

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 88  
3278099

BETWEEN JOSHUA FRENCH  
Applicant

AND COMMISSIONER OF  
POLICE  
Respondent

Member of Authority: Rowan Anderson

Representatives: Nikkii Flint, counsel for the Applicant  
Karen Radich, counsel for the Respondent

Investigation Meeting: 11 and 12 September 2024 in Palmerston North

Submissions and other information received: Up to and including 18 November 2024

Determination: 18 February 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Joshua French is Constable in the New Zealand Police (the Police). He commenced employment in that role September 2019 and primarily worked out of Palmerston North until May 2024. He remains employed.

[2] Constable French claims that he has been unjustifiably disadvantaged in his employment by various actions taken by Police and claims that it has breached its duty of good faith towards him. His claims include that actions taken by Police have negatively impacted his career progression and growth, the undertaking of a flawed investigation process relating to his alleged conduct, and his being removed from the role of Field Training Officer (FTO).

[3] Police contend that a number of the issues raised by Constable French were raised outside of the statutory 90-day timeframe for raising a personal grievance. It does not consent to the grievances being raised out of time. Police otherwise deny Constable French's claims.

### **Anonymisation**

[4] Police have requested that the Authority anonymise the name of a Constable that was a witness in the Authority's proceedings and that worked with Constable French in 2023.

[5] Ultimately there was no objection to the requested anonymisation. I do not consider there any public interest reason for the naming of the individual, they are not a party to the proceedings, and naming of the individual may cause undue embarrassment and/or reputational damage. I am otherwise satisfied that it is appropriate that the individuals name be anonymised, and they are referred to in this determination as Constable A.

### **Issues**

[6] There is a preliminary issue as to whether Constable French raised his unjustified disadvantage personal grievances within the relevant statutory 90-day period provided for at s 114 of the Employment Relations Act 2000 (the Act). In the alternative, Constable French claims there were exceptional circumstances occasioning any delay and that leave should be granted for the grievances to be raised out of time.

[7] Subject to the above, there are four unjustified dismissal claims which are summarised by Constable French as his having been disadvantaged in relation to:

- (a) Negative impact on career progression and growth.
- (b) A flawed investigation process.
- (c) Failing to investigate concerns raised by Constable French in relation to sexual and other harassment in the workplace.
- (d) Repeatedly summarily removing Constable French as an FTO.

[8] Constable French also claims that Police breached clause 1.11 of the New Zealand Police Constabulary Collective Agreement 1 July 2021 – 30 June 2023 (the "CA") in that deductions were made from his pay without his consent. The Authority is to determine whether the alleged breach occurred, and if so, whether any penalty should be imposed upon Police in terms of s 134 of the Act. It is also claimed that Constable French was unjustifiably disadvantaged by that action.

[9] If the Police's actions were not justified, the Authority needs to consider remedies in the form of compensation for humiliation, loss of dignity, and injury to feelings. In doing so, the Authority is required to consider the issue of contribution.

[10] Constable French also claims that Police breached its duty of good faith. The Authority is to consider whether Police did breach that duty, and if so, whether any penalty should be imposed in terms of s 4A of the Act.

[11] There is an issue as to costs with both parties seeking a contribution towards the costs of representation relating to this matter.

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

[12] Written statements were provided in advance of the investigation meeting. Written witness statements were provided from Constable French and his wife, Natasha French, in support of Constable French. For Police, written witness statements were lodged from Inspector Ross Grantham, Senior Sergeant Samuel Gilpin, Detective Senior Sergeant Michael Deegan, Sergeant Benjamin Stanley, retired Superintendent Scott Fraser, Constable A, Richard Hales, Employment Resolutions Specialist, and Kim Durham, Senior Human Resources Advisor.

[13] Senior Sergeant Gilpin provided an affidavit and was, with agreement of the applicant, excused from attendance at the investigation meeting.

[14] An investigation meeting took place on 11 and 12 September 2024 in Palmerston North. Written submissions were exchanged following the investigation meeting in accordance with timetable directions made.

[15] 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**

[16] Constable French was involved in two work related accidents. Following the second of those, he returned to work on 2 October 2021. Constable French contends that following his return to work he was exposed to rumours as to the cause of the two incidents.

[17] Constable French made an application to become a FTO on 10 May 2022. He was not successful with that application and says that he found out by overhearing a conversation on 4 June 2022.

[18] A second application for a FTO role was submitted by Constable French on 8 August 2022. He says he was advised the application was successful and was appointed as a FTO on 15 September 2022.

[19] On 24 September, 2022 Constable French was advised that he would no longer be a FTO as a result of Detective Senior Sergeant Deegan making observations of him the night prior.

[20] On 1 December 2022, Constable French suffered a family bereavement. He returned to work on 20 January 2023.

[21] On 21 January 2023, Constable French was assigned to work with Constable A, who was a probationary constable at the time. There was an incident during which Constable A says that Constable French ignored her observation of a person matching the description of an individual that had absconded from a hospital, that he drove to the house of two off duty officers, and then introduced her to them by saying “This is [Constable A], the new station cum-bucket”. Constable French later apologised to Constable A.

[22] Constable French says that in early April 2023 he became aware that two officers, one of them being Constable A, were laughing because they could see the “outline of my cock”.

[23] Constable French says that he approached Sergeant Stanley on 23 April 2023 after he became aware of other photographs and that he verbally made a complaint about the photographs and bullying behaviour. He says he told Sergeant Stanley that he felt he was being bullied and that Constable A made him feel very uncomfortable. One photograph on Constable A’s phone was said by Constable French to show the outline of his penis through his pants, another was said to be a topless photograph of Constable A.

[24] Constable French had been a participant in the group chat and on 22 January 2023 posted a comment on a photograph of Constable A saying “[Constable A’s] showing us all how she does doggy”.

[25] Constable French says he discussed with Sergeant Stanley there having been tension between Constable A and himself, and that Sergeant Stanley said the two should have a conversation and that he would pair them together in a couple of days. Constable French says he wasn’t happy but didn’t know what else to do.

[26] Constable French and Constable A were paired together on 25 April 2023. Constable French says they had a conversation, but it did not go well and that he reported that back to Sergeant Stanley on 26 April 2023 before the end of the same shift. He says Sergeant Stanley said “okay, leave it with me, I’ll have a think about it”.

[27] Constable French made a further FTO application on 26 April 2023.

[28] Constable French made an application for a Police Support Unit (PSU) position on 16 May 2023. After following up, he was advised the application was unsuccessful on 29 May 2023. The email response disclosed that he was “under investigation”.

[29] Constable French was unaware of any investigation until the email was received. After seeking advice, a meeting was arranged with Inspector Grantham later the same day. Constable French says that he was informed that he was not under investigation, that no further information would be provided until Inspector Grantham served him with a letter, and that he would not remain an FTO.

[30] Inspector Grantham says he was aware there was a complaint about Constable French when his name was raised in a meeting concerning PSU appointments. He says an email was prepared to advise Constable French that he had been unsuccessful, that mentioned the investigation without checking with HR whether Constable French was aware of the investigation. Inspector Grantham denies saying that there was no investigation, and instead says that he advised he was not the investigator.

[31] A letter giving notice of a disciplinary meeting relating to the allegations against Constable French was served on 13 June 2023. In addition to the allegations relating to his comments on 21 January 2023 about Constable A, the letter outlined two other allegations. The first allegation related to alleged berating of a junior officer, the second

to an alleged off duty incident where he was said to have made the incident more difficult to de-escalate and investigate due to actions by Constable French including comments made to the members of the public involved.

[32] A disciplinary meeting was held on 17 July 2023. Mrs French and Constable French's representative at the time, Kerry Ansell, attended with Constable French. For the Police, Mr Hales was in attendance in addition to Superintendent Fraser. Constable French raised numerous issues at the meeting.

[33] Constable French sent Superintendent Fraser a request, said to be under the Privacy Act and Official Information Act, following the meeting that was held on 17 July 2023. In summary terms, the request sought information relating to internal searches and communications relating to Constable French.

[34] On 20 July 2023, Superintendent Fraser wrote to Constable French recording a final decision that no action would be taken in relation to his alleged conduct relating to Constable A. The letter noted that that the language used in front of the probationary constable was entirely inappropriate, but that Superintendent Fraser was satisfied Constable French understood the expectations of him and that no further action was required.

### **Did Constable French raise his personal grievance claims within the relevant statutory 90-day period?**

#### *Relevant principles*

[35] Section 114(1) of the Act requires an employee wishing to raise a personal grievance to do so within 90 days of the action alleged to amount to a personal grievance occurred or came to the notice of the employee.

[36] What is required in terms of the raising of a personal grievance is dealt with at s 114(2) of the Act, which provides as follows:

- (2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

[37] There are several principles relevant to whether a personal grievance has been raised in accordance with s 114 of the Act. I summarise them as follows:<sup>1</sup>

- (a) The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing, and there is no particular formulation of words that must be used.
- (b) Whether a grievance has been raised for the purposes of s 114(2) is to be objectively determined having regard to the facts of each case. The test is “whether to an objective observer the communication was sufficient to elicit a response from the employer”.
- (c) There is no requirement that the grievance be raised in writing, and it may be established by a “totality of communications”.
- (d) The level of detail required is not such as would be required in, for example, a statement of problem.
- (e) The substance of the grievance must be made clear, but an employee is not required to specify the type of relief sought.
- (f) Merely advising an employer that the employee has a personal grievance, or specifying the statutory type of grievance without more, will be insufficient.

[38] In *Chief Executive of Manukau Institute of Technology v Zivaljevic*, Judge Holden said:<sup>2</sup>

[38] It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

[39] The Authority may grant leave for a personal grievance to be raised after the expiration of the 90-day period if satisfied that the delay was occasioned by exceptional circumstances and if it considers it is just to do so.<sup>3</sup> Section 115 of the Act provides a non-exclusive list of exceptional circumstances. For present purposes, Constable French relies on the ground at s 115(b) which provides:

- (a) where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time...

---

<sup>1</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2009] NZEmpC 35, at [36] to [38]; *Idea Services Ltd (in statutory management) v Barker* (2013) 10 NZELR 262, at [39] and [41]; *Goodall v Marigny (NZ) Ltd* [2000] 2 ERNZ 30; *Board of Trustees of Te Kura Kaupapa Motuhake O Tawhiuau v Edmonds* [2008] 1 ERNZ 139; *Creedy v Commissioner of Police* [2006] 1 ERNZ 517;

<sup>2</sup> *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132, at [38].

<sup>3</sup> Employment Relations Act 2000, s 114(3) and (4).

[40] Exceptional circumstances are not limited to those listed at s 115 of the Act. As to what amount to ‘exceptional circumstances’, the Supreme Court’s decision in *Creedy v Commissioner of Police* confirms that the term is to be taken as meaning “being unusual” or “the exception to the rule”, as opposed to “something more than special and less than extraordinary”.<sup>4</sup>

*The meeting of 17 July 2023*

[41] Constable French says he verbally raised a personal grievance at a meeting with Superintendent Fraser on 17 July 2023 by saying “I am raising a personal grievance against Police because of their handling of my complaint and manner in which they have investigated me”. Constable French’s evidence is that those words were said at the end of the meeting after both audio recordings had stopped. He says he also made a Privacy Act and OIA request at the end of the meeting, which he also emailed later the same day.

[42] Towards the later part of the recorded meeting, the transcript reflects that the following statements were made:

Constable French                    ...I think, listen, as I said it’s really nothing personal and I’ve never done this before and I don’t like being this person. I think as Kerry has alluded to, I think there is going to be a personal grievance that follows, and it’s not just in relation to this investigation, in fact, I think this forms a fairly insignificant part of the bigger picture that I’m going to tell you soon. Umm, but...

Natasha French                    But we’ll get to that later.

Constable French                    ...we will get to that later, yeah, and you know, as a show of transparency and good faith as soon as that report is ready, I’ll make it available to you....

[43] Mrs French also gave evidence that a personal grievance was raised at the meeting. Her evidence was that:

During the disciplinary meeting, Josh spoke about how unfair the investigation process had been and the stress this had caused him. He talked about how humiliating it had been to hear from other Police staff that he was under investigation. And how he had expected his complaint against [Constable A] to have been addressed. At the end of the meeting Josh advised Police he was raising a personal grievance. We spoke with Kerry after the meeting and he assured us that the Police (Scott Fraser) had been notified of Josh’s PG and that Scott had acknowledged it, so the process had begun. It was now best to wait to obtain the documents from the Privacy Act request/OIA as he suspected there could be more issues worth including.

---

<sup>4</sup> [2008] 3 NZLR 7, at [31].

[44] Mr Ansell provided an affidavit but did not attend the investigation meeting. In relation to the 17 July 2023 meeting and the raising of a personal grievance he says:

3. At the conclusion of this meeting, I witnessed Constable French hand a written Official Information Act request related to the employment investigation, to Superintendent Fraser. At the same time Constable French verbally advised Police that he required this information as he was raising a personal grievance related to the investigation process and other related matters.
4. On 7 August, I sent an email to Superintendent Fraser at [sic] which I confirmed that Constable French intended raising a personal grievance for disadvantage.

[45] Superintendent Fraser's evidence as to the meeting was that he did not consider a personal grievance was raised. He says he was left with the understanding that Constable French was to go away and consider a personal grievance and referred to the transcript of the meeting which includes, in summary terms, Constable French saying that a personal grievance might be raised in the future. He also referred to an email received from Mr Ansell on 7 August 2023 which I deal with below. Superintendent Fraser says that he would have expected a personal grievance to set out what it was about and that the communications referred to by Constable French did not make it clear what the personal grievance was going to be about and therefore had no idea how it might be able to be resolved. He says all they could do is wait and that no further explanation was received until 13 October 2023.

*Communications following the 17 July 2023 meeting*

[46] An email from 24 July 2023 from Constable French to Mr Ansell shows that Constable French commented on matters relating to his return to work and made enquiries as to whether anything further was required. The email goes on to say:

...  
I believe you are waiting on information from this OIA/privacy request we made before you formulate a report for your boss to determine whether the association are assisting me with a PG against Police. Do you have a rough timeframe when I might have this decision?

[47] I do not consider the email of 24 July 2023 clearly points to any personal grievance having been raised at the meeting of 17 July 2023. In terms of the possible assistance to be provided, the email speaks of "...a PG against Police" rather than referencing a personal grievance already raised. It is also of some note that the correspondence provides no instruction for a personal grievance to be raised, nor does it detail the basis for a personal grievance as such.

[48] Constable French's evidence is that he called Mr Ansell in late July 2023 to check if he needed to do anything else in terms of raising the grievance and was told he did not and that he had formally notified them at the end of the meeting on 17 July 2023. Constable French says he asked whether it needed to be put in writing and that he was told it did not, but that Mr Ansell then said he would send an email just to be sure. Constable French also said that Mr Ansell had provided an affidavit confirming his view that the personal grievance was raised at the meeting on 17 July 2023.

[49] Mr Ansell emailed Superintendent Fraser on 7 August 2023 saying, "This email is just to confirm with Police that Joshua intends to raise a personal grievance with respect to disadvantage". The subject of the email was "Notification of PG". The email further noted that, at the meeting on 17 July 2023, Constable French had verbally advised that he intended to raise a personal grievance. It concluded by saying:

...Once he has received the information requested, preparation and substance to the grievance will be provided to Police in a formal letter.

[50] Mr Ansell's affidavit goes on to say that he emailed Police on 7 August 2023 as to a FTO allowance matter with the email noting "I would like to be able to settle this matter so that it does not become part of the PG that Joshua is already preparing against Police for disadvantage".

[51] I consider the totality of the correspondence evidences that a personal grievance was not raised at the meeting on 17 July 2023. While Constable French and Mrs French both say that a grievance was raised, I consider it far more likely when considering the totality of the evidence that a personal grievance was only something that might eventuate but that it was still under consideration at the time.

[52] I am satisfied that no personal grievance was raised by, or on behalf of, Constable French at the meeting on 17 July 2023. Many issues were discussed at the meeting. However, I am not satisfied that the issues were raised in a manner such as could have made Police aware that Constable French considered he had a personal grievance in relation to any of those matters. Nor, having regard to the numerous issues raised, could Police have been on notice as to what the personal grievance did or did not relate to.

[53] I record that Constable French's evidence as to the meeting was that a personal grievance was raised as to the handling of his complaint and as to the investigation into

his conduct. Even if I were wrong about whether a personal grievance was raised at the meeting, I would have found that the personal grievance raised was limited to those two matters.

*The personal grievance letter of 13 October 2023*

[54] Counsel for Constable French wrote to Police on 13 October 2023. That correspondence referred to Constable French as having been unjustifiably disadvantaged in several ways, the most recent relating to a complaint alleged to have been made by Constable French about Constable A. In summary terms, the 13 October 2023 letter raised various issues, including in relation to the investigation of Constable French's conduct. That correspondence clearly raised personal grievances as to the following:

- (a) the investigation process in relation to Constable French's conduct that was the subject of the 17 July 2023 meeting;
- (b) the alleged inaction regarding Constable French's complaint about Constable A; and
- (c) an alleged pattern of behaviour, which included actions relating to the FTO and PSU roles, having a negative impact on career progression and growth.

[55] In terms of Constable French's complaint regarding the handling of Constable A's alleged conduct, I do not consider the start date for statutory 90-day period was 23 April 2023. Although a complaint was said to have been made at that time, the personal grievance relates to the inaction that is said to have followed. Whether or not a complaint was made by Constable French on 23 April 2023 is a matter relevant to the determination of the substantive grievance. The relevant personal grievance is said to arise from inaction and included an alleged repetition of the complaint at the meeting on 17 July 2023. I am satisfied that the personal grievance relating to alleged inaction was raised and that the relevant timeframe for raising a personal grievance could not be said to have commenced earlier than the 17 July 2023. On that basis, I find that Constable French raised the personal grievance compliant with s 114 on 13 October 2023.

[56] In relation to the course of conduct personal grievance raised, the letter of 13 October 2023 asserted that the investigation and failure to act on Constable French's complaint were the latest in a series of actions that included the FTO issues.

[57] It is for Constable French to show that “the events which occurred outside of the 90-day period were connected to those within the period so as to establish a course of conduct which the Court can evaluate as the basis for a disadvantage grievance”.<sup>5</sup> The matters raised that were within the 90 day period are the investigation process into Constable French’s conduct and the alleged inaction regarding his complaint about Constable A. Should it be found in the substantive consideration that any of the actions outside of the 90 day period were not connected to the those two matters, then they cannot be evaluated as part of the personal grievance. If they were, it then becomes an issue of justification.

[58] In terms of the FTO issues, I find that the two instances referred to, those being on 24 September 2022 and 29 May 2023, I agree with the submission made by Police that the relevant 90-day period expired as to the second matter on 27 August 2023 with no personal grievance having been raised.

[59] Constable French, as to the claim of a negative impact on career progression and growth, claims there has been a pattern of unreasonable behaviour towards him that demonstrates bias. I find the relevant personal grievance was first raised on 13 October 2023 in the context of the investigation regarding Constable French’s alleged conduct and alleged failure to investigate the complaint regarding Constable A as having been the “latest in a series of actions being taken against him”.

[60] The statement of problem outlines the facts that are said to have given rise to the personal grievances claimed. The only events recorded that document that are within the 90-day period of 13 October 2023 are the meeting of 17 July 2023 and the deduction from pay on 2 August 2023. There was also a meeting at which an outcome was received on 20 July 2023 falling within 90-days of the personal grievance letter.

[61] It was submitted for Constable French that Police did not, when responding to the personal grievance letter, identify which aspects of the claims were said to be out of time. I do not consider there was a lack of specificity in Police’s response to the 13 October 2023 letter. The response made clear Police considered many of the factual matters asserted in the letter were out of time and that it did not consent to Constable French raising those matters as personal grievances out of time. I do not consider it was required to go through the 13 October 2023 line by line.

---

<sup>5</sup> *Premier Events Group Ltd v Beattie No 3* [2012] NZEmpC 79, at [19].

[62] As to the personal grievance claim of unjustified disadvantage in relation to a deduction from Constable French's wages, it is submitted for Constable French that he discovered the deduction on 4 August 2023. It was submitted for Police that a personal grievance relating to that issue was not raised within the relevant statutory period and that it was not raised in the personal grievance letter of 13 October 2023.

[63] I find that Constable French validly raised personal grievances, within the relevant statutory 90 day periods, other than in relation to the FTO removal matters and the alleged unlawful deduction of wages.

*Exceptional circumstances*

[64] I need only consider the issue of exceptional circumstances in relation to those two claims I have found were not raised within time.

[65] It is submitted for Constable French that the Authority should grant leave for the personal grievances to be raised out of time based on exceptional circumstances. Constable French relies on the ground at s 115(b) of the Act.

[66] Police submit that Constable French has not applied for leave to raise a personal grievance after the expiration of the statutory period in terms of s 114(4) of the Act, and otherwise contends that there are no exceptional circumstances that would support leave being granted. It is submitted that there is no evidence of any instruction to Mr Ansell to raise a personal grievance relating to the historic matters.

[67] Such that leave has been sought, that has been sought in the course of the proceedings and is addressed in the submissions provided on behalf of Constable French. I consider that I need not deal with whether the application for leave was validly made having regard to the following findings.

[68] Mr Ansell's evidence does not go to his being asked or instructed to raise a personal grievance on behalf of Constable French at any point. The submissions for Constable French approach the issue on the basis that clear instructions were given for Mr Ansell to raise the grievance, that he confirmed that had been done so, and that Constable French followed up to "confirm that there was no further action required from him in relation to the raising of his personal grievance". The affidavit of Mr Ansell does not confirm any of those matters, nor does the email correspondence of 7 August

2023 which not only goes to an 'intention' to raise a grievance, but also clearly does not specify in any meaningful way what the personal grievance is about.

[69] I am not satisfied that there was a representational failure that was the cause of any delayed notification. There is no evidence confirming that an instruction was given to raise a personal grievance concerning the FTO and wages deduction issues, nor that there was an unreasonable failure to do so.

[70] I am not satisfied that there were exceptional circumstances that occasioned the delay in raising the personal grievances as to the wage's deduction issue or removal from the FTO role issues. I decline to grant leave for those matters to be raised out of time.

*Conclusion as to the raising of the personal grievance claims*

[71] Having regard to my findings above, there are three unjustified disadvantage claims that require further consideration, those being the following:

- (a) Negative impact on career progression and growth.
- (b) A flawed investigation process.
- (c) Failing to investigate concerns raised by Constable French in relation to sexual and other harassment in the workplace.

**Was Constable French unjustifiably disadvantaged in his employment?**

*The test of justification*

[72] 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>6</sup>

[73] 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.

*Flawed investigation*

---

<sup>6</sup> Employment Relations Act 2000, s 103A.

[74] A significant aspect of Constable French's claim relates to the basis on which the investigation into his conduct was commenced. In particular, he takes issue with being informed that the investigation was the result of a complaint by Constable A. Constable A's evidence to the Authority was that she was approached by Senior Sergeant Mills and Sergeant Stanley and asked to document what occurred. Constable French's evidence was that he was of the understanding, because Police had put it that way, that Constable A had made a complaint.

[75] I do not consider Police's actions in relation to the issue of whether Constable A made a complaint to have been deliberate. Nor do I find that Constable French was disadvantaged by any of the actions associated with that suggestion. The presence or absence of a formal complaint, having regard to the nature of the alleged conduct and dissemination of the comments to others in the workplace, in my view made that irrelevant. It did not inhibit Constable French in understanding or responding to the allegations. Further, there was ultimately no disciplinary warning issued.

[76] What I find was problematic was the delay in advising Constable French that there was an investigation being conducted into his conduct. While initial enquiries might reasonably be made to ascertain whether an investigation is required without advising an employee, I find that was not the case here. However it was initiated, I consider it was clear there was an investigation being conducted and that Constable French was not given notice of that, or the relevant allegations, in a timely manner. As I have concluded elsewhere, that also had a disadvantageous impact on his attempts to progress his career in circumstances where he was unaware of any investigation.

[77] I also conclude that the findings in relation to the allegations made were predetermined in the sense that a proper process seeking to obtain a response from Constable French was not undertaken prior to conclusions being reached. This included what Superintendent Fraser said was an admission provided via Constable French's representative at the time. As noted in Constable French's submissions, he never denied making the comment about Constable A in January 2023. While that was the case, and the conduct was admitted, there was significant procedural unfairness in the way the investigation and disciplinary processes were conducted.

[78] I am otherwise satisfied that there was a sound and reasonable basis for raising the allegations of misconduct, including the allegations concerning Constable French's

actions of 21 January 2023. There was a substantive basis for initiating an investigation, for the allegations to be made, and indeed for the conclusions that were reached.

[79] I am not satisfied that Constable French has made out that there was a breach of confidentiality. While Constable French says he was told by another Senior Sergeant that there was a complaint and that it was being investigated, I do not consider that discloses that there was a breach of confidence. Further, I do not consider the mere fact that an investigation is being undertaken necessarily results in a breach of confidence. That is especially so where it is necessary that enquiries be made into relevant events, and indeed where the underlying events are broadly known. Speculation in relation to such matters by individuals is not uncommon.

[80] Additionally, I am not satisfied that Constable French was disadvantaged by any privacy breach relating to the draft performance appraisal that he says was able to be accessed by other staff. There is no evidence the information was accessed by other staff or otherwise disclosed.

[81] I am satisfied that the actions of the Police in investigating the matter were substantively justified. To the extent there were procedural flaws in the investigation process, I find they were inextricably linked with the issues of timing and notification of the investigation relevant to his successful claim of unjustified disadvantage relating to the impact on his career development.

[82] Constable French's claim of unjustified disadvantage relating to the Police's investigation into his conduct is successful.

*Negative impact on career progression and growth.*

[83] The personal grievance letter of 13 October 2023 asserted that the recent investigation into Constable French's conduct and alleged inaction regarding his complaint were the latest in a series of actions including, in summary terms:

- (a) The 2022 removal as FTO and associated events involving Senior Sergeant Mills;
- (b) A disparity of treatment as between Constable French and Detective Senior Sergeant Deegan as to the treatment of conduct matters;
- (c) An alleged confidentiality breach regarding a draft appraisal report

[84] Submissions made for Constable French referred to various other alleged actions or incidents as forming part of the alleged pattern of behaviour. Those included comments made in the workplace going back to 2022, Constable French being removed from his section in May 2024, alleged lack of support following absences from work in early 2023, notes made in February 2024 said to suggest that Senior Sergeant Mills had a negative opinion of Constable French, the lost opportunity to be appointed to the PSU in May 2023, the alleged removal of an opportunity to undertake the acting sergeants role in 2024, and other events including a bullying complaint made in 2024. It is contended for Constable French that there was course of conduct damaging his career progression and growth.

[85] In terms of the FTO role in 2022, I find that matter was not related in any way to the matters raised within the 90-day timeframe. There is no association between the action taken by Detective Senior Sergeant Deegan in ceasing the FTO appointment for a period of three months and the later investigation into Constable French's conduct of the alleged inaction regarding his complaint. I accept Detective Senior Sergeant Deegan's evidence as to the reasons he provided for the action being taken, that being based on concerns about Constable French having acted in a manner that had the potential unnecessarily escalate the relevant incidents.

[86] I find that not all the events said to be relevant to Constable French's claim that he was unjustifiably disadvantaged by actions that had a negative impact on his career progression and growth can properly be described as a part of a course of conduct or continuing disadvantage. Nor do they have the necessary connection to the events or actions that occurred within the relevant 90 day timeframe, those being the investigation into Constable French's conduct and the alleged inaction regarding his complaint about Constable A. There are two exceptions to this.

[87] First, I consider the decision to decline Constable French's application for the PSU role had a necessary connection to the investigation process. I accept Senior Sergeant Gilpin's evidence as to the reasons the PSU application was unsuccessful. I also accept Inspector Grantham's evidence that the issue of a complaint was raised at Area Leadership Team meeting and that that was the reason for declining the PSU application. The declining of the PSU application was not part of a cause of conduct to deliberately negatively impact Constable French's career progression, it was instead a pragmatic decision taken while an investigation was being carried out. Such as the PSU

decision and the investigation process relating to Constable French's conduct are said to arise from targeted actions by Senior Sergeant Mills, I do not find that to have been the case.

[88] Notwithstanding the above, I consider it clear that Constable French was disadvantaged in terms of his career progression in that on two occasions concerns regarding his conduct, that had not been put to him prior to the applications or the relevant decisions being made, impacted on the decisions being made by the Police. I find that the actions taken in denying Constable French opportunities to advance, and in withdrawing such opportunities, were without justification having regard to that procedural failure. While I consider Police had justifiable substantive reasons for removing the FTO role and not appointing Constable French to the PSU role, there were procedural failings.

[89] I find that the removal of Constable French from the FTO role in 2023 had the necessary connection with the investigation. That FTO issue arose from the 29 May 2023 meeting with Constable French being advised that he was not able to remain in that role because there was an investigation into his conduct. I accept the evidence of Inspector Grantham that he did not inform Constable French that there was not to be an investigation. The investigation was the basis on which the decision was made regarding the FTO role and that that was explained to Constable French. I find that there was a substantive basis for the FTO decision having regard to the nature of the role and the, in effect, temporary nature of the opportunity not being available to Constable French. I consider Police had a broad discretion in relation to such appointments and that in all of the circumstances it was sufficient that the decision was explained on the basis that there was an ongoing investigation.

[90] Inspector Grantham gave evidence as to the reasons for a decision made to not have Constable French as acting sergeant in early 2024. While that action might be said to have had an impact on career development, I am not satisfied it has the necessary connection with the events associated with the personal grievances that were validly raised, those being the investigation of Constable French's conduct and inaction as to his alleged complaint. I find the same is true as to Constable French's transfer to Road Policing in 2024. Further, I am satisfied, such as there was any mention of the investigation in relevant meetings or correspondence with Constable French, that other reasons for the basis for the decisions made were disclosed to him. By that time,

findings had already been made in relation to the investigation, including relating to the admitted conduct of Constable French. Whilst no disciplinary action in the form of a formal warning was taken, I do not consider that was an impediment to considering his conduct when making discretionary decisions as to acting duties or indeed to future permanent appointments to other roles.

[91] One not unlikely scenario is that Police would have had reasonable cause to make the substantive decisions it did if it had followed a more robust procedure that was fairer to Constable French.

[92] Constable French's claim that he was unjustifiably disadvantaged by a course of conduct involving a negative impact on career progression and growth is successful.

*Alleged failure to investigate complaint*

[93] Constable French says he made a complaint in relation to the alleged conduct of Constable A associated with the photographs to Sergeant Stanley on 23 April 2023.

[94] Sergeant Stanley says he was aware of the comment made by Constable French about Constable A prior to Constable French raising Constable A's conduct with him. He could not recall whether Constable French told him about the "cum bucket" comment or whether he heard it from others.

[95] Constable French's evidence is that he "[e]xplained to Sergeant Stanley what I had just seen on Constable [A's] phone, including her showing me a topless photo of herself. I complained to Sergeant Stanley, letting him know that I wasn't happy with the situation and how I felt I was being bullied and she had made me feel very uncomfortable".

[96] I conclude that Constable French did not seek to raise a complaint about Constable A's conduct with Sergeant Stanley on 23 April 2023. However, I do find that the issue was mentioned on 23 April 2023 and formed part of the discussion between Sergeant Stanley and Constable French to the effect that there had been tension. I accept Sergeant Stanley's evidence that so far as the issue was raised it was not focused on anything to do with 'the outline of Constable French's penis'. I also find that while a concern was raised in the context of the conversation, that Constable French did not say to Sergeant Stanley that he was making a 'complaint'.

[97] Constable French's brief of evidence goes to his having raised the issue, but falls short of suggesting that he asked for the matter to be escalated, investigated, or for any other action to be taken. I also consider the evidence of Sergeant Stanley consistent, in at least many respects, with what Constable French later said about the meeting to Superintendent Fraser at the meeting on 17 July 2023. As submitted by Police, many of the statements made by Constable French at the 17 July 2023 meeting reflect that he framed the issue as him seeking to 'clear the air' or to otherwise address the tension.

[98] I find the issue of Constable A's conduct was mentioned but was not expressed as being a formal complaint. I consider that position consistent with the evidence before the Authority. It aligns with Sergeant Stanley's recollections, albeit they are imperfect. I find it also aligns with the lack of any formal follow up by Constable French as to what he says was a complaint until the meeting of 17 July 2023.

[99] Such as Sergeant Stanley may have considered the raising of the issue retaliatory, I consider that would not necessarily have been an unreasonable conclusion to reach having regard to the prior conduct of Constable French relating to Constable A. In terms of 17 July 2023, on one view, the raising of the matter in the context of the 17 July 2023 meeting could be seen as a retaliatory measure by Constable French in seeking to excuse his behaviour. I do not find that was the case, however, I find that issue was raised only as a basis for seeking to compare the allegations made against him to the alleged conduct of Constable A.

[100] I do not consider Constable French was disadvantaged by Police not investigating the alleged complaint. Constable French's own admitted conduct in the workplace is inconsistent with his having actually taken offence to any of the conduct of Constable A. The issue is one that might have formed a basis for suggesting a disparity in treatment had any meaningful disciplinary action been taken. However, it was not and that is not necessarily the case.

[101] Such as Police are said to have unjustifiably disadvantage Constable French by failing to investigate the matter as raised at the meeting on 17 July 2023, I find that not to be the case. The issue was by that time over six months old and only raised in the context of a disciplinary meeting as to the conduct of Constable French.

[102] Superintendent Fraser's evidence at the investigation meeting was that he would have expected the issue to be raised by Constable French by him coming to see him in

another forum and that Constable French raised several other issues at the meeting that he considered were deflecting away from Constable French's responsibility.

[103] While Superintendent Fraser said at the meeting that the issue of the alleged complaint not being actioned was one that he would have to look into, I do not consider that any subsequent failure to do so disadvantaged Constable French in his employment. I conclude that Constable French raised the issue in seeking to excuse or minimise his conduct, and that while he considered there was a disparity of sorts, I do not accept he genuinely viewed the matter as one that presented a risk that the working environment would be unsafe or that he was being exposed to a risk of harm on or after 17 July 2023.

[104] Constable French's claim that he was unjustifiably disadvantaged in his employment by a failure of the Police to appropriately deal with his complaint about the conduct of Constable A is unsuccessful.

### **Personal grievance remedies**

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

[105] Both Constable French and Mrs French gave evidence as to the impact of the various events and actions on Constable French. Having considered their evidence I have no doubt that the actions relevant to the successful personal grievances have had a negative impact on Constable French. However, such as Constable French takes the position that he has been targeted and that there has been wilful conduct directed towards him causing significant damage to his reputation and working relationships, I do not accept that is the case. A number of the claims made have been found to have been raised out of time or have otherwise been unsuccessful. That includes any suggestion that there was a deliberate course of conduct intentionally designed to damage his career.

[106] Notwithstanding the above, I have found that Constable French was disadvantaged in his employment by the various procedural failings of Police. I accept that a degree of uncertainty and humiliation is attributable to the manner in which Constable French found out that he was subject to an investigation. Additionally, I consider that the delay in notifying him of the investigation, the relevant predetermination, and the reliance on there being an investigation in denying career

opportunities contributed to a sense of confusion and feelings that he had been treated unfairly.

[107] Having regard to the unjustified disadvantage claims that have been made out, and the evidence of impact, I consider it appropriate to assess compensation on a global basis. Having regard to all of the relevant factors, I consider compensation of \$7,000 is appropriate subject to any reduction on account of contribution.

*Loss of benefit*

[108] Constable French, in submissions, raised a claim for compensation for lost benefit in terms of s 123(1)(c)(ii) of the Act. The claim relates to what was said to be lost opportunity relating to the PSU role, the loss of the FTO role, and loss of opportunity relating to the acting sergeant role. It is submitted for Constable French that the relevant underlying actions have been intentional and that the loss to Constable French should be held to be at the highest level.

[109] Police contend that the matter was not raised in the statement of problem lodged and that the claims should not be accepted. No claim was made in the statement of problem as to shift allowances or the PSU role as later included in submissions. Constable French's brief of evidence made various assertions about loss, but it was not clear those sums were being sought, nor that they were being sought in terms of s 123(1)(c)(ii) of the Act. I decline to make any award in terms of s 123(1)(c)(ii) of the Act relating to the PSU role, the shift workers allowance, the acting sergeant's role, the FTO allowance, or the shift change allowance.

[110] I have concluded that the move to traffic and other events since 13 October 2023 are outside of his validly raised personal grievance claims. I record that I would not in any event have made an award having regard to the relevant allowances and the fact that Constable French was not working the relevant shifts, had requested a transfer, and did not travel or incur expenses relating to the claimed incidental allowance.

[111] The statement of problem did seek an order as to the reinstatement of remuneration for the FTO role. I am not satisfied that any order should be made relating to the claimed sum of \$183 relating to the FTO allowance. The claim relates to the issues in 2022 which I have found are not connected with the claims raised within the relevant 90-day statutory timeframe.

[112] I decline to make any order in terms of s 123(1)(c)(ii).

### *Contribution*

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

[114] I find Constable French contributed in a reasonably significant way to the circumstances giving rise to his personal grievance claims. While there were not insignificant procedural defects that resulted in disadvantage, I find that the underlying conduct of Constable French on 21 January 2023 contributed to the circumstances giving rise to the personal grievances, including it that it was an underlying factor in the decisions taken including as to the PRU role. I consider a reduction in compensation of 25 percent is warranted in all of the circumstances.

[115] I order that the Police make payment to Constable French, within 28 days of this determination, of the sum of \$5,250 as compensation for humiliation, loss of dignity, and injury to feelings.

### **Breach of good faith?**

[116] Constable French claims that Police breached its duty of good faith. The claim is based on assertions that Police acted in a misleading and deceptive manner and that it failed to be active and communicative in establishing and maintaining a productive employment relationship.<sup>7</sup> It was submitted on his behalf that the breaches were intentional, significant, have had an ongoing impact, and that a penalty at the higher end is appropriate.

[117] I find that such as there were actions by Police inconsistent with its duty of good faith, they were not deliberate, serious and sustained. The actions do not rise to the level for which the imposition of a penalty would be appropriate.

[118] I consider that such as there was a breach of good faith, that the relevant conduct related to the same factual matrix as the established unjustified disadvantage claims, including the failure to advise Constable French of the investigation into his conduct in a timely manner. I do not accept that Police deliberately misled Constable French as to

---

<sup>7</sup> Employment Relations Act 2000, s 4(1A)(b).

whether Constable A had made a complaint. The reality is that the issue had come to the attention of senior staff and there was a valid basis for investigating the issue having regard to the nature and seriousness of the alleged misconduct. Whether a complaint was made by Constable A was relatively inconsequential. Having regard to the nature of the relevant conduct and the relationship of that conduct to the personal grievances that have been established, I decline to impose any penalty.

[119] In addition to the above, I record that I would in any event have declined to impose a penalty in terms of s 4A of the Act. I do not consider there was any ongoing course of deliberate action designed to mislead Constable French, to harm his career development, or to undermine the employment relationship.

### **Breach of the Collective Agreement?**

[120] Constable French claims that Police breached the terms of the CA. Clause 1.1.1 of the CA provides that Police are entitled to make deductions from an employee's salary subject to conditions. For present purposes, the clause requires that notice of the overpayment be provided no later than 5 days after the overpayment occurred and requires consultation with the employee prior to any deduction being made.

[121] Police accept that neither of the above requirements were met. The payment errors were acknowledged by email on 7 August 2023 and commitment made to correct the payment in the next pay run. Once advised of the issue regarding the timing of correction, it was acknowledged that reimbursement should not have been delayed.

[122] Constable French gave evidence as to the alleged impact of the breach. I accept the submission made by the Police that Constable French would have been aware at the relevant time, having been informed on 29 May 2023, that the FTO role was ceasing and therefore that any future payments would be overpayments. I find that the evidence given by Constable French as to the alleged impact in relation to the matter was overstated, particularly when considered in light of his prior knowledge that the FTO role was being ceased and what was an apparent absence of follow up to the email of 7 August 2023.

[123] I conclude that the actions of the Police were in breach of clause 1.11 of the CA. There is a considerable importance in the need to ensure parties comply with their obligations under a CA. However, I conclude that having regard to the corrective actions taken, the absence of significant impact, and the acknowledgement and the

apology provided at the time, that the imposition of a penalty is unwarranted and unnecessary.

### **Summary of orders**

[124] I have ordered that the Police make payment to Constable French, within 28 days of this determination, of the sum of \$5,250 as compensation for humiliation, loss of dignity, and injury to feelings in relation to his successful personal grievance claims.

[125] Constable French's other claims are unsuccessful.

### **Costs**

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

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

[128] 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>8</sup>

Rowan Anderson  
Member of the Employment Relations Authority

---

<sup>8</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)