

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 660
3170862

BETWEEN EVA POUROVA
Applicant

AND IDEA SERVICES LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Anita Brockhouse, advocate for the Applicant
Paul McBride, counsel for the Respondent

Investigation Meeting: 15 and 16 November 2022 at Christchurch

Submissions Received: 16 November 2022 from both parties

Date of Determination: 12 December 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Eva Pourova is employed by IDEA Services Limited (IDEA Services) as a Support Worker in a Christchurch community house setting working alongside adults with complex care requirements. IDEA Services (a subsidiary company of IHC New Zealand Incorporated)

is funded by the Ministry of Health and the Ministry of Social Development and is New Zealand's largest provider of services for people with intellectual disabilities and their families/whānau.

[2] Ms Pourova has identified an unjustified disadvantage, personal grievance claim, concerning how IDEA Services handled an employment investigation into co-worker concerns. Ms Pourova says the way IDEA Services dealt with the concerns was unjustified, amounted to bullying and caused unnecessary distress. The claim also asserts IDEA Services failed to provide a safe and supportive work environment. This includes a suggestion that IDEA Services did not provide sufficient support when Ms Pourova had identified workload and work pressure issues, whilst she was pregnant.

[3] Ms Pourova seeks compensation should the Authority find that IDEA Services acted in an unjustified manner. The employment relationship is ongoing. Ms Pourova says she will return to work from her current parental leave in early 2023.

[4] IDEA Services in contrast, maintain generally that concerns co-workers identified were genuine and needed to be investigated; the investigation was appropriate and fair and, it did not result in any disciplinary sanction or detriment for Ms Pourova.

[5] Further, IDEA Services contend that workload/lack of support issues were resolved at the time and in any case, have been raised outside of 90 days as personal grievances. IDEA Services denies causing Ms Pourova disadvantage or distress in her employment.

The Authority investigation

[6] During the investigation meeting, I heard evidence from Eva Pourova and a former co-worker, Marketa Foderova. For IDEA Services I heard from: Michelle Hickey, Canterbury Area Manager, Amber Tuhua, and Michelle Austin both Christchurch Service Managers. All provided prior written statements and by agreement, I accepted a written statement from John Wolley, a local union delegate from E tū. In addition, by summons, I heard evidence from Udeep Regmi a current IDEA Services employee who was formerly Ms Pourova's Service Manager from 1 August – 13 November 2021.

[7] As permitted by s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make

orders but I do not record all evidence and submissions except to observe the parties assisted in giving evidence and submissions that I have carefully considered.

Issues

[8] The issues to be decided are:

- (a) Was Ms Pourova unjustifiably disadvantaged in her employment?
- (b) If an unjustified disadvantage claim is established, what remedies should be awarded considering Ms Pourova's claim for compensation of \$15,000 pursuant to s 123(1)(c)(i) of the Act.
- (c) If Ms Pourova is successful in all or any element of her personal grievance should the Authority reduce any remedies granted because of any contributory conduct?
- (d) An assessment of whether either party should contribute to the incurred costs of representation.

What caused Ms Pourova's employment relationship problem?

[9] Ms Pourova is a registered nurse in the Czech Republic and an experienced community support worker since arriving in New Zealand around 2012. Ms Pourova commenced employment with IDEA Services in November 2020. Latterly, Ms Pourova worked in a team of seven, covering the 24-hour care needs of adult residents of an IDEA Services house-flat located in Christchurch.

[10] Ms Pourova says she felt valued, appreciated, and supported by her then service manager up to August 2021 but from this point in time, a combination of issues caused her problems. Ms Pourova says these issues arose at the same time she was pregnant and during her second trimester she struggled with fatigue and a lack of management support.

[11] In late September 2021, Ms Pourova says she was struggling to cope with difficult residents (including an assault), establishing a relationship with her new service manager, Udeep Regmi and perceiving that she was not being listened to when she raised workload issues. On top of these contextual factors, Ms Pourova says she was having trouble sleeping and not coping with late afternoon early evening shift allocations when pregnant.

[12] Ms Pourova sought assistance from her GP and midwife and obtained a medical certificate and letter from her midwife on 7 October confirming her fatigue and issues coping with her pregnancy. Both letters suggested IDEA Services consider providing more social working hours and support. Unfortunately, Ms Pourova did not immediately disclose the letters to IDEA Services. Ms Pourova did not provide a satisfactory explanation why she did not provide them in a timely manner. Ms Pourova says she disclosed her pregnancy to Mr Regmi in late August 2021, shortly after he started as her service manager. Mr Regmi confirmed this was so and recalled Ms Pourova had indicated she was anxious about her pregnancy and did not want it to be disclosed to others.

[13] Michelle Hickey, IDEA Services Area Manager says that around early October 2021, she was picking up concerns that it was difficult to persuade support workers to work at the house Ms Pourova worked in, so alongside Mr Regmi, she attended a 13 October meeting with the support workers involved to ascertain why this was so. Ms Hickey conceded that her approach was direct during the meeting. She recalls addressing the team including Ms Pourova, by saying “some people had said they felt bullied” and she was seeking to understand what that was based upon. From Ms Pourova’s perspective, this meeting did not go well and afterwards Mr Regmi says she informed him, that she felt targeted and was thinking of getting legal advice.

[14] Coincidentally, due to two new residents arriving, IDEA Services conducted a formal ‘service review’ to alter rostering arrangements to cope with the changed residents’ needs.

[15] An 18 October meeting convened by Ms Hickey, discussed new rosters as part of the service review. Differing accounts were given about what was said at this meeting. Ms Pourova claimed she had intended to disclose her medical certificates and was persuaded not to do so by Ms Hickey’s approach to the meeting. Ms Hickey denied this, and suggested Ms Pourova’s approach to the meeting was to pressure others to concede to her roster preferences. Ms Hickey recalled Ms Pourova saying she was unable to work afternoons and she advised if that was because of health reasons a different discussion in terms of IDEA Services medical incapacitation policy needed to occur.

[16] A written statement that both parties accepted, was provided by another meeting attendee John Wolley (a union delegate), indicating the meeting was amicable. He recalled

Ms Pourova's pregnancy was discussed and Ms Hickey offered to investigate if Ms Pourova's shift allocation concerns could be accommodated.

[17] Ms Foderova could not recall what Ms Hickey said during the 18 October meeting but says she was firm but not aggressive to Ms Pourova.

[18] I accept from the evidence that Ms Pourova felt constrained in disclosing her medical certificate at the meeting and at the time, she was frustrated by Mr Regmi's seeming lack of support for her and communication between them was becoming tense. However, by this point in time she had not disclosed the certificates for ten days. Mr Regmi disclosed he was also under undue pressure and perhaps felt a bit 'under siege' from Ms Pourova and other staffing issues.

[19] By letter of 18 October, Mr Regmi confirmed new hours for Ms Pourova (starting from 15 November). She was allocated morning shifts.

[20] A further issue arose on 20 October, when Ms Pourova raised concerns with Mr Regmi by email about having to be present when a carer from another service provider visited to introduce a new resident. The email exchange objectively evidenced that Mr Regmi failed to fully appreciate the full extent of Ms Pourova's concerns. In the event, Ms Pourova took time off on sick leave to avoid meeting the carer. Ms Foderova, a former co-worker who disclosed she was a close friend of Ms Pourova, says that Mr Regmi never bullied Ms Pourova, was at times reassuring but was in her estimate, ineffective in following up concerns and at times ignored Ms Pourova.

[21] In a text exchange of 21 October, Ms Pourova raised staffing and workload issues with Mr Regmi asking for more support. Ms Pourova referenced that she was "close to have burnout" and: "My back is getting extremely sore". Mr Regmi's response did not specifically address these concerns.

Disciplinary allegations

[22] Ms Hickey on 1 November, upon being made aware of issues from Mr Regmi, who had earlier received emailed concerns from two co-workers of Ms Pourova, resolved to conduct a disciplinary investigation. Mr Regmi communicated this decision in a letter of 1 November to Ms Pourova that he described as a 'please explain' letter. A term used in IDEA

Services disciplinary policy. The letter opened with: “Some potentially serious concerns have been brought to my attention”. Emails from co-workers were attached and the letter was grouped around three central allegations – these were that Ms Pourova was:

1. Repetitively late for work – but only two instances were cited.
2. Had repetitively bullied other staff members in that: “You always call other staff members dumb” – but no other specifics were provided.
3. Not fulfilling requirements of the support worker role - the details of this were that Ms Pourova had supposedly:
 - Complained to a co-worker about difficulty in using a hoist for lifting a resident.
 - A contextless statement that: “You put off your work and do nothing” (that turned out to be a co-worker’s generalised comment)
 - Told a co-worker she needed help because she was pregnant.
 - Requested to Mr Regmi on 21 October that she needed a break when orientating a staff member.
 - Asked for help from Mr Regmi on 1 November by text, asking for more trained staff and had indicated she was close to burn out and her back was extremely sore.

[23] The letter which Mr Regmi and Ms Hickey say was based on an HR template, then suggested a preliminary meeting to hear Ms Pourova’s explanations “and to consider whether any further steps are appropriate”. It warned if no satisfactory explanation was received that would “resolve this issue, then the next step would be to begin a disciplinary process and conduct a full and fair investigation”.

[24] The letter then outlined: “As these are serious allegations”, they may result in disciplinary action “up to and including dismissal”. Suspension was also floated as being possible after the initial meeting. The letter concluded with an offer of EAP counselling support and cautioned Ms Pourova of her right to bring a representative to an initial meeting that was suggested for 4 November.

[25] I observe, that in addition to the scant detail contained in the 1 November letter, the emails of concern from two co-workers had already been in Mr Regmi’s possession since 20 September and 6/7 October yet he did not discuss such with Ms Pourova. A further, less than

ideal situation, was Mr Regmi being both a complainant and signatory of the letter and he later assisted in the investigation.

[26] I find a less formal path was available to IDEA Services. I was not convinced that a ‘full on’ disciplinary investigation was necessary and the investigation process was pre-determined regardless of Ms Pourova’s initial explanations. A reason for this, was impliedly that Ms Hickey and Mr Regmi wished to have a wider survey of why other staff were reluctant to work in the team house setting that included Ms Pourova.

Exchange of medical information

[27] By email of 4 November, Ms Pourova’s advocate provided Mr Regmi, Ms Hickey and Ms Tuhua with a copy of the 7 October GP Certificate. Whilst not addressing anything in the 1 November letter’s allegations of potential misconduct, the advocate’s email suggested Ms Pourova had already “raised issues of her own health and safety in regards to being able to work safely in the workplace”. No details were provided.

[28] Further, the advocate’s email described Ms Pourova “experiencing some health implications which do not preclude her from working”, apart from fatigue that needed to be accommodated. The advocate then suggested Ms Pourova’s GP was seeking something akin to light duties for Ms Pourova - this misrepresented the GP’s letter as it only asked for employer consideration of more sociable hours. The email sought a discussion at the forthcoming meeting on “how Idea services under their Health and Safety at work policy and of course staff well being policy are able to accommodate Eva’s Doctor’s certificate attached”. A further email provided the 7 October midwife’s letter. I note the midwife’s letter was more expansive of Ms Pourova’s needs.

[29] Amber Tuhua, another service manager, deputed to conduct the investigation, responded to Ms Pourova’s advocate by email of 5 November. This indicated as Ms Tuhua confirmed during the investigation, that the decision to involve her had already been taken before Ms Pourova had the opportunity to initially respond to the various allegations. Ms Tuhua’s email response also attached a letter seeking Ms Pourova’s consent for further medical information from her GP on the issues the GP and midwife had identified, as well as a list of the physical components of Ms Pourova’s role (and the job description). It contained a request the GP indicate to IDEA Services if “she is currently able to carry out these tasks safely and unsupported or whether she will require any assistance during her pregnancy”.

[30] The cover email from Ms Tuhua said IDEA Services would be having two separate meetings on 15 November (a date set by the advocate's availability): the first to address the 1 November 'Please Explain' letter and then the second to discuss the medical information. Ms Tuhua suggested in the interim, Ms Pourova "is welcome to take sick leave (in part days if needed) for the shifts she feels unable/fatigued to work until we meet" and noted that on 8 October Ms Pourova's shift pattern had been changed to working during the day. The parties also met on 5 November.

[31] I note, Ms Tuhua had been portrayed as being an independent party conducting the investigation. I find it was not appropriate she follow up the operational issue of how Ms Pourova was coping with her pregnancy on an ongoing basis.

[32] Ms Pourova says she refused to give permission to her GP to provide the information sought, believing it on advice, to be confidential.

[33] The meeting proceeded on 15 November, attended by Ms Pourova and her advocate. For IDEA Services, Ms Austin, Mr Regmi, and another service manager who had to stand in for an ill Ms Tuhua, attended. Ms Tuhua and Ms Austin had by this point in time, been deputed by Ms Hickey, to conduct the investigation assisted by Mr Regmi.

[34] At the 15 November meeting, IDEA Services communicated a decision to proceed with the disciplinary investigation and advised that Ms Tuhua would be conducting it and that she would be the decision-maker. Ms Tuhua later clarified during the Authority investigation meeting, if dismissal had been a prospect that decision would have been taken by a more senior manager. However, this was not at the time, communicated to Ms Pourova.

The investigation

[35] The investigation cast a wide net by written formatted survey interviews of support workers who had worked with Ms Pourova during the previous three months. The methodology used was a series of telephone interviews using a question format that Ms Tuhua says she devised in consultation with HR. The format used was a partial climate survey and some generalised questions about the issues being complained of, did not describe what was being specifically investigated. All participants were asked the same questions, including the complainants, who crucially were not interviewed separately and questioned about their concerns they had expressed about Ms Pourova.

First report (5 January)

[36] Ms Tuhua collated the answers from the questionnaires in a letter to Ms Pourova of 5 January 2022 entitled: “EMPLOYMENT INVESTIGATION FEEDBACK REPORT”. The letter outlined “findings” in relation to Ms Pourova’s actions and first indicated: “I have not yet made a decision as to the outcome. I will not do that until I have spoken to you again in a meeting” which was offered on 10 January”.

[37] Unfortunately, while not criticising Ms Tuhua’s efforts to be fair in her approach and I record she ably assisted my investigation, the report findings contained in the letter are confusing as to what had been decided or upheld and what was open to further feedback. Of the three initial allegations, it found the following in summary:

1. **Repetitive lateness at work** – was upheld but only on three specific occasions of Ms Pourova not informing her managers prior to arriving at work. Ms Tuhua claimed to find that on several occasions Ms Pourova had been late to work: “Although I cannot ascertain all dates and times in specific, comments made would suggest to me that you have been repetitively late to work”.
2. **Repetitive Bullying** – was partially upheld but with scant evidence to support this finding apart from references to generalised and unattributed comments in the feedback forms that led to a summary finding of “I believe there has been an element of bullying behaviour from yourself”.
3. **Not fulfilling requirements of a Support Worker Role** – was upheld only on the basis that: “Specifically in the staff interview questions, there have been a number of staff who have mentioned you by name not completing tasks to the full requirement and/or leaving work for others to do”.
4. **Additional findings** – an extra matter not put to Ms Pourova as an allegation suggested she had given incorrect information to a new co-worker “at the time of an incident” and encouraged the worker to follow incorrect procedures. No further detail was provided on this finding.

[38] Ms Tuhua then proceeded to say she had found Ms Pourova to have not followed IHC/IDEA policies and procedures and then identified nine generalised breaches of her Job Description, the Harassment and Discrimination Prevention Policy and Code of Conduct and a further twelve instances where:

...we have found misconduct and serious misconduct on your behalf:

- Unsatisfactory Performance and Misconduct
- Failing to carry out as far as possible IHC’s Philosophy and Policy

- Using abusive or offensive language
- Failing to meet agreed performance measures appropriate to the position
- Behaving in a manner not deemed suitable for the position held
- Failing to work appointed hours
- Failing to report lateness or absence to a designated reporting officer
- Harassment, bullying or discrimination of a person on IHC premises, or in the course of his/her duties
- Grossly neglecting a person with an intellectual disability
- Deliberately refusing to follow or comply with IHC safety or hygiene rules or practices
- Wasting time on materials
- Behaving irresponsibly.

[39] The letter then somewhat confusingly, stepped back by indicating:

.... I have reached the tentative conclusion that you have fallen well short of the expectations that I have in terms of undertaking the duties and responsibilities of the role of Support Worker.

Given my findings above I am considering your behaviour in respect of these matters to be misconduct and serious misconduct.

I need you to be aware that if serious misconduct on your part is determined it may result in disciplinary action up to and including dismissal.

Before I make a final decision on the outcome, I seek to give you the opportunity to respond to the findings that I have documented above and anything else that you may wish to comment on.

[40] Ms Tuhua then closed the letter by inviting Ms Pourova to meet with her, Ms Austin, and Mr Regmi (despite him being one of the complainants) and reminded her, to “bring a support person with you if you wish to do so”

Personal grievance

[41] In a 12 January 2022 letter Ms Pourova’s advocate identified a personal grievance (PG) of unjustified disadvantage - asserting that IDEA Services had generally failed to act in good faith or in a reasonable manner to protect Ms Pourova from harm and suggested IDEA

Services was engaging in workplace bullying by virtue of an: “Unjustified Disciplinary Process” that amounted to ‘gaslighting’ of Ms Pourova. The concept of gaslighting was explained in detail.

[42] Ms Pourova’s advocate sought urgent mediation and suggested an independent investigation proceed into Ms Pourova’s bullying allegations and that Ms Pourova in the interim, be placed on paid special leave.

[43] Rather than focus upon some evident inadequacies in the process leading up to the investigation and presentation of the investigation findings and/or meet to provide feed-back on the initial report, Ms Pourova’s advocate chose to try and switch the focus to Ms Pourova’s concerns.

[44] I observe that the parties somewhat entrenched themselves by their respective stances. The initial investigation was not sufficiently focussed on the two co-worker concerns and the subsequent report findings were poorly presented and some of the conclusions overreaching. However, Ms Pourova sought to ignore the legitimate issues raised by IDEA Services and instead focussed on her own concerns. The latter stance was perhaps unsurprising, given the context of Ms Pourova’s pregnancy and stressful work situation.

[45] IDEA Services responded curtly to the PG by refusing to attend mediation, asserting that their process was “fair and appropriate” and suggested they would continue concluding matters without Ms Pourova’s input (noting she had been unwilling to meet to participate further). While this may appear an aggressive response, I balance it up with the practical consideration that mediation is very rarely a good idea when a disciplinary process is still ‘on foot’. This is especially the case as is here, where the worker was trying to maintain the employment relationship. However, IDEA Services could have been more conciliatory by the language used in their response.

Further meeting

[46] Notwithstanding entrenched views, the parties met on 20 January and Ms Pourova with her advocate present, provided feedback on the findings set out in Ms Tuhua’s 5 January letter.

Second report (24 January)

[47] Ms Tuhua then produced an amended investigation report and communicated this in a letter of 24 January.

[48] In summary, the only allegation now upheld was: “Repetitive lateness at work” on the basis that Ms Pourova had accepted three instances of being late and not informing the relevant manager of this beforehand and, IDEA Services had accepted her apology and was satisfied Ms Pourova had shown remorse.

[49] Despite upholding one allegation (and it being the least serious), Ms Tuhua concluded in her letter that the Code of Conduct and Misconduct and Serious Misconduct policies had still been transgressed.

[50] However, in terms of a penalty finding, Ms Tuhua indicated:

Given your responses and evidence throughout the investigation, we have come to a decision for a final outcome. This has been listed below:

- Letter of expectations – this will include IHC Learning Modules for you to complete, conduct we expect to see in the workplace and expectations in specific around lateness and reporting lateness
- Coaching with your Service Manager.
- On return from your maternity leave, we would expect you to re-orientate to the service and refamiliarise yourself with organizational policies and procedures.

[51] A separate 26 January letter, comprehensively setting out expectations followed. It noted in part, in respect to the disciplinary allegations: “After hearing your explanation, we have accepted this and no further formal action will be required at this stage”.

[52] Ms Pourova filed an application with the Authority on 24 April 2022 and the parties attended a mediation thereafter but matters in dispute remained unresolved.

[53] Ms Pourova commenced parental leave on 15 March 2021, subsequently giving birth to a boy who made a brief and vocal appearance during the investigation meeting. Ms Pourova indicated she plans to return to work in early 2023 but was perplexed by the letter of expectations as she felt the matters traversed were not at issue. Ms Pourova indicated she only wanted to be acknowledged by IDEA Services for her work, that she was doing her best for residents and should be provided with a secure and supportive work environment.

Assessment

[0] In assessing Ms Pourova's disadvantage claims, including whether IDEA Services pursued the disciplinary investigation in a justified manner and, whether IDEA Services took sufficient steps to address Ms Pourova's identified concerns, I utilise s 160(3) of the Act that allows the Authority to not be bound:

.... to treat a matter as being a matter of the type described by the parties, and may in investigating the matter, concentrate on resolving the employment relationship problem, however described. ¹

[1] I apply the above to resolving matters as I am conscious of this being an ongoing employment relationship requiring a holistic approach.

[2] I start from a premise I am not satisfied that IDEA Services approached their concerns about the team functioning in an even-handed manner. By focussing on what were relatively trivial complaints that were not actioned at the time they arose and then conflating those concerns with the service manager's issues of managing Ms Pourova, the resulting investigation became messy and poorly focussed. Against this background, Ms Pourova had been expressing what appeared to be genuine concerns about her physical and emotional ability to cope with workload issues and a gentler approach could have assisted.

[0] A fairer approach could have been to deal with the issues from two perspectives – one informally approaching Ms Pourova to resolve the co-worker conflict and time keeping issues and two - conduct a wider more objective climate survey, to ascertain why the team was not functioning well. The latter task could have been conducted by an external consultant.

[1] I have documented criticism of the initial investigation process and findings, that were objectively too wide-ranging and formulative. I do however, acknowledge IDEA Services adopted an admirable degree of pragmatism and stepped back from what were unsustainable findings. My assessment of Mr Regmi's evidence, was he appeared to struggle to manage the situation and some of his emailed communication with Ms Pourova, lacked insight. I also accept Mr Regmi was under tremendous stress to arrange appropriate resident cover and place experienced staff.

¹ Section 160 Employment Relations Act 2000.

[3] I observe that Ms Pourova may have contributed to the situation by her oversensitivity to at times, legitimate criticism, and her lack of clear and timely communication of the fact she was physically struggling with her pregnancy and emotionally not in a good space. I find a timelier sharing of information may have assisted IDEA Services to get a better handle on where Ms Pourova was coming from.

[4] Having concluded the above, I also find that IDEA Services responses were at times unhelpful. This was especially so, in responding to Ms Pourova's medical certificates that objectively evidenced she was only seeking some practical understanding and support in her coping with her pregnancy. IDEA Services equally got defensive in the face of Ms Pourova's strong advocacy that at times unnecessarily escalated the situation.

[0] Overall, I do not find that in terms of the test in s103A of the Act that IDEA Services acted how a fair and reasonable employer could have done in all the circumstances. I, however, reject the suggestion that the initiating of the disciplinary process was a bullying act. I prefer the assessment having heard all the evidence, that no malice was involved. However, the decision to carry out an investigation was rushed and then the way it was conducted, was ill-conceived. This caused Ms Pourova some significant distress during a difficult period in her life when she should have been given more supportive leeway and understanding. The presentation of the initial findings of the investigation was particularly badly handled but I detected no malice by the investigator.

Finding on the disadvantage claim

[5] Whilst I have not found that Ms Pourova has established a workplace bullying or breach of health and safety obligations claim, I do find Ms Pourova was disadvantaged by the approach IDEA Services took to the disciplinary investigation and the scope of such (albeit disciplinary sanctions were not pursued). Ms Pourova is entitled to consideration of remedies.

Compensation for humiliation, loss of dignity and injury to feelings

[6] Ms Pourova gave evidence on the impact of the investigation and being under the threat of disciplinary action including the fear of losing her job at an inopportune time. This included worry about her financial future and a negative perception that her employer was not taking her concerns seriously. Objectively, the distress was temporary regarding the threat of dismissal (between 5 and 25 January) and Ms Pourova was not suspended.

[54] Ms Pourova described being stressed and overly anxious about her pregnancy but her anxiety was only partially connected to her workplace situation. The medical certificates Ms Pourova provided confirmed the latter.

[55] In assessing compensation for the unnecessary distress IDEA Services caused Ms Pourova by their actions and omissions, I consider that this should be assessed at a reasonably moderate level as the period of distress was lessened when IDEA Services confirmed at a relatively early stage, that dismissal was not being contemplated and they did patiently engage with Ms Pourova.

[56] I balance this against Ms Pourova's lack of acceptance of the outcome (letter of expectations) and her maintenance of a view that there were no issues with her performance. The latter and Ms Pourova dwelling on her situation, caused additional distress that I cannot reasonably attribute to IDEA Services.

Finding

[57] Taking account of the evidence proffered and awards made by the Authority and Court in similar situations, I consider that Ms Pourova's evidence warrants an award of compensation that I fix as \$5,000 under s 123(1)(c)(i) of the Act. ²

Contribution

[58] Section 124 of the Act states that I must assess the extent to what, if any, Ms Pourova's actions contributed to the situation that gave rise to her personal grievance and then assess whether any calculated remedy should be reduced. To assess whether the remedy should be reduced I have considered the relevant factors recently summarised by the Employment Court in *Maddigan v Director General of Conservation*³.

[59] I find that Ms Pourova's approach to communication her failure to properly identify her health concerns earlier and, her seeming inability to reflect on her contribution to the situation were less than ideal. However, taking all contextual factors into account, I find it would not be equitable to reduce the moderate compensatory remedy awarded.

² See summary of compensatory approaches in comparable cases in *Richora Group Ltd v Cheng* [2018] ERNZ 337 at [65] – [66].

³ *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

Summary

[70] I find that:

- (i) Eva Pourova was unjustifiably disadvantaged by IDEA Services Limited addressing potential disciplinary concerns in an inappropriate manner.
- (ii) In the circumstances, IDEA Services Limited must pay Eva Pourova: \$5,000 compensation without deductions pursuant to s 123(1)(c)(i) Employment Relations Act 2000.

Costs

[71] Costs are at the discretion of the Authority and are reserved. The parties are encouraged to make an agreement on costs. If no agreement is achieved, Ms Pourova has fourteen days following the date of this determination to make a written submission on costs and IDEA Services Limited has a further fourteen days to provide a response. I will then determine what costs are appropriate. ⁴

David G Beck

Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1
