

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Evelyn Reti (Applicant)  
**AND** Carter Holt Harvey Ltd (Respondent)  
**REPRESENTATIVES** Anne-Marie McNally, for Applicant  
Peter Kiely, for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**INVESTIGATION MEETING** 2 and 3 June 2005  
20 July 2005, 19 August 2005, 14 September 2005  
**SUBMISSIONS**  
**DATE OF DETERMINATION** 12 December 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Ms Reti first went to work at the Carter Holt Harvey Plywood Mill at Tokoroa in about 1975. Apart from a six year stint in Auckland, she continued to work there until April 2004, when she was dismissed from the position of leading hand. The reason given was serious misconduct (allegedly bullying her team.) This came as a complete shock to Ms Reti. She told me she was unclear what exactly she was alleged to have done. She had supervised the same shift for eight years without any adverse feedback until just a few weeks before her dismissal, and had never seen herself as a bully.
- [2] Ms Reti still finds it hard to understand her dismissal, and the consequences for her have been severe. She was 50 when she was dismissed. She had lived, worked and raised her family in the same small town for most of her adult life. She had been the only Maori woman leading hand at the Plywood Mill. Both the fact of the dismissal and the nature of the allegations against her left her feeling so humiliated and depressed that she was not able to cope with normal daily tasks or show her face in the local community. She was placed on a sickness benefit and did not work again until March 2005.
- [3] Because this dismissal was for alleged serious misconduct, the issues for determination are as follows:
- i. Whether the inquiry into the alleged misconduct was full and fair;
  - ii. Whether it was open to the respondent to conclude that serious misconduct had occurred;

- iii. Whether, in all the circumstances, it was open to the respondent to dismiss Ms Reti.

### Was the inquiry full and fair?

- [4] The process which ultimately led to Ms Reti's dismissal started on 24 March 2004 when one of Ms Reti's team, Ms O, sent an email to John Barber and Martin Carlyle. Mr Barber was Quality Co-ordinator and temporary manager of the pressing section (in which Ms Reti's team worked.) He had taken on that role in around late February. Mr Carlyle was the Acting Plant Manager. In the email the team member stated that she had gone on stress leave and wanted to swap to another shift. She said that she was being "*constantly criticised*" and that her leading hand "*was not using good judgement or leadership skills and has a grudge to bear.*"
- [5] Mr Barber told me that as Quality Coordinator he was in contact with leading hands and knew Ms Reti to be a good employee. She was prone on occasion to be confrontational but he had never had any serious concerns about her behaviour and was unaware of any specific concerns amongst members of her team.
- [6] However, when he discussed the email with Mr Carlyle he learnt that Mr Carlyle had recently received other oral complaints about Ms Reti relating to "*verbal abuse and aggressive behaviour.*" Ms O had also approached Mr Carlyle in person about her concerns and told him that she was considering resigning if the company did not do something to resolve the issues. Mr Carlyle arranged for her to be transferred to another shift.
- [7] Mr Barber and Mr Carlyle then interviewed the members of Ms Reti's team (nine individuals including Ms O) and two other leading hands. They asked them whether there were any issues on the shift they would like to talk about and how would they rate Evelyn's leadership skills. No notes were kept of these interviews. However, in a subsequent report to the Human Resources Manager for the Wood Products division Mr Barber and Mr Carlyle noted that they had received the following responses:
- "*the issues go back more than 7 years*
  - *bullying was a key complaint;*
  - *inconsistent behaviours;*
  - *mood swings;*
  - *aggression towards staff for no real reasons;*
  - *singling out of people;*
  - *poor examples especially in how she did tasks and how she wore her own PPE [personal protection equipment];*
  - *Poor treatment of [Ms O];*
  - *Having favourites e.g. [her son-in-law]*
  - *Staff not willing to continue under her leadership some requests for shift or department changes if not addressed;*
  - *Team leaders were aware of her shift issues and admitted that the problems were there a long time and needed to be dealt with in order that the whole pressing area could lift its moral [sic] to meet new production plans."*
- [8] In addition Mr Carlyle had concerns about two other, unrelated matters involving Ms Reti. He and Mr Barber decided to meet with her in relation to those matters as well as the alleged bullying.

[9] The first Ms Reti knew about all this was on the night of 29 March. She was on bereavement leave at the time but had come in to assist with an operational problem on night shift. Mr Barber was there too for the same reason and took the opportunity to tell her that he and Mr Carlyle wanted to meet with her on 1 April to discuss issues of concern.

*First meeting: April 1*

[10] Ms Reti arranged to have two delegates (Lee Ratima and Tony Tahikita) attend with her. The meeting was in two parts. In the first, Mr Barber and Mr Carlyle outlined their concerns about each of the three matters and listened to Ms Reti's response. The first two concerns were not news to Ms Reti and were ultimately disposed of to the satisfaction of Mr Barber and Mr Carlyle. They did not form any part of the justification for the dismissal. I do not take them any further therefore.

[11] The allegations of bullying however, took Ms Reti aback. She had known nothing of these allegations until then. She asked when the bullying was said to have occurred and who had been involved. Initially Mr Barber said that this information was confidential however, he and Mr Carlyle did say that a team member who was on leave had complained and since there was only one person currently on leave (Ms O) Ms Reti deduced that the complainant must be her. (Ms Reti had understood that Ms O was away with a non-work related back injury.)

[12] Mr Barber did put to Ms Reti some specific matters that Ms O had raised. These included that Ms Reti had changed Ms O's duties around and had criticised her work. In response, Ms Reti referred to the fact that she thought Ms O was doing too much overtime (something Ms Reti had raised with Mr Barber in early March) and was over tired. She also said that some criticism of Ms O's work was justified, as she had made some potentially costly mistakes. Mr Barber also reported that Ms O had said that Ms Reti had run the line too fast the evening before she went off on leave which had been the final straw for her. Ms Reti disputed this as she had not been at work that night, and asked Mr Barber to check the rosters to confirm this.

[13] More generally, Mr Barber and Mr Carlyle told her that other staff backed up Ms O's complaint, describing harassment, aggression and unfair treatment and saying that Ms Reti favoured her son-in-law. She was told that the allegations against her were considered serious and that there would be further investigation into them. In the meantime she was to be suspended and should not communicate with people from her team. She was also told that "*a possible outcome would mean that she may not be able to return to her current role.*"

[14] Ms Reti said the meeting was interrupted several times because it was the end of the month and there were stock issues and reports to be prepared. She did not feel that she was getting a proper hearing.

[15] In the second part of the meeting, later that day Lee Ratima put forward a proposal that Ms Reti be put back in her position with union and management monitoring and support but Mr Barber and Mr Carlyle declined.

*Suspension*

[16] Ms Reti went home to wait. She told me she did not understand why she had been suspended as what had been reported to her about Ms O did not seem to her to be sufficiently serious to warrant this. (I note that in the company's notes of the meeting of 1 April the topic of bullying is under the heading "poor performance.")

- [17] Meanwhile Mr Barber and Mr Carlyle prepared a report which contained the background to all three concerns, notes of the interviews (quoted above in paragraph [7]) and notes of the 1 April meeting with Ms Reti. They used this to brief the Human Resources Manager of the respondent's Wood Products division, Suzanne Crowther. Ms Crowther decided to engage an "independent specialist" with experience in workplace bullying to assess the complaints. She asked the respondent's provider of EAP services (principally counselling) to recommend someone suitable and was provided with the name of Hayden Olsen of WAVE (Workplace Against Violence in Employment) in Rotorua.
- [18] Ms Crowther took this recommendation at face value. I asked her if she had inquired into Mr Olsen's qualifications and experience or the methodology he proposed to use. She did none of these things although she and Mr Barber met once, briefly, with Mr Olsen to outline what she wanted him to do.
- [19] For most of his working life (1978-2000) Mr Olsen was employed as a boiler operator at Tasman Pulp and Paper Mill. Whilst in that role he became a sexual harassment contact person, became involved in EAP initiatives on site, and received in-house training from his employer on these issues. He has also done some short (1-2 day) courses on sexual harassment and violence prevention (provided by the Human Rights Commission, Ministry of Justice and "CYFS" and has attended a half day workshop on disciplinary and employment relations matters run by a local Rotorua law firm. More recently he has completed facilitation training in the "Zenergy" method, and has enrolled at Massey University in psychology.
- [20] Since 2000 Mr Olsen has been working to build up a business in the Bay of Plenty in the area of violence prevention. He told me that while at Tasman Pulp and Paper he "mediated" two to three cases and that since that time he has investigated approximately 8 cases involving bullying or sexual harassment. He told me that he obtains occasional professional supervision from the director of Zenergy.
- [21] With no disrespect to Mr Olsen, I consider Ms Crowther was overstating his qualifications somewhat when she described him as an expert on the subject of bullying. Even more importantly, he has very little expertise in employment relations generally and disciplinary processes in particular. In submissions Mr Kiely pointed out that most employers are not experts in such matters, and are not required to be. That may be so, but it not really the point. Mr Olsen was brought in as a supposed expert and his report relied on as the work of an expert. In my view, for reasons I explain further below, it should not have been.
- [22] The company finally arranged to meet with Ms Reti again on 13 April. Two meetings had previously been arranged and cancelled, the first because Mr Carlyle and Mr Barber were busy with end of month stock take reports and the second in order to fit in with Ms Crowther's availability.
- [23] Ms Reti found the intervening two week period very difficult. During this time she saw her GP who prescribed medication to relieve her anxiety and help her sleep.

*Second meeting: 13 April*

- [24] Once again Ms Reti was accompanied by delegates Lee Ratima and Tony Tahikita and this time, in addition, by Phil Jones (who was about to take up a position as a union organiser.) Mr Barber was in attendance along with Ms Crowther but Mr Carlyle was not. As before the meeting was in two parts.

[25] On Ms Reti's behalf, Mr Jones expressed concerns about the suspension (saying it was premature and harsh) and asked that the complaints/detail of allegations be provided in writing so that Ms Reti was in a position to respond properly.

[26] Ms Crowther replied that she believed the procedure to that point had been "in order" and that the issues had been outlined to Ms Reti at the previous meeting. She said that suspension was standard when serious misconduct was alleged. Mr Jones said he viewed the issues as performance related but Ms Crowther advised that the bullying issue was now being treated as serious misconduct.

[27] Ms Crowther ran over the allegations of bullying again in the same terms as at the previous meeting. She advised that "*there was a person from EAP at the Mill currently assessing the situation and interviewing all of Evelyn's team.*" Mr Barber added that it had emerged that the problems were not confined to Ms O.

[28] Between them, Phil Jones, Lee Ratima and Ms Reti raised the following points in response:

- That there were difficulties in the relationship between Ms O and Ms Reti;
- That Ms Reti felt she was being treated unfairly because she upheld higher standards than other leading hands;
- Ms Reti had asked that her son-in law was not in her team, and that "favoured" treatment he received (such as opportunities for training) was out of her control;
- That Ms Reti had had a number of "difficult" people, (including Ms O) moved onto her shift after they had had problems elsewhere.

[29] Mr Jones also asked whether there had been any effect on the productivity of the team and Mr Barber said there had not.

[30] Ms Crowther told Ms Reti that she wanted her to be interviewed by Mr Olsen but Ms Reti was reluctant to do this. In addition Ms Crowther now offered what had been requested on 1 April-the opportunity for Ms Reti to return to work in a project role. However, Mr Jones explained that Ms Reti was not well enough for this at present. Ms Crowther asked that she be advised when Ms Reti might be able to return to work.

[31] In the second part of this meeting Ms Crowther was able to confirm that the first two disciplinary issues would be taken no further. In relation to the bullying issues, the company's notes include the following;

*"EAP was here compiling a report [Ms Crowther] would really like Evelyn to have the opportunity to speak with him to put forward her perspective and handed Evelyn the relevant contact details.*

*[Mr Jones] again requested specific details of complaints be provided. SC said as far as possible these will be but some of the complaints will, by their nature, be generic.*

*[Ms Crowther] said the real question is- has the relationship got to the point where it cannot carry on? [Ms Crowther] said Evelyn needs to consider if she wants to come back.*

*...Evelyn has 3 days left on medication and was asked to call [Mr Barber] when she wants to come back to work...*

[32] The meeting notes concluded with:

- *Evelyn to decide whether or not to participate in inquiry (she can take a support person with her when she speaks with Haydn)*
- *Final report on the intimidation/bullying issue expected in 7 to 10 days.*”

[33] Ms Reti went back to see her doctor again shortly after the meeting of 13 April. She told me she felt very unwell when she saw him. He decided to put her on anti-depressants as well as the other medications she was already on and told her it was not appropriate for her to have any more meetings at that stage. She passed this on to Mr Jones who took responsibility for letting Mr Olsen know. Mr Olsen conducted his interviews with Ms Reti’s team on 13 and 15 April. His report was duly prepared and presented and a copy delivered to Ms Reti at her home on 21 April. It records that he offered to meet with her but that *“I had been informed by her advocate that she is not willing to do this and that she may have medical reasons preventing this.”*

#### *“WAVE” Report*

[34] Mr Olsen’s report, which has been described in evidence as the *“WAVE”* report, is in five sections:

- i. Parameters of investigation
- ii. Process
- iii. General Findings
- iv. Specific Incidents
- v. Summary
- vi. Recommendations

[35] The parameters of the investigation set out there were:

*“To investigate the nature of complaints of workplace bullying by the Pressing Blue Shift...against their leading hand...To assess these complaints...To report findings of the investigation and make any recommendations in regard to resolving the situation.”*

[36] The process was to interview all of the team. The report states that he told them that:

*“I would be taking notes and that from these notes I would compile a report advising that 1) there was evidence to suggest bullying, 2) That there was no evidence that bullying took place, or 3) That it appears the claims are malicious and the bullying is from the team to their leading hand. “*

[37] Mr Olsen considered that this covered all possible scenarios.

[38] The section headed *“General Findings”* recorded that all interviewees had either personally experienced or witnessed *“repeated displays of hostility”* from Ms Reti such as: *“swearing...raising her voice, glaring at people, ‘in your face’ behaviour, ‘talking down’ to people, snapping at people, bawling people out.”* Nothing is included about times, dates, frequency or circumstances of this conduct.

[39] Similarly ‘most’ interviewees (the number was not given) are recorded as having alleged that she *“constantly targets and victimises people unfairly.”* Examples of this included arbitrarily dispensing disciplinary threats; publicly reprimanding people, criticising some more than others and removing responsibilities from people without providing a reason. Again, there is no

information about how often or how long ago these alleged actions took place or who was involved.

[40] In the final part of section 3 it is recorded that “*A common complaint ...was that Evelyn deliberately creates disharmony and undermines people by talking about them behind their backs.*” Five examples are given of Ms Reti being rude to Ms O, but no information as to when or where this occurred or who the witness was. Ms Reti is also alleged to have described the cleaning lady as “useless” and to have repeated confidential information about a team member, Mr N. Again there are no further identifying details about these incidents.

[41] In the section headed “specific incidents” it is recorded that Ms O claims to have lodged a complaint about Ms Reti as long ago as March 2002, but there are no specifics of what that complaint was about. However, Mr Olsen does give details of four other incidents described by Ms O to him:

- Allegedly unfair written warning to her on 28 November 2002;
- Allegedly unfair written warning to her on 30 May 2003, and
- Being bullied by Ms Reti and Mr Muir over an incident involving a High Visibility jacket (no date, time or details given.)

[42] Mr Muir had been Production Manager (that is, the manager for Ms Reti and her team) up until October 2003. As leading hand, Ms Reti was involved in disciplinary matters involving members of her crew and attended disciplinary meetings. However the final decision rested with the Production Manager.

[43] One incident involving Ms O (on 23 March 2004) took place after Mr Muir’s departure. It was what Ms O claimed led to the need for her to take stress leave. She accuses Ms Reti of approaching her and saying “*you should be doing your job instead of standing around gossiping,*” and of asking Ms W “*what were you and [Ms O] talking about?*”

[44] Section 4 “Specific Incidents” also contained details of the following:

- Ms W said she had previously been Ms Reti’s second in command but was demoted from this role when Ms Reti’s son-in-law joined the team a year before. She also said that she was considering applying for another position within the plant but was told by Ms Reti: “*Don’t even bother because if I have anything to do with it you won’t get it.*” She did apply but was unsuccessful and now feels that Ms Reti resents her for it;
- Mr N reported that Ms Reti once made a sarcastic comment to him during a team brief. On another occasion Ms Reti told him that she wanted a “*one on one*” with him and then told him that he was failing to meet quality standards. He asked for specifics which she did not provide and then she became angry with him. “[Mr N] then asked if this was a disciplinary issue. Evelyn said “*Well you could say that*” [Mr N] then expressed dissatisfaction with the process and left. He also explains that when she made threats to get the manager he said he “*would not lay down and put up with this shit.*””

[45] I note that Mr Olsen records in his report that by “one on one” he understood to have been meant a confrontation. However, I note that this is also the expression the company uses to describe a performance appraisal meeting.

[46] In addition, Mr N alleged that he was demoted from a health and safety role without consultation, and that Ms Reti divulged confidential information about him.

[47] In his summary of findings Mr Olsen stated:

*“Respondent not interviewed*

*I have not had an opportunity to interview the respondent and therefore the findings must be considered to be a summary of the complaints and allegations of individuals within the team rather than a final judgement. This judgement would be appropriate after the respondent had a chance to provide evidence and a chance to refute the allegations. This would then need to be taken into account under a ‘balance of probability’ of the allegations having substance or not...”*

[48] Mr Olsen also notes in his summary that apart from Ms Reti’s son-in-law, “*all other interviewees have said they do not believe the team is bullying their Leading Hand.*” Ms Reti’s son-in law told him that he believed some people were out to get Ms Reti. Mr Olsen felt that the “*fact that alleged previous complaints have not been acted upon has undoubtedly led to the problem becoming worse*” and reported a suggestion from one interviewee that Mr Muir and Ms Reti had protected each other. He also reported that interviewees said that they had been affected by “*the ongoing behaviour of Ms Reti.*” Mr Olsen concluded his report with a list of recommendations, which included Ms Reti’s dismissal.

[49] On 21 April Mr Olsen’s report was delivered to Ms Reti at her home, with a letter from the company requiring her to attend a meeting on 22 April. Ms Reti arranged for Mr Jones to attend with her. She told me that she found it difficult to read and take in Mr Olsen’s report.

#### *Informal inquiries by union delegates*

[50] In the period between 13 April and 22 April some of the site delegates were given permission to talk to staff about Ms Reti’s management style. These inquiries confirmed that her team had problems with Ms Reti although once again, very little specific detail was provided.

[51] Ms Crowther told me that she considered the complaints from Ms O, Mr N, Ms W and Mr M were serious (although I note that the report does not identify any specific complaint from Mr M. It appears that Mr Carlyle and Mr Barber heard about this from speaking directly with Mr M.)

[52] Ms Crowther also told me that when they went in to the meeting of 22 April, subject to what Ms Reti had to say, she believed on the face of it that the complaints had substance because:

- that was Mr Olsen’s assessment;
- because of the sheer number of complaints (four people had complained and the remainder of the team had backed them up);
- Mr Barber and Mr Carlyle knew the complainants well and considered them to be credible people.

#### *Meeting 22 April*

[53] As well as Mr Jones, Mr Ratima and two other delegates attended this meeting to support Ms Reti. The company was represented by Mr Carlyle, Mr Barber, Ms Crowther and Ms Elvidge (in-house legal counsel.) In summarising what was discussed at that meeting I have drawn primarily on notes prepared by Ms Elvidge. Quotes contained in the following section are from those notes.

[54] The meeting began with Mr Carlyle explaining that the company wanted to give Ms Reti the opportunity to respond to the allegations contained in Mr Olsen's report. Ms Crowther said she wanted Ms Reti's response to the "*general flavour of the report, that is, how did she feel about the feedback and how can we move forward.*"

[55] However Mr Jones wanted to go through each heading in the report. To summarise, Ms Reti (and /or Mr Jones on her behalf) responded to the report as follows:

- She does not swear and only talks loudly because of the machines;
- Some or most of the report was not true;
- As far as she knew her leadership style was good and her previous managers had encouraged her style;
- She had been uncomfortable with the way Mr Muir wanted her to lead and had spoken to the former HR advisor (Shirley Field) about this;
- In response to Ms Crowther asking "*why these people thought Evelyn was picking on them*" Ms Reti said she felt she was training them and did not think she victimises people;
- Regarding the demotion of Ms W, Ms Reti said she believed she no longer wanted the role (it was also discussed that Ms W was being provided with literacy support by the company);
- Regarding the incident with Mr N Ms Reti said that she had thought she got on well with him. She said he was moved out of the health and safety role because he had an injury, and that she had referred him to Mr Muir over the issue at the time;
- Ms Reti said she could not recall the alleged incidents involving Ms O;
- Ms Reti denied any breach of confidentiality in relation to Mr N;
- Mr Jones suggested that there had been a lack of management support and perhaps cultural issues (such as in relation to taking instructions from a woman.)

[56] On Ms Reti's behalf Mr Jones explained that it was on the advice of her doctor that she had not met with Mr Olsen, and that he (Mr Jones) had left a message with Mr Olsen to this effect (I consider this consistent with what Mr Olsen recorded in his notes.) He also said that he felt that part of Ms Reti's problem was that she was still trying to meet the expectations of Mr Muir.

[57] Ms Crowther told Ms Reti that she felt that Mr Muir's departure (six months before) was an opportunity for change. Mr Carlyle also said (in contradiction to what had been said at the previous meeting) that there were signs of productivity issues, absenteeism and turnover on Ms Reti's shift. Ms Crowther acknowledged that Ms Reti had not had a "one on one" (performance review) but told Ms Reti that the issue now was whether Ms Reti could come back to her current role. She said that with regard to Ms Reti's concerns about Mr Muir, not much could be done as he had now left.

[58] Ms Reti had not in fact had a performance review since 1998. Mr Barber told me that it had not been the practice for there to be regular formal performance appraisals for leading hands, although Ms Reti was required to do them for her team. Leading hands received feedback on their performance in leading hands' meetings.

[59] Ms Reti responded that she felt she had not had support for a long time. She said she was:

*"willing to do things differently but needed training" and "may have changed if she knew what was happening."*

Ms Crowther asked how Ms Reti thought she would be able to turn things around, to which Ms Reti replied:

*“she could do this by working with them and then maybe the team will be more upfront. SC asked what changes she would make to her behaviour so she was not intimidating? Evelyn asked how do the team think they are being intimidated?”*

[60] Ms Crowther is then reported as saying that:

*“she has not got a clear sense from Evelyn that her behaviour is unacceptable, Evelyn has either denied behaviour or tried to blame others.”*

[61] At this point in the meeting Mr Jones contributed some suggestions about a process to “turn things around” including training for Ms Reti. Ms Crowther said she saw this as a high risk strategy for the business and noted that even if there were some issues of credibility [in the report] this did not discredit the entire report.

[62] After further discussion between Ms Crowther and Mr Jones along the same lines the notes record this comment from Ms Reti:

*“she would have to change the way she approached people, ‘if she knew what they really were.’ She said at the moment she could not communicate very much. It was explained that this was because she was on medication and it would be 10 days before the medication made her alert enough to express herself. SC asked when the 10 day period would be up but there was no definite response.*

*SC asked why wasn’t this conveyed to MC when the meeting was set up? SC said she did not accept that PJ and Evelyn did not know the purpose of this meeting. PJ said he was under the impression SC would not be there and it was just a meeting with MC and JB to discuss the report...*

*SC conveyed her disappointment to be told that Evelyn could not communicate because of her medication...SC felt it would be a farce to go through this process again...*

*PJ says that E has had a fair opportunity to respond to the report, albeit sometimes her communication was unclear. Evelyn would probably have had more to say (if not on medication) and it has been difficult to back up her side as so much was written down.*

[63] The meeting concluded with Ms Crowther advising that the next stage was to make a decision whether or not to dismiss Ms Reti.

[64] At my investigation meeting Ms Crowther was asked whether she had followed up points that had been raised by Ms Reti and her representatives, such as checking the personal files of complainants to see what their past history had been. Ms Crowther said she did not do so as she did not consider this relevant. In a similar way Ms Crowther acknowledged that Ms Reti had told her she had spoken to Shirley Field and Russell Muir about what she saw as related issues, but said that she did not see any point in following this up with Shirley Field as she felt the issues were “*here, today, on site.*”

[65] Ms Crowther also acknowledged that the first part of Mr Olsen’s report was framed in generalisations but she said it then moved on to specific examples, and everything in the report was material to the decision making process. She agreed that some complaints were historical in nature but observed that people were upset now. She noted that the complaints from Ms O and

Mr M related to recent events. (I note however the WAVE report did not detail any complaints from Mr M.)

*Other relevant information*

[66] Ms Reti told me that in October 2003 she felt under a lot of pressure at work. At that time the Mill was undergoing a major restructure and associated redundancies, but Ms Reti attributed her stress to difficulties she was experiencing in supervising some of the people in her team. She felt that she was not getting the support she needed from management. She told me:

*“because of this I found that I was starting to dread going into work and it was taking more and more of my energy.*

*I got to a stage where I wasn’t playing sports or socialising outside work. It was taking all my energy just to get through each working day. I wasn’t sleeping well, because I would lie awake worrying about little incidents at work and how I would manage them. I suffer from asthma and it had been under control for a long time. But the more I worried the more I experienced problems with this.”*

[67] Ms Reti’s GP, Dr Gadson has provided a medical report to the Authority. In it he explains that he had been Ms Reti’s GP for 30 years. He goes on to say:

*“I first began seeing Evelyn with stress related symptoms on 30<sup>th</sup> of October 2003...she confided that in the past six months her job had become increasingly more demanding with increased responsibilities. She told me that she used to enjoy her job but she had grown to hate the place. She was increasingly tired and was losing [sic] control of her long time asthma.*

Dr Gadson arranged tests to exclude problems of medical nature, before he:

*“Spoke with Dave Dawson, the Medical Officer on site at Kinleith, who recommended that I should speak with...her manager...”*

[68] Dr Gadson said he has not recorded whether he succeeded in speaking with the manager and cannot recall for sure whether he did. What Ms Reti can recall is as follows:

*“After Dr Gadson contacted the nurse, I had a meeting with Russell Muir who was still the Production Manager and [Shirley] Field an HR advisor...Russell decided to deal with this by having a team meeting to get all the issues out on the table. He told me, before that meeting, that if it emerged that it was a problem with me, then I would be given training...”*

*...there were no complaints about my role as Leading hand. Although that meeting got the issues out on to the table I found it very difficult to know how to manage the group in the best way with the undercurrents affecting relationships within the crew.*

*I was hoping for some more training or back-up from the company to help me through this, but nothing happened. I had a few discussions with Shirley Fields and those were helpful. Then Shirley Fields was made redundant and I was left to manage as best I could on my own.”*

[69] Soon after, Mr Muir also left.

*Meeting 29 April*

[70] On 29 April Martin Carlyle and John Barber met with Ms Reti for the final time. She was accompanied by Phil Jones, Lee Ratima and Tony Tahikitia.

[71] Ms Crowther, who was connected via speaker phone, conducted the meeting and recorded what took place. The meeting was brief. Ms Crowther advised that the purpose of the meeting was to communicate the final decision around “bullying and intimidation of Evelyn’s team.” She said that the WAVE report:

*“found the team members allegations around bullying as justified”*

and that at the meeting of 22 April:

*“we did not get a compelling view that Evelyn understood the affect [sic] of her behaviour on the team and did not offer any convincing willingness to accept some accountability and offer any suggestions or contribution to change herself and work with the team.*

*Hence our view is that relationship between you the company and your team members is irretrievable and we have lost trust and confidence in your ability to perform your role as team leader.*

*So in conclusion our final decision is dismissal, effective immediately.”*

**Decision**

[72] I have concluded that the company’s inquiry was flawed in a number of respects.

*Predetermination*

[73] The first is that Ms Crowther did not go into the meeting of 22 April with an open mind. As set out in paragraph [52] she had already pre-determined that Ms Reti had bullied her team and that serious misconduct had occurred, despite the fact that prior to the meeting of 22 April Ms Reti had had no opportunity to respond to any specific allegations at all. This had an unfortunate effect on the way Ms Crowther ran the meeting because she proceeded (prematurely) to seek suggestions from Ms Reti as to how she could change her behaviour.

*Certain material should not have been relied upon by respondent*

[74] The employer has erred in placing so much reliance on Mr Olsen and his report. Ms Crowther neglected to check Mr Olsen’s credentials or methodology and as it transpired, he was neither highly experienced nor well qualified in conducting an investigation as part of a disciplinary process. This is demonstrated in the report, which does not adequately document the complaints for the purposes of a disciplinary process. A paucity of specifics means that there was very little to which Ms Reti could be asked to respond in a meaningful way.

[75] In addition, Mr Olsen goes beyond information gathering and proceeds to record a conclusion that Ms Reti had bullied her team and to make recommendations for future action including dismissal. Although it is open to an employer to delegate part of its inquiry to a third party (as Mr Kiely has submitted) that third party must not become the final decision maker, either about whether there was serious misconduct, or about whether to dismiss. It is correct that Ms

Crowther, Mr Barber and Mr Carlyle made the decision to dismiss however they accepted uncritically Mr Olsen's assessment that Ms Reti had bullied her team.

[76] Although the final assessment was not for Mr Olsen to make, it was open to him to record his view. Unfortunately the flaws in his report were such that his view had no demonstrated foundation. The absence of information about dates, times and frequency of many of the behaviours described in the reports made it impossible to evaluate Mr Olsen's assessment of the seriousness of the situation. For example it was impossible to ascertain when interviewees were giving repeated descriptions about the same situation, or fresh descriptions of many situations. (He did not retain interview questions or notes of the responses so it is not possible to assess the quality of his investigation.)

[77] The net effect of all this was that only limited parts of Mr Olsen's report should have been taken into consideration by the respondent. These are the parts which recorded specific complaints and so were capable of being put to Ms Reti for response. The rest of it was of no use or relevance to the disciplinary process.

*Ms Reti unable to respond to generalisations*

[78] As I have indicated, Ms Reti was given very few specifics to respond to. Ms Reti's representatives pointed out at the time that the concerns put to her on 1 April and again on 13 April (as set out in my paragraph [7]) lacked any specific detail. Ms Crowther replied to this concern by noting that Ms Reti would in due course receive a copy of Mr Olsen's report. As we have seen, however, much of the report summarised what it identified as patterns of behaviour. Understandably, Ms Reti found it difficult to respond in a meaningful way to such generalisations.

*Failure to follow up points raised by Ms Reti*

[79] The next flaw in the inquiry was that there was no evidence that the respondent followed up on points raised by Ms Reti and her representatives such as:

- the prior history of team members;
- information that Ms Reti had spoken to Shirley Field with concerns;
- whether there was substance to the claim that there had been a breach of confidentiality;
- whether warnings given to team members were justified;
- whether Ms Reti had asked for her son-in-law to be moved from her team.

[80] Apart from the interviews with other team leaders, and the personal knowledge of Mr Barber and Mr Carlyle, there was no inquiry into Ms Reti's personnel file or past record. Although Mr Barber and Mr Carlyle had known Ms Reti for some time, they had not managed her until very shortly before the disciplinary process began.

[81] Finally, no allowance appears to have been made for the effects of Ms Reti's ill health during the disciplinary process.

Was it open to a reasonable employer to conclude that serious misconduct had occurred?

[82] As we have seen, Ms Crowther, Mr Barber and Mr Carlyle went into the meeting of 22 April having already formed the view that Ms Reti was bullying her team. Ms Crowther told me that at that point they were looking for an explanation from her and none came.

[83] Afterwards the three of them spoke briefly together and took into consideration the following information:

- What they had heard at the original interviews (prior to 13 April) that had been conducted by Mr Carlyle and Mr Barber;
- Mr Olsen's report and brief oral comments he made when presenting it;
- The meetings with Evelyn;
- The fact that the union delegates had not reported back after their own informal inquiries. Ms Crowther told me that she was aware that these inquiries were taking place and thought that if anything significant "the other way" had come out, she would have heard about it.

[84] Mr Carlyle told me that he had "not been averse" to the idea of working with Evelyn to address the issues. However, other staff were at risk and he felt Ms Reti was not prepared to acknowledge any responsibility. He felt the relationship could not be repaired.

[85] Ms Crowther said that although Ms Reti had a long history of satisfactory service, she was not prepared to change and had not suggested any ways to move forward. (Mr Jones' suggestions started from a base of "no blame" which was not acceptable to the company.) The trust and confidence in the relationship was therefore, in her view, irrevocably broken.

## **Decision**

[86] I have come to the conclusion that there was no reasonable foundation for the employer to have concluded that serious misconduct occurred. The procedural flaws (as documented above) are serious and make it impossible to establish that serious misconduct had occurred.

[87] Grievances relating to treatment interviewees received at the hands of Mr Muir cannot form part of the justification for the dismissal. Ms Reti cannot be held accountable, retrospectively, for the actions of her manager, for actions she took under his instructions in good faith, or for actions he endorsed. Ms Reti cannot therefore be held accountable for warnings issued by Mr Muir (even assuming those warnings were unjustified, which was itself not established.) Nor can she be held accountable for the demotion of Ms W from her "2IC" role and of Mr N from his role as a health and safety officer.

[88] In addition, as I have indicated in my earlier remarks, specific examples of serious misconduct must be established in order for a summary dismissal to be justified. There is no meaningful way for anyone to answer a generalised allegations such as "you intimidate your team" without being told who, when, where, and how.

[89] We must also discount allegations in relation to which Ms Reti's answers were not followed up, such as the alleged breach of confidentiality.

[90] We must then consider what allegations remain. These are:

- i. the incident involving Mr N at a team meeting and which continued in a "one on one" between Ms Reti and Mr N;
- ii. the incident of 23 March involving Ms O and Ms W.

[91] I have read carefully the full descriptions of both these incidents. If true, they do not reflect well at all on Ms Reti and certainly demonstrate a need for improvement in her attitude and approach to her team. However they simply fall well short of amounting to conduct of such

seriousness that it could destroy the necessary trust and confidence in the employment relationship.

[92] I find that the information the employer had was not enough to establish that serious misconduct had taken place and it was not open to the employer to conclude as it did.

In all the circumstances was it open to the respondent to dismiss Ms Reti summarily?

[93] Since Carter Holt Harvey has not been able to show that it had reasonable grounds for believing that serious misconduct occurred, it must follow that it was not open to the respondent to dismiss Ms Reti.

[94] In case I am wrong on this point, I record that even if the conduct complained of did constitute serious misconduct, I have formed a view that in all the circumstances the respondent still could not dismiss summarily. My reason for this conclusion is that from October 2003 the respondent was on notice, through Ms Fields, that Ms Reti was not coping with her job. She had received some assistance at that time but this was cut short upon Ms Fields' departure.

[95] I note that in coming to this conclusion I have of course relied on Ms Reti's own evidence as well as Dr Gadson's report. When I received this information my first thought was that I needed to hear what Ms Fields had to say about it. I relayed this to the parties and both attempted to locate Ms Fields. Unfortunately that proved impossible and so I have proceeded on the basis of the evidence I have. I note also that in the meeting of 22 April 2004 Ms Reti raised the matter of her approaches to Ms Fields, and Ms Crowther chose not to follow it up. The company must therefore take responsibility for the fact that it did not have the relevant information about this matter at the time it made its decision.

[96] I also note that although Ms Crowther and the other managers came away from the meeting of 22 April 2004 with a view that Ms Reti did not recognise any need to change her behaviour, this does not come through clearly in the company's own notes of the meeting. What comes through is that Ms Reti is unclear about what changes she must make, which is not surprising as she had been told so little about what she was doing wrong.

[97] In conclusion the circumstances were that a supervisor was in difficulties in her role and found her health affected as a result. She sought medical help and later (through the intervention of her doctor) the company was put on notice of the problems. Because of the restructure she did not get the on-going support she needed, and as we know, the relationship with some of her team reached the point where they complained about her.

[98] It is my view that the company failed both Ms Reti and her team. It is unacceptable for her to be made a scapegoat for this failure, particularly given her long and previously good service. In these circumstances, even if some of Ms Reti's conduct towards her team did amount to serious misconduct (which I do not find was established) I do not accept that the respondent is able to say that the trust and confidence in the relationship was irreparably broken.

## Remedies

[99] The respondent has argued that even if the dismissal was unjustified there is clear evidence (arising out of what Ms Reti's team said about her) that she contributed to the situation giving rise to her personal grievance. I reject this argument because of the conclusions I have recorded in paragraphs [92] to [97.] In my view, Ms Reti did what she could to prevent the situation that ultimately gave rise to the personal grievance. There will be no reduction for contributory fault.

*Reimbursement of lost wages*

[100] Dr Gadson's indicates that Ms Reti was in such poor health after her dismissal that she was unable to work at all. Both he and Ms Reti believe this poor health is directly attributable to the stress arising from the dismissal. I accept this evidence. It follows that the loss she suffered during the period she was on a sickness benefit was a direct consequence of her personal grievance.

[101] Ms Reti did not come off the sickness benefit and resume paid work until March 2005, a period of about ten months after she was dismissed. This work was at a much lower rate of pay than her job at the Mill. For this reason, Ms McNally has argued that Ms Reti should be reimbursed for ongoing losses after March 2005. She points to the fact that in Tokoroa it is hard for anyone who has been dismissed by the respondent to find other work, especially after the length of time she had been with the company and especially after she had been branded a bully. Ms McNally argues that the applicant should be reimbursed for her losses for a period from the dismissal until three months after the date of the investigation meeting.

[102] It is not easy to establish where the cut off point should come in such cases. So many variables have the potential to impact on a working life that one must be cautious in drawing inferences about what would be likely to have happened if it were not for the grievance. However, in this case, it is probably safe to say that Ms Reti would still be at the Mill if it had not been for the grievance, and I think it is also safe to say that she faced particular difficulties in finding other work afterwards.

[103] The period claimed by Ms McNally takes us to around the end of August 2005. I accept that the period claimed by the applicant (which amounts to about 16 months after the dismissal) is a reasonable one in all the circumstances.

**[104] I order the respondent to pay to Ms Reti the total losses sustained by her to the end of August 2005.**

[105] I note that Ms McNally supplied a weekly payslip from Ms Reti's current job (which shows that she earns \$380.00 gross.) She has quantified the figure for lost wages at \$54,881.28 gross. **The respondent made no submissions as to the accuracy of this figure however if there are any issues remaining as to the precise figure owed to Ms Reti, the parties have leave to seek the further assistance of the Authority in resolving them.**

*Compensation for hurt and humiliation*

[106] Mr Reti was not fulsome in speaking of the distress her dismissal caused her, but what she said made a strong impression. I do not think it an overstatement to say that it appears that it nearly broke her. The hurt and humiliation she suffered was aggravated by the fact that she was already struggling to cope with her role, by the lengthy and traumatic suspension, and by the manner of her dismissal. Ms Crowther explained to me that a personal crisis in her own life necessitated her attending the final meeting by teleconference. While I accept the difficulties she herself faced at this time, I do not accept that this relieves the respondent company which was under an obligation to treat Ms Reti properly whether or not one of its human resources managers had serious personal problems of her own.

[107] I am satisfied that this matter calls for an award at the upper end of the usual range. After reviewing other recent awards in comparable cases I am satisfied that an award of \$25,000.00 is appropriate.

**[108] The respondent is ordered to pay to the applicant the sum of \$25,000.00 compensation for hurt and humiliation pursuant to s123 of the Employment Relations Act 2000.**

**Costs**

[109] I reserve this issue at this stage. If the parties require the assistance of the Authority in resolving it they should notify the Authority of this within 28 days of the date of this determination.

Y S Oldfield  
Member of Employment Relations Authority