

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 126  
5281908

BETWEEN            SUSAN LUCAS  
                                 Applicant  
  
AND                    ULTIMATE CARE GROUP  
                                 LIMITED  
                                 Respondent

Member of Authority:     Philip Cheyne  
  
Representatives:         Anjela Sharma, Counsel for Applicant  
                                 Darren Mitchell, Counsel for Respondent  
  
Investigation Meeting:    18 August 2011 at Nelson  
  
Further Information:      1 September 2011 from the Respondent  
  
Submissions received:    8 & 29 September 2011 from the Applicant  
                                 15 September 2011 from the Respondent  
  
Determination:            26 June 2012

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**DETERMINATION OF THE AUTHORITY**

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**Acknowledgement**

[1]     Regrettably, this investigation has been delayed for several reasons.

[2]     An investigation meeting scheduled for 24 & 25 February 2011 had to be adjourned because of the February 2011 earthquake. There followed some delay because the Authority could not access its office and files. Eventually I was able to provide a fresh date for an investigation meeting. Following the meeting there has been a delay while I worked on other matters deferred or affected by the September 2010 and February 2011 earthquakes or which have been accorded priority. Preparation of the determination has also been affected by the issue referred to by the Chief of the Authority in his memorandum dated 7 May 2012.

[3] Since recently turning my attention to this matter, I have reread the statement of problem, statement in reply, statements of evidence, all the exhibits, my full notes of the evidence and the parties' written submissions provided during the investigation meeting.

[4] I acknowledge the parties' patience and understanding and regret any difficulties caused by the delay.

### **Employment Relationship Problem**

[5] Susan Lucas was employed as a senior caregiver at Kensington Court Lifecare from August 1999 until her employment was summarily terminated on 14 July 2009 for serious misconduct. Kensington Court Lifecare is a resthome facility in Nelson owned and operated by Ultimate Care Group Limited (UCG).

[6] Vanessa Kingsbury is UCG's facility manager for Kensington Court Lifecare. On 3 July 2009 Ms Kingsbury received two letters of complaint about Ms Lucas from two staff members (Carolyn Thomas and Kristine Thomas). Two further letters of complaint were received on 6 July from two other staff members (Carol Shelling and Mary Fleming). Ms Kingsbury treated these as complaints by the four individuals of being bullied by Ms Lucas. On 7 July Ms Kingsbury met briefly with Ms Lucas and suspended her from work. Ms Lucas says that her employment was affected to her disadvantage by UCG's action in suspending her which she says was unjustified.

[7] Following some correspondence Ms Kingsbury met with Ms Lucas on 14 July. There was an adjournment and when the meeting reconvened later in the day Ms Kingsbury summarily dismissed Ms Lucas for serious misconduct. Ms Lucas says that the dismissal was unjustified because of procedural defects and for lack of substance.

[8] To remedy these personal grievances Ms Lucas is claiming compensation for lost remuneration from the date of the dismissal until the date of hearing and compensation of \$15,000.00 for distress.

[9] UCG says that it justifiably suspended Ms Lucas to investigate an allegation of serious misconduct and then justifiably dismissed her for good reason and following a fair process.

### **Details of the complaints**

[10] Carolyn Thomas and Kristine Thomas are mother and daughter. Ms Kingsbury found under her door on 3 July their two separate letters.

[11] Mrs Thomas's typed complaint is signed and dated 2 July 2009. It concerns conduct by Ms Lucas and Ruth Taylor, another caregiver. I will summarise the five allegations it makes.

[12] On 21 April Ms Lucas said to Mrs Thomas that she had told Mrs Taylor that morning that she was glad *that bitch* was not here *today*. That was a reference to Lorna McGowan, the recently appointed clinical leader. In fact the clinical leader was present and Ms Lucas spoke loudly enough for her to hear. Ms Lucas laughed about that.

[13] Second, Mrs Thomas reported that she had been told by Ms Lucas and Ms Taylor that they intended to go high up in UCG to get rid of the clinical leader. Mrs Thomas said that Ms Lucas and Ms Taylor constantly undermine Ms McGowan and make comments about her poor personal hygiene which Mrs Thomas and most staff do not agree with.

[14] Third, there was an incident on 23 June. Mrs Thomas arranged help for her daughter with a resident while she covered the helper's work. Mrs Thomas had to do this because Ms Lucas was apparently not speaking to Miss Thomas. Later Mrs Thomas returned to help her daughter. Mrs Thomas overheard Ms Lucas say to another person *It would be nice having my mother her to help me!* Mrs Thomas also heard her say *I need some fucking help done my end* after she had indicated that she was not free to help Ms Lucas. Mrs Thomas had earlier seen Ms Lucas *standing gossiping to laundry staff*.

[15] Fourth, on 29 June Ms Lucas ignored Mrs Thomas all day and gave her *dirty looks, bad body language which made [her] feel uncomfortable and unsafe*. Mrs Thomas heard Ms Lucas being very rude to a resident.

[16] Fifth, many comments had been made to Mrs Thomas by other staff to the effect that they were thinking about leaving Kensington Court because of being bullied by Ms Lucas and Ms Taylor. There was low staff morale because they would not assist other staff and took long lunch and morning tea breaks.

[17] Miss Thomas's typed complaint signed and dated 2 July 2009 is to similar effect. I will leave out the points that relate only to Ms Taylor but follow the order set out by Miss Thomas. On 4 June Ms Lucas had an *out right go* at her in front of another caregiver for not helping out Ms Taylor sufficiently. On 23 June Ms Lucas spoke rudely to her. That day Ms Thomas overheard the exchange referred to above as Mrs Thomas's third point. On 24 June Ms Lucas *had a go at* Miss Thomas for not answering a beeper for a resident who needed toileting saying rudely *come on she's busting to go*. On 25 June Ms Lucas made Miss Thomas and another caregiver hand out the lunches while she chatted to the chef and put sauce on the food. On 30 June Miss Thomas was told by another caregiver that he or she overheard Ms Taylor and Ms Lucas saying they could do what they wanted that morning while Ms McGowan was away. Later Ms Lucas told Miss Thomas and Mrs Thomas to finish off the juice round while she went to lunch with Ms Taylor. Soon after, Ms Lucas told Miss Thomas that Mrs Thomas was a *real nana*. On 1 June Ms Taylor and Ms Lucas went for lunch together leaving Miss Thomas to toilet a number of residents before lunch. On 2 June Miss Thomas overheard Ms Taylor and Ms Lucas complaining about unfair allocation of work by Ms McGowan. They talked about *going to the union* about Ms McGowan and their shift patterns. There was also a discussion about how Ms Kingsbury had been nervous and shaking in a recent staff meeting and criticising her for having *some fat guy* there for support during the meeting. On certain of Miss Thomas's shifts Ms Lucas and Ms Taylor take lunch together when they are rostered separately for lunch leaving staff such as Miss Thomas to cover the work. Miss Thomas finished by saying *Due to this on going bullying from Sue and Ruth I am seriously thinking about resigning from a job I enjoy*.

[18] Ms Shelling provided a written complaint dated 6 July also directed at Ms Lucas and Ms Taylor. Her complaint says that they continually criticise management and staff and complain about changes made by management. They take extended morning tea and lunch breaks which they pre-arrange. Ms Shelling has heard other staff say they are not happy with how Ms Lucas and Ms Taylor treat them. They rarely help others but complain if they are not helped. The atmosphere is much nicer when Ms Taylor and Ms Lucas are not working. At times their negative comments upset and their long breaks annoy Ms Shelling. She feels overworked and has to rush to keep up. They leave a lot of the juice round and toileting for others to do. Ms Shelling had been told two weeks earlier by a resident that Ms Lucas is *a big bully*. Ms Shelling finished by saying *Good staff will leave due to lack of respect from other staff as has happened in the past if a solution is not found*.

[19] The fourth complaint, undated and unsigned, was from Mary Fleming. Her complaint says that Ms Lucas and Ms Taylor were not happy with recent management changes and were making it difficult for others. They speak to the newer staff as if they are lazy and not doing their jobs properly. In the last week especially they had not done their own work and made another person do their work and been *mean and nasty*. On 2 July they took extra time for morning tea and then complained that they were not getting help to finish their work. Later, Ms Lucas yelled at Ms Fleming that she should be doing toileting when she was actually assigned to other duties. Residents who overheard this thought that Ms Lucas was rude. Later Ms Lucas told Ms Fleming that she was not doing another task properly. That was a day when Ms Lucas and Ms Taylor thought that the task should have been assigned to Ms Taylor. On 3 July they were short staffed and Ms Lucas instructed Ms Fleming to stay rather than take a break; then Ms Fleming missed out on her break because Ms Lucas took hers. Ms Fleming was unhappy about the way she was spoken to. Ms Fleming overheard Ms Lucas speaking to Mrs Thomas and was unhappy with the way she spoke to Mrs Thomas.

### **Suspension**

[20] There is no issue before the Authority regarding Ms Taylor. What follows is merely context for events concerning Ms Lucas.

[21] Having received these written complaints Ms Kingsbury first met with Ms Taylor, gave her a copy of the complaints with the complainants' names redacted and told her she was suspended. Ms Taylor left Ms Kingsbury's office and was leaving the facility when Ms Lucas noticed her and asked what was wrong. Ms Taylor was in tears. The two women spoke briefly before Ms McGowan came and told Ms Lucas that Ms Kingsbury wanted to see her. Both Ms Taylor and Ms Lucas say that there was insufficient time for her to read the complaint letters. There is no reason to doubt that evidence.

[22] Ms Lucas went to Ms Kingsbury's office. Ms McGowan was also present. Ms Kingsbury said that she had received some complaints about Ms Lucas and handed her the four typed complaints. The complainants' names were redacted. Ms Kingsbury's evidence is that it was evident that Ms Lucas had spoken to Ms Taylor as she had *defensive body language*, *Her manner was aggressive* and *She started to talk challengingly to the clinical leader Lorna McGowan implying that Lorna had made the accusations*. However, Ms Lucas knew nothing of any detail from Ms Taylor other than that there were complaints and she had been suspended. I find that the demeanour of Ms Lucas was caused by her being suddenly called into a disciplinary meeting with two managers.

[23] Ms Kingsbury's evidence is that she told Ms Lucas she would be investigating the complaints and gave her copies of them before telling her that she was suspended. There is no dispute about that sequence. Ms Lucas had no opportunity to say anything about whether there should be a suspension before that announcement. Ms Lucas then left the office (her evidence) or stormed out (Ms Kingsbury's evidence). There is a dispute about whether Ms Lucas was told not to contact any staff while suspended. Ms Kingsbury says that this was her parting comment while Ms Lucas says that nothing was mentioned. There is a letter dated 7 July 2009 that was couriered to Ms Lucas after the suspension and which she received the next day. It summarises what happened during the meeting and then goes on to instruct Ms Lucas not to contact staff while on suspension. If this instruction had been given during the meeting the letter probably would have mentioned that. Instead the way the letter is drafted suggests that the instruction is additional to what had happened during the meeting. I therefore prefer Ms Lucas' evidence on this point.

[24] UCG says that Ms Lucas left abruptly before Ms Kingsbury could fully discuss the circumstances of the suspension. Ms Lucas reacted to the way Ms Kingsbury handled the matter. It may well be right that Ms Kingsbury would have said more if Ms Lucas had not become upset and left. However, that also supports the finding just mentioned.

[25] The 7 July letter summarises the complaints as follows:

*In summary, it is alleged that staff feel “bullied” by you and are considering leaving the company because of your behaviour towards them.*

*These include:*

- a. Making “derogatory” comments about Facility Management and other staff*
- b. Abusive and aggressive behaviour including swearing*
- c. “Bullying” and harassment of staff*
- d. Not working as part of a team thereby compromising residents cares*
- e. Rudeness to residents*

[26] The letter refers to the complainants’ request for anonymity because of their *feeling of being “scared, “intimidated” and ...fearful of “retribution” from you and members of your family* and goes on to say:

*You are therefore advised that should any allegations of threats of “intimidation” or “acts of retribution” against staff or residents be brought to my attention, the company will fully investigate these, including involvement by external authorities if necessary.*

## **Investigation**

[27] There is a letter dated 8 July 2009 from Ms Kingsbury to Ms Lucas requiring her to attend a disciplinary meeting on 14 July 2009. It includes the usual cautions. It repeats the complaint summary as above and refers to the applicable employment agreement and house rules regarding personal behaviour and examples of serious misconduct.

[28] Ms Kingsbury met with the complainants separately to question them further about their complaint and generally. I have been given typed notes that record two meetings with all the complainants except Mrs Thomas with whom there was apparently just one meeting (so 7 meetings in total). The notes are signed and dated. There is no reason to doubt the bona fides of the notes so I accept that they accurately record what Ms Kingsbury asked and was told during each meeting, that each meeting took place at the time and date noted in the heading and that each complainant signed

the notes as accurate and recorded the date of doing so which generally was not the same day as the meeting.

[29] I will refrain from setting out the details of these notes because of time constraints. The content can fairly be described as a mixture of context and added details regarding the original complaints and new allegations similar in nature to the original complaints. As an example, Mrs Thomas and Miss Thomas separately say that the conduct they complain of was the result of an earlier incident between Mrs Thomas and Ms Taylor with Ms Lucas taking Ms Taylor's side over that incident and getting back at Mrs Thomas by picking on Miss Thomas.

[30] Ms Kingsbury's evidence is that when she interviewed the complainants it was clear to her that there was a fear of reprisal from Ms Lucas and her family. They all expressed this and asked not to be identified. On her evidence that is why the original complaints were supplied to Ms Lucas with the names redacted. However, all the meetings just mentioned occurred on or after 8 July 2009, the day after the suspension. The notes do not support Ms Kingsbury's contention about expressions of a fear of reprisal.

[31] It is unclear from the evidence when or even if Ms Kingsbury met with the complainants prior to suspending Ms Lucas. Ms Kingsbury *vaguely recalls* Ms Fleming coming to her but does not recall asking her for her concerns. Ms Kingsbury thinks that Ms Shelling *just brought the complaint in*. Ms Kingsbury denies typing it up for her and says that she did not speak to Ms Shelling. The evidence is that the complaints from Mrs Thomas and Miss Thomas were found by her under her door. Ms Kingsbury's evidence is that Miss Thomas told her that she was concerned that her car tyres would be slashed but it is not clear when that happened, if not during the meetings for which notes have been provided.

[32] Although not a union member Ms Lucas was assisted by Jacqueline McGrath the local NZ Nurses Organisation official. Her intervention resulted in Ms Kingsbury providing the names of the complainants. Ms Kingsbury did this apparently after speaking to the complainants who agreed to the release of their names but reluctantly because of their fear of reprisal. Ms McGrath was not alerted to the other exchanges

between Ms Kingsbury and the complainants or the existence of the notes mentioned above.

#### **14 July disciplinary meeting**

[33] Present for UCG were Ms Kingsbury and UCG's HR manager. Ms Lucas was assisted by Ms McGrath. Ms McGrath read out a prepared statement on behalf of Ms Lucas. I will summarise its contents. Ms Lucas thought she was a well respected caregiver and friend to the residents and their families who worked to the best of her abilities. Many people including staff and management have complimented her. During her 10 years of employment she has never been rude to residents, been a team player and helped train and orientate new staff. Sometimes change is good but sometimes changes do not work. Ms Lucas felt that the complaints have been dealt with unprofessionally which has been upsetting for her. Ms Lucas denied intentionally harassing or bullying staff and apologised if her behaviour had been perceived that way. Ms Lucas denied being rude to residents. Ms Lucas accepted that she had criticised Ms McGowan's dress and manner. She was not the only staff member to do so and accepted that Ms McGowan had changed. Ms Lucas denied swearing in front of residents or other staff, accepted that she sometimes took longer for tea than she should (as did others) and tried to take no longer than half an hour for lunch. Ms Lucas admitted that her communication style could be abrupt but she was willing to try and change and would accept any training if necessary.

[34] After this explanation the meeting was adjourned until later in the day. During this break Ms Kingsbury met with each of the complainants and asked if they each stood by their complaint which they each did, and how they would feel about Ms Lucas changing her behaviour, apologising and moving on. Ms Kingsbury's evidence is that two complainants immediately said they would leave if Ms Lucas returned, one thought about it before saying that people do not change and that she would leave if Ms Lucas returned. I heard evidence from only two complainants. Ms Shelling's evidence is that she was told by Ms Kingsbury that Ms Lucas had described her complaint as lies and untruthful. Ms Shelling told Ms Kingsbury that she would feel uncomfortable about continuing to work with Ms Lucas so she would probably end up leaving. Ms Fleming's evidence is that she told Ms Kingsbury that if Ms Lucas changed her attitude it would be okay but it would take a lot for her to

change. There is no reason to doubt the evidence of Ms Shelling and Ms Fleming on these points.

[35] Having spoken to the complainants, Ms Kingsbury and/or UCG's HR manager prepared a script for the resumed meeting.

[36] Ms McGrath's evidence, which I accept, is that Ms Kingsbury read from a prepared script. Again I will refrain from setting this out in full. To summarise: Ms Kingsbury asked if Ms Lucas had anything to add but she did not. Ms Kingsbury then told Ms Lucas about having spoken to the complainants who all stood by their complaints. Ms Kingsbury referred to previous issues from August and December 2008 as part of identifying a problem with monitoring any change in behaviour. Ms Kingsbury thought, based on Ms Lucas' body language, that she was not genuinely remorseful and willing to change. Ms Kingsbury said that Ms Lucas had put residents and staff at risk by her lack of team work, contrary to the expectations of a senior caregiver. Ms Kingsbury concluded that the allegations were all proven, mounting to serious misconduct by reference to the employment agreement and house rules. That included the allegations of bullying in Ms Lucas' care and management of residents. Ms Kingsbury no longer had trust and confidence in Ms Lucas and had decided to dismiss her effective immediately.

[37] There is a letter dated 15 July 2009 setting out the reasons for the dismissal. The letter précis Ms Lucas' responses during the disciplinary meeting and incorporates the script read out the previous day.

### **Justification**

[38] There is no separate claim for any remedy regarding the personal grievance arising from the suspension. I will deal with it as part of the dismissal claim although I accept that Ms Lucas' employment was affected to her disadvantage by the suspension and that it was unjustified. That is because Ms Lucas was not given any opportunity to comment prior to the decision being announced.

[39] Because the dismissal occurred in 2009 justification must be determined by considering whether UCG's actions and how UCG acted were what a fair and reasonable employer would have done in all the circumstances at the time.

[40] S.4(1A)(c) of the Employment Relations Act 2000 provides that an employer who is proposing to make a decision that will have an adverse effect on the continuation of an employee's employment must give that employee access to relevant information and an opportunity to comment on that information before making the decision. That is part of the statutory duty of good faith.

[41] A fair and reasonable employer would always comply with their statutory obligations. In *Jinkinson v Oceana Gold (NZ) Ltd* [2010] NZEmpC 102 the Employment Court held:

*The relationship between s.4(1A)(c) and s.103A is clear. A fair and reasonable employer will comply with its statutory obligations. It follows that a dismissal which results from a procedure that does not comply with s.4(1A)(c) will not be justifiable.*

[42] *Jinkinson* was a redundancy case but there is no reason to think that the principle expressed there does not apply to any type of dismissal.

[43] I also note that the employment agreement between Ms Lucas and UCG includes a requirement for UCG to act in accordance with the principles of good faith when considering terminating the employee's employment.

#### **All the circumstances**

[44] There are some additional circumstances that should be mentioned.

[45] Ms Lucas was a senior caregiver and UCG properly expected a standard of behaviour reflecting her seniority. At the same time, Ms Lucas had been a loyal, long serving and well regarded employee. As a senior caregiver Ms Lucas had been asked to monitor Miss Thomas in her work performance.

[46] The business was undergoing some change such as new leadership and proposed roster changes. The problems complained of appear to have emerged more recently alongside such changes.

[47] UCG operates a regular performance appraisal process. Earlier appraisals were generally positive and did not identify any serious difficulties with Ms Lucas' behaviour. The last appraisal was for the year ended September 2008. The appraisal was very positive. As part of the appraisal Ms Kingsbury wrote:

*Seem to have a great working relationship with staff (well most) and residents. Thank you for your commitment to fill in over last few weeks it is much appreciated. Continue to develop understanding and trust both with peers and residents. Your interest in learning is wonderful. Keep up the great work.*

[48] In about August 2008 another senior caregiver wrote to UCG with a complaint about Ms Lucas and Ms Taylor. Prior to then Ms Lucas had completed an incident report concerning this employee. Each side was accusing the other of bullying type behaviour. There was a meeting with Ms Lucas where there was some discussion about UCG's expectations concerning behaviour but the matter was not dealt with as a disciplinary issue. Ms Kingsbury's comment in the September 2008 appraisal was a reference to this matter.

[49] A further matter arose in December 2008 concerning Ms Lucas. It was raised with her as a performance rather than a disciplinary issue. Ms Kingsbury brought the matter to an end by writing to Ms Lucas accepting her explanations as valid and advising that she considered the matter to be closed. This was the matter referred to by Ms Kingsbury in the 8 July 2009 letter convening the disciplinary meeting when she wrote *we have discussed your behaviour towards other staff before, namely in December last year.* It and the August 2008 matter were mentioned during the dismissal as clear evidence of Ms Lucas having been made aware of her behaviour previously.

[50] There are several parts of the house rules that were relied on. Clause 10 sets out the expectation that employees conduct themselves on a *socially acceptable* manner. However, that is directed towards violence and threats of violence. Examples of serious misconduct include behaviour that brings the company into disrepute or damages UCG's reputation; using offensive language or behaviour;

behaviour that is likely to be injurious to UCG; harassment; and seriously negligent conduct or conduct that may have serious consequences for the care or safety of patients or employees.

[51] I have found that Ms Kingsbury's instruction not to contact any of the complainants was first received by Ms Lucas when she received the letter confirming her suspension on 8 July. Before then but after her suspension Ms Lucas sent a text to Ms Fleming saying *thanks for ya statement, so false im going to union bout it I didn't yell at u just sed spoke to Lorna bout 1 short 4 shift*. Ms Fleming's evidence is that she believes this was sent to intimidate her. However, it reads as a response asserting a different account of an incident rather than an intention to intimidate.

### **Conclusions on justification**

[52] I have already mentioned Ms Kingsbury's failure to provide Ms Lucas with all the relevant material. The material that was not disclosed was directly relevant to the decision that Ms Kingsbury made. It should have been given to Ms Lucas for her comment. Applying *Jinkinson* and with regard to UCG's statutory and contractual obligations the dismissal was unjustified.

[53] On the evidence before the Authority Ms Kingsbury overstated the complainants' request for confidentiality, fear of reprisal and concern about Ms Lucas returning to work. Ms Fleming told me that she did not ask for her name to be kept confidential. Ms Fleming also told me that she was not fearful of reprisals. She thought that working with Ms Lucas would be okay if there was a change in attitude but it would take a lot for her to change. Ms Shelling was told that Ms Lucas had described her complaint as *lies and untruthful*. That was not a fair characterisation of the response. Ms Shelling told Ms Kingsbury that she would feel uncomfortable working with Ms Lucas and would probably end up leaving because of an unpleasant work environment. The way Ms Kingsbury described the concerns of Mrs & Miss Thomas to Ms Lucas overstates what the documents record them as saying to Ms Kingsbury. Whether or not this exaggeration was deliberate, Ms Kingsbury misled Ms Lucas about the position of at least some or all the complainants.

[54] It follows that Ms Kingsbury was not entitled to reach the conclusions that she reached and that the decision to dismiss Ms Lucas was unjustified.

### **Remedies**

[55] I must consider the extent to which Ms Lucas contributed to the circumstances giving rise to her grievance in a blameworthy manner.

[56] I have only the direct evidence of Ms Fleming and Ms Shelling.

[57] I am not satisfied that there is any merit in the complaints that Ms Lucas was rude to or mistreated any resident. UCG, like all rest homes, has strict policies about recording incidents of improper or concerning conduct towards residents. Staff know the importance of reporting any concerning incident. Ms Shelling's evidence is that she did not realise that the incident she witnessed was bullying at that stage and she did not think it was so serious that she needed to report it. There is no reason to think that her reconstructed view of the incident sometime later as part of a complaint about Ms Lucas' conduct towards her should be treated as a more reliable account.

[58] The other complaints by Ms Fleming and Ms Shelling are that Ms Lucas sometimes shirked work, sometimes talked rudely and inappropriately to them and others and complained about management and changes. Ms Shelling thought that good staff would leave unless a solution was found. I accept these observations as accurate. Neither woman raised these concerns with Ms Lucas directly. Ms Lucas' evidence is that she did not intend to bully or upset anyone. There is no reason to doubt that evidence. Viewed objectively Ms Lucas carelessly upset some of her work colleagues by her words and manner and sometimes left them to do work that she should have done. That conduct is of a very different character and degree to that in cases of bullying such as *Edmonds v A-G* [1998] 1 ERNZ 1. UCG on the other hand substantially failed to comply with its good faith obligations and wrongly treated some discourteous behaviour and avoidance of some work by a long serving employee as serious misconduct. I find that Ms Lucas' contribution to the situation is at the level of 10% and I will reduce remedies accordingly.

[59] There is a claim for \$15,000.00 for distress. Ms Lucas was visibly upset when suspended. She felt unsupported and at a loss to understand what was happening. She considers that she was suspended and dismissed because of her opposition to roster changes that UCG was introducing. There is no evidence to sustain that view. However, it demonstrates Ms Lucas' sense of grievance about her suspension and dismissal. Ms Lucas was shocked by her dismissal and concerned about the financial impact on her of losing her employment, especially with dependents. Ms Lucas had constant worry about her financial situation until November 2009 when she was able to obtain alternative permanent employment. Ms Lucas was unable to say goodbye to residents she had cared for. There were consequences for Ms Lucas' daughter and parents which also upset her.

[60] Counsel refers me to *Auckland and Tomoana Freezing Works etc IUOW v South Pacific Meat Corp Ltd* [1991] 3 ERNZ 1146 as an example of a moderate award of compensation. The case gives no guidance in the present case. It was an assessment made more than 20 years ago under a very different institutional framework. The Court described a mediator's award of \$500.00 as *token* but chose not to disturb it because of a lack of evidence and a significant element of fault.

[61] With reference to current standards, I assess \$10,000.00 as an appropriate sum to compensate Ms Lucas for these effects, subject to reduction for contribution.

[62] There is a claim for \$2,234.03 in lost remuneration for a period covering slightly more than the 3 months immediately after the dismissal. The modest sum claimed reflects Ms Lucas' successful attempts to mitigate her loss, gaining employment at another facility with her former Kensington Court manager. I accept that Ms Lucas lost this sum as a result of her grievances and should be reimbursed for that loss, subject to reduction for contribution. I see no reason not to cover the whole period of the loss.

[63] Ms Lucas is claiming a further \$2,500.00 as a loss associated with her dismissal. Ms Lucas incurred additional petrol costs because her new employment was a greater distance from her home than Kensington Court where she often walked to work. I am asked to award this sum as *other money lost by the employee as a result of the grievance*. I do not accept that this head of compensation extends to additional

costs incurred by an employee in travelling to other employment. The *money lost by the employee* must be connected to the employment from which they have been dismissed, rather than arising from other activities.

### **Orders**

[64] Ms Lucas was unjustifiably dismissed and unjustifiably disadvantaged.

[65] Ultimate Care Group Limited must pay Ms Lucas compensation of \$2,010.63 pursuant to s.123(1)(b) and s.128(3) of the Employment Relations Act 2000.

[66] I am asked to order the payment of interest on the lost wages compensation. I accept that there is power to do so and that Ms Lucas should be compensated for the loss of the use of the money. The Authority's power is set out in clause 11 of the 2<sup>nd</sup> Schedule to the Employment Relations Act 2000. That permits the Authority to order interest at the rate prescribed under the Judicature Act 1908, currently 5% per annum. Ms Lucas' compensation claim relates to the period ended 25 October 2009. Ultimate Care Group Limited must pay Ms Lucas interest at 5% per annum on \$2,010.63 starting on 25 October 2009 until the compensation is paid in full.

[67] Ultimate Care Group Limited must pay Ms Lucas compensation of \$9,000.00 pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000.

[68] Costs are reserved. Any claim for costs must be made by lodging and serving a memorandum within 28 days. The other party may lodge and serve a memorandum within a further 14 days.

Philip Cheyne  
Member of the Employment Relations Authority