

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 362
3361263

BETWEEN	DEBBIE WATKINS Applicant
AND	TAUTOKO MAI SEXUAL HARM SUPPORT SERVICES TRUST Respondent

Member of Authority:	Claire English
Representatives:	Mark Beech, counsel for the Applicant Stephen Corlett, counsel for the Respondent
Investigation Meeting:	04 December 2025 in Tauranga
Submissions received:	Up to 16 March 2026 from Applicant 2 March 2026 from Respondent
Determination:	09 June 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant Debbie Watkins was employed by the respondent Tautoko Mai Sexual Harm Support Services Trust (Trust) as a social worker. On 20 December 2023, Ms Watkins transported a client between Tauranga and Whakatane, using a car belonging to the Trust. She took the view that this was a necessary part of her role and that a manager was aware of the transport and had raised no concerns about it.

[2] Ms Watkins' manager said she had not been aware of this, that Ms Watkins had not followed the appropriate processes in arranging such transport, and that this was an activity which put herself and another staff member who accompanied her, at risk.

[3] The Trust took steps to investigate what had occurred. Ms Watkins took sick leave during the investigation. The investigation concluded with the Trust accepting Ms Watkins' version of events in March 2024. No disciplinary action resulted.

[4] Following this outcome, Ms Watkins remained on sick leave. Correspondence occurred about Ms Watkins' return to work. By late August 2024, Ms Watkins remained on sick leave and the Trust raised the prospect of her employment ending due to medical incapacity. On 11 September 2024, the Trust ended Ms Watkins' employment as she remained on sick leave.

[5] Ms Watkins claims that she was unjustifiably dismissed and that the decision to dismiss her was substantively and procedurally flawed.

[6] The Trust resists this claim. It says it was entitled to investigate the situation that occurred, as it raised health and safety concerns, and in any event, the outcome of that situation was favourable to Ms Watkins. It says that Ms Watkins was absent from work on sick leave for eight months, with no diagnosis, prognosis, or return-to-work plan, and in those circumstances the decision to dismiss on the grounds of medical capacity was a decision which was open to it.

[7] The Trust further takes the position that it acted in good faith at all times, and that if Ms Watkins is found to have any claim (which it denies), then any remedies should be reduced by reason of contribution.

The Authority's investigation

[8] For the Authority's investigation written witness statements were lodged from Ms Watkins, her husband Mr Watkins, and colleagues Ms Amy McCorkindale, Ms Jennifer Tito, and Ms Angela Reynolds. Witness statements were provided on behalf of the Trust by Ms Klaire Oaks (Manager); Ms Julie Sach (Chief Executive Officer); Ms Sandra Wright (Ms Watkin's direct line Manager); and Mr Colin Pretorius (Acting CEO at the time Ms Watkins was dismissed). All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[9] 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.

The issues

[10] The issues requiring investigation and determination were:

- (a) Was Ms Watkins unjustifiably dismissed?
- (b) If the Trust's actions were not justified, what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act?
- (c) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Watkins that contributed to the situation giving rise to her grievance?
- (d) Should either party contribute to the costs of representation of the other party?

Background

[11] On 20 December 2023, Ms Watkins had arranged to provide support to a client, by supporting them to attend an MSD appointment to obtain emergency accommodation. The client had travelled to Tauranga from Whakatane to attend this appointment. Ms Watkins had arranged with the client, approved by her manager Ms Wright following the completion of the relevant risk assessment form, to pick the client up from the central bus stop and drive him using the Trust car to the MSD offices some distance away. A colleague also attended and travelled with Ms Watkins and the client.

[12] The client was not successful in obtaining emergency accommodation, and as a result, had no place to go and no way of returning to Whakatane. Ms Watkins called Ms Wright, but Ms Wright was unable to answer the call. Ms Watkins returned to the Trust's offices with the client. Ms Watkins was unable to speak with Ms Wright, so she went to her office and prepared a second risk assessment form stating that she was going to transport the client back to Whakatane in the Trust's car, with her colleague.

[13] Ms Watkins then spoke with another manager, Ms Oaks about using the Trust car for this, as Ms Oaks usually took the car home at the end of each working day. Ms Oaks asked if Ms Watkins had spoken to her manager and if she had completed a risk assessment form. Ms Watkins said “yes”. There was some dispute about what was actually said, with Ms Watkins taking the view that she had indicated to Ms Oaks that she had spoken to her own manager Ms Wright about that morning’s trip and risk assessment, and was seeking approval and the use of the car for a second trip. Ms Oaks was of the opinion that Ms Watkins did not explain that she was seeking approval for and/or had completed a second risk assessment for a second trip, and understood that Ms Watkins wanted to get her approval to take the car on a long trip at the end of the day, but that Ms Wright had already approved the relevant risk assessment.

[14] Ms Oaks approved the use of the car, and Ms Watkins drove the client back to Whakatane that evening, with her colleague making the journey there and back with her.

[15] When Ms Wright was able to check her messages, she called Ms Watkins to discuss. By this time, Ms Watkins was already driving to Whakatane with the client and her colleague. Ms Wright understood from this conversation that Ms Watkins had received approval for this trip from Ms Oaks. Ms Watkins explained that this was a mis-understanding, and she had only indicated to Ms Wright that Ms Oaks had approved the use of the Trust car.

[16] At hearing, and in her evidence, Ms Watkins described both Ms Wright and Ms Oaks as “incompetent”, and stated this was her continuing position.

[17] She was critical of Ms Wright for being unavailable when she originally rang her in the afternoon to discuss. She said that she believed that it was her duty and responsibility to transport the client back to Whakatane and that she could not leave him in a city knowing he had no means or accommodation. She was critical of Ms Wright for not having pre-arranged a “plan B” for her client in the event that the MSD application for emergency accommodation was not granted, while also saying she was surprised it was not granted. She made reference to Ms Wright having previously declined to approve a proposal for her to travel in the Trust car with this client between Whakatane and Tauranga, saying that although the file recorded that he was a high-risk

client and had been assessed as such by other agencies, she had met him and believed that this was not an accurate assessment.

[18] Ms Watkins was also critical of Ms Oaks, saying that Ms Oaks should have asked more questions about the risk assessment, should have contacted Ms Wright, and generally should have clarified matters before leading Ms Watkins to believe that Ms Oaks had approved the risk assessment and the trip overall rather than just the use of the Trust car, as Ms Oaks thought was occurring.

[19] The Trust then investigated the matter, and sought to meet with Ms Watkins in a disciplinary context. The concerns raised with Ms Watkins were that the trip from Tauranga to Whakatane “contravened the risk assessment plan for this client that had been agreed with you” and advising Ms Oaks that Ms Wright had approved the plan to transport the client to Whakatane...which was untrue”. The letter inviting Ms Watkins to a disciplinary meeting described these matters as a “failure to ensure the safety of yourself, colleagues and clients” and amounting to “dishonesty”.

[20] Ms Watkins said that she was so stressed by these false allegations that she needed to take sick leave. She took sick leave starting on 7 February 2024, and never returned to the workplace.

[21] Ms Watkins participated in the disciplinary process. After hearing from her, Ms Sachs as CEO of the Trust, accepted Ms Watkins’ explanations, and formed the view that what had occurred was a misunderstanding about the two different trips and two different risk assessments. No disciplinary action was taken, and Ms Watkins was advised of this and that the Trust had accepted her explanations, including that the Trust agreed with Ms Watkins that the two managers could have checked with each other. In fact, no action was taken against Ms Watkin at all apart from the Trust asking her to ensure that in the future, risk assessments were sighted and signed by a manger.

[22] Ms Watkins however, declined to return to work. Her evidence was that the managers “took no responsibility”, and she objected strongly to being advised any repeated actions of this type could result in further disciplinary action. She said this meant it was unsafe for her to return to work unless there were changes to protocols “to prevent me being put in this same situation”.

[23] Ms Watkins remained on sick leave, and provided medical certificates to the Trust. These stated that “the illness has been sufficient that the patient is unable to attend work...is on medication for her mood and she is being treated for significant insomnia”, “the disability has been sufficient that the patient has been unable to attend work”, and “the disability is/has been sufficient that the patient has been unable to attend work”.

[24] After Ms Watkins had been on sick leave for some eight weeks, and after the end of the investigation and disciplinary process, Ms Sachs emailed Ms Watkins asking how the Trust could support her and what her expected return to work date would be. In response, Ms Watkins raised a constructive dismissal claim in relation to the investigation and disciplinary process.

[25] The parties then attended mediation and engaged in settlement discussions but these were unsuccessful. In around July 2024, Ms Watkins performed some work for the police, despite remaining on sick leave. The Trust knew of this work.

[26] In late July 2024, the Trust advised Ms Watkins that in the absence of any information from her about a return to work, it was going to consider whether her employment needed to end due to medical incapacity. Ms Watkins then raised further claims against the Trust of breach of good faith, failing to provide a safe workplace, and the suggestion that her employment end by way of medical incapacity.

[27] The parties then met. Ms Sachs described this meeting. She said Ms Watkins advised that her illness was stress and anxiety arising from the investigation that had occurred earlier in the year. Ms Watkins asked that for her to return to work:

- a. her reporting lines be changed;
- b. different processes be put in place to her satisfaction;
- c. Ms Oaks and Ms Wright admit their “incompetence” and that they had “lied and colluded”.
- d. That once all this had occurred, she would consider returning to work.

[28] Ms Sachs agreed to change Ms Watkins’ reporting lines and participate in a mediation or facilitated meeting. However, she was not willing or able to commit to unspecified changes to policy, or to require Ms Oaks and Ms Wright to make statements they did not agree with. Ms Sachs said that Ms Watkins did not actually commit to

returning to work, but only said she would consider it even if all these things were arranged to her satisfaction.

[29] The parties then engaged in further correspondence throughout August. Ms Watkins put forward a “non-exhaustive” list of policy changes she required. The Trust responded explaining how it believed such policies already existed, including that the Trust had already updated its risk assessment policy and managerial signature requirements. Ms Watkins did not provide any medical information or a return-to-work date. However, the Trust became aware of a Facebook post where Ms Watkins wished her husband a happy wedding anniversary and said “I’m looking forward to our new life in Perth”.

[30] The Trust raised this with Ms Watkins, and asked if Ms Watkins intended to return to work”. Ms Watkins replied, stating that her employment could not be terminated for medical incapacity, and the Trust was not entitled to draw any inferences from the Facebook post. In her in-person evidence, Ms Watkins stated that she had not intended this post to refer to any immediate changes, but to refer generally for her plans for retirement at some future point.

[31] On 11 September 2024, the Trust wrote to Ms Watkins terminating her employment for medical incapacity. The decision was made by Mr Pretorious, the Trust’s Chief Financial Officer and Acting Chief Executive at that time, as Ms Sachs was taking planned leave. He gave evidence about the financial and operational strain Ms Watkins’ absence of some seven months had put on the Trust, and that he had concluded that the Trust could no longer continue to hold Ms Watkins’ job open for her in the absence of clear medical evidence and indication of when she would be able to return to work.

Analysis

[32] The first question I need to consider is whether Ms Watkins was unjustifiably dismissed. Ms Watkins was dismissed for reasons of medical incapacity. This may be a justifiable reason for ending employment, provided a fair process has been followed and the ultimate decision is justified at the time it is made.

[33] The test is traditionally expressed as whether the point has come “at which an employer can fairly cry halt”¹. While the employer’s obligation is to be fair to the employee, it is also entitled to consider the economic impacts of prolonged absence on its business, and the court has held that not even a large employer is required to keep a medically unfit employee on its books indefinitely².

[34] In *Dunn v Waitemata District Health Board* [2014] NZEmpC 201, [2014] ERNZ 524, the Employment Court noted:

Employment relationships involve a two-way street. Both parties have an obligation to be responsive and communicative and to deal with each other in good faith. It ill-behoves an employee to complain about a failure to adequately progress a rehabilitative process when they themselves fail to engage in constructive dialogue in a genuine attempt to resolve issues.

[35] Ms Watkins’ employment was terminated by way of letter dated 11 September 2024. This letter sets out the Trust’s reasoning, and states that it had previously outlined in a letter dated 22 August 2024, “a proposal to terminate your role...on the basis of medical incapacity”. The Trust went to on record that “you did not respond to this proposal, other than to state your position was that you could return to your role if we discharged our obligation to provide a safe workplace. We responded on 4 September 2024 to reiterate that our position is that we have discharged this obligation and we made a further request for you to provide feedback....In your response of 9 September 2024 you still have not provided any specific feedback on this proposal other than stating that [the Trust] “can not rely on the medical incapacity provision to terminate...”

[36] The Trust then stated that it was unable to continue to hold Ms Watkins’ role open indefinitely, it was experiencing impacts on delivery, and it had been unable to fill her role on a temporary basis. It therefore terminated her employment on the grounds of medical incapacity.

[37] Ms Watkins had been away from the workplace on sick leave since the beginning of February 2024, that is, she had been continuously on sick leave for more than 8 months at the point of the termination letter of 11 September. During that time, she had regularly provided the Trust with medical certificates. Those medical certificates first stated she suffered from an illness that was “sufficient” that she was

¹ *Hoskin v Coastal Fish Supplies Ltd* [1985] ACJ 124 at 127.

² In *Lyttelton Port Co Ltd v Arthurs* [2018] NZEmpC 9, (2018) 15 NZELR 624, at [55].

unable to attend work, and then repeatedly described her as having a “disability” “sufficient” that she was unable to attend work.

[38] At no point did Ms Watkins state what illness and disability she suffered from, and nor did the medical certificates state this. Ms Watkins also did not provide any information about when she would be fit and well to return to work, even when prompted for further information by her employer, and knowing that it was considering termination on the basis of medical incapacity. The Trust was upfront about this, the practical difficulties her absence was creating, and gave Ms Watkins multiple opportunities to provide further information.

[39] In both her written and in-person evidence, Ms Watkins was unequivocal that “I was not medically incapacitated to work”. Yet this was what her medical certificates provided by her doctor consistently told the Trust over some eight months. Ms Watkins did not provide any satisfactory explanation as to why she would tell the Trust that she could not work, when her own evidence was that she was not in fact medically incapacitated.

[40] Having told the Trust repeatedly and over some eight months that she was not able to work, Ms Watkins cannot complain that the Trust took her at face value, accepted her medical certificates, and decided after consultation which did not provide any new information, that it could not hold her position open any longer.

[41] Having said that, it is clear that the reason Ms Watkins would not return to work is because she remained unhappy with the investigation process undertaken by the Trust into the events of 20 December 2023. In describing the decision to dismiss on the basis of medical incapacity as unjustified, Ms Watkins says:

The Respondent, before creating a safe working environment for the Applicant to return to, took the course of terminating the Applicant by way of medical incapacity because the Applicant had been on sick leave whilst the parties engaged in mediation.³

[42] After hearing the evidence, I do not accept that this is an entirely accurate statement of what occurred. The parties had engaged in both mediation and significant correspondence, but had been unable to reach agreement. There was no link between

³ Paragraph 2.33 of the Statement of Problem.

Ms Watkins' sick leave and attendance at mediation, nor was there any link between the unsuccessful mediation and the decision to terminate.

[43] More fundamentally, Ms Watkins remained concerned with the fact that the Trust had commenced an investigation and a disciplinary process into what occurred on 20 December 2023 in the first place. She remained firm in her view that, despite the Trust having accepted her explanations, it should not have investigated the matter at all. She took the view that she would not return to work until the “addressed the unsafe working environment”, including by putting policies and procedures in place to protect her from any future investigations or disciplinary actions.

[44] I received evidence about the protocols that did exist at the Trust. It was clear that there were protocols in place requiring a risk assessment and subsequent manager approval for transporting clients. Ms Watkins had successfully and properly carried out the appropriate procedures in respect of the first trip on 20 December 2023 involving transporting the client from the bus station to MSD's offices. (There was some discussion about whether it was proper for her to have taken the client to purchase medication, but as this was not the focus of the dispute between the parties, I have not needed to consider this further.)

[45] Ms Watkins then created a second risk assessment for a second much longer trip that same afternoon, transporting the client from Tauranga to Whakatane. This was done late in the afternoon of the relevant day, and as the client was waiting in reception. She was unable to speak with her manager immediately about this as her manager was in a meeting. She then spoke to another manager, who did not have any of the relevant background, on an urgent basis about both the risk assessment and the use of the car. It was at this point that the misunderstanding about which risk assessment was being discussed, occurred.

[46] Ms Watkins says that Ms Oaks should have asked more questions and Ms Wright should have been more available to her, and they both should have “taken responsibility”. In making these criticisms, Ms Watkins does not suggest that she herself should have been more communicative and told Ms Oaks clearly that there were two trips and two risk assessments and Ms Wright had only approved the first assessment. She does not suggest she should have waited to speak with Ms Wright, or should have prepared for a return journey with the client any earlier than late in the

afternoon of the relevant day. I am also left with some concern that Ms Watkins and Ms Wright had discussed this client's circumstances prior, and Ms Wright had already indicated to Ms Watkins that she would not approve transport of the client from Whakatane to Tauranga for various reasons, and knowing this, Ms Watkins then sought approval from another manager on an urgent basis.

[47] Ms Watkins had been asked to ensure that going forward, completed risk assessments were sighted and signed by a manager before being loaded into the system. There was no suggestion that Ms Watkins did not understand this requirement, or found it onerous.

[48] Taking all of this into account, I am not persuaded by Ms Watkins' position that there needed to be changes to protocols before she could safely return to work. Ms Watkins had demonstrated that she had successfully used the existing protocols in the past, and did not object to the updated protocol requiring that risk assessments were to be sighted and signed, which I consider to be a reasonable and lawful direction in any event. To the extent that Ms Watkins raises concerns about a lack of managerial oversight, the clear requirement that risk assessments were to be both sighted and signed by a manager answers this concern.

[49] By August and September 2024, existing and updated protocols were already in place which would assist Ms Watkins and other staff in any similar situations arising in the future. The Trust had also engaged with Ms Watkins to explain its position to her, engaged in mediation, and had made other concessions requested by her such as changing her reporting line to minimise contact with Ms Wright and Ms Oaks. All of these actions were reasonable responses to Ms Watkins' concerns about safety in the workplace.

[50] It was in these circumstances that Ms Watkins did not provide further information about her ongoing illness or disability which she had told her employer had prevented her from working for the past eight months, or commit to a return to work, leading the Trust to conclude that it could no longer hold her job open indefinitely, and the ending of her employment by reason of medical incapacity was necessary and justified.

[51] The court has said in a similar situation:

I do not accept the plaintiff's case that "incapacity" was used by the defendant as a convenient excuse to dismiss the plaintiff when the real reason was dissatisfaction with his performance or misconduct or a severe personality conflict. In many cases, and this is no exception, issues of employee performance, employee misconduct, and capacity or ability arise contemporaneously. That does not mean, however, either that the incapacity or inability was a result of the manner in which the employer dealt with the other issues, or that an employer dismissed for reasons that were not stated truthfully. If an employee is unable to return to work or provide a positive prognosis for return, an employer cannot be expected to continue the employment relationship to enable other dissatisfactions to be dealt with on their merits at some indefinite future time.⁴

[52] Standing back and considering the circumstances overall, I find that Ms Watkins' claim of unjustifiable dismissal is not made out. She had remained on sick leave for more than eight months, without providing a diagnosis or any indication of when she would be able to return to work. The Trust put her on notice that it was considering termination on the grounds of medical incapacity and the strain her absence was putting on the business, and only terminated her employment after providing her with multiple opportunities to engage with it on this issue.

[53] While Ms Watkins criticises the Trust for not having better medical advice, she did not take the opportunity to provide any such particularised advice, so I set this to one side.

[54] I do not accept that there were unresolved concerns about a safe workplace, or that there is any unreasonableness about the Trust taking Ms Watkins at face value when she had repeatedly provided medical certificate describing her as having an illness and/or disability preventing her from working.

[55] I have also considered whether Ms Watkins suffered an unjustified disadvantage in her employment. This is said to arise from three things: raising allegations of dishonesty with her in relation to the 20 December 2023 incident and "emphasising" what Ms Watkins could have done differently; initiating a medical incapacity process while Ms Watkins was "awaiting engagement around her concerns" and that Ms Watkins' Facebook post stating she was "looking forward to our new life in Perth" was an inappropriate contributor to the Trust's decision to dismiss.

⁴ *McKean v The Board of Trustees of Wakaaranga School*, [2007] ERNZ 1, at [87].

[56] An unjustified disadvantage occurs when an employee's employment or conditions of that employment, is affected to the employee's disadvantage by some unjustified action of the employer.

Allegations of dishonesty and Ms Watkins' role

[57] Turning first to the claim that the Trust unjustifiably disadvantaged Ms Watkins by raising allegations of dishonesty with her and by inappropriate focusing on her contribution to the situation and what could have been done differently, I find that this is not an entirely accurate description of what occurred. The Trust was concerned to understand what had happened, how it had happened, and what processes had been followed or otherwise. It was, at the start, also (but not exclusively) concerned that Ms Watkins had not been truthful in what appeared to be conflicting reports to two different managers. Given the confusion that first existed, this concern had a reasonable foundation. Not only was the Trust entitled to put this to Ms Watkins, it was also obligated to do so to enable her to understand the scope of its concerns and provide her response. Neither the forming of the concern nor putting it to Ms Watkins for response were unjustified actions by the Trust. In addition, no aspect of Ms Watkins' employment was affected to her disadvantage by this, as this was consistent with mutual obligations to be active and communicative.

[58] I am also not persuaded by the claim that the Trust focused inappropriately on Ms Watkins' contribution to the situation and/or on what she herself could have done differently. It is entirely appropriate for the Trust, in its communications with Ms Watkins, to discuss the matters from her perspective rather than focusing on discussions about other staff. I have already found that its requirements of her, that in the future she ensure that risk assessment documents were both sighted and signed by managers, were both reasonable and lawful, and no disciplinary action was taken. It follows that I do not consider the Trusts' actions in this respect to be either unjustified, nor to have affected terms of her employment to her disadvantage. No unjustified disadvantage claim is made out on these grounds.

Initiating a medical incapacity process

[59] The second ground for unjustifiable disadvantage is said to be the Trust initiating a medical incapacity process while Ms Watkins was "awaiting engagement around her concerns". After hearing the evidence, I do not accept that this is an accurate account of what occurred. Ms Watkins was on long-term sick leave, and the

genuineness of her illness was accepted at all times by the Trust. However, the Trust was entitled to address this matter. In addition, Ms Watkins was not “waiting for engagement” with the Trust. Ms Watkins and the Trust had been actively engaged for a considerable period of time about her concerns over safely returning to work, and the Trust engaged substantively with her including making changes to procedures and reporting lines, and I have found it did so reasonably, and in a way that was responsive to her concerns. I do not consider the Trust’s raising of medical incapacity to be unjustified in the circumstances, including that it had waited more than eight months with no indication of any return-to-work date. Nor do I consider that it had made Ms Watkins wait unreasonably for engagement around her concerns.

[60] The issue between the parties was rather that the Trust had engaged with Ms Watkins, but Ms Watkins was unwilling to accept the changes that had been made. No unjustified disadvantage claim is made out on this ground.

Impact of the Facebook post

[61] Ms Watkins alleged that the Trust improperly took into account a Facebook post she made stating “I’m looking forward to a new life in Perth” when dismissing her. Ms Watkins accepts that she made this post while on sick leave. The Trust wrote to her putting it to her that this post indicated that she did not intend to return to work but intended instead to permanently move to Perth. Ms Watkins says that she did not intend this post to refer to an upcoming move to Perth, but rather intended it to mean that she and her husband would retire in Perth at some future point. She disputes that the post could be read in any other way, and objects to the Trust raising its concerns with her at all. She says that the Trust improperly took this into account when dismissing her.

[62] In its dismissal letter of 11 September 2024, the Trust stated that (after hearing Ms Watkins’ explanations) it did not consider further discussion necessary, and that it was not a factor in its termination decision. Mr Pretorius also gave evidence that this was not one of the reasons he considered it necessary to end Ms Watkins’ employment.

[63] I have considered the matter. I understand the Trust’s initial concern on seeing this post. On its face, it suggests an imminent move to Perth, which would have brought the employment relationship to an end. Although Ms Watkins might have intended it to refer to her future retirement, the post did not say this and did suggest immediacy. I find that the Trust was entitled to ask Ms Watkins what the post meant. However, the

contemporaneous documents as well as Mr Pretorius' evidence were that this was not a contributing factor to the Trust's decision to dismiss, and I accept this evidence. There is no evidence to the contrary apart from its raising with Ms Watkins in the first place. Standing back, I am not persuaded that the Trust's actions were unjustified, or that there was any demonstrable adverse impact on Ms Watkins's employment. No unjustified dismissal claim is made out.

Did the Trust breach its duties of good faith?

[64] Ms Watkins claims that the Trust breached its duties to act in good faith towards her. In particular, she refers to a failure to "act in a manner designed to resolve issues and not undermine the relationship", "be active and constructive in maintaining a productive employment relationship" and "facilitate rather than obstruct".

[65] I do not accept that these claims are made out. The Trust actively engaged with Ms Watkins over a considerable period of time. It did not uncritically accept her perspectives, especially in regard to Ms Watkins' negative view of Ms Wright and Ms Oaks. However, it took her concerns seriously, and made changes that were objectively advantageous to her. This does not support the claim that the Trust failed in its obligations to be active, responsive, and communicative, or that it did not take steps to maintain a productive employment relationship. I find this claim is not made out.

Remedies

[66] As I have not found that Ms Watkins' personal grievance claims are made out, no questions as to remedies arise. I note that this includes any claims for penalties for breach of good faith, and any recommendations to the Trust under s 123(1)(ca) of the Act.

Orders

[67] Ms Watkins' personal grievance claims are not made out. No orders are made.

Costs

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

[69] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondent may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that

memorandum the applicant will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[70] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁵

Claire English
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1