said to be justified or reasonable in all the circumstances.

[103] The Commissioner submits her response was proportionate and fair particularly given the resources available to her. While the college is not large the Commissioner has been able to draw on considerable resources including the Ministry of Education, the school trustees association and legal representation to support her through complex and lengthy processes. The deficiencies in the process were not minor or technical, as with the suspensions and the delay in resolving the subcommittee process, they

involved clear breaches of obligations owed to Mrs Rasheed under the collective agreement.

[104] The Commissioner submits at all times she was well meaning and had the best intentions at heart for the college and its pupils, staff and community. I do not doubt that is the case. However, that does not restrict or alter the application of the relevant legal tests to the factual matters for determination.

[105] For the above reasons Mrs Rasheed's dismissal was unjustified.

Remedies

[106] Mrs Rasheed has established personal grievances for unjustified disadvantage and unjustified dismissal. She is entitled to a consideration of the remedies sought.

Reinstatement

[107] Reinstatement is the primary remedy in proceedings for unjustified dismissal.¹⁷ The remedy of reinstatement is to the employee's former position or one no less advantageous.¹⁸ It must be awarded wherever practicable or reasonable to do so.¹⁹

[108] The Commissioner strongly opposes Mrs Rasheed's application for reinstatement. She says Mrs Rasheed should not be reinstated because to do so is not practical or reasonable:

- (i) such an order would have a disproportionate negative impact on a large number of staff at the college including staff who gave credible and compelling evidence of their strong opposition to Mrs Rasheed return;
- (ii) the college had had a considerable period of stability in the leadership of the college and a new principal was appointed in November 2025;
- (iii) stability is a primary concern of Mrs Rasheed's witnesses and reinstatement would serve to cause instability and upheaval;
- (iv) a school can only have one principal;²⁰

¹⁷ Employment Relations Act 2000, section 123(1).

¹⁸ Employment Relations Act 2000, section 123(1)(a)

¹⁹ Employment Relations Act 2000, section 125(2).

²⁰ Education and Training Act 2020, s10.

- (v) there is a live question whether the Authority can displace a statutory role of principal; and
- (vi) there are other ways short of reinstatement by which Mrs Rasheed's mana and dignity can be restored and the Commissioner is prepared to participate in such restorative processes as the Authority deems appropriate.

[109] The Trust opposes reinstatement. It says the relationship between it and Mrs Rasheed had irretrievably broken down, Mrs Rasheed had not taken steps available to her to rebuild the relationship while she was at the college, and she is unlikely to be able to work constructively with the now proprietor trustee.

[110] Reinstatement is the primary remedy. The availability of a vacancy is not a requirement of reinstatement.²¹ The considerations are practicability and reasonableness. Mrs Rasheed can perform the role of principal of the college. She held that position for 14 years prior to the events which resulted in her dismissal. There is no professional body barrier to Mrs Rasheed's returning. The Teaching Council has considered the mandatory reporting of the found serious misconduct in relation to Mrs Rasheed and deemed the matter not appropriate for further disciplinary process.

[111] The Commissioner has been on notice from the outset that Mrs Rasheed is seeking reinstatement. A principal has been appointed to the college in full knowledge of these proceedings and that reinstatement is sought. That person had held a senior role in the college. Other than broad concerns about stability and wants a fresh start to the college year it is unclear why an Acting Principal could not have continued until the reinstatement claim was determined.

[112] There is conflicting evidence before the Authority of support among staff for Mrs Rasheed's return to the role of principal. I accept the sincerity of those who oppose Mrs Rasheed's reinstatement. Some of the witnesses who opposed reinstatement have longstanding associations with Mrs Rasheed including as family members. However, having carefully considered all the evidence on this matter I give particular weight to those witnesses who do not oppose Mrs Rasheed's reinstatement and who gave in my view balanced evidence as to the contemporary state of the staff room and its dynamics,

²¹ *Walker v Firth Industries a division of Fletcher Concrete & Infrastructure Limited* [2014] NZEmpC 60.

recognised there were different views about Mrs Rasheed's returning and sought to place this employment relationship problem in the broader context of the pupils at the college and their best interests.

[113] I have also given particular weight to the witnesses from the college community, including an expert on Islamic law and dispute resolution who expressed concern that Islamic dispute resolution principals had not been applied to this employment relationship problem and considered such principals could be utilised to support Mrs Rasheed's reconciliation with the college and the Trust.

[114] The college is a special character school, and it is reasonable and appropriate that the school community would expect those animating Islamic values to inform matters including the appropriateness of reinstatement to the college of Mrs Rasheed. The confidence and hope those witnesses expressed in Mrs Rasheed as principal was compelling. Further, during the investigation meeting evidence was given that the college is committed to restorative practices. There is expertise within the college and the college community which can be drawn on to support reinstatement and reconciliation of relationships within the staff, the school community and Mrs Rasheed.

[115] I accept that given Mrs Rasheed's commitment to the education of girls in an Islamic context and her experience and stage of working life, her dismissal is effectively career ending. She has acknowledged the performance issues and prior to her dismissal offered to return to the PAG programme. She has given evidence of her commitment to make changes to her leadership style and address the concerns of staff and has actively reflected on and undertaken training and education on these matters since her dismissal.

[116] With respect to the Trust's position, the evidence opposing reinstatement is not strong given circumstances including the proprietor trustees have changed since Mrs Rasheed has not been at the college. It is possible the Trust's internal issues, apparent through at least the later part of 2023 and 2024, may have impacted the employment environment of the college and this employment relationship problem. This issue was clearly apparent to Mrs Myers when she discharged Mrs Rasheed from the PAG programme in April 2024. An assertion of irrevocable breakdown does not mean reformation of relationships is not possible while acknowledging this may not be easy.

[117] For the above reasons is it practical and reasonable to grant Mrs Rasheed's application for reinstatement on the following conditions:

- (i) immediate reinstatement to the payroll; and
- (ii) within 21 days of the date of determination the parties are to agree a process for Mrs Rasheed to return to the position of principal of Zayed College for Girls.

Reimbursement for lost wages from 17 June 2025 to reinstatement under s 123(1)(b) of the Act

[118] Mrs Rasheed has not looked for other work since her dismissal in June 2025 and has pursued reinstatement while undertaking professional development. This order as sought is appropriate in the circumstances of this matter and is granted. The parties have leave to return to the Authority if there is any issue as to calculation.

Compensation

[119] The evidence before the Authority establishes Mrs Rasheed is passionately committed to the education of girls in an Islamic context and is deeply connected to the college not just as principal but through family and community associations of many decades. She is a recognised leader in Islamic education in New Zealand and in her faith community including as a member of an education committee supporting work arising from the Christchurch terror attack. Her mana and dignity have been damaged through this employment relation problem.

[120] The Authority was assisted by the evidence of Dr Aamina Ali, a registered clinical psychologist who gave evidence based on her experience as a close family member who observed first-hand the impact on Mrs Rasheed of the workplace stress, investigation and dismissal on her health and well-being. Dr Ali said Mrs Rasheed had notably changed over the past three years from a hardworking, optimistic and resilient woman and become increasingly anxious and worry ridden who often presented as overwhelmed and distracted. Dr Ali observed the stressors had come to be predominately present in Mrs Rasheed's life and she had frequently observed her as distressed, tearful and dejected. Dr Ali said while she was concerned about the impact on her aunt's mental health and wellbeing her steadfastness in upholding her values and commitment to the community had been inspiring, that Mrs Rasheed was driven by her passion to empower young Muslim women to succeed and have access to opportunities and that her faith had anchored her through these challenging times.

[121] Mrs Rasheed said the delay in resolving the disciplinary process had caused her to experience anxiety which had intensified over time and manifested in physical health symptoms.

[122] Mrs Rasheed described the first suspension as an abrupt removal and which she found humiliating and embarrassing including what message this would send to some in her community. She said she had never suspended a staff member though she had dealt with many challenging situations during her principalship and understood it was a last resort reserved for extremely serious case. She said the second suspension made her feel derailed and defeated and that the whole system was turned against her despite the positive progress she felt had been made since her return to the college following interim reinstatement. She said she could not afford a second application or interim reinstatement.

[123] Mrs Rasheed said the toll on her following her dismissal had a further detrimental impact including on her health and aspects of her life. She said she withdrew even more from her community following her dismissal to avoid questions that would trigger acute anxiety and distress and has found the dismissal deeply shaming because it may have cemented in the minds of community members that she is guilty of wrongdoing justifying such an outcome. She has had feelings of sadness and worthlessness and says the dismissal has cast a shadow over her family's long-respected name.

[124] The Authority is satisfied Mrs Rasheed has experienced harm under each of the heads in section 123(1)(c)(i). Given the ongoing and overlapping nature of the personal grievances a global award is appropriate. Having regard to the particular circumstances of this matter and in relation to other similar matters Mrs Rasheed is entitled to a global award to compensate the humiliation, loss of dignity and injury to feelings she has suffered consequent to her established personal grievances of \$40,000.00.

Reimbursement of 23 days sick leave

[125] This remedy is granted as sought. The evidence that Mrs Rasheed experienced workplace stress for which she took sick leave is established as is the contributing personal grievance. The parties have leave to return to the Authority if there is any issue as to calculation.

Should any remedy awarded be reduced (under section 124 of the Act) for blameworthy conduct by Mrs Rasheed which contributed to the circumstances which gave rise to her grievance?

[126] It is not accepted Mrs Rasheed contributed to the circumstances of her first found unjustified disadvantage. She cannot be held responsible for delays in a process initiated and wholly in control of the employer. In the period between Mrs Rasheed raising the disciplinary investigation and her personal grievance she took two weeks leave due to work related stress and on return was presented with a PAG programme proposal. These are not blameworthy actions on Mrs Rasheed's part.

[127] The Commissioner says Mrs Rasheed contributed to the circumstances of her suspensions by refusing the offers of paid special leave.

[128] This is not accepted. Mrs Rasheed was under no contractual obligation to accept the offer particularly in circumstances where the Commissioner had advised an intention to implement a process into matters of conduct and/performance.

[129] Mrs Rasheed was entitled to expect her employer would scrupulously adhere to the provisions of the collective agreement. She asserted that in correspondence with the Commissioner including a detailed outline of the mechanics of the relevant provisions and its application to the circumstances in which the parties found themselves. This has been upheld. Mrs Rasheed has not contributed in a blameworthy way to the circumstances of her suspensions.

[130] With regard to the dismissal, the failure of the Commissioner to commence a fair and reasonable workplace investigation and the deficiencies in the subsequent disciplinary process did not arise from conduct of Mrs Rasheed. Indeed, the documents establish Mrs Rasheed repeatedly sought to engage with the Commissioner to ensure compliance with the collective agreement and provide information, which I find she could reasonably believe Mrs Myers's would consider in her disciplinary deliberations. In addition, and as found the Commissioner's failure to use the collective agreement mechanism available to her to sift through the allegations to discern performance from conduct matters has likely contributed to the length and complexity of the workplace investigation. Such an assessment was urged by Mrs Rasheed.

[131] None of the upheld misconduct allegations have been found by the Authority to have been made in compliance with the statutory justification test. That said the information before the Authority is that Mrs Rasheed accepts there are performance matters which she needs to address. In the absence of a fair and reasonable process and given the comprehensive process available to the Commissioner to raise and address such issues with Mrs Rasheed and the failure to do so it cannot be said the matters which came to the Commissioner's attention through the PAG programme or the workplace investigation can be characterised as blameworthy on Mrs Rasheed's part.

[132] There is no reduction in the remedies due to contributory conduct.

Penalties

(i) the employer

[133] Breaches of the employment agreement and the statutory obligation of good faith have been established. This however is not a matter where a penalty award would be appropriate.

(ii) the Trust

[134] I accept Mrs Rasheed lodged her action to recover a penalty against the Trust within 8 months of the cause of action coming to her attention on 1 April 2024 because that is the date her cause of action has been found to have arisen for the personal grievance relating to delay and breach of the collective agreement.

[135] Mrs Rasheed says the actions of Mr Elidrissi on behalf of the Trust were intended to bring about her removal as principal and in so doing incited, instigated, aided or abetted a breach of her employment agreement. The breach is the delay in progressing the disciplinary process implemented by the subcommittee.

[136] The Trust's representatives on the BoT were instrumental in the disciplinary subcommittee. They were the majority on the subcommittee. Mr Elidrissi was the presiding member on the BoT at that time. Before the subcommittee process was complete and after it was in receipt of Mrs Rasheed's initial the Trust, I find, through its representative acted in a way which has instigated and aided the found breach of the employment agreement by the employer:

- (i) seeking to end Mrs Rasheed's employment by participating in a meeting where her resignation was sought in exchange for money;
- (ii) raising concerns on 16 November 2022 about Mrs Rasheed directly with the Ministry to whom it also expressed an intention to withdraw from the integration agreement; and
- (iii) not providing a report of its actions to the BoT.

[137] It remains unclear what accelerated the Trust's concerns after the subcommittee process had been commenced. The suggestion in the evidence that it may have been the result of the election to the BoT parent representatives. The Trust could have challenged the election if it was concerned. On the evidence before the Authority, it did not.

[138] The BoT including the Trust's representatives had received advice about the requirements of any competency or disciplinary process involving Mrs Rasheed including that it must seek to preserve her dignity and mana and that any such process must comply with the provisions of the collective agreement. I am satisfied the Trust, through its representative was aware of the importance of scrupulous compliance with the provisions of the collective agreement. It is established that its actions have impeded compliance with those provisions and I find that it is very likely the Trust through its representatives was aware or likely aware this would be the case. These actions have instigated and aided the breach of the employment agreement by the employer being the delay in completing the disciplinary process commenced by the subcommittee.

[139] Standing back and including comparison to other cases and the relevant matters listed in s 133A of the Act, a fair penalty is \$6,000. The Trust is ordered to pay half the penalty to Mrs Rasheed to compensate her for the inconvenience and resources expended in pursuing statutory entitlements. The penalty is to be paid within 21 days of the date of this determination.

Summary of order

[140] Mrs Rasheed is reinstated to her position at the college on conditions as described in [117] above.

[139] The following amounts are to be paid to Mrs Rasheed within 21 days of the date of determination:

- (i) \$40,000 under s 123(1)(c)(i) of the Act;
- (ii) reimbursed lost wages from 17 June 2025 to date of reinstatement to the payroll under s 123(1)(b) and s 128;
- (iii) reimbursement of 23 days sick leave under s 123(1)(b) and s 128;

[141] The Trust is to pay a penalty of \$6,000 within 21 days of the date of determination to Mrs Rasheed.

Costs

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

[143] If parties are unable to resolve costs between them and an Authority determination on costs is needed Mrs Rasheed may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the Commissioner and the Trust 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.

[144] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence. 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.²²

Marija Urlich
Member of the Employment Relations Authority

²² See www.era.govt.nz/determinations/awarding-costs-remedies.