

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Lorraine Draper (Applicant)  
**AND** Waikato District Health Board (Respondent)  
**REPRESENTATIVES** Joanne Watson, Counsel for Applicant  
Paul White, Counsel for Respondent  
**MEMBER OF AUTHORITY** Leon Robinson  
**INVESTIGATION MEETING** 26 July 2005  
27 July 2005  
5 August 2005  
18 August 2005  
**DATE OF DETERMINATION** 26 September 2005

DETERMINATION OF THE AUTHORITY

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**The Authority determines that this employment relationship problem shall be resolved by the following orders:-**

- A. Waikato District Health Board is ordered to forthwith reinstate Lorraine Draper to her position as Emergency Department receptionist at Waikato Hospital.**
  - B. Waikato District Health Board is ordered to pay to Lorraine Draper twelve weeks gross wages less any gross holiday pay paid at termination, as reimbursement.**
  - C. The parties are encouraged to resolve costs between them, but failing agreement, Ms Watson is to lodge and serve a memorandum within 14 days of the date of this Determination. Mr White is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination.**
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## The problem

[1] Mrs Lorraine Draper (“Mrs Draper”) says that her dismissal on 3 May 2005 from her employment as a receptionist in the Emergency Department at the Waikato District Health Board’s (“the Board”) Waikato Hospital operation was unjustified. The Board defends its decision to summarily terminate Ms Draper’s employment.

[2] Alternatively, Mrs Draper says she was unjustifiably constructively dismissed on 5 May 2005 by a series of unjustified actions.

[3] The parties were unable to resolve the differences between them by the use of mediation.

## The facts

[4] Reception staff employed at the Board’s Waikato Hospital Emergency Department are members of a union (“the union”). The union members took strike action on Tuesday 12 and Wednesday 13 April 2005.

[5] When the reception staff returned to work on Thursday 14 April 2005, they learned that one particular staff member had worked during the strike. I refer to her as “Ms G”. The reception staff were unhappy with Ms G because she had not supported the strike.

[6] It is not disputed that Mrs Draper left a message on Ms G’s home answer phone at about 3.00 pm saying “SCAB” in a disguised voice. One Ms H was present when Mrs Draper left the message. I find that all the emergency department reception staff became aware of Mrs Draper’s message that same day. Not one of the staff members reported the matter to management or informed Ms G as to who had left the message.

[7] Ms G believed the person who had left the message was Ms H and she reported the matter and her belief that Ms H had left the message to Mr Stuart Cockburn the operations manager of the Board’s Waikato Hospital Emergency Department (“Mr Cockburn”), on or about Monday 18 April 2005. Mr Cockburn listened to the message himself. Ms G had earlier informed Mr Cockburn that she had been sent an anonymous note with the word “SCAB” on it through the internal mail.

[8] On Wednesday 20 April 2005, Mr Cockburn phoned Ms H and asked her to meet with him on the morning of Friday 22 April 2005.

[9] That same afternoon, Ms H phoned Mrs Draper and told her of Mr Cockburn’s request to meet. I find that Mrs Draper initially resolved she would confess to leaving the message but eventually she and Ms H agreed that they would wait to see how matters transpired at the scheduled meeting.

[10] I find that Ms H’s husband Mr H phoned Mrs Draper on the morning of Thursday 21 April 2005. I find Mr H told Mrs Draper his personal view that the matter was not serious and that Mrs Draper should not confess until they knew exactly what Mr Cockburn was investigating and how seriously Mr Cockburn was taking the matter.

[11] Mrs Draper did not hear from Ms H or Mr H following Ms H’s meeting with Mr Cockburn at 8.30 am on Friday 22 April 2005.

[12] Mr Cockburn approached Mrs Draper at 2.00 pm later that day and demanded to talk to her. I find that Mr Cockburn was agitated. He asked Mrs Draper whether she knew anything about the

phone message and a note with the word “SCAB” that had been left for Ms G. Mrs Draper told him “No”. I find that Mrs Draper was dishonest with Mr Cockburn about her involvement with the phone message. Mr Cockburn asked Mrs Draper about her work activities on 14 April 2005 and about her computer use that day. He told Mrs Draper he would get to the bottom of matters.

[13] Earlier that day, Ms H and her husband Mr H together with union organiser Mr J, met with Mr Cockburn and Human Resources advisor Ms Kaye Roberts (“Ms Roberts”). Ms H says that she was never directly asked whether she knew who had left the phone message for Ms G. That is plainly at odds with what Ms Roberts’ notes record but whether or not that is true, Ms H did not tell Mr Cockburn what she knew. At the conclusion of this meeting Ms H was suspended. I find that Ms H although reluctantly, had told Mr J before this meeting that Mrs Draper had left the message on Ms G’s phone. I find that after this meeting, Mr J asked to speak “without prejudice” to Mr Cockburn and in this session he implied that Mrs Draper was responsible for the phone message by suggesting to Mr Cockburn that he should make his enquiries of Mrs Draper.

[14] Mr Cockburn did not tell Mrs Draper of Mr J’s suggestion that he make enquiries of Mrs Draper when he (Mr Cockburn) met with Mrs Draper that day.

[15] Mrs Draper tried to contact Ms H at about 3.00 pm that day. Mr H told her Mrs H was not allowed to speak to her. Mrs Draper told Mr H to tell Ms H she had said “No” to everything she had been asked by Mr Cockburn. I find that Mr H told Mrs Draper that Ms H had not passed on Mrs Draper’s name to Mr Cockburn.

[16] Unknown to Mrs Draper, Mr H then phoned Mr Cockburn. Mr Cockburn was with Ms Roberts and they spoke with Mr H on speakerphone. Mr H advised that Mrs Draper had contacted him and he had told her Ms H could not speak to her. He also said Mrs Draper had informed him she had said “No” to everything she had been asked. Mr H then advised that it was Mrs Draper who had left the message for Ms G because Ms H had been present when Mrs Draper had made the call. That was advice consistent with the impression Mr J had left with Mr Cockburn earlier in the day.

[17] Mr Cockburn and Ms Roberts then met with two other receptionists. Both receptionists confirmed that Mrs Draper had left the message for Ms G.

[18] Mr Cockburn and Ms Roberts discussed the situation with Human Resource Consultant Mr Gregory Peplow (“Mr Peplow”). Mr Peplow advised Mr Cockburn that Ms H’s suspension should be withdrawn.

[19] Mr Peplow contacted Mr J and advised Ms H’s suspension was withdrawn. He made it clear to Mr J that Ms H was to give a full and frank account of all that she knew at a meeting to be held with her at 8.30 am on Tuesday 26 April 2005. I find that Mr Peplow told Mr J that as long as Ms H co-operated in this manner, no further action would be taken against her. Mr J contacted Ms H and advised her of the situation. He contacted Mr Peplow again and confirmed Ms H would give her cooperation at the further meeting.

[20] Mrs Draper contacted her team leader Ms Sharon McKay (“Ms McKay”) on the morning of Tuesday 26 April 2005 and confessed to leaving the message on Ms G’s phone. I find that Ms McKay told Mr Cockburn of this confession. Mr Cockburn phoned Mrs Draper and told her he would speak with her later that day.

[21] Mr Cockburn then met with Ms H. He knew of Mrs Draper’s confession when he met with Ms H. Ms H informed him that Mrs Draper had made the call leaving the message for Ms G.

[22] Mr Cockburn telephoned Mrs Draper at about 10.00 am. He told her she was required to attend a pre-disciplinary meeting. Mr J was present with Mr Cockburn following the conclusion of the meeting with Ms H. Mr Cockburn asked Mr J if he would represent Mrs Draper as a member of the union. Mr J said he would. Mr Cockburn asked Mrs Draper if she would like to speak with Mr J and she said she did. Mr Cockburn left them alone to talk. When he returned, Mr J advised he was representing Mrs Draper.

[23] Mrs Draper and Mr J met with Mr Cockburn and human resources consultant Ralph Tyrell at 8.00 am on Wednesday 27 April 2005. Mrs Draper admitted her responsibility for the phone message to Ms G but she denied any involvement with the anonymous note.

[24] Mr Cockburn told Mrs Draper that despite his request for confidentiality, she had contacted Ms H. Mrs Draper said she had only done so out of concern for Ms H. Mr Cockburn advised that the investigation was largely complete and that Mrs Draper was suspended to allow the investigation to be concluded and a further disciplinary meeting would be held the following day. He explained that if the allegations were sustained, a decision would be made in terms of the Board's *Progressive Disciplinary Process*. He undertook to provide Mrs Draper with a letter of confirmation and offered her EAP services.

[25] Two letters were delivered to Mrs Draper's residence that evening. One was a suspension letter signed by Ms Jan Adams Manager Waikato & District Hospitals ("Ms Adams"). The other detailed the allegations. Ms Roberts had faxed an amended version to Mr J. It was alleged that Mrs Draper had used Board property to write a note with the word "SCAB" on it addressed to a staff member and additionally, that on Thursday 14 April 2005 at approximately 1500 hrs she had made a phone call (from an Emergency Department extension) to a staff member's home, and left a voice message saying "SCAB".

[26] Mrs Draper and Mr J met with Mr Cockburn and Ms Roberts at 8.30 am on Thursday 28 April 2005. Mrs Draper denied any involvement with the anonymous note. She said the phone call was an impulsive act. She said that other reception staff were also involved. Mr Cockburn asked Mrs Draper why she had lied to him when she was first asked and why she broken the request to keep matters confidential. He also informed her of Mr H's telephone call and the information Mr H had passed on. Mrs Draper said that Ms H and Mr H had told her not to say anything. At this point she looked to Mr J and said "*I thought you were in on this*". Mr J then requested an adjournment. When they returned, Mrs Draper admitted contacting Ms H.

[27] The meeting adjourned again and Mr Cockburn and Ms Roberts discussed matters with Mr Peploe. When the meeting reconvened, Mr J said that Mrs Draper was remorseful about what had been an impulsive action. Mr Cockburn advised that he would recommend to Ms Adams that Mrs Draper be dismissed. Ms Adams had the delegation to terminate Mrs Draper's employment.

[28] By report dated 2 May 2005 Mr Cockburn recommended to Ms Adams that Mrs Draper be dismissed. The report concluded that the allegation concerning the anonymous note could not be substantiated. Mr Cockburn's report did not record Mrs Draper's confession of 26 April 2005.

[29] Mr Cockburn's report was provided to Mrs Draper on the evening of 2 May 2005. Mrs Draper learned of a meeting with Ms Adams the following day when she phoned Mr J that evening.

[30] At the meeting with Ms Adams the following day, Mrs Draper was represented by Mr J. Mr Peploe was present with Ms Adams. Mrs Draper had never met either Ms Adams or Mr Peploe previously. Also present was Nurse Karen Arnold who attended to support Mrs Draper.

[31] Mr Peploe confirmed the only allegation against Mrs Draper was the phone message left for Ms G. Mrs Draper apologised for what she had done. She said she felt terrible and her actions were totally out of character. She said she would like to apologise to Ms G. Mr J then sought to mitigate Mrs Draper's conduct by asking the Board to take into account Mrs Draper's service, good performance and blemish free work history. He asked the Board to see the incident as a one off spur of the moment event and said that Mrs Draper had learned a valuable lesson. Ms Arnold said that Mrs Draper was a wonderful worker.

[32] Ms Adams then emphasised Mr Cockburn's concern about trust issues and that it would be difficult for Mrs Draper to return to work.

[33] Ms Adams and Mr Peploe then took an adjournment. When they returned, Ms Adams said she and Mr Peploe had taken into account what had been said. She said that the Board had a responsibility to all its staff for their safety and comfort in the workplace. She said she had to acknowledge what her manager had recommended and that he had lost trust and confidence in Mrs Draper. She advised that Mrs Draper would be summarily dismissed as of 5.00 pm that evening. Mr Peploe said he would organise Mrs Draper's final pay.

[34] Mr J said he found the decision disappointing and he said "*we will need to consider our options from here.*" He asked for some time. Mr J, Mrs Draper and Ms Arnold then left the room and discussed the situation. Mr J's notes record the discussion. He advised Mrs Draper she had two options. These options as recorded in his notes were:-

1 *that we seek to have the decision of summary dismissal overturned in favour of Lorraine (sic) being able to resign, giving her the opportunity to not have that on her record and assist in getting future employment.*

2 *that we not seek resignation but look at unfair dismissal and seek a personal grievance against the DHB for this.*

[35] Mrs Draper asked Mr J for his advice about what she should do. He records that he told her it was a very difficult decision to make but given the circumstances of the Board's attitude in dismissing her, he felt it would be very difficult to expect it would consider reinstatement, and that the decision to not seek resignation would be very uncertain for her. Mr J then asked Mrs Draper if she wished him to speak to the employer as to whether it would consider resignation as opposed to dismissal. Mrs Draper asked for an extension of time for her to make a decision.

[36] Mr J went back to talk to Ms Adams and Mr Peploe and asked to speak with them "*off the record*". I find that he asked whether the Board would consider allowing Mrs Draper to resign instead of dismissing her. I find that he explained that Mrs Draper was the sole wage earner, and at her age a dismissal would count against her finding another position. The Board agreed to allow Mrs Draper to resign provided she did so as of 5.00 pm that evening. Mr J asked for an extension of time to the following day. The extension was subsequently extended to a further day.

[37] Mr J reported back to Mrs Draper and asked her to contact him the next day about her decision.

[38] Mrs Draper handed her resignation letter to Mr Cockburn at 11.30 am on 5 May 2005. That letter advised as follows:-

*Due to a recent incident within the Emergency Department which resulted in an allegation of Serious Misconduct made against myself and subsequent to an investigation made by my manager which I believe to have been incomplete and unfair, I am with great reluctance tendering my resignation of employment and hereby give notice as from 12pm today.*

*Also, because of the management of this issue, I have been forced to seek medical assistance for the stress I am now experiencing. Whilst I believe one must always be accountable for an action which is hurtful to another who is undeserved of the action I also believe an appropriate punishment should include all those who are guilty.*

## **Discussion**

[39] Mrs Draper alleges she was unjustifiably dismissed and in the alternative, that she was unjustifiably constructively dismissed. That alternative allegation recognises that her resignation is initially problematic. If she resigned, how is it that she can claim to have been dismissed unjustifiably?

[40] I am persuaded that it is appropriate to scrutinise the Board's decision to dismiss rather than the purported resignation. The essence of the employment relationship problem is that Mrs Draper's employment came to an end and according to her, it should not have. It would be unduly technical to regard the resignation arrangement as precluding her from challenging the actual reason her employment was terminated. That is the problem I concentrate on resolving now.

[41] There are a number of procedural matters which concern me. I deal with each of these in turn.

## **Representation**

[42] Firstly, I am concerned about Mrs Draper's representation. I have found that Mr J asked to speak "without prejudice" to Mr Cockburn. Mr J suggested to Mr Cockburn that he (Mr Cockburn) should make his enquiries of Mrs Draper. In doing so, he implied Mrs Draper was responsible. I tend to the view that Mr J as good as told Mr Cockburn Mrs Draper had made the call to Ms G. I do not criticise him for doing that, but he should not have then purported to represent Mrs Draper.

[43] I am uncomfortable that Mr Cockburn should then enlist Mr J to represent Mrs Draper. Mr J tells me he took advice about the situation from his superiors. The Board is obliged to carry out a full and fair investigation and that was the obligation that rested on Mr Cockburn. It was wrong of him to suggest, approve and facilitate Mr J's representation of Mrs Draper when he knew Mr J had furnished him with information that was unfavourable to Mrs Draper. That was not fair to Mrs Draper and Mr Cockburn is experienced and sophisticated enough to have appreciated that. While it may have been convenient for Mr Cockburn that Mr J represented both Ms H and Mrs Draper, in my view a fair and reasonable employer would have considered it prudent and fair to see that Mrs Draper was represented appropriately without conflict. That may well have necessitated a brief delay while Mrs Draper sought appropriate advice. Mr Cockburn must be taken to have considered it fair that Mrs Draper was represented in this way. I disagree.

[44] It was also unfair to Mrs Draper that Mr J never told her of what he had learned from Ms H or that he had passed that information to Mr Cockburn.

[45] When Mr Cockburn met with Mrs Draper at 2.00 pm on Friday 22 April, he never told her of that information either. Whether or not Mr Cockburn believed Mr J, he ought to have told Mrs Draper in fairness to her. He did however, introduce it at the meeting on 28 April 2005 but there was no advance notice of it.

## Lying to the employer

[46] If Mr Cockburn had put that information before Mrs Draper when he met with her on 22 April, Mrs Draper may not have lied to him. That is not to excuse her dishonesty, but faced with the information, she may well have realised there was no point lying to her employer and especially if she was aware that the information had come from Ms H through Mr J. Mr Cockburn's actions in being less than forthcoming with Mrs Draper was unfair.

[47] It is not disputed that Mrs Draper lied to Mr Cockburn. She chose to be dishonest with her employer and she did so deliberately. That was plainly contrary to her obligations of good faith and the implied terms that she owed to her employer Board.

[48] Nothing she says about conversations or agreements with Ms H and Mr H can excuse or justify her actions. That common purpose is no excuse at all and in any event Mrs Draper departed from the agreement reached. She had resolved with Ms H and Mr H that she would wait until they knew what Mr Cockburn was investigating and how seriously he was taking it. When she gives her evidence that Mr Cockburn was allegedly intimidating and hostile, it was plainly apparent to her what he was enquiring into and how seriously he regarded matters. In maintaining her dishonesty, Mrs Draper departed from the common purpose. It was incumbent upon her to then confess as she had arranged to do with Ms H and Mr H. She chose not to. It is no surprise then that Mr H sought to protect his wife Ms H, when he immediately telephoned Mr Cockburn after Mrs Draper told him of her continuing dishonesty.

[49] I am satisfied that Mrs Draper's lying was a significant factor for the Board in its decision to summarily terminate her employment. Ms Adams' decision to dismiss on the basis of a loss of confidence and trust in Mrs Draper is explained:-

*I made my decision on the basis that Lorraine had harassed and intimidated another employee despite being given instructions this was not acceptable. Lorraine had also lied when asked about the matter.*

[50] Ms Adams had relied on Mr Cockburn's assessment that he could no longer have trust and confidence in Mrs Draper. His evidence to the Authority on this aspect of matters is this:-

*Even in the final meeting I had with Lorraine on 28 April she continued to be evasive and didn't seem to accept total responsibility for her actions in harassing and intimidating [Ms G], and also her subsequent lying and covering up the matter. Given what Lorraine has done I cannot rely on anything she says as being credible and could not trust her as an employee in my department.*

[51] Mr Peploe as advisor to Ms Adams gives this evidence:-

*The two primary considerations for Jan were, the actual intimidation and effect it had on [Ms G], and the fact that Lorraine had lied about it, and effectively only admitted the action when Waikato DHB knew of her role.*

[52] It is plain then that one of the principal reasons Mrs Draper was dismissed was because she had lied, contributing to a loss of confidence of trust in her.

[53] If that was the allegation, it was never formally put to her for her response. In fairness to Mrs Draper it should have been. The allegation was not specified in the allegation letter of 27 April 2005. If the allegation evolved from the meeting held on 28 April 2005, it ought to have been formally put by a further letter. In this regard I note the Board's *Progressive Disciplinary Management* policy *Diagram 2 Serious Misconduct Process*, contains an imperative that the manager **must** notify the staff member in **writing** of the alleged misconduct, and **copies of any**

**documentation** supporting the allegation. The emphasis is mine. Mrs Draper was not provided with written notes of interviews with other staff.

[54] I accept Mr Peploe's evidence of the meeting held on 3 May 2005 as follows:-

*I specifically put it to Lorraine she had lied to the department manager when asked if she had any knowledge of the phone call. Lorraine did not answer this point.*

That was not however the formal notice of the allegation required and came too late for any kind of meaningful response from Mrs Draper.

[55] If the allegation of lying had been properly put to Mrs Draper requiring her formal response, she no doubt would have raised the matters she did in the Authority of the arrangement with Ms H and Mr H. In doing so, the employer Board would then have been obliged to consider matters with the benefit of Mrs Draper's full and informed response to the allegation and decide whether any such response sufficiently mitigated her admitted conduct. I am satisfied that that exercise did not occur and it should have. I am satisfied too, that a further dimension would have become apparent which would then have raised another issue requiring the Board's due consideration.

[56] Had the allegation of lying been formally been put to Mrs Draper for her response, she no doubt would have sought to mitigate her conduct by explaining Ms H and Mr H's involvement. I have said that it was unfair to deny Mrs Draper this opportunity. Had the matter been properly dealt with, it would have then become apparent to the Board that Ms H too had been less than honest with her employer. It is no answer for Ms H to say that at the meeting held with her on 22 April 2005, she was not expressly asked whether she knew who had left the message for Ms G. Ms Roberts' notes of that meeting contradict Ms H's evidence in this regard. What is clear however, is that Ms H knew Mrs Draper had left the message for Ms G. Ms H did not give this information to the employer when the employer discussed the matter with her. That was less than honest. It was not in accord with the duty of good faith that she owed her employer Board. I find that this is the reason why Mr Peploe told Mr J no further action would be taken against Ms H if she was full and frank in the further meeting held with her on 26 April 2005. When I put the issue to Mr Cockburn he said that he could not take action against Ms H because of Mr Peploe's assurance to Mr J.

## **The reasons for the dismissal**

### **Loss of confidence and trust**

[57] The Board says it has no confidence and trust in Mrs Draper because she was dishonest with it. While it says that of Mrs Draper, it has no such concerns with respect to Ms H. Ms H was complicit in the scheme of silence negotiated between her, Mrs Draper and Mr H. It is no answer for Ms H to say she did not want to be seen to "nark". Her loyalties were owed to her employer Board and not Mrs Draper. Both Ms H and Mrs Draper were complicit in misleading their employer yet the employer Board makes no allegation of a loss of confidence and trust in Ms H. Ms H remains in her employment and she was not disciplined in respect of her complicit behaviour. Mrs Draper paid the ultimate price and lost her employment. I find that Mrs Draper received disparate treatment and that was unfair. Accordingly, the Board's allegation of a loss of confidence and trust in Mrs Draper is not objectively sustainable. This disparity of treatment situation arose because the Board did not formally put the allegation of lying to Mrs Draper.

[58] Both Ms H and Mrs Draper told the employer the truth of matters on the morning of 26 April 2005.

## The “SCAB” message

[59] I consider now whether the remaining allegation concerning the “SCAB” message left for Ms G constitutes good reason for summary dismissal.

[60] Ms Adams made the decision to dismiss in this regard “*on the basis that Lorraine had harassed and intimidated another employee despite being given instructions this was not acceptable.*”

[61] Mrs Draper’s actions are not to be condoned. They were foolish and completely devoid of good sense and judgment. I have no doubt she has learned her lesson and seriously regrets the stupidity of her behaviour.

[62] I have concluded that Mrs Draper’s single act in leaving the phone message for Ms G is not sufficient to constitute grounds for summary dismissal when weighing both the Board’s and Mrs Draper’s interests.

[63] It has been held that serious misconduct usually involves a deliberate action inimical to the employer's interests. Although completely foolish, I do not consider Mrs Draper’s action can be described in that way.

[64] Mrs Draper’s conduct was a single isolated action. In deciding whether that single isolated action can constitute good reason for summary dismissal, regard must be had to the nature and degree of the misbehaviour and to its significance in relation to the Board’s business and to Mrs Draper’s position as receptionist. In making the factual assessment, I weigh Mrs Draper’s admitted conduct and, viewing the matter objectively, its effect on the maintenance of the confidential relationship between her and the Board as against the severe consequences of immediate dismissal. If it is to warrant that response the misbehaviour must go to the heart or root of the contract between them.

[65] The Board considers Mrs Draper’s action constituted harassment and intimidation. I am not inclined to characterise a single, although completely foolish, act in that way. As a matter of degree, the action was surely at the very lowest level.

[66] I do not regard it reasonable, that as a matter of fact and degree, the Board could regard Mrs Draper’s action in leaving an anonymous phone message for Ms G, as completely undermining its relationship of confidence and trust in her, as a receptionist. I do not regard it reasonable that the Board could consider her actions as constituting a complete and irremediable loss of trust and confidence in her, as a receptionist, as a result solely of one isolated but completely foolish action. Summary dismissal was not the appropriate response.

## Determination

[67] Weighing both parties’ respective interests, I conclude that Mrs Draper’s summary dismissal was unjustifiable. **Accordingly, I find that Mrs Draper has a personal grievance and she is entitled to remedies in resolution of that grievance.**

[68] Having made that finding and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the *Employment Relations Act 2000* to consider the extent to which Mrs Draper’s actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[69] I have found that Mrs Draper left an anonymous message for Ms G, and also that she was dishonest with her employer when she was asked. Mrs Draper's actions contributed to the situation that led to the personal grievance. Her actions are blameworthy and they require a reduction in both the nature and extent of the remedies to be awarded to her.

[70] Mrs Draper is entitled to be reinstated. That remedy is the primary remedy available to her at law. I am not persuaded that it is impracticable that she be reinstated to her position as receptionist and I particularly understand she does not work with Ms G. I consider it appropriate to order that Mrs Draper be reinstated. **I order Waikato District Health Board to forthwith reinstate Lorraine Draper to her position as Emergency Department receptionist at Waikato Hospital.**

[71] I consider that Mrs Draper is entirely the author of her own misfortune. I take the view that any hurt and humiliation she suffered was all her own doing. I decline therefore to make any award of compensation.

[72] As for reimbursement, I consider that remedy is available to her because of the unlawful summary termination of her employment. Mrs Draper shall be reimbursed the wages she has lost in respect of the period from 3 May 2005 until the Authority's investigation meeting held on 26 July 2005. **I order Waikato District Health Board to pay to Lorraine Draper twelve weeks gross wages less any gross holiday pay paid at termination, as reimbursement.**

## **Costs**

[73] In the event that costs are sought, I invite the lawyers to reach an agreement between them, but failing such agreement, Mr White is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Ms Watson is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe.

Leon Robinson  
**Member of Employment Relations Authority**