

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 666
3316401

BETWEEN

GIULIA CAROZZI
Applicant

AND

CABLE BAY WINE LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Teresa Brown, advocate for the Applicant
Emma Crowley and Bronwyn Colgan, counsel for the
Respondent

Investigation Meeting: 21 August 2025 in Auckland

Determination: 22 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Cable Bay Wine Limited (CBWL) employed Giulia Carozzi from 17 July 2023 until it dismissed her on 29 February 2024 for serious misconduct. Ms Carozzi worked as a restaurant manager at CBWL’s winery, restaurant, and accommodation business on Waiheke Island.

[2] Ms Carozzi was dismissed because she breached company procedure concerning how bookings for helicopter landings at the company premises were checked and approved.

[3] Ms Carozzi had confirmed a booking on 7 February 2024 which resulted in CBWL exceeding its resource consent limits for landings and take offs in the following weekend.

[4] She apologised for her error in an email she sent to CBWL director Loukas Petrou on 12 February saying she took “full responsibility for what happened”.

[5] CBWL did not accept her apology as resolving the situation. It said Ms Carozzi knew the booking query should have been referred to another staff member who was responsible for monitoring and approving bookings, and she had not explained why she had acted that way. Its letter of dismissal said Ms Carozzi's actions amounted to "gross negligence" which had caused "significant" damage to CBWL and it had "no other option" but to terminate her employment with immediate effect.

[6] Ms Carozzi raised a personal grievance about her dismissal. She said she was not given an adequate opportunity to respond to the reasons given for her dismissal, her actions had not amounted to serious misconduct and she was not adequately trained about the resource consent requirements.

[7] In her application to the Authority Ms Carozzi sought findings that her actions had not amounted to serious misconduct and the company had treated her inconsistently with another employee who had "made the same mistake," instead making a predetermined decision to dismiss her without exploring alternative options.

[8] In reply CBWL said Ms Carozzi had "chosen to ignore the established process that was clearly communicated to her" and the company had "followed the correct investigation and disciplinary process" to reach its decision.

Issues

[9] The following issues arose for determination:

- (a) Was CBWL's decision to dismiss Giulia Carozzi and how it made and carried out that decision, what a fair and reasonable employer could have done in all the circumstances at the time?
- (b) If CBWL's actions were not justified, should Ms Carozzi be awarded remedies of lost wages and compensation for distress caused to her?
- (c) If any remedies are awarded, should they be reduced for any blameworthy conduct by Ms Carozzi that contributed to the situation giving rise to her grievance?
- (d) Should either party contribute to the costs of representation of the other party?

The Authority's investigation

[10] The following people provided written witness statements and attended the Authority investigation meeting to answer questions, under affirmation, from me and the parties' representatives:

- Ms Carozzi;
- Mr Petrou;
- Roxanee Guinee, CBWL's former Hospitality and Marketing General Manager, who conducted the disciplinary process which ended with Ms Carozzi's dismissal; and
- Alana Brashier, a former CBWL office administrator who was responsible for helicopter bookings at the relevant time.

[11] The representatives also provided oral closing submissions, speaking to written synopses, at the investigation meeting.

[12] As permitted by s 174E of 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 context and events

The helicopter booking system

[13] CWBL's resource consent for operation of its winery and hospitality premises sets strictly limited numbers for permitted helicopter landings and take offs at the site. Helicopter traffic and other noise issues have caused controversy with some neighbours of the business so the company has a procedure in place to check helicopter bookings are kept within those limits.

[14] In her role as restaurant manager Ms Carozzi reported to the Hospitality and Marketing General Manager. Ms Guinee held that post from 3 August 2023 to 15 August 2024.

[15] The office manager was primarily responsible for approving and recording helicopter bookings. Ms Brashier held that role from 21 February 2023 to 11 March 2024.

[16] Those bookings were recorded on a spreadsheet specially designed to enable a running check that any bookings made were within the resource consent limits.

[17] The spreadsheet was developed because of previous complaints from neighbours who promptly reported instances where they thought CBWL had exceeded the permitted number of landings and take-offs in a week or a month. The company was concerned further complaints would cause legal costs, bad publicity and, potentially, affect its license and the viability of its business.

[18] Requests for bookings, usually made through helicopter companies, were received at two email addresses for the company. Ms Carozzi managed the email traffic to both addresses.

[19] Under the established procedure, enquiries to those addresses for helicopter bookings were referred to Ms Brashier to check. Ms Brashier entered the party details and landing times on the spreadsheet. An algorithm on the sheet identified whether the booking was within the permitted limits. Ms Brashier would then advise whether the booking could be accepted or not, with this information then passed on to the customer and the helicopter company.

[20] Confirmed bookings were listed on the spreadsheet and in the restaurant's booking system. All staff were able to access and check those bookings.

The 7 February 2024 query

[21] On 19 January Ms Brashier had confirmed a booking for a helicopter landing associated with a restaurant reservation for lunch on 10 February. This determination refers to the guest's name for that booking only as DM.

[22] The helicopter company making the booking for DM's landing was asked to confirm whether it involved four or two movements.

[23] Four movements comprised situations where the helicopter landed with the customer and then took off (a drop off), returning later to land to pick up the customer for the return journey and take off again (a pick up).

[24] Bookings for two movements involved the helicopter landing with the customer but then waiting on the ground until the customer had finished their vineyard or restaurant visit and then taking off, so there was just one landing and one take-off.

[25] The DM booking for 10 February was recorded as involving four movements.

[26] On 7 February Ms Carozzi received an email from the same helicopter company asking for a landing booking for a guest referred to here as RM. He was the father of DM. The booking request was for an arrival time half-an-hour after the time booked for DM's landing.

[27] The subject headings of the 19 January and 7 February emails each used the respective first name and shared family name of each man.

[28] Ms Carozzi responded to the 7 February booking request for RM six minutes after receiving it from the helicopter company. Her response read: "The booking is confirmed. [DM] have (sic) also made a booking in the restaurant directly".

[29] According to her later evidence Ms Carozzi responded to the email after asking Ms Brashier about the booking. They were both working in the office that day.

[30] The available email record showed Ms Carozzi had not followed the usual procedure of forwarding such booking requests to Ms Brashier, with Ms Brashier checking the spreadsheet and then sending an email response on whether the request could be accepted.

[31] In her evidence to the Authority investigation Ms Carozzi said she did not think the 7 February email was about a new booking because it had the same last name, the same number of helicopter movements, the same helicopter company and a similar time as the existing booking for that day. She said she had "skimmed the email" and turned to Ms Brasher, asking her if the helicopter booking for the upcoming Saturday with four movements, under the M surname was confirmed. She said Ms Brashier had replied "yes" and Ms Carozzi then sent an email reply to the helicopter company to confirm the booking. She said that she had "never thought for a split second" that the email concerned a new booking enquiry.

[32] Ms Brashier's evidence was that she did not recall telling Ms Carozzi it was okay to confirm the booking. She was, however, certain she would not have done so if

she knew such a query was about a new booking. Ms Brashier said she would always check a new booking through the process of receiving the booking query by email and sending a reply email, approving or declining the request. Doing so would involve checking the spreadsheet and its algorithm for calculating whether a requested booking would be within the company's permitted limits on helicopter movements.

[33] In her oral evidence Ms Brashier accepted Ms Carozzi "might have" only asked if a booking was still on the sheet for the M family surname and she "might have said yes". Ms Brashier accepted it was, in those circumstances, an "easy mistake" but insisted she would not have answered yes if Ms Carozzi had given any indication that her query concerned a new booking, not an existing one.

10 February landings

[34] Due to other business commitments in Auckland Mr Petrou is not routinely involved in the day-to-day operation of the Cable Bay restaurant and winery on Waiheke Island. During the weekends, however, he often spends time on the premises as a guest, to eat, drink and socialise with friends.

[35] While there on 10 February, a Saturday, he noticed the number of helicopter landings around lunch time. He said it was obvious those landings exceeded consent limits and he asked Ms Guinee to check what had happened.

[36] Neither Ms Brashier nor Ms Carozzi were at work that day so Ms Guinee contacted the helicopter company directly. A representative of the helicopter company confirmed it had an email from Ms Brashier for the first landing, for DM, and an email from Ms Carozzi approving the booking of the second landing, for RM.

[37] Ms Guinee reported this information to Mr Petrou. According to her later oral evidence at the Authority investigation meeting, Ms Guinee said she told Mr Petrou she could see what had happened. She thought Ms Carozzi had confirmed the booking based on the family name, believing it was for one booking already made, rather than an additional booking.

12 February discussion

[38] On the following Monday morning Ms Guinee met with Ms Carozzi and Ms Brashier to talk about what had happened with the bookings for 10 February. On her

account of their discussion it was clear to the three of them that Ms Carozzi had misunderstood the email message from the helicopter on 7 February as applying to the existing booking because the customer referred to had the same family name as the name under which the restaurant booking was made.

[39] In her oral evidence at the Authority investigation meeting Ms Carozzi said she “felt silly” when she looked at the 7 February email again on 12 February and thought she should have read the email better.

[40] In the email Ms Carozzi wrote to Mr Petrou on the evening of 12 February, with the subject heading “Apologies”, she said:

I just would like to take the time to apologize for what happened over the weekend with the helicopter landing. I am truly sorry for my mistake, and I understand how bad this can impact Cable Bay. It was never my intention to cause any harm, and I deeply regret what happened. I’ve made an error and I understand the seriousness of the situation and take full responsibility for what happened.

I hope you know that I value Cable Bay, and I’ve always work (sic) to its success.

[41] Mr Petrou did not respond to Ms Carozzi’s apology email or talk with her about the incident during the following week.

13 February email

[42] Instead, Mr Petrou forwarded Ms Carozzi’s email to Ms Guinee on 13 February with a message about steps he wanted taken. He said Ms Carozzi was well aware of the process for approvals of helicopter landings by Ms Brashier, to be recorded on the “specialist spreadsheet”, and he understood Ms Carozzi had otherwise always followed the correct process up until this time. He said she had “acted in gross negligence and chosen not to follow the established process” and he could not ignore the “significant” damage to Cable Bay. His message to Ms Guinee concluded:

I consider this to be gross misconduct and the appropriate disciplinary action must be followed and her employment with Cable Bay must be terminated.

17 February email

[43] Mr Petrou spent time at the winery and restaurant on Saturday, 17 February. Later that day he sent Ms Guinee a lengthy email setting out 18 “observations” he made during that time.

[44] One observation noted Ms Carozzi had directed a staff member to work in one area rather than another. He asked Ms Guinee who gave Ms Carozzi authority to do that and continued: “Why is Giulia’s employment not terminated yet as requested”.

[45] His email ended with six action points he asked Ms Guinee to carry out. Point two was: “Proceed with immediate termination of Giulia’s employment”.

20 February letter about disciplinary process

[46] Three days later Ms Guinee told Mr Petrou she had spoken with a Restaurant Association advisor about the need to hold “a formal, recorded meeting” with Ms Carozzi “even though it is gross misconduct”.

[47] Mr Petrou initially questioned the need for any further meeting because Ms Guinee had already talked to Ms Carozzi, on 12 February, about what had happened. He said he saw Ms Carozzi’s action as gross misconduct and did not see how feedback would change that but agreed with Ms Guinee later that day that they needed “to follow the correct process”.

[48] Ms Guinee then sent Ms Carozzi a letter calling her to a disciplinary meeting to answer an allegation of serious misconduct. The letter said this related to “confirming a booking for four helicopter activities without following the correct process, which resulted in us being over our allowed heli activities by four”. It said those additional helicopter landings “could result in a[n] enormous fine, damaging media coverage and the possibility of losing our consent to have helicopter landings at Cable Bay at all”. It said Ms Carozzi’s behaviour breached her employment agreement, her job description and company procedure.

28 February meeting

[49] After getting independent advice about her situation Ms Carozzi attended the disciplinary meeting on 28 February, taking a co-worker as a support person. Ms Guinee conducted the meeting, with Ms Brashier attending to take notes.

[50] Those notes recorded three key responses Ms Carozzi gave to the concerns put to her. Firstly, Ms Carozzi said she was not adequately trained on the process for helicopter bookings. Secondly, she said some other resource consent requirements were not followed by the business so it seemed to her that there was “a fine line what we can

and can't do" and that seemed "different for each person". An example she gave was a reference to Mr Petrou, describing him as not following one of those rules. Thirdly, she said she was expected to cover other roles additional to her restaurant manager duties.

[51] Ms Brashier's note recorded that Ms Guinee ended the meeting with the following indication of what would happen next:

I will consider everything and provide a preliminary decision to you by tomorrow. You will then have the opportunity to then give feedback on my preliminary decision and we can go on from there.

Disciplinary outcome

[52] After that meeting Ms Guinee prepared a letter, to be sent to Ms Carozzi, dated 29 February and with the heading "Preliminary decision".

[53] Her draft letter said that the "proposed" decision was to "instantly dismiss you without notice for serious misconduct". It then summarised what Ms Carozzi said at the disciplinary meeting and said her feedback had been considered. It said the "preliminary" finding was that Ms Carozzi had breached the trust and confidence held in her as an employee, had breached her duty of good faith and her behaviour amounted to serious misconduct. It asked her to provide written feedback or, if she wished, to attend a further meeting on 1 March, that was the following day.

[54] The draft ended with a note that, subject to Ms Carozzi's feedback, the disciplinary outcome could include "instant dismissal without notice for serious misconduct".

[55] Ms Guinee sent her draft to Mr Petrou for approval. He responded with significant amendments and additions to it.

[56] The opening paragraph of Mr Petrou's amended version removed the reference to a "proposed" decision, instead telling Ms Carozzi that the company had decided to terminate her employment with immediate effect for serious misconduct.

[57] In further additional paragraphs written by Mr Petrou, the draft letter said Ms Guinee had spoken to him about the allegations about inadequate training and he had confirmed Ms Carozzi was inducted on the helicopter procedures by both him and a previous events manager. It said previous instances of Ms Carozzi referring booking

enquiries to Ms Brashier showed she understood the correct process but on 7 February she “decided to act without authority and approval to confirm helicopter bookings”. It also noted her 12 February apology to Mr Petrou had taken “full responsibility for what happened”. It said she had provided no explanation for why she chose not to follow the established process and “significant” damage to Cable Bay could not be ignored.

[58] Mr Petrou’s draft then continued by describing Ms Carozzi’s “allegations about her duties” as “simply false”, describing them as “false and emotional statements” that seem “malicious and unsubstantiated”.

[59] It concluded by saying that her actions amounted to gross negligence and the company had “no other option but to terminate your employment with immediate effect”.

[60] It included a further paragraph saying Ms Carozzi had said she had already secured employment with another company.

[61] The latter point about another job was, according to Ms Carozzi’s later evidence, not correct. It appeared to be a misunderstanding resulting from what Ms Guinee had told Mr Petrou about an email she received from Ms Carozzi on 28 February, after the disciplinary meeting.

[62] Ms Carozzi had asked, informally, whether she could resign rather than be dismissed, if dismissal was to be the likely outcome. Ms Guinee told her she would talk to Mr Petrou about that query but, without waiting for a response, Ms Carozzi had gone ahead and sent Ms Guinee an email giving notice of her resignation, effective six weeks from 28 February, that is on 10 April. Ms Carozzi’s email said she was resigning because “recent events have led me to reassess my position” and “the lack of training provided had significantly contributed to the mistake made, leading to increased work-related stress”.

[63] Mr Petrou did not accept a resignation as an alternative to dismissal. According to his written evidence, the notice of resignation email Ms Carozzi sent on 28 February “cemented in my mind her acceptance of the magnitude of her mistake” and he told Ms Guinee that it had no impact on the disciplinary process.

[64] He did, however, agree to remove the reference to Ms Carozzi having another job to go to from his draft of the outcome letter. At his direction Ms Guinee then sent the letter to Ms Carozzi with the opening heading now reading: “Final Disciplinary Outcome”.

The test of justification

[65] In determining a claim of unjustified dismissal the Authority does not substitute its opinion for the decision of the employer. Rather, the Authority’s role is to objectively assess whether the decision of the particular employer, and how it reached that decision, fell within the range of what a notional fair and reasonable employer could have done in all the circumstances at the time.¹

[66] The parties’ ongoing obligations of good faith to one another are also a relevant consideration in this assessment. Both are required to be active and constructive in maintaining a productive employment relationship. This includes the employer’s obligation to give the employee access to relevant information and a reasonable opportunity to comment before making any decision which might have an adverse effect on the continuation of the employment.² The employer also has to show it had genuinely considered any explanation the employee gave in response to allegations about their conduct.³

[67] In later reviewing the process followed by the employer in deciding on a dismissal, the Authority may determine a dismissal to be unjustified if defects in the process followed were more than minor and had resulted in the employee being treated unfairly.⁴

[68] An Employment Court decision has explained the way in which those statutory expectations affect what an employer should do in investigating allegations about a worker’s conduct:⁵

An employer is not required to approach an investigative and disciplinary process with a completely blank mind – that may not be possible given the realities of many workplaces. Nor is it objectionable to form a tentative view during the course of the process. However, an employer must keep a sufficiently open mind to enable genuine consideration to be given to the issues

¹ Employment Relations Act 2000, s 103A.

² Section 4(1A).

³ Employment Relations Act 2000, s 103A(3)(d).

⁴ Section 103A(5).

⁵ *Merennage v Ritchies Transport Holdings Ltd* [2015] NZEmpC 198, at [59].

and must remain amenable to persuasion. Merely going through the procedural motions does not suffice.

[69] As a general rule, inadvertent errors or oversights made by a worker carrying out their duties, if not made deliberately or knowingly reckless to their effect, are deemed in law, initially at least, to be a matter of misconduct rather than serious misconduct.⁶ An employer may, however, justifiably decide that a single instance of negligence is serious misconduct if that action deeply impairs the trust and confidence that the employer has in the worker.⁷ The focus in that assessment is on the *action* of the worker rather than its *consequences*. This distinction between what was done and its effects addresses the prospect that an action may deeply impair trust but not result any actual cost or negative outcome in that particular single instance while another instance may have, for example, some costly consequence but the action itself is not sufficiently serious to justify dismissal.

[70] In each instance, the justifiability of a disciplinary decision for an error, mistake or oversight, is a matter of fact and degree in the particular circumstances of each case.⁸

[71] The evidence about what happened to lead to the disciplinary process, what happened during it and its outcome is assessed, and conclusions drawn, on the civil standard of the balance of probabilities. Probability here means what is more likely than not to have happened.

Ms Carozzi's dismissal was unjustified

[72] On that standard, CBWL's dismissal of Ms Carozzi for serious misconduct was not justified. For the following reasons that outcome, and how CBWL reached it, was not what a fair and reasonable employer could have done in all the circumstances:

- (i) The outcome was predetermined;
- (ii) The circumstances in which the 7 February error occurred were not adequately investigated;
- (iii) The company's concerns were not put fully to Ms Carozzi for response;
- (iv) An ulterior purpose motivated the decision;

⁶ *Makotoa v Restaurant Brands (NZ) Limited* [1999] 2 ERNZ 311 (EC) at 319.

⁷ *Click Clack International Limited v James* [1994] 1 ERNZ 15 (EC) at 32.

⁸ *Click Clack*, n 7 above; and *Northern Distribution Union v BP Oil New Zealand Limited* [1992] 3 ERNZ 483 (CA) at 487.

- (v) Mr Petrou, as actual decision-maker, did not meet with Ms Carozzi to give her opportunity to respond to his concerns and to discuss alternatives to dismissal; and
- (vi) Alternatives to dismissal were not fairly considered.

(i) *A pre-determined outcome*

[73] The evidence from Mr Petrou's email communication to Ms Guinee identifying the concern about the 12 February helicopter landings, his query on 17 February why Ms Carozzi had not yet been dismissed and his rewriting of the preliminary disciplinary letter demonstrated the outcome was predetermined from the outset.

[74] Agreeing to Ms Guinee conducting a formal disciplinary process, on the recommendation of a Restaurant Association advisor, did not change the reality that Mr Petrou had already decided what Ms Carozzi did on 7 February was serious misconduct and she was to be dismissed for it, with no alternative to be countenanced. Mr Petrou's evidence that he "was not in charge of the disciplinary process" and what he said was "a mere expression of opinion" was not compelling. It did not accord with the reality that he was the owner of the business, its managing director and had given an explicit direction to the general manager about the expected outcome. The process Ms Guinee had then followed, objectively assessed, was a charade.

[75] This was confirmed by Mr Petrou's refusal to consider the prospect offered by Ms Carozzi that she resign instead and, through his rewriting of the disciplinary letter, by removing a preliminary step in the disciplinary process allowing an opportunity to comment on the proposed outcome of dismissal.

[76] This was, on the balance of probabilities, because Mr Petrou had already decided what was to happen and how it was to happen. It was not an approach that an employer acting fairly and reasonably could have taken because it 'cemented in from the outset' his adverse view that there could be no acceptable explanation for what had happened and no satisfactory outcome except dismissal for serious misconduct.⁹ It is not a fetter that a fair and reasonable employer could, justifiably, have imposed on itself.

⁹ Adopting the description of such a mindset in *Merennage*, above n 5 at [59].

(ii) *Inadequate investigation of the 7 February incident*

[77] The 29 February letter of dismissal given to Ms Carozzi, in a section drafted by Mr Petrou, said she had “provided no explanation as to why you acted in this manner and why you have chosen not to followed (sic) the established process”.

[78] The evidence, however, did not establish CBWL had done what it reasonably could have been expected to do to examine the circumstances in which Ms Carozzi made her admitted mistake on 7 February, either during Ms Guinee’s discussion with her on 12 February or at their meeting on 28 February.

[79] The 12 February discussion was the first opportunity Ms Guinee had to talk with Ms Brashier and Ms Carozzi about what had happened to cause the 10 February helicopter overbooking.

[80] The evidence of all three women about their discussion indicated they talked about *what* happened and *how* it happened, but not *why* it happened. There was nothing to indicate Ms Guinee asked or Ms Carozzi explained what had caused her, in those moments on 7 February, to misread the email and send her prompt response to the helicopter company without doing any more to check its contents or to identify that it related to a new booking that should have been referred by email to Ms Brashier.

[81] It was also clear from the email Ms Carozzi sent Mr Petrou, in the evening of 12 February, that she accepted her mistake was serious and took responsibility for it. Again, however, she did not say why it happened and Mr Petrou, because he never replied to her message, did not ask for an explanation.

[82] The notes of the 28 February meeting, taken by Ms Brashier, do not show any question was put to Ms Carozzi about what was happening on 7 February that caused her to respond to the helicopter company query as quickly and in the way she did.

[83] Ms Carozzi’s later evidence, in a witness statement for the Authority investigation, said she was “very busy this day” with the vineyard cellar door and restaurant teams asking for her help with set-up because they were short-staffed and people had to cover more than one job. This included managing booking and other inquiries to the two email addresses she had to monitor, which she said could receive more than 80 emails a day in the peak season.

[84] She said she was “trying to juggle emails and help the front of house team” when she “made the mistake” of not realising the RM email was a new booking enquiry and not forwarding it to Ms Brashier. She said she knew Ms Brashier “also had more on her plate than usual, and I was trying to do as much as I could”.

[85] A fair and reasonable employer could not, as part of its justification for a dismissal, say an employee had failed to provide an explanation for their actions if the employer did not do what it reasonably should have done to get one at the time.

[86] In this case CBWL’s evidence did not establish it had made sufficient inquiries to get an explanation and could not, reasonably, then blame Ms Carozzi for failing to provide one.

[87] In his evidence for the Authority investigation Mr Petrou rejected Ms Carozzi’s claim her mistake was caused by being so busy on 7 February. He said this claim was surprising because the business had one of its quietest summers. Ms Brashier, in her evidence, said she could not recall the events of 7 February specifically or Ms Carozzi being particularly busy that day but “that could be plausible”.

[88] This was not, however, really something that could be satisfactorily resolved from discussion of faded recall many months later during an Authority investigation meeting. Rather, it was a point of fact which CBWL should have squarely addressed at the time of its disciplinary inquiry in February 2024. It was directly relevant at that time to why the error occurred. If Ms Carozzi had sufficient time and support in carrying out her duties, responsibility for a careless error could fairly be hers to bear alone. If she did not have that time and support, however, an employer acting fairly and reasonably could not have concluded the blame necessarily lay just on her shoulders. In the latter scenario, such an employer could have to accept a share of responsibility for the situation in which the error or mistake occurred.

[89] Having not made reasonable enquiries about why this particular error or oversight occurred at the time, CBWL could not fairly conclude Ms Carozzi’s actions met the evidential standard of amounting to “gross negligence”.

[90] Her email accepting responsibility was not, on its own, enough. It was an admission of a mistake. It was not, on its own, enough for a finding the mistake amounted to gross negligence.

(iii) Employer's concerns not fully put to Ms Carozzi for response

[91] A proper examination of the circumstances in which Ms Carozzi made that mistake was also necessary because of two allegations subsequently made about the motivation for her action or oversight.

[92] An employer acting fairly must tell the employee its concerns and give that person a reasonable opportunity to respond before making any decision to dismiss.¹⁰

[93] The letter of dismissal, in the section written by Mr Petrou, described Ms Carozzi as having “chosen” not to follow the established process. It was a description which implied an element of deliberateness or conscious recklessness in what she did.

[94] Because Mr Petrou removed the preliminary stage in the disciplinary process, instead directing Ms Guinee to immediately issue a final decision, Ms Carozzi did not get an opportunity to respond to the allegation that she deliberately ‘chose’ not to follow the booking process, rather than her oversight happening because she was careless or distracted at the particular moment.

[95] Mr Petrou’s written evidence to the Authority investigation also disclosed a further suspicion he had at the time which, again, was not disclosed to Ms Carozzi. This meant she had no proper opportunity to answer a concern on his mind that contributed to the decision he considered needed to be made at that time.

[96] He said Ms Guinee told him Ms Carozzi gave no explanation for how or why the error occurred and he noticed no explanation was recorded in the notes of the 28 February meeting. He wrote that he was “left to wonder ... if she had accepted payment ... or been offered something in return for making this booking”.

[97] Suggesting Ms Carozzi might have received some sort of ‘kickback’ for what she did was a serious allegation. If Mr Petrou genuinely held that concern, it should have been properly investigated and put to Ms Carozzi for answer because it suggested a motivation for what she did that was beyond CBWL’s description of gross negligence.

¹⁰ Employment Relations Act 2000, s 103A(3)(b) and (c)

(iv) *Decision motivated by an ulterior purpose*

[98] Mr Petrou's evidence also disclosed the disciplinary process and its outcome was motivated by an ulterior purpose of assisting with the company's defence if any inquiry or litigation arose over excess helicopter landings. As he explained in his written witness statement:

I was very worried, given CBWL's previous prosecutions, that we would be prosecuted once again. I felt like I would need to demonstrate to the Employment Court that disciplinary measures had been undertaken to ensure this did not happen, yet again. My mind was focussed on saving the business. I knew that a further prosecution could jeopardise our resource consent enabling helicopter landing, or, worse our liquor licence. ... I was worried that the negative publicity, as well as a further prosecution could impact the business so badly, we might have to close.

[99] While Mr Petrou could legitimately take measures to protect the interests of his business, those actions also had to balance other obligations of the company including, in this case, to meet the objective standard of acting as a fair and reasonable employer could have done in that situation.

[100] He prioritised gaining a dismissal for potential litigation purposes in a way that was unfair for two reasons.

[101] Firstly, the dismissal letter said Ms Carozzi's error had caused "significant" damage to CBWL which could not be ignored. It was a description which fell short of the good faith obligation not to mislead. There was, at the time in February 2024, no *actual* damage to the company. The neighbours had made no complaint about the excess helicopter landings on 10 February, either at that time or since. There was no prosecution. At worst, Ms Carozzi's error created what CBWL's closing submissions more accurately described as "a significant *potential* risk" (emphasis added).

[102] Secondly, a dismissal which might be unfair for other reasons could not be justified solely because it assisted with mitigating potential outcomes if the company had faced some charge for breaching the consented limits. Mr Petrou's view was influenced by a similar previous instance, some years earlier. On that prior occasion he considered the company's position was assisted in responding to a prosecution by being able to say it had ended its employment of the person who was responsible for a breach of helicopter rules on that occasion. In that instance, however, the employee had promptly resigned after that breach rather than been dismissed. There was also nothing

to indicate that, in the scenario of a future prosecution, the outcome for CBWL would necessarily be *better* if it dismissed an errant employee or be *worse* if it had only imposed a disciplinary warning and continued the employment of the person responsible for breaching the rule.

[103] The point was that the focus on the ulterior purpose of protecting the company's position in the event of prosecution did not 'trump' the statutory obligation on CBWL to act fairly and reasonably in its disciplinary process. This was an aspect that was particularly important, addressed later, in respect of its refusal to accept Ms Carozzi's suggestion that her employment could end by resignation rather than dismissal.

(v) *Not heard by the actual decision maker*

[104] A further failure of fairness occurred because CBWL did not arrange for Ms Guinee to speak to Mr Petrou as the actual decision maker about the disciplinary outcome.

[105] While Ms Guinee was nominally responsible for the process and decision, signing both the letter calling Ms Carozzi to a disciplinary meeting and the letter telling her of the final outcome, the evidence established Mr Petrou, in fact, made all critical decisions.

[106] As already canvassed in the finding on pre-determination, he initiated the process with a direction to Ms Guinee about the expected outcome and, later, had unilaterally curtailed that process by rewriting a letter of dismissal to deliver a final decision rather than the preliminary decision Ms Carozzi was told at the 28 February meeting she would have a chance to respond to.

[107] In those circumstances, where Mr Petrou was really making the decisions and, as shown by his rewriting of the final letter, relying on his own recall of discussions with her about work procedures, he should have provided an opportunity for Ms Carozzi to meet with him.¹¹

[108] This is not an abstract right. Its significance, in this case, needed to be considered under questions raised by s 103(5) of the Act. This specifically asks whether

¹¹ *Ioane v Waitakere City Council* [2003] 1 ERNZ 104 at [25] and *Irvin's Freightlines Ltd v Cross* [1993] 1 ERNZ 424, at 442.

the defect was more than minor and did, as a matter of fact or likelihood, result in Ms Carozzi being treated unfairly. The answer on both aspects is yes.

[109] The defect in CBWL's process of not having Mr Petrou meet with Ms Carozzi to discuss his own view of events and the appropriate or necessary outcome meant she did not have a real opportunity to address the concerns which were, as disclosed in his later evidence, decisive for him.

[110] This included whether there was some genuine distraction or burden of work on 7 February such that what she did in error or haste might be excusable. His evidence, in effect, was that she had not explained why it happened. If they had met to discuss it, he could have had that concern answered directly by her.

[111] A fairer discussion of the prospect of resignation as an outcome could also have occurred if Ms Carozzi was given the chance to meet with Mr Petrou. This may, in different ways, have ultimately better suited the purposes and interests of both parties is a way that was consistent with their mutual good faith obligations in the employment relationship, which includes what happens in ending it.

[112] On both counts then, the failure of CBWL's actual decision maker to meet with Ms Carozzi before imposing the final outcome was a defect in process that was more than minor and resulted in her being treated unfairly.

(vi) Failure to explore alternatives

[113] An employer acting reasonably will fairly consider alternatives to dismissal where that means of ending the employment is in prospect at the end of a disciplinary process.

[114] CBWL acted unfairly in not doing more to consider Ms Carozzi's proposal to end her employment by resignation rather than dismissal. It had accepted such a resolution as appropriate in a similar previous occasion but discounted doing so in the present instance because Mr Petrou considered he needed a more punitive outcome to impress a council or a court if a prosecution resulted from the breach of landing rules. The alternative of accepting Ms Carozzi's resignation, even with a shorter notice period than the six weeks she had put forward, could have achieved the company's purpose without causing the damage to her future employment prospects that dismissal may have caused.

Remedies

[115] Having found CBWL acted unjustifiably in reaching and carrying its decision to dismiss Ms Carozzi, she was entitled to an assessment of remedies for her personal grievance.

Lost wages

[116] Ms Carozzi got a suitable new job elsewhere six weeks after her dismissal so her claim for lost wages is restricted to that period.¹² On her annual salary of \$70,000 at CBWL the loss of ordinary time remuneration for that period was \$8,076.93. This is the amount awarded to her as lost wages under s 123(1)(b) of the Act, subject to deduction for contributory behaviour as assessed later in this determination.

Compensation for humiliation, loss of dignity and injury to feelings

[117] Ms Carozzi's evidence established that how CBWL had conducted its disciplinary process and implemented its decision to dismiss her caused her distress which should be compensated by an award under s 123(1)(c) of the Act.

[118] Her distress was compounded by two factors.

[119] Firstly, she was shocked to receive a final decision of summary dismissal on 29 February when she was told on 28 February that she would have the opportunity to respond to a preliminary discussion.

[120] Secondly, Ms Carozzi is an Italian national and was working for CBWL under the terms of an accredited employer work visa. As CBWL knew when it dismissed her in the way that it did, this visa arrangement tied her to work only for that company. This meant she faced additional distress in losing that job due the greater sense of insecurity that a visa holder has in having to seek a new job and a new employer in those circumstances.

[121] Considering the particular circumstances of her case and the range of awards in similar cases, the appropriate amount to award as compensation was the sum of \$15,000 Ms Carozzi which had sought in her statement of problem. Again, this is subject to any reduction for contribution.

¹² Employment Relations Act 2000, s 123(1)(b) and s 128(2).

Reduction of remedies for contributing behaviour

[122] As required by s 124 of the Act, a reduction of remedies awarded for a personal grievance had to be considered for actions of Ms Carozzi which contributed to the situation giving rise to her grievance.

[123] In this case Ms Carozzi's suggestions that she was not sufficiently trained in the requirements of the helicopter booking process was not compelling. She had followed that process on previous occasions, without any known or reported difficulties. As noted earlier, CBWL had not satisfactorily examined why the error occurred, including whether work pressures might have been a factor. Ms Carozzi had, however, promptly apologised for her part in the overbooking which occurred on 7 February. Her acceptance of her contribution to the situation then also had to be recognised in a reduction of the remedies awarded. Broadly assessed, a reduction of 20 per cent was a substantial but sufficient measure of that contribution.

[124] Applying that reduction, the remedies awarded to Ms Carozzi are adjusted to \$6,461.54 for lost wages and \$12,000 as compensation for humiliation, loss of dignity and injury to feelings.

Summary and orders

[125] CBWL did not do what a fair and reasonable employer could have done in deciding to dismiss Ms Carozzi for serious misconduct and how it made that decision.

[126] Within 28 days of the date of this determination CBWL must settle Ms Carozzi's personal grievance by paying her the following sums, which have been reduced by 20 per cent for contributory conduct:

- (i) \$6,461.54 as lost wages; and
- (ii) \$12,000 as compensation for humiliation, loss of dignity and injury to feelings.

Costs

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

[128] If unable to do so, and an Authority determination on costs is needed, Ms Carozzi 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, CBWL would then have 14 days to lodge any reply memorandum. If requested by the parties, an extension of time to resolve costs between themselves may be granted.

[129] 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.¹³

Robin Arthur
Member of the Employment Relations Authority

¹³ See www.era.govt.nz/determinations/awarding-costs-remedies.