

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 421
3302700

BETWEEN CAROL HODGSON
Applicant

AND TITUS TRANSPORT
LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: Allan Halse, advocate for the applicant
June Hardacre and Rob McStay, counsel for the respondent

Investigation meeting: 17 December 2024, 31 March, 1 and 14 April 2025 in Auckland and by audio-visual link

Submissions At the investigation meeting from the applicant
At the investigation meeting from the respondent

Date: 15 July 2025

DETERMINATION OF THE AUTHORITY

[1] This determination deals with an unusual and unfortunate series of events where a May 2023 email and later an August 2023 text message were received by the employer Titus Transport Limited (Titus), seemingly from its employee Carol Hodgson. Ms Hodgson denies sending both of them, saying they did not come from her email address or phone number. Titus appeared to accept her denials but Ms Hodgson became dissatisfied with Titus's actions regarding those communications and resigned.

[2] Titus is a third-party logistics provider specialising in logistics and transportation, including managing complex supply chains. Ms Hodgson was involved in dispatch.

[3] Ms Hodgson brings unjustifiable disadvantage and constructive dismissal grievances. Titus says that, although it is not unsympathetic to Ms Hodgson's position, she is looking for someone to blame for what happened to her. At the time Titus wanted Ms Hodgson to stay and thinks it did everything it could to achieve that.

The Authority's process

[4] The statement of problem identified Clint Rolfe, director of Titus as the respondent. The statement in reply identified Titus Transport Limited as the respondent.

[5] The applicant was agreeable to Titus Transport Limited becoming the respondent. Under section 221 of the Employment Relations Act 2000 (the Act) I directed Titus Transport Limited to become the respondent and Clint Rolfe to be struck out as a party.

[6] The Authority received written witness statements from Ms Hodgson and Titus' Tania Rolfe, Ana Moala, Salesi (Les) Loloa and another Titus staff member I refer to as Mr S. All gave evidence under oath or affirmation and answered questions.

[7] The investigation meeting was scheduled for 17 and 18 December 2024. At the start of the 17 December meeting Ms Hodgson's representative provided an additional witness statement from her. On its face it was not a reply statement. An explanation was given regarding not having access to documents from Titus sooner and Ms Hodgson's memory being triggered to look for diary notes. Titus' representative provided some meeting minutes regarding meetings which Ms Hodgson did not attend, including a toolbox meeting.

[8] In light of the new witness statement, Titus' representative was concerned about continuing the investigation meeting, without the opportunity to brief two important witnesses who were not present at that point and thus not properly being able to question Ms Hodgson.

[9] Ms Hodgson wished to proceed but Titus did not as it was not able to prepare properly. It became apparent that Ms Hodgson had two diaries which covered relevant events. Copies of relevant portions were taken and provided to Titus. I decided that I would proceed to hear Ms Hodgson's evidence in response to Authority questions and then adjourn to allow Titus to prepare. The parties were also encouraged to make

further efforts to resolve the matter, now that a proportion of Ms Hodgson's evidence had been heard.

[10] There were challenges finding dates which suited everyone and the meeting resumed on 31 March and 1 April 2025. The meeting was completed on 14 April 2025 when submissions were heard by audio-visual link.

Issues

[11] The issues for investigation and determination are:

- (a) Was Ms Hodgson disadvantaged by unjustifiable actions of Titus:
 - (i) Its response to a 2 May 2023 email purporting to be from "Carol" including inadequately investigating it and inadequately supporting Ms Hodgson;
 - (ii) Requiring her to undertake additional dispatch duties;
 - (iii) Failing in its health and safety and good faith obligations;
 - (iv) Its response to a 2 August 2023 text message purporting to be from "Carol";
 - (v) Standing down or suspending Ms Hodgson, including financially disadvantaging her; and
 - (vi) Applying disparity of treatment in treating Ms Hodgson in a worse manner than the person she believes sent the email and/or text?
- (b) Was Ms Hodgson constructively dismissed by Titus (including consideration of foreseeability) and if so, was that unjustified?
- (c) If Ms Hodgson establishes a personal grievance, should she receive:
 - (i) Lost wages and other money including Kiwisaver – any difference in earnings whilst stood down/suspended;
 - (ii) Lost wages and other money including Kiwisaver – after any dismissal; and
 - (iii) Compensation for humiliation, loss of dignity and injury to feelings of \$20,000 per disadvantage and \$20,000 for any dismissal?

(d) Should either party have to contribute to the other party's costs?

[12] Reference to discrimination in the statement of problem was clarified to relate more broadly to adverse treatment rather than discrimination as defined in s 104 of the Act.

The parties' backgrounds

[13] Ms Hodgson has worked primarily in the transport industry for the last ten years or so.

[14] In late 2021 she started with Titus as a temporary employee, becoming permanent in April 2022.

[15] Titus is very much a family business – couple Clinton and Tania Rolfe run the business with Mr Rolfe as the director, Mr Loloa is their son in law and at least a couple of other family members also work in the business. Ms Rolfe earlier practised as a lawyer and later became Titus's HR manager. In Ms Hodgson's time with Titus it had around 45 to 50 employees. Ms Rolfe describes Titus as a face to face business, with formalities coming after that.

[16] This was a time of flux for Titus. In April 2023 the Rolfes relocated to the Bay of Plenty, still intending to manage the business from there. Ms Rolfe worked from home and would occasionally go into the Auckland and other branches. She worked towards stepping down as HR manager with Mr Loloa, the former HR co-ordinator, stepping up into the manager role.

[17] The Rolfes and Ms Hodgson enjoyed a good relationship with Ms Hodgson feeling free to raise things with them face to face, in a respectful way, sometimes about her personal matters. They had helped her on occasions with things.

[18] Ms Hodgson was less confident about Ms Moala and had not had much to do with Mr Loloa. Generally Ms Hodgson really enjoyed working at Titus.

[19] Ms Rolfe describes a number of scammers contacting the business, including pretending to be employees and asking for bank account details to be changed. At least one of these occurred prior to the first incident involving Ms Hodgson - what is assumed to be a scammer emailed the accounts section, impersonating a senior manager, seemingly with some knowledge of the organisation.

Ms Hodgson's role and training

[20] During the investigation meeting Ms Hodgson expressed concerns about whether she had effectively been required to change roles by Titus and had training imposed on her for the new dispatch role.

[21] Ms Hodgson started with Titus through a recruitment/personnel company on what she understood to be a customer service and dispatch administrator role. She saw Titus as later requiring her to move to a head dispatcher role when Mr S was transferring to another Titus role.

[22] Mr Rolfe had seen potential in Ms Hodgson when she was a temp and steps were taken to offer her a permanent role. It became apparent during the Authority's investigation meeting that Ms Hodgson was not focused on her Titus employment agreement, which identifies her as "dispatcher", responsible in the schedule to "Head Dispatcher/Operations Manager". Rather she describes being happy and excited to achieve a permanent Titus role and not thinking the title was important. Ms Hodgson sees herself as working very satisfactorily as a dispatch administrator and then being required to move to dispatcher role without her really agreeing to that.

[23] Titus takes a different position - it had allowed Ms Hodgson to operate at least partially as more of a dispatch administrator for a time as she was more comfortable with that than the dispatcher role which was specified in her employment agreement. Later there was more need for her to operate in the dispatch role, in addition to the other two people trained in dispatch and so training was provided to her.

[24] Titus arranged for Ms Hodgson to have dispatcher training to supplement her skills. The training was to cover a four week period, although ended up being extended.

[25] Ms Hodgson seemed to connect what happened with the May email (detailed below) with getting a less supportive environment and being required to be Head Dispatcher. The timing of this does not sit easily - Titus had already arranged for the training and it had started (albeit briefly) by the time the email was sent.

[26] Although the issue of Titus requiring Ms Hodgson to undertake additional dispatch duties was part of the disadvantages identified early on in the Authority's process, there was little mention of it in closing submissions.

[27] The training started on 1 May 2024, primarily provided by Mr S. Even if Ms Hodgson was the only dispatcher on the desk at a time, Mr S and Mr W were both able to keep a check from their phones about what was happening with dispatch and do dispatch tasks from their phone if necessary. Ms Hodgson sought advance notice about the days or times she was going to be dispatching. Sometimes this could be provided, but not always.

Conclusion

[28] Ms Hodgson was not focused on her designated role in the employment agreement. It was not established that Titus acted unjustifiably in requiring Ms Hodgson to undertake dispatch training to undertake that work.

2 May email

[29] On Tuesday 2 May at 11.01pm an email from a gmail address, which included Ms Hodgson's name and a number, was sent to the Titus owners' Clinton and Tania Rolfe with the subject line – Request Change in Dispatch:

... Since I have been appointed to upskill myself within dispatch since Monday, I would like to make some changes for the next 4 weeks of my training.

As [Mr S] will be teaching me from the ground up for dispatch 2 weeks, then on 3rd week ... On the 4th week I am requesting for [Mr S] to be on road driving and place [Mr G] as he is keen to learn dispatch. ... I am happy to train [Mr G].

Since being in that seat 2 days I think it's a privilege from [Mr W] as I have learned so many things in dispatch. I believe I can run dispatch without [Mr W] and [Mr S] on the 4th week. As you know I have previously ran the dispatch team at [two companies Ms Hodgson had previously worked for] with great outcome. It will also help [Mr W and Mr S] to focus on other avenues with Titus.

[Ms Hodgson's husband's name] and myself have also requested that once I am fully trained my hourly rate shall line up to \$35 plus hour since I'll be more on senior dispatch with added work for me.

If my hourly rate cannot be adjusted above my current rate of \$28 then I would have to find another job.

It is a very stressful job hence why requesting extra money.

As you know I was not fully aware of these changes and was placed into that seat with short notice and expect better from you.

I hope you can understand the situation.

Kind Regards
Carol and [*her husband's name*]

[30] Mr G, referred to in the email was a former Titus employee, who had just started back with the company on 1 May 2023.

[31] Although not specifically expected by Titus, an email proposing change to the training and a pay raise was not totally surprising. Initially Ms Rolfe thought the email was from Ms Hodgson – it came from an email address containing Ms Hodgson's name, referred to her husband's name and spoke about work matters relating to Titus and Ms Hodgson, with some knowledge base.

[32] Ms Rolfe's initial assumption was that the email came from Ms Hodgson. Ms Rolfe forwarded the email on to Ms Moala and Mr Loloa to discuss with Ms Hodgson.

[33] The version of the email Mr Loloa received initially had the email address blacked out with only "Carol Hodgson" identified as the author's name. He was not that surprised by its content as he had developed the schedule for her training and she had raised issues about her pay and role with him and another manager. For example, he thought only he, Ms Hodgson and the Rolfes would know Ms Hodgson's pay rate. Auckland Branch Manager Ms Moala had a similar view, being aware of Ms Hodgson's vocalness including her dissatisfaction with the dispatching role.

4 May meeting

[34] Ms Moala and Mr Loloa arranged to meet with Ms Hodgson. This meeting was arranged informally – Mr Loloa asked Ms Hodgson if she could meet them in about 15 minutes. Ms Hodgson, as was her habit when invited to meetings, asked if she was in trouble. She also asked if she should bring someone. The response to her questions was it was an informal meeting and nothing to worry about. Mr Loloa saw the purpose as being to address concerns which he thought Ms Hodgson had raised in her email.

[35] The meeting was recorded and a file note detailing the meeting, if not a transcript in the strict sense, later completed.

[36] Early on Ms Moala refers to the meeting being about the email to the Rolfes and looking for some answers. Ms Moala initially talks about guidelines for whom Ms Hodgson is reporting to and the fact that was not done here - she should not have been reporting to the business owners.

[37] Ms Hodgson questions about the email and after a little to'ing and fro'ing, Ms Hodgson says she has not sent anything. Mr Loloa then says the meeting is paused as Ms Hodgson is saying she has not sent an email. Ms Hodgson is looking through her phone. She confirms she has not sent the email and says she does not think it is fair carrying on the meeting believing she sent it when she did not.

[38] Mr Loloa shows Ms Hodgson the email. She confirms it is not her email address but her husband is named in the email. Ms Hodgson becomes upset. Ms Moala acknowledges that everything is very much up in the air and they are trying to investigate. Mr Loloa confirms that they are happy to investigate and goes to get another laptop.

[39] Ms Hodgson seeks to take a photo of the email. Ms Moala is cautious about that – identifying that if Ms Hodgson is saying the email is not hers then it belongs to Titus. Ms Moala says she will let Ms Hodgson know. Ms Hodgson explains in some detail why she would not have sent the email and says she is going home, given what is happening.

[40] Ms Moala indicates Ms Hodgson should do whatever she's got to do. Mr Loloa says there have been fraudulent emails going round the business before and gives some examples. Ms Hodgson expresses concern that details which only a few Titus people would know are in the email. There is some exploration of who might have known. She is upset and shocked, describing feeling it will be hard to go back to work. Ms Moala suggests not driving if she is upset and staying in the meeting room. Can they do anything to help her out? Ms Hodgson asks if they can find out who sent the email.

[41] At one point Ms Hodgson asks if they want her to resign, she will. Ms Moala says no, that was never the intention. Mr Loloa indicates the business is happy to support where it can. Ms Hodgson is upset and crying, leading Ms Moala to ask if they can call anyone or should they go.

[42] Ms Moala asks if Ms Hodgson wants to have a more personal conversation. They stop recording. Ms Moala describes a welfare check being undertaken.

[43] In oral evidence Ms Hodgson recalled a comment during the meeting by Mr Loloa that the email came from the address Titus had on file for her. That comment is not reflected in the meeting notes although the recording did not cover the very final portion of the discussion. A letter sent by Ms Hodgson's representative to Titus on 21

August 2023 refers instead to the HR advisor saying he did not check the personnel file but saw part of the email address was Ms Hodgson's name so "just thought" it belonged to her. A second reference later in the letter refers to the HR advisor realising a mistake had been made and saying "my bad". Ms Hodgson agrees he said that. I disregard Ms Hodgson's evidence that the email was said to come from her address.

[44] I also disregard a statement in that letter that Ms Hodgson was told she could have 15 minutes as it looked like she was upset, then she can go back to work. Ms Hodgson's evidence to the Authority that Ms Moala said "do what you need to do". Also that Ms Moala did not want Ms Hodgson to be unsupported and leave if she was upset. Mr Loloa also offered support, Ms Hodgson accepts.

Between meeting events

[45] Ms Hodgson took the remainder of Thursday 4 May and Friday 5 May 2023 off work. She sought and received a medical certificate for a short time off.

[46] On 9 May Ms Hodgson emails Ms Rolfe and she responds.

[47] Steps taken by Titus include reviewing information and advice on the Netsafe website about what could be done to identify the owner of the email address and reviewing Gmail's terms and conditions to see if they could trace or reverse IP address. The checking of company phones revealed nothing.

[48] Ms Rolfe wondered if she had spoken to the internal IT person (who was her son) or the external IT person around this time but was unable to confirm that and accepted August 2023 communications with the external person suggested that was the first discussion.

[49] Mr Loloa said the price estimate for an independent forensic investigator was \$2,000 to \$30,000. This second figure may have been a misunderstanding – Ms Rolfe's experience was that it might cost \$2,000 to \$3,000 (likely assuming it was relatively straight forward). Titus did not consider that the likelihood of receiving useful information was high and the costs thus not worth it. Titus also saw it could do little regarding the possibility of the employee's husband, as a non-employee, being involved.

[50] Some of the investigation appears fairly informal. For example, at least some of those who had the information in the email were questioned, in some cases by each

other, for example Ms Rolfe questioned Mr Loloa then Mr Loloa questioned her. There is no documentation of these discussions in May 2023.

[51] At some stage Ms Rolfe and Mr Loloa understood Ms Hodgson was going to the police, which they saw as appropriate than Titus going, as she could be seen as the victim.

[52] The preventative measures Titus adopted were to:

- get staff members' email addresses registered with the company and encourage staff to check that incoming emails seemingly from staff were from those addresses
- caution staff to be alert for calls and emails requesting staff information and watching out for possible fraudulent emails, calls and texts including emails which did not go through the usual reporting lines
- implementing a new bullying and harassment policy.

[53] Toolbox meetings were used to educate staff on these measures.

11 May meeting

[54] Ms Moala, Mr Loloa and Ms Hodgson met again. A recording was taken and detailed file note compiled afterwards.

[55] Mr Loloa indicated Titus had done as much investigation as it could into the email, acknowledging the email address was not the one Titus had registered for Ms Hodgson. To go further digital investigators would be required, which is quite expensive and Titus was not prepared to do that. Ms Hodgson is provided with a copy of the email.

[56] Ms Hodgson expressed her views that:

- the assumption the email was from her made her sad, as well as not checking the address
- the email came from someone within the business which made her question whether she was safe

- it is up to Titus how it puts together its dispatch training and she is willing to do it.

[57] Mr Loloa acknowledged that the email was not hers but sees it as speculative whether it comes from someone in the business. If Ms Hodgson wanted to continue the investigation Titus would support her.

[58] Ms Hodgson thanked the other two and mentioned Ms Moala for the supportive email she sent Ms Hodgson. Ms Moala describes Ms Hodgson being in high spirits at the end of the meeting, saying she had decided to look at the dispatch role from a different perspective.

Disadvantage regarding first incident

[59] Ms Hodgson and her representative identify a number of concerns at this stage although noting Ms Hodgson accepted to the Authority that “we never anticipated a second incident”.

Notification about meeting

[60] Submissions for Ms Hodgson are critical of the company calling her into the 4 May 2023 meeting without telling her what it is about and offering her the opportunity to have a support person present. Ideally employees being invited to meetings would have some idea of what it was about. However here the Titus managers thought the email was from Ms Hodgson, expressing her concerns, and so there was little need for advance notification.

[61] There is no evidence that Titus intended this to be an investigative meeting which could lead to disciplinary action. It wanted to talk to Ms Hodgson about the concerns it thought she was raising in the email and work out what to do about them. No formal disciplinary allegations were put to Ms Hodgson at the meeting and there was no disciplinary outcome. This was not intended to be, and did not become, a disciplinary meeting.

Management representatives

[62] Ms Hodgson expresses some dissatisfaction about those dealing with the meetings.

[63] Ms Moala and Ms Hodgson had not always had friendly interactions. Having seen an email exchange between Ms Rolfe and Ms Moala regarding a 2022 interaction and hearing Ms Moala's evidence, I am not satisfied that Ms Moala was biased against Ms Hodgson, thus being an unsuitable person to deal with this matter. At the time Ms Hodgson did not express concerns to Titus about Ms Moala's involvement. It was not unreasonable for the company to have Ms Moala as one of its representatives dealing with Ms Hodgson's situation.

[64] Mr Loloe now acknowledges that at the time he was somewhat inexperienced. He sent an unfortunate email regarding Ms Hodgson's representative but this was some months after Ms Hodgson left Titus.

[65] Ms Hodgson would likely have preferred Ms Rolfe to deal with this issue but she had just moved and was starting to hand over her HR responsibilities. She did still have some involvement in Ms Hodgson's situation.

[66] The question is whether the company acted as a fair and reasonable employer could have done in all the circumstances.¹

Presumption about the email's author

[67] It was suggested by Ms Hodgson that Ms Rolfe should have investigated early and found out that the email did not come from the usual personal email address which Ms Hodgson occasionally used for communications with Ms Rolfe.

[68] In a perfect world that might have been the case. The email has a firm or harsh tone. But on the information before the Authority, it is not so outlandish that the first question in people's minds would naturally be 'who sent it, it can't have been Carol?'.

[69] The initial assumption the email came from Ms Hodgson was not unreasonable. Given its content a meeting with her seemed an appropriate course.

[70] Fairly early on in the meeting Ms Hodgson indicates she did not send the email. At least in retrospect she is not happy with the approach the Titus representatives took in response, saying they did not treat it seriously, with Mr Loloe referred to as scammers.

¹ Employment Relations Act 2000 (the Act), s 103A.

[71] Ms Hodgson told the Authority that neither came out and said to her that she did not send the email, leading her to think they did not believe her.

[72] While Ms Hodgson would no doubt have preferred a statement that they believed her, in the most unusual circumstances, I do not consider it was unreasonable for the Titus representatives not to make such a categorical statement at this point. They did provide several indications of support to her.

Failure to provide email

[73] Ms Hodgson says she was not allowed to read the email entirely but did skim read it, acknowledging she did not seek more time during the meeting for reading. And when she asked for a copy she was told she could not have one as it belonged to Titus.

[74] Again the unusual circumstances Titus' representatives uncertainty about Ms Hodgson's entitlement to a document she was saying she had not sent is understandable. The file note from the 11 May 2023 meeting suggests Ms Hodgson was given a hard copy of the email at this meeting, saying she would show it to her husband.

Investigation

[75] Ms Hodgson considers there was a lack of investigation. Certainly Titus's investigation process in May 2023 was relatively informal although it did take steps to try to identify the email's sender.

[76] Neither party brought a forensic expert to the Authority's investigation meeting. Whether the appointment of such a person in May 2023 would likely have provided more useful information is somewhat speculative but steps taken in August 2023 suggest it may not have. A person using their own device may not have been identifiable.

Outcome and working environment

[77] Titus rolled out a new bullying and harassment policy which was discussed with work teams reiterating the definitions in the policy. Options to raise concerns were listed as putting a note on the HR manager's desk, completing an incident report and reporting to manager/direct managers. Other steps were taken to collect staff members' personal email addresses and reinforce the checking of those if emails were received.

[78] Titus decided to meet with Ms Hodgson to discuss the outcomes rather than send her a letter. In some ways this seems preferable as Ms Hodgson herself describes preferring face to face interactions. However, either at the 11 May 2023 meeting or subsequently, there was little or no detail provided regarding the steps taken or information obtained or detailed description of why further steps were not taken. Ms Rolfe acknowledges that there was a lack of communication.

Conclusion on disadvantage grievance

[79] There is some validity to Titus's point that Ms Hodgson is looking back and thinking what should have been done rather than reflecting what she thought or asked for at the time.

[80] Under other circumstances a failure to stop the 4 May meeting could have been unfair but in these particular circumstances I conclude it was not. Ms Hodgson willingly continued the discussion and did not repeat her request. She became engaged.

[81] In terms of investigation, there was a limited amount done. Ms Rolfe and Mr Loloa both struggled to think that a Titus team member would want to hurt another. There were discussions with some of those who knew parts of information contained on the email. A couple of others were not interviewed. However, in light of their August interviews denying knowledge this does not seem to have resulted in Ms Hodgson being treated unfairly.

[82] What more could have been done to prevent recurrence and guarantee a safe environment safe is not clearly identified on Ms Hodgson's behalf.

[83] There was more that could have been done to communicate with Ms Hodgson. When asked why nothing was put in writing to Ms Hodgson about what steps Titus had taken to investigate, Ms Rolfe acknowledged that there was a lack of internal communications about who did what, including who should communicate further to Ms Hodgson. Ms Rolfe saw it as an on-going investigation. Perhaps an uncompleted investigation is more accurate, as there were no further steps planned by Titus. If anything else came up it would be utilised, including from any investigation Ms Hodgson undertook.

[84] Considering Titus's good faith obligations to be open and communicative with Ms Hodgson in a way that maintained their employment relationship, it did not do what

a fair and reasonable employer could have done to let her know about its investigation and why it concluded the investigation was complete from its end.² Titus's unjustified actions disadvantaged Ms Hodgson, leaving her feeling unprotected.

[85] Remedies are considered below.

Request for further training

[86] Ms Hodgson's training was impacted by the email incident. She feels her training was, at least in parts, poorly planned and poorly supported.

[87] By 14 June 2023 letter Titus acknowledged positive results with Ms Hodgson's development plan but indicated she needed to further develop with one more week of training.

[88] Ms Hodgson acknowledges there were some good parts of the training and some not so good. Ms Moala regarded Mr S as pretty good at dispatching so Ms Hodgson had the tools necessary there and other people to go to if needed. Mr W was able to dispatch and Ms Hodgson appears to have had a good relationship with him.

[89] Ms Hodgson describes the additional responsibilities only increasing her stress, feeling increasingly insecure. On occasions she found Mr S walked away from assisting her.

[90] Mr Loloa recalls Ms Hodgson seeming a bit off. At one point she had a "vent off the books" about Mr S to him but when he asked if she wanted to formalise it, she declined.

[91] Ms Hodgson refers to being quite vocal about her dislike for the dispatch role, recognising that she was struggling to meet everyone's needs and perform well. Evidence from others in several forms supports that.

No disadvantage regarding training

[92] Ms Hodgson had not established that any dissatisfactions with the training can be regarded as amounting to unjustified actions to her disadvantage.

² The Act, s 4.

2 August text from “Carol”

[93] While Ms Hodgson is on bereavement leave a text message is received in the evening of 2 August 2023 by Mr Loloa, Mr Rolfe, Mr S and Mr W, saying:

Hi Team,

Please note I have received a txt from dispatch mobile stating I should be starting at 8am as of tomorrow to carry out dispatch full time.

I don't understand why Ana and Les cannot talk to me face to face and instead via txt [I] am very upset and feel down as I already mentioned to [Mr W and Mr S] that I am in no position doing dispatch as I do not have any knowledge of it. I understand I got training but it's a waste of time.

Last few months I have been thrown into dispatch without proper notice and struggle to meet everyone's needs.

I am in tomorrow but VIA TXT I would like to render in my resignation, giving 2 weeks notice and my last day will be 18/08. If you have any issues you are welcome to talk face to face tomorrow.

Thank you Carol

[94] Ms Rolfe is suspicious after the May email. Also, resigning by text was not a common practice at Titus and she did not think Ms Hodgson would do that. Ms Rolfe called the number but it went straight to voicemail. She left a message asking for a call back but that did not happen.

[95] Ms Hodgson comments she would not use the word “render” in this context.

[96] There was acknowledgement from Ms Hodgson that the email contained views she had expressed in the workplace.

Following weeks

[97] The next day, 3 August 2023, Ms Rolfe calls Ms Hodgson, telling her about the text received from a number Ms Rolfe was not familiar with. Ms Hodgson confirms she had not sent the message and was not resigning. She now accepts it was not a supportive time for a discussion given she was on bereavement leave and Ms Rolfe was heading off for to a graduation ceremony. Ms Rolfe gets confirmation Ms Hodgson is not resigning said she was not. Ms Rolfe tells Ms Hodgson they will let the team know the text was not from Ms Hodgson but the details would be kept confidential.

[98] Ms Rolfe gives Ms Hodgson the option of returning to work or staying home while they investigated. Ms Hodgson agrees to stay home. Ms Rolfe asks Ms Hodgson to get in contact if there is anything else she needs. No timeframe is put on what becomes referred to as the standing down, as it is not clear how long will be needed and Ms Rolfe thinks Ms Hodgson might be shocked by the text.

[99] From there the timeline continues as follows:

- 4 August Ms Hodgson emails Ms Rolfe – confirming she did not communicate her resignation and she appreciating Ms Rolfe touching base with her before accepting the resignation.
- 6 August Ms Rolfe sends a lengthy email to Ms Hodgson. Communications will be through her. The standing down to allow the investigation and protect her wellbeing and that of other staff is noted.

Titus has started “*comprehensive investigation*” into the email and text, which will incorporate “*the possibility of a private investigator*”, with police indicating no laws have been broken and it is not a police matter. “*Company privileged/sensitive information*” would not be disclosed [presumably to Ms Hodgson] but any “*findings that will bring this matter to a conclusion or relating to*” her will be provided. Managers have been contacted to provide information and Ms Hodgson may be contacted but currently Titus is unable to give an indication of a timeframe for the investigation.

Comments are made regarding the Dispatching Plan - including that adequate training was provided, Ms Hodgson saying it is a 2-person job and Ms Rolfe saying Titus’s position was never that she would be there on her own. “*This point has been confirmed*” by [Mr S, Mr W and Ms Moala].

“Titus is taking this matter seriously and it is our hope that it can be resolved in a timely manner. We will need to discuss further, if we exhaust all reasonable means in trying to locate the person/s who sent the email/text and are unable to. It would not be financially viable to continue if there is no possibility of locating anyone it is advisable that you also conduct your own investigation with your own means to track down any possible lead/person responsible for this.

... Should you have any further questions please contact me directly”.

6 August

cont

Ms Rolfe contacts Titus's IT adviser asking how to trace the May email address and for help finding the text sender, "*it is all very suss*". Further emails are exchanged. Ms Rolfe writes "*we think it is coming from her or her husband. But without any hard evidence Titus will have to instruct a Private I, maybe?*".

The IT person suggests googling to look for more information like the IP address.

11 August

Ms Hodgson emails Ms Rolfe to let her know that she has contacted Netsafe, who wanted copies of the email, text and phone number it came from.

13 August

Ms Rolfe sends Ms Hodgson the email and text original message, including:

We are still waiting on our investigator to make contact around their findings – but will make contact when we have done so.

What are your thoughts on returning to work but potentially in another departments while we continue to work through this with you and the other services involved?

14 – 15

August

Ms Moala, Mr Loloa and Ms Rolfe email about an office assistant position description which will be offered to Ms Hodgson once "signed off". Some checking is needed about the budget and higher pay rate. Mr Loloa is to offer this to her at their next meeting, although this was not to be.

17 August

Ms Hodgson receives a missed call and voice message from Mr Loloa and texts - he is free to chat now if she would like.

18 August

Ms Hodgson texts back noting "*I would like to keep all correspondence to email at this time. It just ensures we both can keep track of what is said and keeps everything transparent. Please don't hesitate to email should you require anything or if there is an update regarding the investigation. ...*"

Mr Loloa responds - "*the purpose of this meet is to understand how we can help liaise you back to work. The purpose of a face to face is to [make] it as stress free for you as possible as emails can drag out a process and tone is crucial when dealing with this. If you would like to keep it to emails, I'll send you a letter*".

Ms Hodgson responds – *“Thank you Les. Yes please if you can email me that would be appreciated.”*

21 August Seemingly due to a reluctance to think a team member had sent the May email and the August text, interviews with staff are left until after other approaches have been taken.

From interview notes - Mr Loloa meets with Mr S asking if he is agreeable to being questioned in an investigation about text and email from someone claiming to be Ms Hodgson. Mr S agrees. He goes on to deny being aware of the May email or sending the text. He says he would be happy for her to return to her current position.

Mr Loloa speaks to Mr W. Mr W denies knowing about the email until recent weeks. He denies sending the email. He received the text, did not know whose number it was and thought it was Carol's. He comments it was not a shock really. Mr W thinks the only people who would have known about the information were Ms Moala, Mr S, Mr Loloa, Ms Hodgson and himself. When asked if he would be happy for Ms Hodgson to return to her position, Mr W replies no, because she is not the person for the role. He would be comfortable about her returning in another position.

Mr Loloa interviews Ms Moala, asking her similar questions. She denies sending the email but was not that surprised by its content as Ms Hodgson was vocal about how she felt about dispatching. Ms Moala denied sending but did receive the text and again found it not different to what Ms Hodgson had been vocal about. Ms Moala did not mind Ms Hodgson returning as it is her job and good to have the numbers up.

21 August
cont

Mr Loloa calls Ms Hodgson at 12.55pm then texts as a courtesy, to let Ms Hodgson know he has sent a letter and ask for confirmation of receipt. She confirms with Mr Loloa then replying *“...[h]ope you are well and let me know if you would like to change the venue if you feel uncomfortable having to meet at the depot”*.

The letter includes:

“...SUPPORT MEETING - Return to work ... I hope this letter finds you well. Titus Transport understands that this matter is concerning for your well-being. You are a valued team member, so it is imperative that your return to work is smooth and supported.

I write to invite you to a meeting on Tuesday 22nd August at 16:00 at the Titus ... depot upstairs office. Present ... with me will be Ana Moala. You are welcome to bring a support person.

The purpose of this meeting is to:

- Understand your feelings and address any current and relevant concerns you may have.*
- Discuss any updates or changes that have occurred in your absence.*
- Plan your return- to-work strategy while consider your needs and the business's needs.*
- Allow you to reconnect with the team for smooth ongoing processes.*

If the suggested meeting time or place above does not suit you, please contact me immediately so a more convenient time may be arranged.

Should you have any queries ... do not hesitate to contact me.

1.19pm – Ms Hodgson emails Mr Loloa advising that Allan Halse will be her point of contact, with Mr Halse cc'd in. Mr Loloa replies that there is no form authorising Mr Halse as her representative. Mr Halse emails that Titus needs to respond to the personal grievance before any meeting. There may have been an understanding that a personal grievance letter had been sent by this point but it appears not to have been.

4.16pm - Mr Loloa follows up as the grievance reference makes him think Ms Hodgson may have been resigning. A little later he asks for the email requesting meeting attendance the next day to be disregarded.

An email from Mr Halse confirms representation and indicates Ms Hodgson is not to be directly contacted in respect of this matter.

21 August

cont

8.58pm Mr Halse emails through a lengthy letter to Mr Rolfe on behalf of Ms Hodgson, asking that *“all communication in this matter is with me as Carol's representative”*. A personal grievance is raised regarding *“workplace bullying, unsatisfactory management of bullying resulting in a second incident, and a failure to keep an employee safe at work.”*

Amongst other things, the letter seeks a full and comprehensive open investigation, policy review, staff made to feel safe (ensuring these cases are handled in a confidential manner) and guarantee of

a safe workplace so *“I can return to work”*. Titus is invited to attend mediation.

21-30

August No communication evident by the parties. Ms Hodgson did not ask her representative to seek a meeting directly with Titus after the grievance letter was sent. She refers to believing at the time that option was not available, including mention of her representative not being Auckland based.

30 August Mr Loloa writes to Ms Hodgson recording she is a *“valued team member, so it is imperative that your return to work is supported”*. The investigation has been completed and *“you are required to return to work for your scheduled shift on the 1st of September at 6:00am.”* He invites her to a return to work meeting on 1 September at 12.30pm with him and Ms Moala, noting she is welcome to bring a support person. The identified purposes of the meeting are effectively the same as in the 21 August letter. If the meeting time or place does not suit Ms Hodgson is asked to contact Mr Loloa for rescheduling.

“Refusing to return to work will result in unpaid stand down as of the 1st September 2023.

Should you have any queries... please do not hesitate to contact me”.

1 September Ms Hodgson sends a letter notifying of her immediate resignation and including:

“I am resigning under duress due to an unsafe work environment and bullying behaviour from an unknown person and feel that because Titus Transport has failed to provide a safe working environment that I have no choice but to resign. I feel I have been pushed into staying in a department that is unsafe due to the unknown identity of the person sending the email and text. That the situation was not taken seriously and therefore there were no measures put in place to ensure I was supported or there was anyone I could trust. No follow up was done by management to check how I was going after such an incident”.

The letter continues, talking about mental distress, not feeling confident as *“the role of Head Dispatcher I was pushed into because of the issue that there was someone within the business who could be sabotaging my performance due to the contents of the email ...no one from management or H/R followed up shows a lack of care”*.

“... It was not my desire for this to be the outcome, but the way I have been treated makes me feel no longer safe in the workplace, and too humiliated and undervalued to ever be able to work at my job any further.”

1 September

cont Mr Loloa writes acknowledging the resignation and saying final pay will be processed. Further “[w]e were hopeful that you could return to work, and we could meet with you to better understand your concerns – however, we respect your final decision”.

[100] Titus paid Ms Hodgson’s salary in full from 7 August to 3 September 2023. It did not inform Ms Hodgson of the other role it was planning to offer her as that was to be done at the meeting about her return to work which she did not go to.

[101] Ms Hodgson sent her resignation letter on Friday 1 September 2023 and started her next job on Monday 4 September. She explains the full time role was obtained through someone she had worked with previously, with her interview being on the Friday afternoon. Ms Hodgson acknowledges that she had possibly asking around about other work although she was not serious, noting that other staff were putting out feelers too.

[102] Mr Loloa described Titus as not trying to persuade Ms Hodgson to stay with Titus as the resignation letter (running to a full single spaced page) seemed well thought out.

Constructive dismissal tests

[103] Constructive dismissal covers situations where although the employee resigns the impetus for the termination comes from the employer. Of the three categories of constructive dismissal described by the Court of Appeal in *Auckland Shop Employees Union v Woolworths (NZ) Limited* the last one is potentially applicable here - a breach of duty by the employer leading the employee to resign.³

[104] In this category it is not sufficient for the employer’s conduct to be inconsiderate and cause some unhappiness to the employee.⁴ What is required is dismissive or

³ *Auckland Shop Employees Union v Woolworths (NZ) Limited* [1985] 2 NZLR 372 (CA) at 374-375.

⁴ *Wellington etc Clerical Workers etc IUOW v Greenwich* (1983) ERNZ Sel Cas 95 (AC).

repudiatory conduct - a breach of the employer's duty to the employee. If that is established, these factors need to be examined:

- whether the conduct caused the resignation; and
- the breach of duty was sufficiently serious to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing? Or, was there a substantial risk of resignation?⁵

[105] In summary, Ms Hodgson says, due to feeling continuously unsafe and unsupported, she was compelled to resign – the lack of adequate investigation into both impersonation incidents, coupled with additional pressure forces her to make this difficult decision. She describes losing faith in anything Titus could do at that point. There is some lack of specificity about what it was in terms of Titus's actions or inactions which breached its obligations to her, causing her to resign at the particular point she did which actually.

Information requested

[106] Further, when asked why she decided to resign, Ms Hodgson told the Authority that “every time we'd requested information they provided nothing”. The example given was of file notes etcetera being requested and not provided. This covered her and Mr Halse's requests.

[107] It was difficult to match this impression up with actual evidenced requests. I accept there was a reluctance by Titus to provide the email in the unusual circumstances of the 4 May 2023 meeting once it became apparent Ms Hodgson was saying she did not send the letter. The Titus' representatives were not sure in those circumstances that Ms Hodgson was entitled to a copy. On the evidence before the Authority it was provided at the next meeting on 11 May 2023.

[108] The first request for the text, along with for the email, was on Friday 11 August, with Ms Rolfe sending them through on Sunday 13 August.

[109] Mr Halse requested by email on the night of Monday 21 August 2023 under “discovery” and the Privacy Act – Ms Hodgson's personnel and health and safety files,

⁵ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW* [1994] NZLR 415 (CA).

her wage and leave records, all relevant Titus policies and all internal and external communications (Netsafe, Worksafe NZ etc) meeting notes, audios, CCTV footage etcetera relating to matters raised in Ms Hodgson's personal grievance of the same day, that mention or reference her name. No particular timeframe was identified. This is not insubstantial request - it is perhaps not unsurprising that Titus with its resources, had not supplied that written information by Wednesday 30 August 2023.

Investigation

[110] Ms Rolfe and Mr Loloa were both involved in the investigation.

[111] They assessed who had the pieces of information across the May email and the August text. For example, only a few people, not including Mr S in the normal course of events, would not have had Ms Hodgson's individual pay rate which was specified in the email. Ms Rolfe told the Authority that they concluded that only Ms Hodgson and her husband would have known all the entirety of the information in the May email and August text. There was an awkwardness about attempting to get information from Ms Hodgson's husband.

[112] Ms Rolfe phoned the number when she got the August text and left a message asking to be called back. There was no reply. Later Mr Loloa phoned the number twice and it went to voicemail with there being no identifying message. He contacted the telco connected with the number but they were unable to provide him with any information. Using online apps, Mr Loloa tried to reverse the number the August text came from but was unsuccessful.

[113] A request to the relevant telco did not result in any further information leaving Ms Moala to wonder if it was a burner phone.

[114] Ms Rolfe phoned a police contact who advised it seemed more of a civil matter as there were no threats to a person or property.

[115] Those who seemed to be the relevant staff were interviewed in August 2023 and nothing was revealed.

[116] Ms Rolfe spoke to her son, Titus's internal IT person. He tried to obtain some information including through contacts but was unable get anything.

[117] Ms Rolfe also interacted with the external IT provider who made some attempt to get information about the problematic communications. Titus concluded the IP address was untraceable from the email, Gmail is protected so a search order or court order is required to identify the owner of an email account and this was not a criminal offence. Thus the advice was that a forensic investigator was unlikely to find more information. Possibly unless the messages were sent from Titus devices which seems unlikely, it was not evident how much further a forensic investigation would have got.

[118] Evidence from Ms Hodgson suggests she wanted to know how Titus were investigating and updates on how the investigation was proceeding. When asked in cross examination whether a good way to have got information would have been to ask to meet with Titus or attend the 30 August meeting, she accepted it was.

Feeling unsupported and isolated

[119] Ms Hodgson had the period from Monday 7 August 2023 off work, although the initial few days was already set for bereavement leave. She was then away from work until receiving the 30 August letter inviting her to return to work on 1 September. That period is a little over three weeks which is not a short time to be off work at home. However, Ms Hodgson:

- agreed to be off work when asked by Ms Rolfe whether she preferred to work or be off.
- was contacted by Ms Rolfe or Mr Loloa on 4, 8, 13, 17, 18, 21 and 30 August 2023, along with Mr Loloa's contact with her representative Mr Halse.
- on 17 August asked to be contacted by email/letter only, rather than by call as Mr Loloa was attempting to do. This made it difficult to provide the type of support Ms Hodgson indicated to the Authority that she wanted, including for example, managers coming to see her,
- Mr Halse proposed mediation as the next step.

[120] Ms Hodgson says she wanted to know what Titus had put in place to keep her safe. But there was little communication to Titus with this focus.

[121] Ms Rolfe struggled with the suggestion Ms Hodgson was not supported. The two had a discussion in July 2023 on a sensitive personal matter concerning Ms Hodgson. Ms Rolfe considers there was trust between them and Ms Hodgson would have felt able to call her if she felt she needed more support.

[122] Ms Rolfe did accept that there was some overlapping between herself and HR potentially creating some gaps. She expresses that their intention was always for Ms Hodgson to come back, they wanted her back. In retrospect Ms Rolfe recognises that Ms Hodgson may have wanted or needed more support, but at the time she was not aware of that.

Being active and communicative

[123] Titus did little to inform Ms Hodgson or her representative about the steps it was taking. It planned to do at least some of that at the meeting with her which never happened. Ms Hodgson also did not discuss with anyone from Titus her hope for a new job there either.

[124] Titus did not provide information about its investigation to Ms Hodgson before aiming to meet on 1 September. It arranged the return to work meeting for several hours after Ms Hodgson was supposed to start back at work that morning.

[125] Perhaps surprisingly Ms Hodgson told the Authority that she still wanted to return to work but wanted more information.

Providing a safe workplace

[126] Titus had a duty to take reasonable steps to provide Ms Hodgson with a safe workplace. A hazard of someone else impersonating a particular employee and communicating as such with the employer is not commonly anticipated. Once the email was sent the chance of a recurrence was there but identifying that person and/or stopping them taking further action is challenging.

Conclusion on breach of duty

[127] In the particular circumstances Titus breached its duty to Ms Hodgson by not providing her with information about its investigation prior to her return to work, then requiring her to return without even meeting her before or when she started, indicating that she would be unpaid if she did not return. It is arguable this action was at least a

part of what caused her resignation but the more difficult argument is that this resignation was foreseeable.

Lack of foreseeability

[128] Ms Hodgson's initial answer when asked by the Authority whether it was foreseeable to Titus that she would resign was "no". However when asked about whether Titus would have known that she was not satisfied with what the company was doing she replied that they would – a person cannot go into a situation like this (with email) and not be unhappy.

[129] Ms Hodgson was unhappy about what occurred in May 2023. After Titus finished its actions regarding the May email and before the August text, Ms Hodgson did not express concerns to anybody at work that she felt unsafe (other potentially than during an 'in confidence' discussion with someone in another office). By contrast she did spell out in a way that meant multiple managers knew, that she was not happy about the dispatch work.

[130] Ms Hodgson acknowledged that even with the second incident, she did not think that resignation was a possibility. It was not until later "getting info requested" that she was thinking about that, when they were not getting anywhere.

[131] There were future focused requests in the 21 August 2023 letter from Mr Halse. These do not suggest that Ms Hodgson was on the verge of resigning.

[132] In conclusion it was not reasonably foreseeable by Titus that Ms Hodgson would not be prepared to return to work or was under substantial risk of resigning.

[133] It has not been established that Ms Hodgson was constructively dismissed.

Unjustified disadvantage

[134] Given some difficulties regarding Titus's actions referred to above I go on to consider whether its unjustified actions in August disadvantaged Ms Hodgson.

[135] The decision to stand Ms Hodgson down from work was made with her agreement. She did not feel comfortable being at work when the August text had come through. The possibility of her being financially disadvantaged by being away from

work was raised at the start of the proceeding but not later emphasised. She did not give evidence that she was worse off as a result.

[136] Titus made a reasonable number of attempts to communicate with Ms Hodgson in the period before she obtained representation.

[137] As found above, it erred in not providing her with information about its investigation prior to her return to work, then requiring her to return without meeting before or when she started, indicating that she would be unpaid if she did not return. It appear the original plan was to meet her before she started back but seemingly as time ran on it decided to combine her return to work and then meet later that day. This disadvantaged her. She did not get to the point of finding out another job was available for her, although it is hard to be certain whether she would have accepted it by that point.

[138] Ms Hodgson was disadvantaged by unjustified actions of Titus in August 2023.

Remedies

[139] Ms Hodgson has established unjustified disadvantage grievances regarding particular parts of the May and August 2023 processes. Given the related nature of them a global compensation award is appropriate.

[140] Ms Hodgson gave evidence of describes being the lack of support and care from Titus when the incidents occurred, changing the enthusiasm she once had for the company. She lost her confidence, had sleepless nights, became emotional quickly, second guessed her work and has severe trust issues with colleagues.

[141] Compensation should be linked the events which have been found to amount to disadvantages. It is somewhat difficult to sever evidence about that from Ms Hodgson's concerns which have been found not to relate to an established grievance. Standing back I assess the appropriate amount of compensation as being \$5,000.

[142] I have considered whether this amount should be reduced due to contribution by Ms Hodgson. Whilst Titus identifies some concerns about Ms Hodgson's conduct, I am not persuaded that given the limited nature of the grievances found, Ms Hodgson should be seen as blameworthy as regards them.

[143] Titus is ordered to pay Ms Hodgson \$5,000 compensation for humiliation, loss of dignity and injury to feelings, within 28 days of the date of this determination.

Costs

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

[145] If they are not able to reach an agreement on costs then a party seeking costs should lodge and serve a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the other party would then have 14 days to lodge any reply memorandum.

[146] The Authority's usual notional daily tariff and any factors requiring an upward or downward adjustment would be considered.⁶

Nicola Craig
Member of the Employment Relations Authority

⁶ See www.era.govt.nz/determinations/awarding-costs-remedies.