

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 147  
5164043

BETWEEN

RACHEL MANAWATU  
Applicant

A N D

TE TAI O MAROKURA  
CHARITABLE TRUST  
Respondent

Member of Authority: Helen Doyle

Representatives: Robert Davidson, Counsel for Applicant  
Alan Knowsley, Counsel for Respondent

Investigation Meeting 4 and 5 November 2010 at Kaikoura

Submissions Received: 29 November 2010 from Applicants  
17 December 2010 from Respondent

Date of Determination: 3 October 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Rachel Manawatu says that she was unjustifiably dismissed from her employment with Te Tai O Marokura Charitable Trust (the Trust) on 27 March 2009 where she had worked for 17 years and further says that the process resulting in the termination of her employment was undertaken in a procedurally unfair manner and that this amounts to a personal grievance that her employment or conditions thereof were affected to her disadvantage under s.103(1)(b) of the Employment Relations Act 2000.

[2] The Trust is a registered charitable trust. Its role is to provide health and social services for whanau in the Rohe covered by the Trust. Services are provided in accordance with contracts with various funders such as the District Health Board, Department of Child Youth and Families Service, Ministry of Health and in accordance with kaupapa of the Trust.

[3] Riria Allen, the Tumuaki or Chief Executive of the Trust gave evidence that Ms Manawatu's role was that of a budget adviser. Ms Manawatu gave evidence that she saw her role as wider than simply a budget adviser and that it included an assistant social work role and business planning. I shall return to this matter at a later stage.

[4] Ms Manawatu seeks a determination that she was unjustifiably dismissed and/or unjustifiably disadvantaged and reimbursement of lost income from 27 March 2009, compensation in the sum of \$20,000 and costs.

[5] The Trust does not accept that Ms Manawatu was unjustifiably dismissed or disadvantaged. It says that Ms Manawatu was only employed by the Trust since 1999. The Trust says that Ms Manawatu was absent from work without explanation or authorisation from lunchtime on 23 March 2009 for a period in excess of three days. The Trust says that during that period Ms Manawatu did not advise she would be absent from work and did not seek authorisation to be absent or work from a different location. It deemed on that basis she had abandoned her employment in reliance on its abandonment policy.

[6] On 27 March 2009 a letter was placed in Ms Manawatu's letterbox advising that she was deemed to have abandoned her employment and that her employment was at an end as at 12 noon Friday 27 March 2009. The Trust does not accept therefore that it dismissed Ms Manawatu or that she was disadvantaged.

[7] The Authority regrets the delay in issuing this determination. The file and importantly the Authority's notes of the evidence it heard at the investigation meeting were unable to be accessed from the building in Kilmore Street, Christchurch until quite recently. I thank the parties for their patience and understanding and sincerely regret any inconvenience the delay may have caused.

### **The Issues**

[8] The Authority is required to determine the following issues in this case:

- Is the Authority the right forum to resolve this employment relationship problem?
- When did the employment relationship commence between Ms Manawatu and the Trust?

- Was Ms Manawatu bound by the abandonment policy?
- Was the Trust entitled to conclude under that policy that Ms Manawatu had abandoned her employment?
- If the Trust was not entitled to conclude that Ms Manawatu had abandoned her employment, was Ms Manawatu dismissed and/or disadvantaged – test in s.103A Employment Relations Act 2000?
- If Ms Manawatu was dismissed then was such dismissal unjustified?
- If the dismissal was unjustified then what remedies is Ms Manawatu entitled to and is there issues of contribution and mitigation?

***Is the Authority the right forum to resolve this employment relationship problem?***

[9] Ms Manawatu was party to an individual employment agreement (the agreement) with the Trust dated 1 September 2004. The agreement contained an alternative process for resolving personal grievances. Briefly summarised, if the matter was not resolved in discussion with the Service Manager then there was a referral to a grievance committee consisting of a Kaumatua and Governance and Management representative of the Trust. The emphasis in the process was on settling the grievance rapidly and close to the point of origin.

[10] The Employment Relations Act 2000 provides in s.113 that personal grievance provisions are the only way to challenge a dismissal.

[11] The Authority discussed this matter with counsel at the start of the investigation meeting. Counsel and the parties were happy for the Authority to investigate and determine the matter.

[12] The answer to this question therefore is yes.

***When did the employment relationship commence between Ms Manawatu and The Trust?***

[13] This matter was of some importance for Ms Manawatu. Ms Manawatu said she had been employed by the Trust for 17 years. Ms Allen says that Ms Manawatu's employment commenced in February 1999.

[14] The Authority must rely on the best evidence before it regarding the commencement date of employment. It cannot speculate about important matters such as when the parties entered into a legally binding employment relationship.

[15] The only documentary evidence before the Authority on the date Ms Manawatu commenced employment with the Trust is that recorded on her confidential employee sheet, hand-written and typed format, of 2 February 1999. I have considered whether there was anything to suggest previous service before that date being carried over or taken into account. There is no evidence of that. There was evidence that the date of 2 February was used as an anniversary date for calculating holiday pay entitlements – the undated letter sent from Ms Allen to Ms Manawatu after she was deemed to have abandoned her employment regarding calculation of holiday pay.

[16] I accept Mr Knowsley's submission as sensible that Ms Manawatu could not have been employed by the Trust before it was established in 1999 and then later incorporated in 2000.

[17] There is, I accept, a possibility that Ms Manawatu was employed before that date by a different entity and that she considered the Trust and the other entities to be one. I am not satisfied from the evidence though that was the case. I accept Mr Davidson's submission that, whilst important to Ms Manawatu the date of commencement of employment is not particularly material to the matters the Authority is required to determine.

[18] The answer to this question is that Ms Manawatu's employment commenced with the Trust on 2 February 1999.

***Was Ms Manawatu bound by the abandonment policy?***

[19] Ms Manawatu's employment agreement did not contain an abandonment clause. Clause 3.3 of the agreement provided that Ms Manawatu would, during the continuance of her employment, comply with all reasonable directions given by the Trust and with all the rules and regulations laid down by the Trust concerning its employees.

[20] It was common grounds that whilst a number of human resource policies were referred to in the employment agreement itself and attached to it as various

appendices, the policy about abandonment of employment was not. The evidence supports that in addition to clause 3.3 Ms Manawatu, when first employed, was asked to confirm that she agreed to adhere to the policies and procedural manual – employee fact sheet and the documents suggest that she did agree.

[21] Ms Manawatu said that she was aware of the policy on abandonment and that there had been a *brief overview of that policy at a two day meeting where Ms Allen ran through the different policies of The Trust*. Ms Allen's evidence was that there was regular review of the policies and procedures with all the staff at the Trust and I accept her evidence about this is more likely. The Trust placed importance on adherence to its policies and procedures as part of the quality management system.

[22] I find that Ms Manawatu was expected as part of her terms and conditions of employment to adhere to policies and procedures and rules laid down by the Trust from time to time. These were drawn to her attention and her evidence is that she knew there was a policy on abandonment, although said she did not recall the details as to the exact number of days that an employee was to be absent before any such policy would take effect. In any event Ms Manawatu said during her period of absence the abandonment policy simply did not enter her head.

[23] Mr Davidson also referred the Authority to the Employment Court judgment of *Lwin v. A Honest International* [2003] 1 ERNZ 387 in which it was held by Judge Travis that the absence of an expressed term did not prevent a term being implied, as necessary to give business efficacy to a contract, in that particular case if an employee abandoned their employment the contract would be at an end.

[24] The answer to this question is that Ms Manawatu agreed to adhere to the policies of the Trust in her employment agreement, and this included the abandonment of employment policy.

[25] The policy provided:

***Policy***

*Where the employee is absent from work for a continuous period exceeding three days without the prior consent or notification to the employer, or without good cause, he/she shall be deemed to have terminated his/her employment.*

*Unauthorised absence from the workplace is considered serious misconduct.*

***Procedure***

*Where an employee is deemed to have terminated his/her employment under the policy, the Service Manager shall advise the employee in writing within 24 hours of the employee's employment being deemed terminated.*

*A copy of the employee's notice of termination is to be held on the staff members personal file.*

***Was the Trust entitled to conclude under that policy that Ms Manawatu had abandoned her employment?***

*What happened during the week 23-27 March 2009?*

[26] The employees at the Trust are associated with the local Marae and well known to each other with many being directly related.

[27] Ms Allen was, prior to 23 March 2009, concerned about Ms Manawatu's performance at the Trust and what she saw as her continued failure to meet the obligations of her job. In particular she was concerned that timesheets, activity reports and monthly reports were not being filled out in a timely manner. Ms Manawatu confirmed in her evidence that she had had problems in the past about time keeping and was quite relaxed about record keeping. Her evidence supported an inconsistent approach by her to paperwork. She said that if she was told to complete the paperwork she would do so for a period and then stop again.

[28] Ms Allen advised all staff at a staff meeting on 17 March 2009 that there was going to be an audit by external funders and she would need to go through all staff files to make sure that they were up to standard and that there would be a review with respect to monthly reports and time sheets.

[29] Later that same day Ms Allen asked to review Ms Manawatu's files. She was advised that they were messy but that they would be ready for inspection on Thursday 19 March 2009. At the meeting on Thursday 19 March 2009 Ms Manawatu advised Ms Allen that she had not completed the files but would do so by the end of the week. Another meeting was therefore scheduled for Monday 23 March 2009 at 1pm. Ms Allen offered throughout this period assistance to Ms Manawatu to get the files in order but such offer was not taken up.

[30] On 23 March 2009 Ms Manawatu attended an early morning meeting at the local school between 8.30am and 9.30am to discuss a school fight between her niece Grace and Ms Allen's niece. Ms Manawatu believed at the end of the meeting that the incident between the two girls had been resolved. She returned to the workplace but then left again at about midday to have lunch with her sister in law, Moana Manawatu, who is Grace's mother. Ms Manawatu was advised at that stage by her sister in law that the matter involving the young people had not been resolved. Ms Manawatu's evidence was that she felt the difficulties were a continuation of the tension between the two families.

[31] A further meeting was arranged with the school for 12.30pm that day. It was agreed, after discussion, that while some safety measures were put in place at the school Grace would stay at home until 26 March 2009.

[32] Ms Manawatu spent part of the week looking after Grace and she said she also did some other work. When that work was set out in detail in the written statement of evidence Ms Allen said it was not work that she would have, had she known about, authorised Ms Manawatu to perform.

*Did Ms Manawatu make any contact with the office from 1pm on 23 March until her return to work at or about 8.30am on Monday 30 March?*

[33] Ms Manawatu did not make any contact with anyone from the Trust during the period she was away to advise the reason for her absence, seek authorisation to be away, and to explain where she was and what she was doing.

[34] Ms Manawatu said that she had stayed away in a similar matter previously and nothing had happened. Ms Allen accepted in her evidence before the Authority that there had been occasions when Ms Manawatu had not shown up to work. That would not have been consistent with the policy attached to Ms Manawatu's employment agreement for staff safety and reporting. The policy required staff to report each day at the marae office in the morning between 8am and 10am and to complete activity sheets and then at the end of the day staff were required to report back between 4pm and 6pm to the duty manager and sign off. The policy is directed to safety at the Trust. Staff are often required to work in places outside of the marae and sometimes this can include working in client's homes. It is recognised as important that the Trust know the whereabouts of staff.

[35] Ms Allen said that these occasions when Ms Manawatu had not shown up for work were not like the absence from 23 May 2009. She said that she knew where Ms Manawatu was on the other occasions from other staff or because she heard directly from her. The difference she said on this occasion was that there was no contact at all.

[36] Whilst Ms Manawatu's written brief of evidence made reference to her having, during the week she was absent from the office, regular contact with other staff in the office, her evidence at the Authority's investigation meeting was that she did not contact anyone at the office, or leave a message to advise of her whereabouts. I am not satisfied that the evidence supports as she wrote in her written statement that she advised a number of the trustees and other employees of her decision to withdraw from working in the office.

[37] I find any contact with other employees in the small, close knit community of Kaikoura was unplanned and did not involve discussion about her absence from the office. Ms Manawatu for example gave evidence that she saw Taikorekore Stirling, an environmental health worker at the Trust at a prayer meeting. There was also evidence about a meal outside of normal working hours at which other employees were present. Ms Manawatu accepted her absence was not a topic of conversation.

[38] I do not find that Ms Manawatu made any contact with the office during the week from on or about midday 23 March to midday 27 March.

*What steps did Ms Allen take to contact Ms Manawatu?*

[39] When Ms Manawatu did not attend the pre-arranged meeting at 1pm on 23 March 2009 Ms Allen asked Martin (Ned Manawatu), the finance manager of the Trust, Colleen Lee the social worker at the Trust, Mr Stirling and Lisa Kahu who was primarily at that time involved in a health promotion role at the Trust whether Ms Manawatu had left a message that she was not returning, or if they knew where she was. No one had heard from Ms Manawatu.

[40] On Tuesday 24 March Ms Allen checked the answerphone for messages and then tried to contact Ms Manawatu on different cell phone numbers and her home number as listed in her personnel file. In respect of the cell phone numbers attempted there was no answer, and the home number had a disconnected signal. Ms Allen

again enquired of staff if they knew Ms Manawatu's whereabouts but no-one had heard from her, or knew where she was.

[41] On Wednesday 25 March Ms Allen again made inquiries of staff and checked for any messages. She drove to Ms Manawatu's house and knocked on the front door but no one answered. Ms Allen said in her evidence that at that time she thought Ms Manawatu was avoiding meeting with her.

[42] On 26 March Ms Manawatu failed to turn up to work and there were no messages. Ms Allen again questioned staff if they knew of her whereabouts and they confirmed they did not. Ms Allen tried a 021 cell phone number and also a 025 number that was listed on the wall. There was no answer.

[43] On Friday 27 March 2009 Ms Allen again asked staff if they knew where Ms Manawatu was. She obtained some legal advice because she said she didn't know what to do. At about 3.40pm in the afternoon Ms Allen went around to Ms Manawatu's house and knocked on the door. Again there was no answer so she left the following letter in the mail box:

*Friday 27 March 2009*

*Tena Koe Rachel,*

*I note you were to attend a meeting with me at 1pm on Monday 23 March 2009 to review your files, case notes and work/time sheets. You were in the office on Monday morning, you left the office before lunch stating you were going to lunch, you failed to return to work and so did not attend the agreed 1pm meeting. You have been absent since then and have not contacted me or the office to advise the reason for your absence. I have tried contacting you on your cell phone to no avail, and landline (which is returning a disconnected signal).*

*In the circumstances you are deemed to have abandoned your employment. Your employment is therefore at an end as at 12 noon Friday 27 March 2009. Your final pay and any holiday pay owing will be paid as soon as possible.*

*Heoi ano, na*

*Riria Allen*

[44] On Monday 30 March 2009 Ms Manawatu turned up as usual at the office of the Trust between 8.30am and 9am. Ms Allen asked to speak to Ms Manawatu in her office and questioned her as to whether she received the letter left in her mail box. Ms Manawatu confirmed that she had not seen the letter and asked if Ms Allen

wanted her to go and get it. Ms Allen said that she could print off another copy and duly did so.

[45] Ms Manawatu asked if it was to do with the family situation and Ms Allen said no. Ms Manawatu questioned whether she was being *fired* and Ms Allen advised she was not. It is likely that Ms Manawatu was encouraged to take some advice and she was told she was no longer required at the Trust and effectively sent away from the office.

[46] Ms Manawatu said that she left the office in distress. She was subsequently provided with a package containing her personal effects, a reference dated 2 April 2009 and a calculation of her final pay including holiday pay.

*Letter 16 April 2009*

[47] Ms Manawatu wrote to Ms Allen by letter dated 16 April 2009. The letter was just over three pages long and set out the details about the meeting at the school and also what she described as the fall out from the Runanga Hui held earlier in the month of March 2009. Ms Manawatu set out that she considered the fall out from that had led to increased tensions and some verbal assaults and aggressive non verbal behaviour that she felt was targeted at herself and whanau members. She said that her way of coping with the tensions that she believed made it increasingly unsafe for herself and her whanau was to withdraw and work away from the marae for a time until emotions had calmed down and the intimidation tactics she felt were aimed at her had stopped.

[48] Ms Manawatu also set out that withdrawing in this manner was not an isolated incident and that she felt targeted by the response to her absence. She stated that withdrawing seemed to her to be the best course of action and when whanau needed assistance within the home she took that opportunity. Ms Manawatu did acknowledge in the letter that she should have raised her feelings of *un-safeness with Ms Allen as the CEO directly* but felt that would have been difficult with the issues between the families.

[49] Ms Manawatu suggested in her letter a Hui to allow her the right of response, stating that her years of service deserved some respect and acknowledgement. She suggested a hohourongo process and mediation meeting so she could achieve some closure about that matter.

[50] Ms Allen responded to the letter and also some queries about the calculation of holiday pay in an undated letter following receipt of Ms Manawatu's letter. She said in her letter that the Trust did not agree to Ms Manawatu's analysis of the situation and did not agree that Ms Manawatu had any grounds for not being at work or that her place of work was unsafe. She set out that Ms Manawatu failed to raise those matters with her or any member of the board and failed to seek or obtain approved leave. She concluded the letter by stating that there was no point in meeting with her and mediating the situation and declined to do so.

[51] A statement of problem was then lodged with the Employment Relations Authority in December 2009 and it was only after the Authority directed mediation that the parties attended a meeting. The matter was unable to be resolved.

### **Conclusion**

[52] The Trust concluded that Ms Manawatu was deemed to have abandoned her employment. Under the policy the Trust had to be satisfied about certain matters.

[53] The first is that Ms Manawatu was absent from work for a period exceeding three days. I am satisfied in this case that Ms Manawatu was.

[54] The second is that the period of absence had to be without the prior consent or notification to the Trust. I am satisfied that Ms Manawatu was absent from work without the prior consent or notification to her employer. That could be safely relied on by the Trust.

[55] The third is that such period of absence be without good cause. The Trust could not, in circumstances where no-one knew where Ms Manawatu was, or the reason for her absence, be satisfied about this matter without first giving Ms Manawatu the opportunity to explain why she was away before taking further action.

[56] There was consideration as to similar wording in an abandonment clause in the Authority determination of *Brown v. Five Star Pork (NZ) Ltd* AA216/08, Member Robin Arthur. In that case there was analysis of the interactions that had taken place to determine whether the actions taken by the employer to establish whether there was no good cause was sufficient. It was held that one unanswered telephone call, asking another employee with whom the applicant got a lift to work if he knew of the reason

for the absence and checking for messages fell short of a more careful inquiry required. Mr Arthur concluded that a fair and reasonable employer would have told the applicant in that case that it appeared he may have terminated his own employment and given him the opportunity to explain before taking further action.

[57] Support for that being a necessary step is found in the Employment Court case referred to earlier of *Lwin*. In that case the defendant employer wrote to the employee advising that if she failed to respond in writing before a certain date with an explanation of her intentions, it would assume she wished to abandon her position of employment. In that case the Court held that there was not enough evidence upon which a reasonable employer could have concluded that the employee had abandoned her employment but that the step in writing to the employee was a very proper one to clarify the position. Judge Travis referred to the employer in that case being cautious in drawing the inference that the employee had abandoned her employment. The difficulty however was that the letter had not been sent to the correct address and the employee was found to have been unjustifiably dismissed.

[58] Any such action by an employer also has to be assessed against the good faith obligations in s.4 of the Employment Relations Act 2000. Section 4.1 (1A) provides:

*The duty of good faith in subsection (1) –*

- (a) *is wider in scope than the implied mutual obligations of trust and confidence; and*
- (b) *requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and*
- (c) *without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected –*
  - (i) *access to information, relevant to the continuation of the employees' employment, about the decision; and*
  - (ii) *an opportunity to comment on the information to their employer before the decision is made.*

[59] Ms Allen in this case took a number of steps to attempt to contact Ms Manawatu by telephoning cell phone and landline numbers, making regular

inquiries of other staff about her whereabouts, checking to see whether any messages were left, attending at Ms Manawatu's home and then finally delivering a letter advising that she was deemed to have abandoned her employment and that it was therefore at an end from 12 noon Friday 27 March 2009.

[60] Ms Allen did not attempt to clarify with Ms Manawatu whether there was good cause for her to be away. There was no evidence in this case that Ms Manawatu intended to finally end her employment. Her evidence is that she had left her computer on when she had left the office for lunch on 23 March and she had not removed any personal effects.

[61] I agree with Mr Davidson's submissions that a fair and reasonable employer could have discharged its obligations in terms of any good cause by leaving a note or letter at Ms Manawatu's home advising her that there was a risk that she could be deemed to have abandoned (terminated) her employment and giving her an opportunity to explain her absence from the office.

[62] Ms Allen instead moved directly to a decision that Ms Manawatu was deemed to have abandoned her employment from midday 27 March 2009. There was an opportunity for an explanation for the absence to be given when Ms Manawatu returned to work on Monday 30 March 2009. Ms Manawatu was not allowed to discuss the matter further. There was then a further opportunity after the 16 April 2009 letter which provided for the first time the reasons for Ms Manawatu's absence and for not contacting the office. Ms Manawatu suggested a hohourongo or mediation at a later date but such opportunity was not taken up by the Trust.

[63] Whilst the facts leading to the decision that Ms Manawatu was deemed to have abandoned her employment were not complex, there were many issues that I heard evidence about regarding her absence. None of these had been discussed prior to Ms Manawatu having been deemed to have abandoned her employment. It would be fair to say from the evidence that Ms Allen and Ms Manawatu had quite different views about most of these issues ranging from the scope of Ms Manawatu's role, views on the impact of what had happened at the Runanga hui in March and whether Ms Manawatu had had absences similar to this one on previous occasions without any sort of consequence.

[64] Ms Allen was understandably upset about the failure by Ms Manawatu to advise about her absence from the office. Objectively assessed though if Ms Manawatu had been allowed to provide an explanation then I am not satisfied it was inevitable that Ms Allen would have concluded Ms Manawatu had abandoned her employment. Instead Ms Manawatu may well have continued her employment with a disciplinary outcome such as a warning.

[65] Ms Manawatu had been an employee for a long time at the Trust. Although there were clearly some issues of concern for Ms Allen regarding her performance about file maintenance, time records and activity sheets, she had never received any previous formal disciplinary outcomes. She had on other occasions, although I accept it is unlikely to the same extent, not attended at work in accordance with the clear policies of sign in and out. There also seemed some confusion from Ms Manawatu as to the exact boundaries of her roles and I do note that whilst there is a service description for budget advice services (document K) Ms Manawatu's position description had not been updated in a particularly timely manner.

[66] There had been some serious family issues arising outside of work and some tensions as a result. The Runanga meeting held on the Takahanga Marae on 15 March 2009 had been difficult. Ms Allen's brother had been voted out as Chairperson and Ms Manawatu's brother took over as interim Chairperson. The meeting passed a vote of confidence in Mark Solomon. He is a first cousin of Ms Manawatu's and she was amongst a group who supported him. Although the policies and procedures quite properly cautioned bringing these matters into the workplace, it could not be ruled out that they had had some impact on Ms Manawatu and her feelings of safety in the workplace whether or not evident to other staff. As in the *Five Star Pork* case however there was no opportunity for Ms Allen to consider all these matters and whether they amounted to good cause for Ms Manawatu being away. Ms Allen did not turn her mind to an outcome other than Ms Manawatu having terminated her own employment by her actions during the week of 23 March 2009 because there was no process to enable that to occur.

[67] It was common ground that had Ms Manawatu advised Ms Allen that she needed to take time off to look after her niece, then Ms Allen would in all probability have granted that on the basis that she take annual leave for that purpose.

[68] In conclusion without offering Ms Manawatu an opportunity to explain her absence so that the Trust could determine whether or not there was not good cause for it, the Trust was not entitled under its abandonment policy and the good faith statutory requirements to simply deem that Ms Manawatu had terminated her employment. That it did in this particular case, without giving Ms Manawatu that opportunity I find amounts to a dismissal.

### **Was the dismissal unjustified?**

[69] The Trust at the time of deeming Ms Manawatu to have terminated her employment did not establish if the absence was without good cause. In fact at the time that the letter was left in Ms Manawatu's letterbox on 27 March 2009 the Trust had no knowledge at all of any of the reasons behind the absence. I do not find in those circumstances the Trust is able to justify the dismissal.

[70] I find that Ms Manawatu has a personal grievance that she was unjustifiably dismissed from her employment and she is entitled to remedies. The grievance of unjustified disadvantage does not need to be separately considered as it arises out of the same facts.

### **Remedies**

#### *Lost wages*

[71] Lost wages are claimed in an estimated amount of \$69,291.99. The evidence from Ms Manawatu is that she could not obtain alternative employment undertaking the same work that she had in Kaikoura with the Trust. After about three weeks of unemployment Ms Manawatu, as a result, moved to Christchurch.

[72] Ms Manawatu also noted in her written evidence that she had promised Ms Allen's late mother Miriama Kahu, who was the founder of the Trust that she would not attempt to secure any health and social service contract from the Government in Kaikoura and that if she remained in Kaikoura she said that would have to learn new skills in order to be able to obtain employment.

[73] That led therefore to a move away from Kaikoura to Christchurch where she was able to secure some part time work. Ms Manawatu advised that she hated living in Christchurch and felt disconnected from her family. As time went on she started to

have panic attacks whenever she had to return to Christchurch and in January 2010 when her position ended in Christchurch she could not bear the idea of applying for another position and returned to Kaikoura.

[74] I am satisfied that Ms Manawatu did attempt to mitigate her loss after 27 March 2009 by shifting to Christchurch and picking up and obtaining similar work, albeit for fewer hours.

[75] Ms Manawatu gave evidence about the difficulties she had suffered in terms of a business she was involved in because when she was in Christchurch she had to employ someone else to work in the business. I am not satisfied that the Trust should meet any loss arising from the business. Lost wages should be limited to those Ms Manawatu would have received at her employment with the Trust.

[76] There is a claim for reimbursement in this case that is greater than three months ordinary time remuneration. The Authority may in its discretion order an employer to pay an employee by way of compensation for remuneration lost a sum greater than three months lost wages. I am not satisfied that I should restrict any award in this case to a three month period. I take into account that Ms Manawatu did leave her home town and family members and attempt to mitigate her loss in a situation where there was no work available in Kaikoura in the field that she had been working in.

[77] Subject to any finding that I go on to make about contribution Ms Manawatu is entitled to reimbursement of her lost wages that she would have earned at the Trust, but for her unjustified dismissal, less money earned by her for a period of 10 months from 30 March 2009 until 29 January 2010. After the end of January I do not find sufficient attempts were made to mitigate loss.

[78] There was no satisfactory documentation evidence to confirm what income had been received by Ms Manawatu since the termination of her employment. Mr Davidson is provide information from Inland Revenue Department and/or other sources to support earnings from 27 March 2009 to Mr Knowsley. These earnings are then to be deducted from the amount owing for the period 30 March 2009–29 January 2010.

### *Compensation*

[79] Ms Manawatu referred to her distress at not being able to explain her absence in her letter of 16 April 2009.

*Where is the tikanga? I have given my heart and dedication to the service, being the longest serving member of the staff and again, I reiterate never having received a verbal or written warning by any member of management. I do however, acknowledge there have been many lessons to learn and the previous Tumuaki certainly raised her issues with me “kanohi ki te kanohi” which I’m sure you can testify too. However, in all her communications with me I felt my mana was left intact and that I at least had the opportunity to voice my response – a right I feel that was not given to me in the situation.*

*You expressed to me Riria your feelings of difficulty with this being the hardest thing you have had to do. But you did not give me the respect of “kanohi ki te kanohi” and I was left feeling even more humiliated by the knowledge that I was supposed to have read this letter at home and not put you through the inconvenience of having to see me about it.*

[80] I accept that not being able to explain her absence *face to face* before being deemed to have abandoned her employment from midday 27 March 2009 did affect Ms Manawatu deeply. Her employment agreement encouraged such an approach and she was denied that. I accept that she felt a sense of humiliation and loss of dignity in the small community in which she had previously worked for ten years as a result.

[81] There was also an impact from her role ending with the Trust on her financial situation. Ms Manawatu was required to sell some shares that she had inherited in order to pay her mortgage. She referred in her evidence to her health having suffered in terms of ongoing problems with insomnia that escalated after her dismissal and having since been provided sleeping pills. Ms Manawatu suffers from diabetes and said that in order to escape she overdosed on sugar to effectively knock herself out. Fortunately now family and friends monitor what she eats.

[82] The evidence about the distress that Ms Manawatu suffered was compelling. Subject to any findings I make about contribution, a suitable award for compensation is \$12,000.

### *Contribution*

[83] The Authority is required to consider under s.124 of the Employment Relations Act 2000 the extent to which the actions of Ms Manawatu contributed

towards the situation that gave rise to the personal grievance, and if so required, reduce the remedies that would otherwise have been awarded.

[84] Mr Knowsley submits that contribution should be 100%. Mr Davidson on the other hand submits that there was no contribution.

[85] I find that there was blameworthy conduct on the part of Ms Manawatu. She did not turn up to a pre-arranged meeting with Ms Allen on 23 March 2009 and did not let her know the reason for that. She then failed to contact the office and tell them of her whereabouts at the latest between 1 pm 23 March and midday 27 March 2009 when she was deemed to have abandoned her employment.

[86] Ms Manawatu had an obligation in good faith to be responsive and communicative with the Trust and she was not. Her behaviour in failing to contact the office, leave a message or even write a letter had bearing on the conclusion that she was deemed to have abandoned her employment.

[87] Against that though in this case Ms Manawatu was not allowed to explain her absence on her return to work the next week. There were two opportunities for that to have occurred, at that time and, when Ms Manawatu suggested a meeting in her letter of 16 April 2009.

[88] I take into account several other matters. The first is that there had been difficult and quite distressing issues between the families. Different people deal with stress in different ways. I find there is a strong likelihood that these matters did impact on Ms Manawatu's decision to simply withdraw from the office. The way however that she did that by failing to communicate where and why she was away was a breach of her obligations toward the Trust.

[89] Ms Manawatu did conduct herself at times in a way other than that contemplated by the policies and procedures of the Trust and having heard from other staff in a manner different to other staff. She did so seemingly without formal consequence. Although unsatisfactory and not in line with how Ms Allen managed the Trust, this could have led to a misguided but nevertheless genuine belief on the part of Ms Manawatu that she did not have to keep regular contact with the office and that if someone needed her they would contact her. I also take into account that most of the absence away from the office was spent supporting her niece which if leave had been requested would in all likelihood have been granted.

[90] Other activities that Ms Manawatu undertook in the community during her absence, such as business planning were activities that Ms Allen said she would not have granted permission for her to undertake. Ms Allen said that they were not within Ms Manawatu's role and apparently for the benefit of another organisation. Ms Manawatu gave strong evidence that she considered business planning to be within her role at the Trust. I accept Ms Allen's evidence that this was not part of her role. I am not able to rule out though that there was some genuine confusion on the part of Ms Manawatu that she was able to do such planning in her role and in Ms Manawatu's view therefore she was continuing to perform her duties for the Trust during her absence.

[91] I accept Mr Davidson's submission that the performance matters should not impact on contribution because these were matters that could have been addressed earlier or could have been addressed if Ms Manawatu had returned to work by way of the processes available to the Trust.

[92] I have carefully assessed the factual circumstances in this case against other similar matters. I find that there are differences in the facts in this case to others where there has been a 100% contribution. That said I accept that there is contribution that in all the circumstances I assess at 25%.

#### *Lost wages*

[93] The contribution is to apply to lost wages. Mr Davidson is to provide documentation to establish Ms Manawatu's earnings during this time, and if agreement as to amount cannot be reached then leave is reserved for either party to return to the Authority.

#### *Compensation*

[94] Applying contribution to the compensation amount of \$12,000, Ms Manawatu is entitled to compensation in the sum of \$9,000 without deduction under s.123(1)(c)(i) of the Employment Relations Act 2000 and I so order.

#### **Costs**

[95] I reserve the issue of costs and encourage the parties to reach agreement. Mr Davidson has until 24 October 2011 to lodge and serve submissions as to costs

and Mr Knowsley has until 14 November 2011 to lodge and serve submissions in reply.

Helen Doyle  
Member of the Employment Relations Authority