IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 100
3237379

BETWEEN	KAREN HILL Applicant	
AND	TAMAKI LABOUR HIRE LIMITED Respondent	

Member of Authority:	Sarah Blick
Representatives:	Graeme Halse, counsel for the applicant Emma Butcher, counsel for the respondent
Investigation meeting:	5 November 2024 in Auckland
Submissions and further information received:	8 and 22 November 2024 from the applicant 19 November 2024 from the respondent
Determination:	21 February 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Karen Hill was employed by Tamaki Labour Hire Limited (Tamaki) as an Auckland or regional sales manager. Tamaki provides supply chain services, including sourcing and distributing marketing materials, branded merchandise and operational supplies. It trades as True North Supply Chains.

[2] Ms Hill says she has a personal grievance for unjustified disadvantage, because in the latter stages of employment she was subjected to workplace bullying and a wrongful suspension. After a restructuring process, Ms Hill's role was made redundant. She says the grounds for redundancy were not genuine and the procedure followed was flawed, resulting in her unjustified dismissal.

[3] Tamaki submits that its actions, and the manner in which it acted, were what a fair and reasonable employer could have done in all the circumstances at the time of Ms Hill's termination. It says Ms Hill took an unreasonably negative view of her employer and chose not to engage in that process in good faith or provide any substantive comments. Tamaki further denies any bullying occurred and says the suspension during the redundancy consultation period was justifiable in all the circumstances.

The Authority's process

[4] The Authority received witness statements from Ms Hill, Tamaki's General Manager Andrea Kidd and its former Wellington-based regional manager, Anna McGavin. All witnesses gave evidence under oath or affirmation at the Authority investigation meeting. Ms McGavin is based in Australia and with leave of the Authority gave evidence by audio visual link.

[5] 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 information received. In determining this matter the Authority has considered all the material before it, including all information provided by the parties and their submissions.

The issues

[6] The issues for investigation and determination are:

(a) Was Ms Hill unjustifiably disadvantaged in her employment on two grounds – bullying and suspension?
(b) Was Ms Hill unjustifiably dismissed from her employment?
(c) If Tamaki's actions were not justified, what if any remedies should be awarded?

Background

[7] Tamaki is owned by an Australian-based company TMA Group of Companies Limited (TMA), and operates offices and distribution centres including in Auckland, where Ms Hill's role was based.

[8] Ms Hill commenced employment with Tamaki as a Sales Manager in October 2021. Ms Hill's employment was covered by the terms and conditions in a written agreement. She was part of the senior leadership team (SLT). The SLT was primarily comprised of Group Chief Executive (Group CE), Ms Kidd, Ms McGavin, another senior manager, and Ms Hill.

January/February 2023

[9] In early January 2023, Tamaki hired an accounts manager (AM). The AM was a member of Ms Hill's team and reported to her. Ms Hill says that around the same time she had a conversation with Ms who alluded to pressure from a director of TMA to cut two management salaries. Ms Hill's gave evidence that in response, she asked if her job was on the line, to which Ms Kidd responded "not necessarily".

[10] In February 2023, Tamaki employed a second AM, who also became a member of Ms Hill's team and reported to her as manager. She says when recruiting the second AM, she was informed that the latter had to be interviewed by Ms McGavin before the hiring decision was made. She took this as unusual as this had not been a requirement for hiring any of the five other accounts managers in her team, as it had been solely her responsibility to conduct such interviews.

[11] Ms Hill has given evidence that in February 2023, she was not invited to a dinner with the representative of one of Tamaki clients (the client), having previously attended all dinners with the client. Instead, the Group CE and Ms McGavin attended this dinner by themselves.

[12] On 24 February 2023, Ms Hill received an email from the Group CE saying he had not been clear enough about the client and:

> Before any further written comms with [client representative], please talk with me
> I'm regularly talking with her. You are making things difficult
> Wishing to avoid disaster.

[13] Ms Hill gave evidence that during the week of 27 February 2023 to 3 March 2023, the Group CE failed to acknowledge her or say hello to her during the time he was in Tamaki's offices.

Early March 2023

[14] On 3 March 2023, at a meeting between Ms Hill and Ms McGavin, Ms Hill raised concerns about how she felt she had been treated over the previous few months. Unbeknownst to Ms McGavin at the time, Ms Hill recorded their conversation, which has been produced along with a transcript. Ms Hill expressed that she wanted to have an open conversation, and that she felt she was being cut out of communication at the SLT level, and that felt she was being pushed to the side as a result a number of "little things". She noted not being included in the client dinner and Ms McGavin provided an explanation. She also raised the concern about the email from the Group CE and how had been acting and communicating in relation to the client recently. Ms McGavin acknowledged the email was not acceptable. Ms Hill said her impression was that she was being treated in a way that she would not enjoy her job and would want to leave, like another named employee had been treated. Ms McGavin reassured her that was not happening and said sorry if she felt that way. Ms Hill raised Ms Kidd's comments about the pressure from a director to cut two managerial salaries. Ms McGavin acknowledged pressure on Ms Kidd and that "we are top heavy" and its revenue was "probably not…enough to support that at the moment", but she did not know what direction would be taken. Ms McGavin asked if it was okay if she spoke to Ms Kidd to get some clarity around Tamaki's change plans, and to the Group GE about the email that day. Ms Hill confirmed that was okay and Ms McGavin said she would come back to Ms Hill "next week". She asked Ms Hill to let her know if she could help or if there was anything she could do differently.

[15] Ms McGavin did speak to the Group CE that same day and as she was leaving, confirmed to Ms Hill she had done so. That afternoon, the Group GE sent Ms Hill a follow up email referring to his email of 24 February 2023, saying nothing was intended by his email, and "admittedly my comms would have been better relayed by a phone call".

[16] On 8 March 2023, an SLT meeting was held via a video call. During this meeting, Ms Hill says the Group CE waved her on in a dismissive manner to hurry her up and finish what she was saying as she spoke. At the investigation meeting, Ms McGavin and Ms Kidd said they did not observe the waving gesture.

[17] On 9 March 2023, Ms Hill reports that the Group CE barged into her office when her door was closed and spoke to her in an abrupt, rude and bullying matter.

Commencement of restructuring process

[18] By letter dated 13 March 2023, Ms Kidd requested Ms Hill attend a meeting on 16 March 2013 to discuss a proposed restructure that may impact on Ms Hill's role. The short letter advised Ms Hill had the right to bring a representative to this and any future meetings.

[19] By text message on 15 March 2023, Ms Hill advised Ms McGavin she considered due process was being followed but she thought the outcome is "already defined". She requested to work from home for the morning prior to the meeting, rather than being in the office pretending everything was okay. Ms McGavin agreed to this request, explained that the outcome had not been decided and they were keen for her input. She proposed having the meeting at a different and neutral venue, away from the rest of the office. Ms Hill confirmed she would rather have the meeting at the office.

[20] On 16 March 2023, Ms Kidd and Ms McGavin met with Ms Hill and her partner (her support person) at Tamaki's offices. Ms Hill recorded the meeting without Ms Kidd or Ms McGavin's knowledge. Ms Kidd outlined the rationale for a restructuring proposal. Ms Kidd stated the current position:

> …we know that True North has had no annual growth, ah, over the last three years and two of those have been Covid, so that was expected, um, but we've had a year out of Covid now and we still aren't getting any traction, ah, in terms of revenue…

[21] Ms Hill was advised during the meeting that the same proposal had been made regarding the other senior manager's role. She advised that the timeline to provide feedback on the redundancy proposal and alternatives was "whatever" she "would like" and that they were "reasonably flexible" but were "thinking a week." Towards the end of the meeting, Ms Kidd said they would prefer it if Ms Hill did not tell the rest of the business unless it was someone she was close to, as long as she could be "semi-positive" about it as Ms Kidd did not want staff to get upset as this is just a "concept".

[22] Ms Hill did not switch off the recording function on her mobile phone when she discussed the meeting with her partner after the meeting had concluded. Ms Hill sounds upset in the recording and said that it "solidifies everything" she thought and commented that Tamaki did not need to replace the customer service manager position as it had been vacant for months

and she could look after the customer service team. Ms Hill's partner, for his part, set out something of a proposed strategy:

(a) not raising a personal grievance as they had a two week window;

(b) waiting to see what happened on the job front over the next one or two weeks;

(c) delay the process to give Ms Hill time to find another job;

(d) push it out for another three to four weeks because Ms Hill should be able to find a job within the next three months;

(e) put in for sick leave and have the next two days off, then at the end of the following week, send an email outlining how Ms Hill wanted to discuss mediation with a third person before submitting feedback.

[23] The contents of the recording were put to Ms Hill at the investigation meeting. Ms Hill pointed out the audio does not demonstrate that she agreed with the comments at the time.

[24] Shortly after the meeting, Ms Hill emailed her team saying there was a proposed company restructure with a proposal to dissolve her role and the Auckland sales team to report to Ms McGavin. It stated to reach out to Ms Kidd or Ms McGavin with any questions.

[25] Also that morning, Ms Kidd emailed Ms Hill a PowerPoint proposed restructure document. Its overview of Tamaki's "current position" comprised of the following:

> True North has had no annual revenue growth.
> Our sales team have too much admin.
> We have not replaced our Customer Support Manager.
> Cost of Management Staff remains top heavy.
> Needing in-depth monitoring & analysis of financial performance of the companies [sic] supply chain operations.

[26] On a page headed "What we need" it stated:

> Additional support for Auckland Account Managers.
> Reduce Management head count while retaining cover.
> Cost savings to remain profitable until substantial new business is obtained.
> Cohesive management across all logistics focused operations within the business.

[27] The document provided a map of the current and proposed organisation structure, and outlined the following:

Proposed changes:
> replace Sales Manager Auckland with Junior Account Manager

> combine the CS [Customer Service] Manager & Logistic Manager role into an Operations Manager role.

> Identified outcomes of proposal:
> > Reduction in management cost
> > Additional admin support for sales team
> > More financially focused Operations role across our two Logistics divisions.

[28] A position description for the proposed Operations Manager role was included. There was no financial information in the document beyond the statement that there had been no annual revenue growth.

[29] Ms Kidd felt it necessary to email Tamaki staff members later on 16 March 2023, confirming Tamaki was reviewing its management structure and working through a process. She reassured non-management staff that their employment would not be affected. Ms Kidd says it was not her original intention to notify staff given the disruption it may cause.

[30] On the evening of 16 March 2023, Ms Hill requested permission to work from home. Ms Kidd agreed to Ms Hill working from home the following day, but said Ms Hill was expected to return to work from the office from Monday 20 March 2023. By attached letter, Ms Hill was invited to a meeting on 23 March 2023, to discuss the restructuring proposal and give her feedback. It stated after the meeting Tamaki would consider her input and then make a final decision. It said Tamaki would meet with Ms Hill again to discuss the impact any decision would have on her employment. Finally, it said if Mr Hill needed more information or was unclear on what was being proposed, to speak to Ms Kidd or Ms McGavin.

[31] A meeting invite was sent for the proposed meeting. On 19 March 2023 Ms Hill proposed rescheduling for apparently30 March 2023. Ms Kidd responded that was later than expected and asked if Friday 24 March 2023 was suitable, or early that next week.

[32] Ms Hill says on 20 March 2023, Ms McGavin cancelled her weekly sales meeting at very late notice with her team without consulting her to instead host her National Sales Meeting because the initial time she had set for her meeting did not work for her. Ms McGavin acknowledged this may have occurred but there was no intention behind what occurred.

[33] That night, Ms Hill submitted several questions to Tamaki about the proposed restructure. Ms Kidd responded on or about 21 March 2023.

[34] On 21 March 2023, Ms Hill says the Group CE again failed to acknowledge her while he was in the office. She says by this time was extremely upset by the treatment she had been receiving from the Group CE, Ms McGavin and Ms Kidd since January 2023, and her mental health was affected.

[35] On 27 March 2023, Ms Hill emailed Ms McGavin saying she would not be at work and needed to see her doctor, which the latter acknowledged. Ms Hill obtained a medical certificate stating she was medically unfit and should be able to resume work on 4 April 2023. It did not state the nature of Ms Hill's unfitness, but in Ms Hill's email to Ms McGavin, she advised she had been prescribed a medication for two named issues. Ms Hill went on leave.

[36] By letter dated 29 March 2023, Ms Kidd emailed Ms Hill outlining the process to date and Tamaki's attempts to schedule a feedback meeting. The letter noted Ms Hill's email of 27 March 2023. The letter stated this was Tamaki's "final request" for Ms Hill to provide input or alternatives to its proposal before it made a final decision. Ms Kidd rescheduled a feedback meeting for 5 April 2023. The letter said feedback could alternatively be given via email, text message, phone call or video call, with a deadline of 12 April 2023.

Personal grievance raised

[37] On Sunday 2 April 2023, by email to Ms McGavin and Ms Kidd with the subject line "PERSONAL GRIEVANCE AND DISPUTE RESOLUTION", Ms Hill raised concerns that she was being targeted for constructive dismissal and bullying. She said since the 3 March 2023 meeting, she felt consistently bullied and dismissed by senior management, with the restructure proposal coming 10 days after the meeting. At this point she advised she had been recording conversations based on legal advice received. Ms Hill stated she did not believe the correct process was being followed and requested that Tamaki organise a mediation.

[38] A short time later Ms Hill emailed again raising concern about what she saw as an expedited process in contrast with what she was told at the 16 March 2023 meeting. She referred to having been signed off on "stress leave", and the failure to acknowledge her email attaching her medical certificate which had compounded her distress and feelings of not being supported. She stated she did not believe the restructure process could proceed in good faith until they had attended mediation. Ms McGavin responded the same day.

[39] On 3 April 2023 Ms Kidd responded and advised that Tamaki had contacted the Ministry of Business, Innovation and Employment to arrange mediation and that the feedback meeting would be "postponed until we have move [sic] through the mediation process and reach a resolution".

[40] Ms Hill returned to work on 4 April 2023 and reports having a panic attack while driving to work. At lunch time that day, she emailed Ms McGavin attaching a "letter of support" dated the day before, which stated her "welfare would improve from working remotely, wherever possible". She requested to work from home for the "foreseeable future", quoting Ms Kidd's comment during the 16 March 2023 meeting.

[41] Ms McGavin responded to Ms Hill's request that afternoon, copying in Ms Kidd, acknowledging Ms Hill was struggling and required time to recover. She suggested Ms Hill take time off to recover without the pressures of work, and that she could return to the office when she was ready. The email said Tamaki was happy to meet with Ms Hill at any time in person or by video call to discuss the situation or arrange a without prejudice meeting, while the parties' awaited mediation. Ms Hill responded a short time later saying she could not take leave given her financial situation, asked for clarification about why the offer to work from home seemed to have been retracted, and she was okay to work and it was the office environment that was causing her distress.

[42] Ms Kidd responded saying the offer to work from home discussed at the 16 March 2023 meeting was not intended to be for the duration of the restructuring process. She further stated that:

(a) the proposal was in a consultation phase and no decisions had been made;
(b) Ms Hill's role was one that required her to be present in the office as it involved coaching and support of a team based in the office;
(c) she was willing to further discuss how the business could support Ms Hill to reduce any anxiety she may feel in the office.

[43] Ms Hill responded by email, setting out her understanding about the offer to work from home and thanked Ms Kidd for setting out her perspective.

[44] Ms Hill returned to work in the office. By email dated 11 April 2023, Ms Hill asked Ms Kidd to urgently reconsider her request to work from home, asserting Tamaki was required

to accommodate this request due to her experiencing adverse impacts to her health. She pointed out that the requirement to work in the office contradicted the proposed restructure which would have the Auckland team managed by a Wellington-based manager, Ms McGavin.

[45] By email dated 12 April 2023, TMA's chief executive officer offered for Ms Hill to take sick leave or annual leave if she was not well enough to attend work.

WorkSafe notification and suspension

[46] Ms Hill says that on 12 April 2023, she submitted a Mentally Healthy Work Notification to WorkSafe.

[47] Ms Kidd says on the morning of 14 April 2023, it was brought to her attention by one of Ms Hill's direct reports that email correspondence with a client, forwarded by Ms Hill to Ms Kidd the previous day had been edited before she had sent it on. Ms Kidd says she received advice in the morning about how to handle the investigation of this, including how to utilise the suspension clause in Ms Hill's employment agreement.

[48] On 14 April 2023, WorkSafe wrote to Tamaki explaining that it had received an allegation of workplace bullying and harassment but that it would not be taking any further action. Tamaki notes it was sent to it general customer service email inbox, which was monitored by customer service staff members.

[49] Following receipt of advice but before sending the email to Ms Hill, Ms Kidd received the WorkSafe letter, but viewed it only after she had identified the issue leading to suspension. She says it did not form part of her decision to deal with that. The same day Ms Kidd emailed Ms Hill. The email advised Tamaki had received "serious allegations" – namely Ms Hill may have "doctored documents and shared private information", which it viewed as improper behaviour, potentially dishonest and a risk to the company. It said Tamaki was forced to take action and invoke clause 25 of the agreement, which "required" it to suspend Ms Hill's employment until the matter was resolved. The email further advised Ms Hill was not permitted to undertake any work and must stay away from the workplace until further notice, while a two-week investigation took place.

[50] On 17 April 2023, Ms Hill's counsel wrote to Tamaki raising a personal grievance in relation to her need to work from home at the present time. The process for suspension was

not challenged, but reasons were sought for it. The letter also sought advice whether a mediation date had been confirmed.

[51] By email dated 18 April 2023, Ms Kidd responded to the matters raised in Ms Hill's legal representative's letter of 17 April 2023. She gave some details regarding two allegations that Ms Hill had:

(a) redacted times when the client was available for a review meeting, which required the general manager and national sales manager to be present; and.

(b) shared private details with AMs regarding her interactions with Tamaki and herself to the sales team.

[52] The email said its process was to speak to staff who reported the allegations. No information was sought from Ms Hill. The email confirmed mediation had been requested but no date had been confirmed yet.

[53] On 24 April 2023, Ms Hill's counsel wrote to Tamaki about her personal grievance. The letter provided a relatively detailed response to the allegations relied on for suspension, denying Ms Hill had acted dishonestly or improperly. The letter stated it appeared as a result of the 3 March 2023 meeting, Ms Hill was being made redundant and was suspended. Ms Hill asked to be permitted to work from home for the foreseeable future or until:

(a) the issues between the parties had been resolved; or

(b) Ms Hill felt comfortable returning to the office; and/or

(c) Tamaki was able to provide a reasoned explanation as to why Ms Hill was required to work from the office.

[54] Tamaki's counsel responded on 28 April 2023. It denied the restructuring proposal was as a result of Ms Hill's concerns raised at the 3 March 2023 meeting. Tamaki also advised:

(a) it was prepared to pause the disciplinary process in the circumstances;

(b) as mediation was unable to occur within a reasonable timeframe, it wanted to progress with the restructuring process;

(c) sought any further feedback on the proposal from Ms Hill by 5pm Wednesday 3 May 2023, in writing or in person; and

(d) it did not agree to Ms Hill working from home, and offered her paid special leave until 3 May 2023.

[55] Ms Hill's counsel wrote to Tamaki on 2 May 2023 commenting further on the request to work from home and the disciplinary allegations. In relation to feedback on the restructure proposal, the letter stated Ms Hill had already provided feedback by way of questions by email of 20 March 2023. The only further comment was that the proposed organisational structure map showed the Auckland Sales Manager role was to be taken over the by the National Sales Manager who is residing in Wellington. Clarification was sought about how this could be the case when Ms Hill's role was not a remote role and required her to work in the Auckland office.

Role disestablished and termination

[56] Tamaki's counsel responded by letter on Monday 8 May 2023. The letter said Tamaki had considered Ms Hill's further comments in relation to the proposed restructure and redundancy. It stated the proposal was based on "the idea" that the Sales Manager role had become surplus to requirements by reason of a genuine business proposal to (a) reduce management cost and (b) provide additional support for the sales team. The letter said Tamaki had decided to proceed with the restructuring proposal which meant Ms Hill's role was disestablished. It further advised Tamaki would now consider redeployment opportunities and would "be in touch further about this in the next few days". Ms Hill was asked to advise if she wished to provide any further feedback on redeployment opportunities. In the event no redeployment opportunities were identified, Ms Hill's employment would end on 5 June 2023, due to redundancy.

[57] On 12 May 2023 Tamaki advised Ms Hill via an email to counsel that it had considered redeployment opportunities. The two proposed roles were the only roles currently available, neither of which were suitable for Ms Hill. It further said three vacant roles in a related operation were not suitable either, being manufacturing and labouring roles. The email noted Ms Hill had provided no feedback on redeployment. It further notified Ms Hill that her employment was ending due to redundancy and advised that a payment in lieu of Ms Hill working out the remainder of her notice period would be made.

[58] By letter dated 19 May 2023, Ms Hill's legal representative reiterated Ms Hill's claims. Tamaki was invited to make a reasonable offer of settlement to Ms Hill to avoid legal proceedings. Tamaki's legal representative responded by email dated 22 May rejecting Ms

Hill's version of events and asserting it had acted fairly towards Ms Hill at all times. Tamaki declined the invitation to make an offer of settlement and advised it would be paying no more than Ms Hill's contractual entitlements.

[59] By email dated 29 May 2023, Ms Hill's counsel advised that unless mediation was agreed to, Ms Hill would be progressing an application to the Authority. Tamaki's legal representative replied by email dated 31 May declining to attend mediation.

[60] Ms Hill has provided the Authority with expired job advertisements of Tamaki, one of which is dated 30 November 2023 for an Auckland Regional Sales Manager.

Unjustified dismissal claim

[61] The Authority does not substitute its own judgement for that of Tamaki when called upon to assess its decisions that a position had become superfluous to its business needs and that Ms Hill, as the person holding that position, had to be dismissed because there were no suitable alternative roles for her in the business. Tamaki is not required to prove such measures were commercially necessary for survival of its business.[1] Rather, when considering whether Tamaki's decisions were justified, the Authority must determine whether its actions, and how it acted, met the objective statutory standard of being what a fair and reasonable employer could have done in all the circumstances at the time.[2]

[62] Where questions are raised about the commercial rationale for an employer's decision, or ulterior motives are alleged for the selection of a particular position for redundancy, the Authority's evaluation may consider whether the employer's decisions were made for genuine business reasons and "not used as a pretext for dismissing a disliked employee".[3]

[63] If the evidence disclosed Tamaki's motive for its decisions had mixed its business needs with underlying performance or personality concerns about the worker, the company would bear the burden of persuading the Authority that the predominant reason were the needs of the business. Any 'paper trail' generated at the time of making those changes may assist with identifying the motives for removing or changing job positions in the employer's workforce.

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[1] *Grace Team Accounting v Brake* [2014] NZCA 541 at [47].
[2] Employment Relations Act 2000, s 103A.
[3] *Grace Team Accounting*, above n 1, at [85].

[64] The Authority must also consider whether Tamaki's process for making and carrying out that decision was fairly conducted. Fairness, in this context, includes meeting the statutory good faith obligations placed on an employer proposing to make a decision likely to adversely affect the continuation of a person's employment. Employees likely to be affected should have access to relevant information and an opportunity to comment on it before a decision is made. How much must be done to meet those obligations of fairness and good faith will depend to some degree on the resources available to the particular employer.[4]

Genuine business reasons

[65] Conclusions about the evidence had to be reached on the civil standard of the balance of probabilities - that is what was more likely than not to have happened. In reaching the decision to dispense with role, the Authority finds it is more likely than not that Tamaki was motivated by a consideration of the savings to be made by reducing its management salary costs. However, the lack of financial analysis of the cost of management to the company and how that related to the overall performance of the company, along with how Ms Hill came to be included in the redundancy proposal and the fact a decision was made to re-establish the role a few months later, does not demonstrate the business requirements of the company required the disestablishment of Ms Hill's role at the time of dismissal. The scant evidence included in the witness statements and oral evidence provided to the Authority has shed limited light on the matters. For example, Ms Kidd's witness statement refers to Tamaki's financial position by saying in January 2023, Tamaki lost a particular client, which meant a significant reduction in revenue. There was no indication of how much revenue was lost and/or what financial implications that would have on the company.

Fairness of process

[66] As noted above, the duty of good faith requires, among other things, an employer proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of an employee's employment, to provide the affected employee with:[5]

(a) access to information, relevant to the continuation of the employee's employment, about the decision; and

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[4] *Grace Team Accounting*, above n 1 at [47].
[5] Employment Relations Act 2000, section 4(1A)(c)(i)-(ii).

(b) an opportunity to comment on the information to the employer before the decision is made.

[67] The information provided orally by Ms Kidd in the 16 March 2023 meeting and in the short PowerPoint document did not enable Ms Hill to fully understand the reasons relied on by Tamaki and to formulate a response. Late in the evening on 20 March 2023 Ms Hill asked several direct questions of Ms Kidd by email, seeking to better understand the situation. She asked for information about the rationale behind recently employing two AMs, creating a junior AM role, expected cost savings from the restructure and redeployment opportunities, and the use of AI to increase efficiencies in the business. Ms Kidd quickly responded with short email answers the next morning. This is the extent of the information provided by Tamaki. I find Ms Hill was not provided with sufficient access to information relevant to the continuation of her employment.

[68] After the 16 March 2023 meeting, Tamaki rushed to set up the next step in the process on the Thursday 16 March 2023 meeting by sending a letter requesting a meeting on 23 March 2023, despite agreeing that Ms Hill could think about it over the weekend and would come back to it with a reasonable timeframe. Despite this initial rush, Tamaki was pushed into slowing the process down, with her asking for a later date to provide feedback.

[69] Ms Hill has noted that Tamaki attempted to continue the process while she was on sick leave. However, Ms Hill was not required to provide feedback, rather, an attempt was made to set up a meeting the day after her expected return to work. The alternative option of providing feedback by other means was also given. Although Tamaki could reasonably have waited until Ms Hill's return to work to request a meeting, I do not find that what, if any, unfairness arose from it.

[70] It was agreed on 3 April 2024 that matters would be mediated. By 28 April 2024, Tamaki says no mediation date had been offered. Rather than seeking urgent mediation or pursuing without prejudice discussions via counsel, Tamaki retracted the agreement to mediate by 28 April 2024, saying it had agreed to the suggestion of postponing the feedback meeting until mediation had taken place on the mistaken understanding it would be a quick process. It is difficult to see how reneging on its agreement to mediate, after having commenced a disciplinary process in a flawed manner, to then require feedback from Ms Hill in a truncated timeframe, could be found to be what a fair and reasonable employer could do.

[71] Another substantive issue concerning fairness of the process concerned whether consideration was truly given for the prospects of redeployment to another position in the business. Although couched as being subject to redeployment to another role, Tamaki gave Ms Hill four weeks' notice of termination. Although the prospect of Ms Hill being open to redeployment by this stage was unlikely, giving Ms Hill notice of termination and then no timeframe for a response before it proceeded to determine Ms Hill was not suitable for roles, left it vulnerable to criticism.

[72] Taking into account relevant matters, the restructuring process and decision to dismiss Ms Hill was not what a fair and reasonable employer could have done in all the circumstances at the time. Ms Hill has established she had a personal grievance for unjustified dismissal.

Unjustified disadvantage grievances

[73] To establish a disadvantage grievance it is necessary to show that the employee's employment, or one or more conditions of the employee's employment, is or are or was affected to the employee's disadvantage by some unjustifiable action by the employer.[6]

Bullying

[74] As set out in case law, the definition of workplace bullying is repeated, and unreasonable behaviour directed at an employee. It takes place over a period of time and can take various forms. Having carefully considered the evidence, it does not a support a finding based on the balance of probabilities, that Ms Hill was subject to bullying or exclusionary behaviour.

Suspension

[75] Ms Hill must establish that the suspension was unjustifiable and affected her terms and conditions of employment to her disadvantage.

[76] In deciding whether to suspend an employee, an employer must comply with the rules of natural justice and, in order to meet the test of justification as set out in s 103A of the Act, must follow a fair and reasonable process. The rules of natural justice also mean an employee

[6] Employment Relations Act 2000, s 103(1)(b).

generally ought to be told a suspension is being contemplated, the reasons why, and almost always be given an opportunity to be heard before a decision is made.[7]

[77] Generally suspension is only possible if there is a specific contractual right under the employment agreement to suspend and there is a real business need to suspend. Even with a contractual right to suspend, it must be exercised in a fair and reasonable manner and be justifiable in all the circumstances. In *Singh v Sherilee Holdings Limited* the Court commented:[8]

> To justify suspension, an employer must have good reason to believe that the employee's continued presence in the workplace will or may give rise to some other significant issue.

[78] There was a contractual right to suspend in the employment agreement in response to a complaint regarding dishonesty or improper behaviour. Whether it was on pay or not was stated to be at Tamaki’s sole discretion.

[79] Tamaki submits the suspension was justifiable in the circumstances and did not in any way disadvantage Ms Hill. It submits that the correspondence that followed from Ms Hill’s counsel, there was nothing to indicate that any particular emotional response was triggered in Ms Hill by the suspension. In fact, it says, it allowed for what Ms Hill was seeking, a further delay and paid time away from the office. Those submissions are not accepted. Ms Hill had shown she was willing to work in the office despite her health concerns and was still attending the workplace at the point she was suspended. Tamaki’s actions in preventing her from working and the lack of consultation were both actions that affected Ms Hill’s terms and conditions of work. Tamaki’s unjustified actions in this regard made Ms Hill’s already tenuous work environment even more so. The unjustified disadvantage grievance relating to suspension is established.

Remedies

[80] Ms Hill has established personal grievances for unjustified dismissal and unjustified disadvantage in relation to the suspension. She is entitled to a consideration of remedies.

Lost wages

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[7] *Hong v Auckland Transport* [2019] NZEmpC 54 at [50].
[8] *Singh v Sherilee Holdings Limited* AC 53/05 22 September 2005 at [91].

[81] Ms Hill found alternative work quickly within another business, but that role was made redundant. Ms Hill seeks one weeks' wages for the period 5 June to 12 June 2023, and 14 weeks for the period 28 August until 5 December 2023 until she found further employment. I am not satisfied the fact that Ms Hill's next role also became redundant should result in liability to Tamaki in the circumstances. Further, no evidence has been produced around Ms Hill's efforts to apply for alternative employment. It is also unlikely the employment relationship would have continued indefinitely into the future given the state of the employment relationship. In light of these matters, Ms Hill is awarded one weeks' lost wages only.

Compensation under s 123(1)(c)(i) of the Act

[82] I am satisfied Ms Hill has experienced significant harm under each of the heads of s123(1)(c)(i) of the Act as a result of the both the unjustified dismissal and suspension. I consider that an appropriate amount of compensation, taking into account current awards and the impacts on Ms Hill, is $18,000 in relation to the dismissal, and $5,000 in relation to the suspension.

Contribution

[83] Tamaki has submitted that Ms Hill embarked on a course of action suggested in a private conversation after the meeting of 16 March 2023. However, the remarks of concern were made by Ms Hill's partner and not by her. The audio recording amply demonstrates her emotional upset at the time and does not indicate she agreed with the remarks. The evidence is clear that Ms Hill sought legal advice and the procedures followed were based on legal advice which she received. Although Ms Hill could likely have been more active and constructive in her communications during the redundancy process, I am not satisfied this would require a reduction in remedies for contribution. Further, there is no reasonable basis for finding Ms Hill contributed to Tamaki's procedural failures in relation to the suspension process, and no form of dishonesty or improper behaviour was established. No adjustment to remedies is required in this case under s 124 of the Act.

Outcome

[84] Ms Hill has established personal grievances for unjustified dismissal and disadvantage in relation to her suspension.

[85] Within 21 days of the date of this determination, Tamaki Labour Hire Limited is to pay Karen Hill:

(a) One weeks' lost wages; and

(b) $23,000 in compensation pursuant to s 123(1)(c)(i) of the Act.

Costs

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

[87] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Hill 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 Tamaki will then have 14 days to lodge any memorandum on costs in response. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[88] 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.[9]

Sarah Blick
Member of the Employment Relations Authority

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