

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 543  
3313381

BETWEEN	MATTHEW CRESSEY Applicant
AND	COMMISSIONER OF POLICE Respondent

Member of Authority: Rowan Anderson

Representatives: Kirsty Wallace and Eilis Yates, counsel for the Applicant  
Karen Radich, counsel for the Respondent

Investigation Meeting: 11 and 12 March 2025 in Wellington

Submissions and other information received: Up to and including 17 July 2025

Determination: 1 September 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Matthew Cressey is now a Constable in the New Zealand Police, employed by the Commissioner of Police (Police). Constable Cressey was, at the time of the events relevant to his claims, employed as a recruit on a fixed term employment agreement commencing on 28 June 2023. As at that time, he had anticipated graduating and being attested as a constable on or about 19 October 2023.

[2] A complaint was made about Constable Cressey relating to alleged conduct at the Royal New Zealand Police College (Police College). That complaint related to an alleged incident on 10 October 2023. Constable Cressey was subsequently stood down

on pay, on 13 October 2023, and the allegations were the subject to both a criminal and employment investigation.

[3] Constable Cressey claims that he has been unjustifiably disadvantaged in his employment by various actions taken by Police. The relevant actions complained of related to actions taken by Police following the receipt of a complaint. The claims arise from Police's response to that complaint.

[4] Police maintain that its actions were justifiable.

### **Issues**

[5] The issues for investigation and determination are:

- (a) Was Constable Cressey unjustifiably disadvantaged in his employment by the Police's actions?
- (b) If Police's actions were not justified (in respect of disadvantage) what remedies should be awarded, considering:
  - (i) Compensation for humiliation, loss of dignity, and injury to feelings under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act);
  - (ii) Compensation for lost wages under ss 123(1)(b) and 128 of the Act?
- (c) Should either party contribute to the costs of the other party?

### **The Authority's investigation**

[6] A case management conference was held on 3 October 2024 at which timetable directions were made and an investigation meeting scheduled. A summary of the issues for investigation and determination were provided following the case management conference together with written timetable directions.

[7] Written statements were lodged in advance of the investigation meeting from Constable Cressey; his mother Natalie Cressey; Fiona Johnston, a former Employment Investigator at NZ Police; and Ronald Lek, retired Senior Employment Advisor Districts for the New Zealand Police Association.

[8] For Police, written witness statements were lodged from Tasmyn Brown, Employment Resolutions Specialist; Superintendent Andrew Mortimore, Inspector Mark Harrison, and former Director of Training Warwick Morehu.

[9] An investigation meeting took place in Wellington on 11 and 12 March 2025. Written submissions were exchanged following the investigation meeting, with directions issued providing for submissions to be lodged up to 16 April 2025.

[10] After having received the written submissions lodged, the Authority sought confirmation as to the issue of non-publication and/or anonymisation. An application was made requesting that the name of the employee who made a complaint against Constable Cressey be anonymised. There was no objection to that from Constable Cressey and the individual is referred to as “Employee A” in this determination rather than by their name.

[11] 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 of evidence and submissions received.

### **Further background**

[12] Constable Cressey, then a recruit, commenced employment with Police on 28 June 2023. His employment was on a fixed term basis while undertaking recruit training at the Police College.

[13] On 13 October 2023, Constable Cressey was called to a meeting and provided a letter from Superintendent Morehu dated 13 October 2023 advising he was subject to a ‘stand down from duty’ “...for a period of 30 days whilst a further assessment of the situation [was] made”. The allegations relating to conduct on 10 October 2023 were outlined as follows:

On 13 October 2023 I became aware of an allegation that on 10 October 2023, whilst walking up the southern stairwell in the Barry Mason building with recruit [Employee A], you have unclipped [Employee A] epaulette on her left shoulder promoting her to stop and adjust. It is further alleged that.

*Allegation One:* It is alleged that you used your body weight to force [Employee A] front facing against a wall, pressing your chest upon her back and grabbed her in a locked hug for a period of approximately three seconds. Upon hearing a person enter the stairway you have released your hold.

*Allegation Two:* It is alleged as [Employee A] has ascended the stairs that you have brushed your hand across her buttocks and grabbed the right-hand side of [Employee A's] buttocks...

....

[14] The ‘stand down’ was said to be pursuant to the Policing Act 2008. Section 70 of the Policing Act 2008 uses the term ‘suspension’. Other than where necessary, I use the term suspension in this determination.

[15] The stand down letter asserted that it would be inappropriate for Constable Cressey to perform his duties due to health and safety risks and the possibility that the nature or gravity of the alleged conduct might prejudice the public interest or damage the reputation of the Police. In relation to the 30 day period, it was noted in the letter that Constable Cressey might, following that period, be “provided with a proposal to suspend [him] from duty, a proposal for a return to work on restricted duties or [Constable Cressey would] be able to return to work, with no restriction.”

[16] At the same meeting, Constable Cressey was given a second letter giving him notice of a “dual Police process”. The allegations were repeated in that letter. The letter referred to the ‘dual role’ of Police in relation to such matters as both the employer and the investigating and prosecutorial agency. The letter advised that an assessment had been carried out and that Police had decided to initiate a ‘dual process’ in accordance with its Police Employment Resolutions and Disciplinary Policy. The notice of investigation letter stated that a Police investigation would be carried out in relation to the criminal law aspects and that the Police would “be informed by the progress and outcome of the criminal investigation when considering the impact of [the] matter on [Constable Cressey’s] employment. In relation to the employment investigation, it further stated as follows:

...  
This employment process will progress at the same time as the criminal investigation and will continue until Police can hear from you unless there is a request by you for the employment process to be held in abeyance or Police decide to await the outcome of the criminal proceeding...

[17] At the time of the suspension, Constable Cressey was due to graduate from training in approximately three days’ time.

[18] The Police National Assessment Team (NAT) had, prior to the meeting Constable Cressey attended, completed a case assessment on 13 October 2023 as to what was stated to be an alleged incident of indecent assault. The review noted that the criminal investigation would assist in informing the employment concerns and recommended a “dual pathway”.

[19] In terms of Constable Cressey's duty status, the NAT's review considered there was a risk to health and safety and that the gravity of the alleged conduct might prejudice the public interest or potentially damage the reputation of Police. The NAT had recommended Constable Cressey be stood down until restricted duties could be arranged and indicated those restricted duties would remain in place while the process was undertaken. It further stated that duty status should be regularly reviewed in order to assess whether the risk factors identified were still present. The decision maker is recorded as saying "I agree with the dual investigation to better inform the panel in terms what direction this matter takes".

[20] Notes made by a Police Association representative reflect they were advised of the general nature of the allegations at approximately 2.30pm on 13 October 2023, apparently prior to Constable Cressey being advised. The notes reflect that the representative then took a call from Constable Cressey at 5.23pm the same day.

[21] Constable Cressey was, at the conclusion of the meeting on 13 October, required to leave the Police College. He was escorted to collect his belongings before leaving site.

[22] Constable Cressey attended an initial criminal investigation interview on 26 October 2023 and a second interview on 3 November 2023. The findings of the criminal investigation were issued on 24 November 2023. A copy of the report was provided to the Criminal Charging Advisory Panel (CCAP) on 12 December 2023.

[23] On 8 November 2023 a proposal to restrict Constable Cressey's duties was issued to him in writing. Superintendent Morehu outlined his views, including that it would be inappropriate for Constable Cressey to continue performing his then current Police duties given health and safety concerns and the gravity of the alleged conduct. It noted that view was held after consideration of the risks and information available to Superintendent Morehu. The letter proposed that Constable Cressey work on restricted duties as a Traffic Camera Operator (TCO) out of Palmerston North. Constable Cressey was invited to make submissions on the proposal to place him on restricted duties.

[24] On 9 November 2023, counsel for Constable Cressey wrote to Police raising issues with the suspension, lack of clarity with the process being undertaken, and recording alleged unjustifiable disadvantages. The letter sought payment based on a Constable's wage.

[25] On 28 November 2023 Constable Cressey's Police Association representative advised Police that he had withdrawn representation having been advised that Constable Cressey had engaged counsel to deal with his employment matters.

[26] Police responded to the 9 November 2023 letter on 30 November 2023. The response referred to the initial suspension as being under the Policing Act 2008 and also referred to the 8 November 2023 proposal to restrict duties. It noted that Police were seeking a response to the proposal and provided further time for that response.

[27] Constable Cressey raised a personal grievance on 5 December 2023. That correspondence also set out Constable Cressey's response to the restricted duties proposal. The response stated that he considered the TCO role unworkable including because there were no hours specified, due to associated additional costs, and childcare considerations. Constable Cressey also denied there had been consultation about restricted duties, listed other duties that he thought he could do, and sought payment having regard to those other duties he said he could perform.

[28] Police responded on 13 December 2023 confirming the outcome of the criminal investigation was that charges would not be pursued. The letter noted that an employment process might still be required, and that information obtained during the criminal investigation might be used to inform any employment investigation. The letter then included the following statement as to the employment process:

....  
This will soon be assessed by the National Assessment Team (NAT) to identify any employment concerns and an appropriate pathway. I will be back in contact with you once that has occurred.

....

[29] On 20 December 2023, Superintendent Morehu wrote to Mr Cressey giving notice of an employment investigation. The letter referred to the dual investigation letter dated 23 October 2023 and noted the criminal investigation had been completed and had not supported charges being laid. The letter of 20 December 2023 also noted that an employment investigator would be appointed. Prior to detailing the allegations, the letter stated:

....  
The employment investigation will now progress as I remain concerned about your alleged actions.

....

[30] The same day, Constable Cressey was provided a letter confirming restricted duties. Superintendent Morehu's letter confirming restricted duties, effectively as proposed on 8 November 2023 with Constable Cressey to work in the TCO role. The letter noted that Constable Cressey's submissions as to restricted duties had been carefully considered.

[31] Counsel for Constable Cressey then emailed on 22 December 2023 seeking an extension of special leave until 29 January 2024 in order to facilitate the making of childcare arrangements. Police, within one hour, responded agreeing to the request.

[32] Terms of reference for the employment investigation were produced, being dated 24 January 2024.

[33] Fiona Johnston Investigator, wrote to counsel for Constable Cressey on 29 January 2024 introducing herself, providing a copy of the terms of reference, and outlining her intended initial steps in investigating the matter. Ms Johnston requested confirmation that Constable Cressey consented to the statement provided in the criminal investigation being used in the employment process.

[34] The employment investigation report was provided to Superintendent Mortimore on 12 March 2024. The investigation report concluded that both allegations were not upheld. The content of the report indicates that the last of the interviews with relevant witnesses occurred on 20 February 2024.

[35] Superintendent Mortimore wrote to Constable Cressey on 25 March 2024 and Constable Cressey then returned to the training college to complete remaining requirements.

[36] Constable Cressey was attested as a Constable on 12 April 2024.

### **Was Constable Cressey unjustifiably disadvantaged in his employment?**

#### *The test of justification*

[37] Section 103A of the Act sets out the test for justification. The Authority must consider, on an objective basis, whether Police's actions, and how Police acted, were what a fair and reasonable employer could have done in all of the circumstances at the time the action occurred.<sup>1</sup>

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<sup>1</sup> Employment Relations Act 2000, s 103A.

[38] Justification requires the consideration of both substantive and procedural fairness. The onus is on Police to justify its actions. Section 103A of the Act requires the Authority to consider the factors set out at s 103A(3) and also the requirements of good faith set out at s 4(1A) of the Act.

*Suspension from employment*

[39] Police rely on s 70 of the Policing Act 2008 and submitted that it empowers Police to suspend any employee at any time, with or without pay, subject only to the conditions of the Policing Act 2008 and conditions of employment in any employment agreement. In the alternative, Police say that Constable Cressey was not disadvantaged by any failure to consult as that decision would have been made anyway.

[40] Section 70 of the Policing Act 2008 provides as follows:

*Suspension or removal of Police employees*

**70 Suspension or removal of Police employees**

The Commissioner may at any time, subject to this Act and the conditions of employment set out in any applicable employment agreement,—

- (a) Suspend any Police employee from that employee's employment, with or without pay:
- (b) Remove any Police employee from that employee's employment.

[41] Section 70 of the Policing Act 2008 confers a statutory power of suspension to Police. The power to do so is subject to the conditions of employment set out in any employment agreement. There are no other restrictions in the Policing Act 2008 I consider impact on the interpretation of s 70. Section 56 of the Policing Act 2008, provides that, except as expressly provided in the Policing Act, the Employment Relations Act 2000 applies to the Police.

[42] Clause 17.4 of the fixed term agreement deals with suspension in the context of investigations relating to potential serious misconduct. It states:

- 17.4** Where you are under investigation for potentially serious misconduct, the Employer may suspend you on full, part or zero remuneration, or place you on restricted duties in accordance with policy.

[43] Clause 19.2 of the fixed term agreement provides:

- 19.2** The Employer shall, when dealing with any instance of alleged misconduct involving you, follow the applicable disciplinary process.

[44] Suspension is also dealt with in the 'Employment Resolutions and Disciplinary Process Guidelines' (Guidelines) which require suspension be on pay, subject to an

exception in the event of obstruction of the investigation process. The Guidelines refer to stand down and suspension as two distinct concepts, with stand down referred to as a temporary measure while an assessment of the situation is made. The Guidelines provide that, in the case of suspension and restrictions or changes in duty, a proposal will be put to the employee and their feedback given careful consideration. There is an exception to that in cases where there is an immediate and justifiable need to remove the employee from their current position in order to assess the risks arising from having them present in the workplace. Such a requirement does not appear expressly, in the Guidelines, in relation to stand down.

[45] It was submitted for Police that stand down is permissible in accordance with the Policing Act 2008 notwithstanding any absence of consultation. It is said to be a measure enabling the immediate removal of a Police employee while an assessment of the situation is made. Further, it was submitted that the plain words are to be given their ordinary meaning and that s 70 of the Policing Act 2008 should not be interpreted in such a way as to render its plain words meaningless.

[46] Police also submitted that Constable Cressey's fixed term agreement was consistent with s 70 and that it does not require consultation prior to suspension. It was submitted that any case law as to the application of s 4 of the Act and consultation is subordinate to the specific power in the Policing Act 2008. Further, Police contend it is not in every case that consultation is required anyway, that the issue is whether a fair and reasonable employer could act in a that way in all of the circumstances, and that Constable Cressey was not in any event disadvantaged as the suspension would have occurred anyway.

[47] It was submitted for Constable Cressey that the relevant conditions of employment included the 'Code of good faith for employment relationships in relation to the provision of services by Police' at Schedule 1C to the Act and referred to *Commissioner of Police v Coffey* [2014]<sup>2</sup> as to the application of the overriding duty of good faith in s 4 of the Act. While I accept Schedule 1C and s 4 of the Act have application generally in relation to Constable Cressey's employment, the courts commentary in *Coffey* was not dealing with a specific statutory provision in the Policing

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<sup>2</sup> NZEmpC [194] at [46].

Act 2008 and was instead dealing with the application of the legal principles having application to variation of employment agreements.

[48] The reference to *Coffey* is not support for the proposition that a suspension for the purposes of s 70 of the Policing Act 2008 must be in accordance with s 4 of the Act and Schedule 1C. However, there is no doubt s 4 and Schedule 1C had application to Constable Cressey's employment more generally and that Police were required to act in good faith.

[49] I consider the good faith requirements in the Act have application. Further, section 70 of the Act does not expressly exclude application of s 4 or s 103A of the Act. There can be no suggestion, for example, that the s 70(b) of the Policing Act, dealing with removing Police employees from employment, prevent a dismissed Police employee from raising a personal grievance on the basis that Police's actions in dismissing them were unjustified for reasons that not relating expressly to the terms set out in any applicable employment agreement.

[50] I conclude that while s 70 of the Policing Act 2008 permits suspension, that a plain reading of the text in light of its purpose and context,<sup>3</sup> does not support an interpretation that power can be exercised in manner that is otherwise inconsistent with the terms of any employment agreement and the duty good faith. While the Policing Act 2008 expressly permits suspension, the application of employment conditions and the duty of good faith, including affording an employee natural justice by providing an opportunity to respond to a proposal to suspend prior to it occurring,<sup>4</sup> is not inconsistent with that power.

[51] I accept evidence given by Constable Cressey as to events between the time of the alleged incident and the suspension, in summary terms that immediate steps were not taken by Police and that he continued to have some level of interaction with Employee A during that time. However, I consider the relevance of that evidence is to whether there was an immediate need to suspend as opposed to a need to suspend at all. In my view, the evidence establishes that there was not an immediate need for suspension such as would justify the absence of Constable Cressey first being put a

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<sup>3</sup> Legislation Act 2019, s 10(1).

<sup>4</sup> Noting in some cases of immediate risk that will not be required.

proposal to do so and being given at least a preliminary opportunity to raise any issues in response.

[52] There will be circumstances where consultation is not required at the outset, including where there is an immediate risk to the health and safety of persons. Such as there was an immediate risk requiring assessment here, I consider immediate removal in the absence of consultation may have been justifiable had that occurred at the outset when Police became aware of the allegations. However, further steps were taken to ascertain the nature of the allegations and to convene a NAT meeting. This was not a case where the suspension occurred immediately in order to assess the risks or to ensure safety, but rather one that followed some assessment of the relevant risks in light of the allegations.

[53] The initial suspension was said to be for a period of 30 days. The basis for 30 days being a relevant period is unclear. Such as Police might reasonably conduct preliminary inquiries consistent with assessing the risk of Constable Cressey remaining at work, that period appears entirely arbitrary. On one view setting a period of 30 days provides an upper limit thereby ensuring a suspension under the Policing Act 2008 does not extend unreasonably. However, on another view, it amounts to an excessive period of time precluding real consideration as to the relevant risks in a timely manner.

[54] Given the steps taken and what was known, including that Constable Cressey had remained in the workplace without any further alleged issues with Employee A, I consider Police were required to put the proposal to suspend to Constable Cressey before suspending him at the time it did. While that may well not have changed the result, Constable Cressey was disadvantaged by being excluded from the workplace having not had that opportunity.

[55] In terms of the ability to have a support person or representative present at the meeting on 13 October 2023, Police submitted that Inspector Boyle-Tiatia opened the meeting by asking whether Constable Cressey whether there was anyone at the college that he wanted to have as a support person and that he declined the offer. A critical issue here is that Constable Cressey was not required to respond at the meeting. Constable Cressey was escorted from the college. I do not consider that action was unjustified in the circumstances having regard to the nature of the allegations.

[56] I find that the actions of Police were not those of a fair and reasonable employer and that Constable Cressey was unjustifiably disadvantaged by Police's failure to provide with him an opportunity to respond to a proposal he be suspended from his employment.

*The approach taken to the employment investigation – dual process*

[57] The Guidelines deal with the conduct of employment investigations (including where criminal investigations are also necessary), decision making, and various other matters relating to the procedures to be followed. A 'dual' pathway where there is potential criminality is described as follows:

The purpose of a dual process is to address matters that have both criminal and employment concerns.

The criminal concerns will be addressed via a criminal process involving a criminal investigation and charging process. The employment concerns will be addressed via one of the available employment pathways listed below.

Note: There can be times where the outcome and relevant information from the criminal process may be considered by the NAT to help inform the most appropriate employment process.

[58] A significant issue in this case is the process followed in terms of investigation and the 'dual investigation process' of the criminal and employment matters. Constable Cressey was advised that there would be a dual investigation encompassing the criminal and employment investigations. The employment investigation did not progress at all until 20 December 2023 at which time he was advised the employment investigation would be conducted. This, at least on one view, conflicts with the advice provided earlier that the employment investigation would commence on 13 October 2023.

[59] It was submitted for Police that allowing the criminal investigation to conclude before progressing the employment investigation was appropriate in the circumstances. Police rely in part on what it says were discussions between Mr Lek and Ms Brown, contending there was agreement that it would be in Constable Cressey's best interests for the criminal process to proceed first. Ms Brown's evidence was that the matter was agreed with Mr Lek and that Mr Lek should have informed Constable Cressey of that agreement.

[60] Mr Lek's evidence was that he could not recall having such a conversation with Ms Brown and that if he had that he would have told Constable Cressey and that it would have been reflected in his notes. He also said he would have confirmed the same in email correspondence and that he was meticulous in those processes.

[61] Mr Lek further described other conversations with Ms Brown about the issue of abeyance relating to other investigations and said that the normal practice was that any employment investigation would continue, at the same time as a criminal investigation, to the point where an interview with the individual was requested and that the expectation would be that the employment investigation continue to that point and not simply be parked entirely. He described those requests as usually being formalised, with Police having a prescribed process, and such requests coming from either the individual's counsel or the Police Association.

[62] Police concede there was no formal abeyance process followed in this case. I prefer Mr Lek's account, and I find there was no such agreement reached. His evidence as to his record keeping practicing is compelling and I also find his account more consistent with the absence of any agreement being recorded or otherwise mentioned in the contemporaneous correspondence. Had there been any such clear agreement, one would expect it to have been recorded in writing. Indeed, given the earlier correspondence was inconsistent with an abeyance being in place, I consider it would have been unreasonable to proceed with an abeyance absent any clear notification of the same.

[63] Police submitted that its correspondence to Constable Cressey did not suggest that an employment investigation would be commenced or undertaken at the same time as the criminal investigation. While the initial correspondence refers to the later possibility of an employment investigation, I consider that the correspondence gave rise to Constable Cressey reasonably being left with an incorrect impression of the process to be followed. Further, if the correspondence had been clear that an employment investigation was merely a future possibility, then it is unclear why such an abeyance would be required.

[64] I find Police did not directly respond to Constable Cressey's correspondence pointing to a lack of clarity as to timeframes by pointing out an employment investigation may not eventuate or would only follow the criminal investigation. It simply did not respond meaningfully to that point other than to point to the criminal investigation having been expedited. The absence of clear communication as to the process to be followed contributed to situation.

[65] Police say that Constable Cressey did not raise any concerns about the timing of the employment investigation at the time and that he was not disadvantaged by the sequence in which the investigations took place. Police also submitted that Constable Cressey was unable in evidence to point to any communications where he had asked about when an employment investigation would be conducted or indicating any view that it should have been earlier.

[66] There were not insignificant inconsistencies between what Constable Cressey was told would occur, and what occurred. It is understandable that Constable Cressey was confused as to the process being followed and that he understood the employment investigation would commence in October 2023. The communication was also such that it created an impression that the criminal and employment processes, absent any agreed abeyance of the employment investigation, would be undertaken in parallel.

[67] Perfection in the approach to investigations is not required. In terms of the manner in which the investigations were carried out, including the sequence in which the various steps were taken, I do not consider there was anything inherently wrong with the general approach. There are understandable and unique considerations having regard to the role of Police and the circumstances in which staff operate. I find the issues here were communication issues as opposed to issues going to the substantive processes involved.

[68] The communication issues were not inconsiderable, and that Mr Cressey was disadvantaged by the relevant actions taken by Police which included steps being taken that were inconsistent with what Constable Cressey had been led to believe. That included Constable Cressey being left in a position of uncertainty regarding his employment for a longer period than anticipated. The actions by Police were not the actions of a fair and reasonable employer. Such as there were procedural failures, they were not minor, and they did result in Constable Cressey being treated unfairly.

[69] I find that Constable Cressey was unjustifiably disadvantaged by the actions of Police in taking a different approach to its investigation than that communicated to Constable Cressey.

*Alleged delays in the investigation*

[70] An employment investigation is one of the possible pathways under the Guidelines. Others include no further action being taken, early resolution, a process

considering alternatives to formal disciplinary action, and the matter being referred straight to a disciplinary meeting. The description of employment investigation provides:

The purpose of an Employment Investigation is to establish if the alleged conduct occurred regarding the employment concerns for an employee.

An employment investigation is undertaken where the NAT has enough information to raise an allegation with an employee that they may be in breach of the Code of Conduct, Our Values or Police policies and/or practices.

If the employment allegations are upheld, the outcome may be a formal sanction and/or other outcomes to held address the behaviour of concern.

[71] I need not detail all the relevant timeframes relating to the investigations. However, I have carefully considered all the relevant steps taken, including periods where there was an apparent absence of active steps being taken to progress the employment investigation.

[72] In terms of any alleged delay in consideration by the CCAP I do not consider that a matter for the Authority. To the extent I may be wrong about that, I would otherwise be satisfied that the timeframes taken and process followed were justifiable on the basis that the New Zealand Police investigation proceeded in an expedited and timely manner. Police were required to allow the criminal investigation to take its course. I also do not consider any delay by Police in referring the matter to the CCAP for decision as part of its law enforcement function could be said to give rise to a disadvantage in terms of Constable Cressey's employment.

[73] The CCAP received a copy of the criminal investigators report on 12 December 2023. It was submitted for Constable Cressey that Police failed to progress the criminal interviews within a reasonable timeframe. I do not agree, and do not otherwise consider that investigation, or any alleged delay in it, gives rise to any unjustified disadvantage claim. I also accept it is not a matter for the Authority to scrutinise the criminal investigation conducted by New Zealand Police.

[74] As to the employment investigation, while again I note I do not record here all of the relevant time periods, I do not consider any delay between 12 December 2023 and 20 December 2023 to have been unreasonable. I accept that relevant matters were given consideration by Superintendent Morehu within that time and I find nothing unusual or unreasonable about that.

[75] There was also a delay between 20 December 2023, at which time Constable Cressey was advised, again, that there would be an employment investigation, and 24 January 2024 when an investigator was assigned. Police say that that period was impacted by relevant staff being on leave over the Christmas and January period. The actual employment investigation, from appointment of the investigator on 24 January 2024, to the provision of the report on 12 March 2024, was not unreasonable having regard to the nature of the investigation. This of course all occurred in the context where Constable Cressey had been offered alternative duties.

[76] Superintendent Mortimore received the employment investigation report on 13 March 2024. He then wrote to Constable Cressey on 25 March 2024. Again, I do not consider the timeframe in relation to consideration of the report to have been unreasonable.

[77] Taken in context, I do not consider Police's actions in terms of the time taken, and practical steps associated with the same, were inconsistent with those that were open to a fair and reasonable employer. I find Constable Cressey was not unjustifiably disadvantaged by the alleged delays.

#### Other alleged communication issues and delays in responding

[78] Constable Cressey takes issue with a response provided to him by Superintendent Morehu on 16 October 2023. That response was to an email from Constable Cressey shortly beforehand in which he, without solicitation, briefly responded to the allegations, commented on events between the time of the alleged incident and suspension, and asked for the suspension decision to be reconsidered so he could graduate. I consider Superintendent Morehu's response was not in any way inappropriate and nor does it evidence any unjustifiable communication failure by Police, at least outside of the issue of consultation relating to the suspension itself which I have already dealt with. The response was prompt and in the circumstances the content of the response was entirely unsurprising.

[79] An email from Constable Cressey to Mr Lek was forwarded to Superintendent Morehu on 20 October 2023. That email raised concerns about being stood down for health and safety reasons in circumstances where he says Police were aware of the allegations for 32 hours while he continued at the training college with Employee A. The email also took issue with an absence of being able to take a support person to the

initial meeting and not being provided an opportunity to respond. It also sought payment of Constable wages for the duration of the investigation.

[80] Superintendent Morehu responded to Constable Cressey's email on 8 November 2023. I find the response was not in any way inappropriate and that it addressed each of the issues raised by Constable Cressey, including by explaining the process of initial assessment of the allegations prior to the suspension, that the initial meeting was not disciplinary, and by responding to the payment request.

[81] Further correspondence on 8 November 2023 from Superintendent Morehu proposed restricted duties.

[82] On 9 November 2023 counsel for Constable Cressey wrote to Police taking issue with the suspension, lack of clarity in the process, and asserting that he had been unjustifiably disadvantaged. That correspondence again sought payment of wages at the Constable rate. To the extent the correspondence took issue with a lack of clarity, the point raised was that Constable Cressey was yet to be provided with any certainty regarding the investigations and referred to his earlier correspondence to Superintendent Morehu. However, the correspondence of 8 November 2023 had provided a response.

[83] On 30 November 2023, Superintendent Morehu responded to counsel for Constable Cressey. That provided a further response in relation to the issues of the suspension and the request for payment at the Constable rate.

[84] Constable Cressey then raised a personal grievance on 5 December 2023. In that correspondence, Constable Cressey took issue with having been provided no information as to the "...expected timeframe for both the criminal investigation and/or the employment investigation, nor how long [he] could be expected to be suspended from [his] normal duties for".

[85] Police submit it did not have clarity itself such that it could provide that information, and that such information could not be provided until those investigations had commenced and were able to progress. Police refer also to its policy providing that investigations will be conducted in a timely manner but without providing timeframes. Police submitted that it was unable to, and was not obliged to, provide timeframes.

[86] In terms of the issue of expected timeframes, there is no apparent reason why some response could not have been given, even if the substance of that response was to advise that such timeframes could not be provided at that point. While that is the case, it was also not apparently a primary issue at the time and confirmation of the timeframes involved was not something sought by Constable Cressey in terms of the personal grievance letter of 5 December 2023.

[87] Constable Cressey had been advised that the investigations may take some time and would certainly not be completed by the graduation day, that he would be stood down for 30 days while further assessment was made, and that he may be suspended after that date with a proposal to work restricted duties.

[88] Having considered all of the relevant communications, I am not satisfied that Constable Cressey was unjustifiably disadvantaged by any absence of or delays in communication other than to the extent I have already dealt with in terms of the approach taken to the investigations.

#### Restricted duties

[89] Police maintain that they did consider alternatives to suspension. That is evidenced in the letter of 8 November 2023. Police also submitted they were right to be cautious about what duties Constable Cressey could perform in the interim and that it promptly offered an alternative to suspension in the form of the Traffic Camera Operator (TCO) role.

[90] Police maintain that Constable Cressey's feedback about the TCO role was considered, pointing to correspondence between Inspector Harrison and Ms Brown as evidence of that. One of the considerations also related to avoiding roles that would require significant training, I find was an understandable consideration in the circumstances.

[91] Constable Cressey was later, in February 2024, moved to a role in Disclosures. While that occurred, Police say that was a different role to that proposed earlier by Constable Cressey. It also noted that the potential for criminal charges had fallen away by the time those restricted duties were offered. Police were not obliged in my view to offer any particular role, and I do not consider the TCO role proposed was unreasonable.

[92] Constable Cressey also takes issue with Ms Brown receiving his recruitment file. Police submit the recruitment file was needed in response to the personal grievance as to the proposed restricted duties and to understand issues associated with location to consider whether other options might be available. Constable Cressey also referred to some reliance on considerations relating to Constable Cressey's ex-wife and communications with her. Police say there is no evidence of that occurring. I am not satisfied Constable Cressey was subject to any disadvantage relating to those two matters.

[93] Police proposed restricted duties and sought submissions from Constable Cressey. I am satisfied that Constable Cressey's views as to the restricted duties being offered were considered to some extent. I am also satisfied that the TCO role, in of itself, was not an unreasonable suggestion. Police had some considerable latitude to restrict the duties that could be performed. However, I do not consider the approach taken, including the limited information provided as to the parameters of the restrictions being considered, were communicated appropriately to Constable Cressey in the context of finding agreed alternative duties.

[94] The approach taken was to offer the TCO role and then to consider and decline the proposals made by Constable Cressey. I accept that Constable Cressey was effectively in the dark as to what alternatives might be acceptable to Police, and that Police, in the context of considering alternative duties, took into account considerations that were not disclosed to Constable Cressey, including location and work with females. The approach taken is not one that reflects any real commitment to finding a mutually acceptable solution as to alternative duties delayed the process of finding agreed alternative duties. I find that the approach taken was without justification and that Constable Cressey was unjustifiably disadvantaged.

#### Employment investigation and decision making regarding the NAT

[95] Constable Cressey alleges he was subject to disadvantage because he was not provided the opportunity to have his case assessed by the NAT. He was informed on 20 December 2023 that the question of whether any employment process was required would be considered by the NAT but that did not occur.

[96] Police contend that any second referral to the NAT is optional and that, in this case, Ms Brown explained that doing so would have led to further delays. Police also

referred to the CCAP's consideration of the matter and the NAT having been only two months prior. It was submitted that the CCAP's review and recommendation provided a reasonable basis for Superintendent Morehu to proceed as he did. I am not persuaded that the absence of further assessment by the NAT amounted to a substantive failure, nor that Constable Cressey would at all have been likely to be subject to a different pathway had the NAT further assessed the matter.

[97] A fair and reasonable employer will do what it says it will do. Here, the matter was not referred to the NAT despite that being the process Constable Cressey was informed of. Had there been reasonable cause to depart from that approach, then Constable Cressey should have been advised of that. He was not.

[98] To the extent Constable Cressey was disadvantaged, I consider that was a procedural issue and part of the same issues of inadequate communications in the process.

#### Secondary employment

[99] Such as Constable Cressey was advised he could consider secondary employment, I do not consider doing so resulted in Constable Cressey being disadvantaged. While I accept there were likely practical impediments to Constable Cressey obtaining secondary employment, explaining that option, or even encouraging such a course, did not disadvantage Constable Cressey in of itself. Nor do I consider the approach taken to have been contrary to Police's good faith obligations.

#### Instruction not to communicate

[100] Constable Cressey contends that he was disadvantaged as a result of being instructed not to talk with his fellow recruits when he was suspended from his employment.

[101] Police submitted that Constable Cressey's evidence was that Inspector Boyle-Tiatia told him he was not to speak to any members of his wing "...about the allegations". Police further submitted that Constable Cressey's evidence having changed to suggesting he was told not to communicate with his wing at all. Police submitted the more limited version of the evidence should be preferred and say that the instruction was entirely fair and reasonable. I accept that submission and I am not satisfied that a blanket prohibition on communication was imposed upon Constable Cressey.

*Conclusion as to unjustified disadvantage claims*

[102] I conclude that Constable Cressey was unjustifiably disadvantaged in his employment by Police's:

- (a) failure to consult with him prior to suspending him from his employment;
- (b) failure to accurately and appropriately communicate with Constable Cressey as to the employment investigation process and restricted and agreed alternative duties.

[103] Constable Cressey's claims are otherwise unsuccessful.

**Personal grievance remedies**

*Compensation for humiliation, loss of dignity, and injury to feelings*

[104] Constable Cressey gave evidence as to the impact of the relevant actions on him. He says that the suspension made him feel blindsided and that he was not afforded an opportunity to have a support person present.

[105] Constable Cressey referred to the meeting on 13 October 2023 as being a 'disciplinary meeting' and asserted that it was predetermined and that the consequences to him and his family were not considered. He says he was unable to graduate and that his reputation was tarnished by being threatened with disciplinary action should he talk to anyone on his wing and being escorted out of the Police College.

[106] Constable Cressey's evidence as to impact also expressly referred to the possibility of being subject to criminal charges for something he says he did not do. I consider that was not an insignificant aspect of the impact on him, and one that is not compensable. He also detailed impacts during the investigation process including mental struggle, concern he may not be able to become a police officer, and anxiety. I do not consider those impacts related to actions taken by Police that were unjustified.

[107] Constable Cressey complained of a lack of support from Police. He also says that he was humiliated by being placed on restricted duties as a TCO without consultation. I don't accept those matters, other than as to the discrete issue of the absence of consultation, flow from any unjustified action by Police.

[108] Constable Cressey says he suffered from despair which was made worse by the delays in the investigation and lack of guidance as to timing. Again, aside from those

impacts that are attributable to the absence of consultation from the suspension, and the inadequate communication issues, those are not matters for which compensation flows.

[109] Police submitted that compensation under s 123(1)(c)(i) of the Act requires that there be a link between the grievance and the loss. In this case, it submitted that Constable Cressey cannot be compensated for having had to face the investigation process itself. Police further submitted that here there is no medical evidence and also sought to distinguish a number of cases where multiple claims were compensable and or which involved particular features justifying higher awards in the case of successful unjustified disadvantage claims had been successful. Police submitted in the event the personal grievance was established, that only an award at the lower end would be appropriate.

[110] While a number of the consequences and impacts are not attributable to any unjustified action by Police, I am satisfied that Constable Cressey was adversely impacted by the actions relevant to his successful claims. The impact included significant uncertainty and stress relating to his role as a parent and income provider.

[111] In terms of the claims established, I consider they are in effect interrelated and that compensation should be approached on a global basis. Having regard to all of the relevant factors, I consider compensation of \$6,000 is appropriate subject to any reduction on account of contribution.

#### *Lost wages*

[112] Constable Cressey claims lost wages of \$9,421.62 being what is said to be the difference in wages received compared to that he would have received if he had been appointed a Constable, the relevant period being 13 October 2024 to 12 April 2024. In the alternative, it is claimed that lost wages should be paid for the period 12 January 2024 to 12 April 2024, on the basis that if the employment investigation had progressed on 13 October 2023 that the finds would have been issued by 12 January 2024 at the latest. The sum claimed in the alternative is \$4,710.81.

[113] Police submit that Constable Cressey remained on his contractual pay rate throughout the employment investigation and, in effect, that there was no contractual right to the wages sought until he was sworn as a Constable. I accept that submission and conclude that Mr Cressey continued to be paid in accordance with his contractual arrangements without loss of pay.

[114] I also record that I would not have been satisfied that Constable Cressey lost wages as a result of his personal grievance. The established unjustified actions of Police were not causative of any lost wages. The investigation as to the allegations into Constable Cressey would have occurred absent any of the unjustified actions taken. Further, I find that Constable Cressey would, as a result, have been unable to graduate and to have attested as a Constable.

[115] I decline to make any order of lost wages.

#### *Contribution*

[116] I am required by s 124 of the Act to consider the extent to which the actions of Constable Cressey contributed towards the situation giving rise to the personal grievances.

[117] Subject to the remedies being considered, Police submitted that Constable Cressey's delay in commencement of restricted duties might be relevant to the issue of contribution.

[118] I do not consider there is any basis on which Constable Cressey's actions or conduct could be said to have contributed to the circumstances giving rise to his successful personal grievance. I decline to make any reduction on account of contribution.

#### **Summary of orders**

[119] I have ordered that the Police make payment to Constable Cressey, within 28 days of this determination of the sum of \$6,000 as compensation for humiliation, loss of dignity and injury to feelings in relation to his successful personal grievance claim.

#### **Costs**

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

[121] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Constable Cressey 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 Police 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.

[122] 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.<sup>5</sup>

Rowan Anderson  
Member of the Employment Relations Authority

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<sup>5</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)