

**Attention is drawn to the order prohibiting publication of certain information (refer paragraph 4)**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 837  
3131454

BETWEEN

MICHAEL REDDY  
Applicant

AND

HAMILTON CITY COUNCIL  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Alex Hope and Edmond Carrucan, counsel for the Applicant  
Tom Jarman and Ella Burney, advocate/counsel for the Respondent

Investigation Meeting: 11 and 12 November 2025 in Hamilton

Submissions and/or further evidence 11 and 14 November 2025 from the Applicant  
14 November 2025 from the Respondent

Determination: 22 December 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] The Applicant, Michael Reddy, claims that he was unjustifiably dismissed by the Respondent, Hamilton City Council (HCC).

[2] Mr Reddy also claims that he was unjustifiably disadvantaged by HCC failing to properly investigate his claims of bullying.

[3] HCC denies that Mr Reddy was unjustifiably dismissed. HCC also denies that Mr Reddy was bullied, or that it failed to investigate claims of bullying made by him.

**Prohibition on publication**

[4] **I order that the names of HCC Contractors and employees who did not provide evidence in this matter, and any information which may lead to their identification, are**

**subject to a permanent non-publication order and not to be published. They will be referred to by initials bearing no relationship to their actual name. This order is made under Schedule 2 clause 10(1) of the Employment Relations Act 2000.**

### **The Authority's investigation**

[5] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Mr Reddy.

[6] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Emily Botje, Clark Collins and Daniel Finn.

[7] Oral and written submissions were received from Mr Hope for the Applicant and from Mr Jarman for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Issues**

[9] The issues requiring investigation are whether or not Mr Reddy was:

- Unjustifiably dismissed by HCC.
- Unjustifiably disadvantaged by HCC not properly investigating his claims of bullying.

### **Background**

[10] HCC provides a wide variety of public services within Hamilton. It employs approximately 1500 people, with a full-time equivalent of 1300 employees. There are seven groups of services and approximately 26 business units.

[11] Emily Botje was the Facilities Manager for the Facilities Unit at the time Mr Reddy was employed. At that time there were approximately 30 employees in the Facilities Unit.

[12] Ms Botje said that the Facilities Unit undertakes project work as an in-house provider of building management for other business units in respect of public facilities such as libraries, the museum and parks.

[13] Prior to her joining HCC Ms Botje said it had been a case of what she described as 'feast or famine', with every job requiring a tender. However she saw the opportunity to make some changes which enabled HCC to enter into arrangements with selected contractors for projects to be undertaken with an agreed contract price over a three-year period. This resulted in there being a secure pipeline of work.

[14] Ms Botje said the relationship required HCC to communicate openly in a partnership with its clients and contractors.

[15] Mr Reddy was a fully qualified Project Manager with excellent technical skills. He applied for the job of Project Manager at HCC. He said he was attracted by the idea of doing a job for which he was well qualified. He was interviewed by Ms Botje and the then Programme Manager and offered the role of Project Manager as part of a team of three project managers. He commenced working on 26 August 2019 and was covered by the PSA Collective Agreement.

[16] Mr Reddy reported to a Programme Manager who in turn reported to Ms Botje. Shortly after Mr Reddy commenced at HCC, the Programme Manager resigned and Mr Reddy applied for the position. However QMC, a contractor, was appointed to the role on a temporary basis.

[17] Mr Reddy said his job as Project Manager involved him in planning, investigating, designing, procuring, and closing projects efficiently and systematically following best practices and HCC's management framework. Shortly into his employment with HCC he said he encountered problems with one of HCC's main contractors, BDF, and its manager, BTO.

[18] Mr Reddy said he realised during his first project there was no confirmed, written and, drawn up Scope of Work. He therefore established the process of holding pre-construction meetings for all projects as a 'must start' point of any project.

[19] Ms Botje said that when Mr Reddy joined the Facilities Unit they were improving their business processes associated with project management and delivery, and Mr Reddy assisted the team in developing a number of new practices. She said she was appreciative of his efforts to improve the overall performance of the team.

[20] Ms Botje explained that as an in-house business unit providing services to other units, the Facilities Unit had to report to multiple different people. She said Mr Reddy was required to report to clients who were not his direct line manager.

### *Initial Complaints*

[21] Mr Botje said within Mr Reddy's first six months of employment she began noticing issues with his behaviour particularly in relation to how he engaged with HCC's clients. His direct line manager QMC started to receive a number of complaints from several clients who complained about Mr Reddy's communication with key stakeholders in the projects he was managing. QMC escalated these complaints to her. The nature of the complaints were that Mr Reddy was rude, obstructive, and uncooperative in his interactions with the complainants

[22] Mr Reddy also raised contractual concerns regarding the contractors with Ms Botje. She said Mr Reddy was concerned that HCC and contractors had a disregard for professional standards and project management integrity. He told her that his efforts to enforce proper project management processes were met with resistance; and he considered that HCC exercised no time or cost control in relation to the projects it was managing. He said that the contractors were allowed to bypass procedures, and that his insistence on compliance led to conflict.

[23] Mr Reddy said he was overruled on technical decisions on projects he was managing despite his valid concerns. He believed his professional ethics and standards were not respected by management or peers and referred to QMC as having 'no knowledge'.

[24] Mr Reddy said on one project involving one of HCC's main contractors, BDF, a change in certain areas of interior lining was discussed, and he agreed to that on the basis that there would be a cost saving to HCC. The contractor disagreed and would not agree to a credit back to HCC. Mr Reddy said he raised that issue with Ms Botje, but rather than supporting him, she overruled him.

[25] Ms Botje said she became involved in several of Mr Reddy's projects as a result of his conduct. The most significant of which was the Waikato Museum roof replacement project. Mr Reddy was responsible for the project and contract management for the repair of part of the Waikato Museum roof.

[26] Ms Botje said this was a very complex project which none of the Facilities Unit, including Mr Reddy, had experience in, and it required timely collaboration with the client and the contractor to find cost effective alternatives to materials and constructive techniques. She said the contractor produced a method statement under warranty for alternative works that met the requirements of the contract, and the risk assessment methodology had been accepted by HCC.

[27] Ms Botje said Mr Reddy did not respond with the flexibility or engagement she had expected in the situation. The project had to be stopped and about a week of construction time was lost. Ms Botje said the manner in which Mr Reddy raised issues about the construction

had caused a significant breakdown in the relationship HCC had with the contractors involved in the project.

[28] During the project she received complaints that Mr Reddy failed to address health and safety concerns raised by the museum's health and safety representative and the museum's visitor services manager.

[29] Ms Botje said she tried to assist Mr Reddy in improving relations with museum staff which included daily toolbox stand-up meetings and a visual whiteboard to display the works programme risks. She said unfortunately key information was not forthcoming from Mr Reddy which led to a second site shutdown and a full health and safety investigation.

[30] On or about December 2019 she understood that a client for another project had raised a concern with an HCC employee about Mr Reddy's behaviour during the first meeting about the project.

[31] In June 2020 QMC emailed her after speaking to an HCC client MLZ, on another project who had raised concerns about Mr Reddy's communication with her and contractors.

[32] A few days later on 8 June 2020, QMC emailed Ms Botje after complaints had been raised with him by contractors from BDF and NIP about the same project.

#### *HR advice pre-June 2020*

[33] Clark Collins was, at the time of Mr Reddy's employment, the HR Business Support Partner for the Facilities Unit. Mr Collins said that prior to June 2020 he had been approached by Ms Botje and QMC in regard to concerns about Mr Reddy's behaviour towards contractors and clients.

[34] He advised them to provide Mr Reddy with support with the aim of improving his communication skills. As a first step he suggested direct feedback and coaching to be provided by Ms Botje and QMC, and later, as concerns continued, the engagement of an external coach from a support organization, the Effect.

[35] Mr Collins said QMC forwarded to him the complaints received via email from early July 2020. Details of the complaints included:

- i. From client MLZ who on 5 June 2020 met with QMC and described Mr Reddy having asked her for an emergency plan in a confrontational and rude tone. MLZ also told QMC Mr Reddy was bullying the contractors, and she was not consulted on project decisions;

- ii. From the director of the contractor NIP who met QMC on 8 June 2020 and complained that Mr Reddy's communication style was confrontational and aggressive;
- iii. From BTO, the manager of BDF, on 8 June 2020 who described Mr Reddy as having a bullying approach to his communication and having been subjected to abusive language from him; and feeling that Mr Reddy was 'always trying to get one over to you'. BTO was concerned that further projects might be "ending in acrimony" if Mr Reddy continued acting in the same way.

[36] Ms Botje said she asked QMC to record the complaints he had received in writing and have complainants confirm them as accurate.

[37] On 7 July 2020 Ms Botje said QMC spoke to the director and the manager from contractors BDF and NIP both of whom told him they had not observed any change in Mr Reddy's behaviour. Ms Botje said she therefore decided to speak with Mr Collins.

[38] Mr Collins said that together with Ms Botje and QMC it was decided that it was necessary to formally investigate the complaints received. Accordingly on 7 July 2020 he emailed an external investigator from an external HR company, to carry out an independent investigation.

*Meeting between Mr Reddy and Mr Collins on 8 July 2020*

[39] Mr Reddy said after he was appointed he had encountered ridicule, false allegations, and discrimination primarily due to his rigorous adherence to HCC policies and procedures, where his professional ethics were significant.

[40] He requested a meeting with Mr Collins which took place on 8 July 2020. Mr Collins said he took notes which noted Mr Reddy's concern about how he believed he was being treated by contractors, subcontractors and his managers. He said Mr Reddy had asked that the meeting was treated as confidential.

[41] One of Mr Reddy's concerns centred around his interactions with the contractor BDF. Mr Reddy said BDF did not provide sufficient information in its pricing which caused him stress and frustration.

[42] He recounted a meeting with contractors in which QMC was present and said QMC had told him that the way he spoke during the meeting was too aggressive. Mr Reddy said he been singled out a few times by QMC and Ms Botje about minor things and that he felt bullied by this.

[43] Mr Reddy also raised concerns about QMC having a racist attitude towards him, providing an example, when he believed QMC to be laughing at him while he was eating sushi for lunch. Mr Collins said Mr Reddy was unable to provide a specific reason for this belief and as a result he suggested that he clarify the situation with QMC as he may have been laughing about something different

[44] Mr Reddy also mentioned an incident where he felt that QMC favoured a contractor, saying that during a meeting he believed QMC's body language was more positive towards a contractor than himself.

[45] Mr Collins said none of the examples given by Mr Reddy gave him cause for concern that Mr Reddy was being bullied. However he ensured that Mr Reddy was aware of the options available to him. He asked Mr Reddy how he wanted to address his concerns, and outlined several options for addressing concerns including submitting a formal concern through HCC's processes. Mr Collins said they had also spoken about alternative approaches such as raising his concerns directly with the individual involved to better understand the situation in perspective.

[46] Mr Collins said he encouraged Mr Reddy to make the most of the coaching support available at HCC and Mr Reddy confirmed he was seeing an external coach at the Effect.

[47] He said Mr Reddy expressed hesitation about filing a formal complaint and he suggested he follow up with him in a few days. They had agreed to keep the matter confidential, and because Mr Reddy had not decided what to do, Mr Collins said he did not take any further action regarding the complaint at that time.

[48] Mr Reddy said he had been worried that if he raised a formal complaint it would spark retaliation, that was the reason he did not submit a formal complaint at that time, however he had expected HCC would address his concerns. Instead of doing so, he said it retaliated by accepting the complaints which were from contractors who objected to his strict adherence to HCC policies and processes

[49] On 9 July 2020 Mr Collins said he received an email from Mr Reddy following their meeting the previous day. In the email Mr Reddy stated:

Looks like my dissent is when others do not like I carry out the processes and procedures of Project Management. Talking with the Effect has given me back the confidence I need in my work and also that I am not doing anything wrong but looks like I am a victim of extreme and undesirable circumstance or situation.

[50] Mr Collins said he was concerned from Mr Reddy's email that he attributed the issue to the behaviour of others, not his own behaviours. He said Mr Reddy had been provided feedback on his behaviour and additional support from QMC and Ms Botje along with the coaching team from the Effect.

[51] He replied to this email on 13 July 2020 attaching the HCC Harassment Bullying and Discrimination policy. He also let Mr Reddy know that he was available if Mr Reddy needed any help.

*Meeting on 14 July 2020*

[52] On 14 July 2020 a meeting was held about the external investigation attended by Mr Collins, QMC and Mr Reddy and the acting Facilities Unit Manager who covering for Ms Botje who was on leave. During the meeting a letter was presented to Mr Reddy which stated:

Complaints

We have received complaints about your behaviour from BTO from BDF and XYD from NIP.

The complaints include:

- using aggressive and intimidating behaviour
- fault finding and blaming of others
- threatening retaliation
- possible retaliation e.g. waiting until the end of the job before providing a defect list that would have been easier to progress to address earlier

As part of our preliminary view of the complaints we have information from HFD – Service Manager – Libraries.

We take such complaints seriously. We will undertake a full and fair investigation of the complaint in accordance with relevant policies. ...

The proposed terms of reference for the investigation has been attached. Please provide feedback of the proposed terms of reference by 5 PM on Thursday 16<sup>th</sup> of July 2020.

[53] The letter attached the relevant information in relation to the complaints and also encouraged Mr Reddy to access the HCC employee assistance programme (EAP).

[54] Mr Collins said Mr Reddy emailed confirming he understood that the matter would be externally investigated, and he had no objection to the Terms of Reference.

[55] On or about 15 of July 2020 Mr Reddy went on discretionary leave. On 23 July Mr Reddy advised Mr Collins that he would return to work on 27 July 2020. On Mr Reddy's return on 27 July 2020 Mr Collins, Ms Botje and QMC met with him to provide an update on the

investigation; in particular that the External Investigator would be in touch with him to understand his view on the complaints

[56] Mr Reddy was advised that while the investigation was underway he could:

- (a) Continue working but not be in contact with others without QMC or Ms Botje present;
- (b) Be on paid suspension, or
- (c) Continue discretionary sick leave.

[57] Mr Reddy advised he wanted some time to consider his options and he was asked to provide this by the end of the day on 28 July 2020 . Ms Botje confirmed the options available to Mr Reddy in an email following the meeting.

[58] On 28 July 2020 Mr Collins said Ms Botje advised that Mr Reddy had chosen to take the discretionary leave option

### *The Investigation*

[59] On 24 July 2020 Mr Reddy was sent an email by the External Investigator which stated that one aspect of the Terms of Reference was to ensure that he was aware of the details of the complaints. It contained a summary of the complaints received and notes of the interviews to that date, together with the notification that she would be speaking to further witnesses the following week.

[60] The interviews carried out by the External Investigator included all the complainants, Mr Reddy and two witnesses requested by Mr Reddy. The HCC Code of Conduct clauses specifically considered by the external investigator during the investigation were:

#### 6 Misconduct

##### a Performance of Duties

Failure to demonstrate HCC behaviours at the required level

Disrupting the workplace through

- Acts of undesirable behaviour and/or
- Misuse of time or resources and/or
- Preventing or disrupting another employee from carrying out their duties and/or
- Failure or inability to work harmoniously and cooperatively with others

#### 7 Serious Misconduct

##### c Health and Safety

Acting in a manner that

- Threatens safety or health in the workplace and/or
- Prevents the safe and proper performance of the duties of other employees and/or
- Creates fear in other employees.

Any harassment of employees, contractors, sub-contractors, members of the public or customers.

This includes the use of abusive, obscene or threatening language.

3.3 The Harassment, Bullying and Discrimination Policy states:

All Council employees, elected members, customers, volunteers and contractors are expected to treat each other fairly with dignity and respect. Harassment is completely unacceptable, illegal and incompatible with Council's core values.

The specific clauses in the Harassment, Bullying and Discrimination Policy which are considered in this investigation are:

1 Workplace Bullying

- ...

Personal attacks (direct)

- ...

Task-related tasks (indirect)

- ...

[61] Mr Collins said that the External Investigator sought permission to contact seven further witnesses as a result, and arising out, of the investigation. Mr Collins sent through the contact information for those further witnesses

[62] On 29 July 2020 Mr Collins said the External Investigator indicated she would set up an interview with Mr Reddy for 10 August 2020, which would provide him with sufficient time to review all the documents and fully respond to the complaints.

[63] On 30 July 2020 DFJ emailed Ms Botje and Mr Collins advising that he represented Mr Reddy and that all communication should be directed to him. Mr Collins responded to DFJ on 31 July 2020 explaining HCC was investigating complaints in accordance with the principles of natural justice and provided the requested information requested by DFJ.

[64] The External Investigator also contacted DFJ to provide the information she had collected in the Investigation and to arrange for an interview with Mr Reddy on either 10 or 12 August 2020.

[65] On 3 August 2020 DFJ emailed Mr Collins complaining that HCC had effectively completed the Investigation without formal written complaints. He also requested further information which Mr Collins provided on 6 August 2020.

[66] The External Investigator interviewed Mr Reddy who was accompanied by DFJ on 17 August 2020.

[67] On 31 August 2020 the External Investigator emailed Mr Collins the draft investigation report which he understood was also emailed directly to Mr Reddy. Mr Collins emailed the independent investigator with HCC's response to the draft report, and addressed the relationship

between the draft findings and HCC policy and whether particular terms had been correctly applied.

[68] Mr Collins said the draft report only considered the definition of ‘misconduct’ and not ‘serious misconduct’. In addition, there was no clear conclusion as to whether Mr Reddy’s pattern of behaviour amounted to workplace bullying so Mr Collins requested that those comments be taken into account before the final report was provided.

[69] Mr Collins said his understanding from the final investigation report was that Mr Reddy declined to provide feedback when presented with the draft report.

*Final investigation report*

[70] On 14 September the External Investigator sent through the final investigation report. This set out in detail her specific findings and made the observation that Mr Reddy was an experienced Project Manager, but his way of enforcing his processes was causing significant damage to the relationship between HCC and key stakeholders.

[71] It also observed that Mr Reddy operated from a place of distrust for contractors, and that he needed to find a constructive way to implement good processes to the benefit of all parties without destroying relationships.

[72] Further to that, Mr Reddy did not demonstrate he was aware of the importance of good relationships in the working environment and/or the impact of his personal communication style in building and maintaining those relationships.

[73] The final investigation report concluded:

- (a) that seven particular incidents, taken together, were a significant pattern of breach of the HCC Code of Conduct and HCC might make a decision that it warranted a finding of serious misconduct, particularly if there had been documented efforts to make Mr Reddy aware that his behaviour is not acceptable and he would need to improve.
- (b) Mr Reddy’s behaviour was impacting working relationships sufficiently to consider whether it reached the level of serious misconduct; and
- (c) If Mr Reddy was unwilling to recognise the damage he had, and was still, causing to relationships and find a more constructive manner of achieving his desired outcomes; or if it had been brought to his attention and there was no

improvement, it was appropriate to consider it to be serious misconduct and an irreconcilable breach of trust and confidence.

[74] Ms Botje said she had reviewed the final investigation report by 17 September 2020 and she and Mr Collins considered that the findings warranted a disciplinary meeting.

[75] Accordingly, Mr Reddy was provided with a letter dated 17 September 2020 which set out the investigation outcome, her concerns, and invited Mr Reddy to a disciplinary meeting at which he would be given the opportunity to provide an explanation into the alleged breaches of HCC's Code of Conduct. The breaches were specified as:

**Performance of Duties**

disrupting the workplace through:

- failure or inability to work harmoniously and cooperative others
- failure to demonstrate HCC behaviours at the required level, specifically work together

[76] Mr Reddy was invited to have a support person or representative present at the meeting and encouraged to continue the coaching sessions provided through the Effect and that the EAP programme was also available to him.

*Disciplinary meeting 22 September 2020*

[77] The disciplinary meeting facilitated by Mr Collins was held on 22 September 2020 and attended by Ms Botje, Mr Reddy supported by DFJ. Mr Collins discussed the concerns raised by several contractors during the meeting and asked Mr Reddy about his approach.

[78] Mr Collins said it was made clear to Mr Reddy that HCC's focus was on how he was communicating with its partners, and Ms Botje explained the importance of HCC building relationships with contractors and internal customers.

[79] After a short adjournment to consider the responses provided by Mr Reddy, Mr Collins said he responded to the concerns Mr Reddy had raised. Mr Reddy's concerns included how the investigation had arisen; the need for proper processes and a high standard of performance from contractors; the cultural component and needing to be inclusive of people from different backgrounds; and concerns about not being heard during the investigation.

[80] Ms Botje informed Mr Reddy of HCC's decision that he had breached the HCC Code of Conduct on grounds of misconduct, and to issue him with a first written warning, valid for six months.

[81] Mr Collins said he and Ms Botje wanted Mr Reddy to return to work and they had emphasised their desire for him to succeed. They discussed the external coaching sessions Mr

Reddy had already received and Mr Reddy mentioned the name of the psychologist with whom he had been meeting. They noted that Mr Reddy was also being supported by DFJ.

[82] It was agreed that Mr Reddy would return to work on 28 September 2020. His return would be facilitated by having a third party present at meeting with contractors until he felt confident he could work back with them.

[83] The meeting outcome was confirmed by Ms Botje in a letter dated 23 September 2020, which stated that any further breach of the Code of Conduct by Mr Reddy could result in further disciplinary cation, including a final written warning or termination of employment.

*Mr Reddy's return to work 28 September 2020*

[84] Mr Reddy returned to work on 28 September 2020. Ms Botje said that during a 'welcome back' meeting with Mr Reddy which QMC attended, a plan to support Mr Reddy was agreed which would provide him with support over the following months.

[85] The plan included:

- (a) Weekly meetings with Mr Reddy, QMC and herself;
- (b) Support at any meetings with BDF to be provided by either her or QMC;
- (c) A staged handover of projects and all supporting documentation; and
- (d) Continued coaching sessions with the external coach.

[86] Mr Reddy said he learned on his return to work that two temporary project managers had been engaged to manage his work whilst he was on discretionary leave, Ms Botje said the two project managers were both part-time and divided Mr Reddy's workload between them.

[87] Mr Reddy said he was disappointed that HCC had not addressed the bullying and harassment he had raised in his meeting with Mr Collins on 8 July 2020. He said he was suffering from depression and was on medication.

[88] Following his return to work Mr Reddy was to take over a project which one of the project managers, YQS, had been handling in his absence. Mr Reddy said he was told on his first day by YQS that they were to attend a site meeting. After the meeting they were to return to the office. Mr Reddy said he suggested to YQS that they have lunch but he had refused.

[89] A few days later Mr Reddy said QMC told him that another serious complaint had been made about him.

[90] Ms Botje said that after Mr Reddy returned to work, complaints continued to be made about his conduct. These included that Mr Reddy:

- (a) had failed to attend scheduled meetings;
- (b) had disrupted the successful handover of projects from YQS, the temporary project manager engaged whilst he was away on discretionary leave;
- (c) excluded QMC from communications when he had been asked to include him; and
- (d) did not follow through with his support plans in place and appeared to place little priority on organising or attending meetings that were outlined in his return to work plan.

[91] On 8 October 2020 DFJ emailed Ms Botje and Mr Collins raising concerns about how Mr Reddy was being treated. Attached to DFJ's letter was one from Mr Reddy raising concerns about how he believed QMC was treating him. Mr Reddy stated at the end of the letter:

I am not yet describing any of his action as bullying or harassment and need to check out the bullying and harassment policy before I do that.

[92] On 20 October 2020 Ms Botje wrote to DFJ setting out setting out concerns since Mr Reddy's return to work which included:

1. Allegations related to Mr Reddy's interactions with YQS including:
  - a. Refusing to discuss client handover meetings;
  - b. Mr Reddy telling YQS he was not ready for a meeting YQS had organised, then leaving for lunch;
  - c. Criticising YQS; and
  - d. Failing to notify YQS that a meeting had been cancelled causing him to wait at the site expecting Mr Reddy to arrive;
2. Declining a handover meeting with YQS to finalise the handover of projects. Failing to attend a scheduled meeting due to claiming he had a doctor's appointment although he been in the office.
3. Declining to attend a routine meeting with QMC on 8 October 2020 when Ms Botje was away stating only that he was working from home, but he had not attained manager approval to work from home that day.
4. Cancelling a meeting with the manager of BDF on 8 October 2020 because he was double booked, however not having any other bookings in this calendar on that date;
5. Telling an external contractor during a meeting that QMC and YQS were coordinating his removal from HCC.

[93] The letter stated:

We are concerned that Mr Reddy's overall conduct and behaviour since returning on 28 September 2020 has not been conducive to building and maintaining healthy working relationships. It appears he has not effectively utilised the time afforded to him with YQS to get a detailed understanding of all projects being handed over and instead were stand-offish and evasive to him ....

[94] The letter attached copies of information relevant to the investigation, namely the Code of Conduct, HCC Performance Management and Discipline Management Policy, a statement from YQS, and the emails and deadline declines of 8 October 2020.

[95] The letter concluded by stating that HCC wanted to give Mr Reddy an opportunity to respond, but asked DFJ, in light of the disclosure about Mr Reddy's mental health, for suggestions on the best way to receive Mr Reddy's response.

[96] DFJ responded on 28 October 2020 raising various complaints, including that QMC would continue to bully and manufacture false allegations against Mr Reddy and he had colluded with YQS to raise complaints against Mr Reddy. DFJ claimed Mr Reddy's mental health had deteriorated because of QMC's attacks on him which were supported by Ms Botje.

[97] As a result of DFJ's implications of Ms Botje in the claims of bullying, it was decided appropriate that Ms Botje step aside from investigating the incidents outlined in the letter dated 20 October 2020.

[98] PFC, who had by that stage replaced Mr Collins as the HR Business Support Partner for the Facilities Unit, responded to DFJ's email stating that HCC would like to resolve matters in order to move forward positively.

[99] DFJ responded on 2 November 2020 attaching Mr Reddy's responses, doing so under the Protected Disclosures Act 2000 (the PDA).

[100] Mr Reddy provided an explanation for the complaints including that he did not have to formally handover projects; he had to stay at home for family reasons and the meeting with QMC could wait; he was not aware of the working from home approval process; QMC was the most offensive person he had ever met; and he believed QMC and Ms Botje were "out to get him".

[101] Daniel Finn, Head of People, Safety and Wellbeing, said he and PFC met to discuss DFJ's responses. A letter was sent to DFJ inviting Mr Reddy to attend a disciplinary/investigation meeting at which Mr Reddy would have an opportunity to respond to HCC's concerns about his personal behaviour and professional conduct.

[102] Mr Reddy was advised that the incidents to be discussed could amount to misconduct and/or serious misconduct.

*Personal Grievance 19 November 2020*

[103] On 19 November 2020 DFJ emailed the Deputy Chief Executive and General Manager Community Group, advising that he did not want to send the HCC letter of 19 November 2020 to Mr Reddy because of a risk that Mr Reddy might take his own life “because of this harassment”.

[104] That same date DFJ also wrote to the then CEO of HCC raising a personal grievance for unjustifiable disadvantage, purportedly under the PDA.

[105] DFJ claimed that the concerns Mr Reddy had raised with Mr Collins on 8 July 2020 were not investigated, and that the investigation with the External Investigator had been in retaliation for the complaints Mr Reddy had made on 8 July 2020. In addition it was claimed that Mr Reddy had been suspended for 10 weeks and been under intense scrutiny since his return to the workplace.

[106] Mr Finn said he responded to DFJ on 23 November 2020, he said that HCC would be replying to the personal grievance separately but that HCC was genuinely concerned about Mr Reddy’s state of mind and the serious psychological/physiological harm and his suicide ideations. Accordingly, HCC need to know if Mr Reddy was in a fit and healthy state to be at work, and that urgent medical clearance was required.

[107] On 25 November 2020 Mr Reddy emailed Mr Finn advising him that he had an appointment with his GP and would provide a medical certificate.

[108] On 26 November 2020 DFJ emailed to Mr Finn Mr Reddy’s medical certificate and stated that he expected Mr Reddy to be suspended whilst an investigation into his bullying complaint took place.

[109] Mr Finn responded to the personal grievance on 27 November 2020 stating in the letter:

- (a) HCC denied that Mr Reddy had suffered an unjustifiable disadvantage in respect of the independent investigation and written warning;
- (b) The details of Mr Reddy’s personal grievance were unfounded whereas HCC’s concerns were supported by evidence; and on that basis it withdrew its support to attend urgent mediation;

- (c) Raising the personal grievance under the PDA was not in line with the purpose of the PDA and has no application;
- (d) In relation to the concerns raised with Mr Collins on 8 July 2020, Mr Reddy was presented with his options regarding his concerns and he chose not to pursue those concerns as complaints. Mr Collins provided the HCC Harassment, Bullying and Discrimination policy to Mr Reddy by email following the meeting. Further there was nothing raised of a nature or substance that warranted the pursual of an informal investigation in the absence of Mr Reddy requesting it;
- (e) The complaint that HCC failed to provide a safe working environment relied on Mr Reddy being bullied and HCC denied that;
- (f) The external investigation was not retaliatory, complaints were received as early as 5 June 2020, prior to the meeting on 8 July 2020. HCC had also funded an external coach at the outset of Mr Reddy's communication struggles;
- (g) A return to work plan was discussed in the disciplinary meeting of 22 September 2020. When Mr Reddy returned to work, a meeting was held with him, Ms Botje and QMC to discuss it. Since returning to work HCC had provided external support to Mr Reddy by providing further sessions with the external coach through the Effect;
- (h) HCC denied QMC had bullied Mr Reddy. It was stated that QMC, as Mr Reddy's manager, was a natural point of contact when individuals wish to raise allegations about Mr Reddy's conduct.;
- (i) It was claimed QMC had made a concerted effort to share complaints in a constructive manner and provide feedback and coaching to help Mr Reddy avoid such incidents and complaints. Ultimately the concerns were escalated to the People, Safety and Wellness team.

[110] DFJ emailed on 27 November 2020 stating that he believed he had raised a valid protected disclosure and seeking an urgent meeting with the Chairperson of the Strategic Risk and Assurance Committee.

[111] Mr Finn responded by reply email that same day providing the HCC Protected Disclosure Policy; He also advised that Mr Reddy would be provided with a safe working environment and HCC would continue to offer him EAP support.

[112] DFJ advised on 29 November 2020 that he was going to escalate the protected disclosure to the Chairperson of the Strategic Risk and Assurance Committee. The Chairperson of the Strategic Risk and Assurance Committee referred DFJ's correspondence to a lawyer for review in accordance with the HCC Protected Disclosure Policy.

[113] The result of the referral was the advice that the threshold of serious misconduct had not been reached and the requirement under the PDA policy that HCC take 'reasonable practical steps to prevent the recurrence of the serious wrongdoing complained about' did not apply

[114] On 9 December 2020 DFJ emailed to the Chairperson of the Strategic Risk and Assurance Committee advising that Mr Reddy said:

I do not feel safe working in Facilities Unit. My life is at risk in many ways. Please help me. If no help comes then I'll have to help myself out of this, which could cost in many ways.

[115] Upon reading Mr Reddy's comment as set out in DFJ's letter 9 December 2020, Mr Finn said the Facilities HR Business Partner spoke to the DHB Mental Health Crisis Team which agreed to contact Mr Reddy.

[116] On 11 December 2020 Mr Reddy emailed Mr Finn asking him to stop giving his personal information including his phone number and email to anyone.

[117] Mr Finn said he responded to Mr Reddy by advising that the DHB Crisis Team had been asked to contact him out of HCC's concern because it understood he had made a genuine call for help. The DHB Crisis Team reported that Mr Reddy declined its assistance.

#### *Proposed Disciplinary Meeting 7 December 2020*

[118] On 2 December 2020 HCC provided DFJ with an updated disciplinary invitation letter attaching relevant information and inviting Mr Reddy to a disciplinary meeting on 7 December 2020. The letter explained that HCC had provided the letter to DFJ on 19 November 2020, but it understood he had not delivered that letter to Mr Reddy

[119] A further concern set out in a letter dated 2 December 2020 related to the meeting that occurred on 4 November 2020, which Mr Reddy attended as a project manager. Specifically, that Mr Reddy had:

- (a) committed to organising the meeting but had failed to do so;
- (b) authorised the commencement of the project without customer authorisation;

(c) although QMC had drafted the project management plan on 25 May 2020, he (Mr Reddy) had provided no further updates until 30 November 2020 when prompted to do so and he did not finish it to the required level of detail.

[120] On 6 December 2020 DFJ emailed that Mr Reddy would not be attending any disciplinary meeting at HCC. On 7 December 2020 HCC responded that there was no legitimate reason for Mr Reddy not to respond to the misconduct/serious misconduct concerns which were separate to the PDA matters. It was also stated that HCC would reschedule the meeting to 8 December 2020.

[121] DFJ responded on 7 December 2020 stating the matters were not separate and advising that that would be no meeting on 8 December 2020.

*Preliminary findings respect the disciplinary investigation*

[122] DFJ was sent an email on 9 December 2020 attaching a letter from HCC setting out its preliminary findings. HCC's view as stated was that all the allegations should be upheld, but before deciding what disciplinary action should be imposed, Mr Finn requested Mr Reddy's feedback on the preliminary conclusions by Friday, 11 December 2020.

[123] On 10 December 2020 Mr Reddy provided a medical certificate certifying that he was unfit to resume work for a period of one to 2 weeks.

[124] On 11 December 2020 HCC emailed DFJ advising that since no feedback had been received the preliminary findings would stand.

[125] In light of Mr Reddy being absent from work, HCC intended to postpone the delivery of the proposed outcome to the conclusion of Mr Reddy's medical certificate.

[126] Between 18 December 2020 and 21 December 2020 the HR Business Partner and DFJ exchanged emails to confirm status of Mr Reddy's leave. It was confirmed that Mr Reddy intended to take the full two week period of his medical certificate. On 23 December 2020 Mr Reddy submitted a further medical certificate indicating he was unlikely to be able to resume work for the 'foreseeable future'.

[127] On 18 January 2021 HR Business Support Partner PFC emailed DFJ advising that HCC was in receipt of Mr Reddy's medical certificate but noting that it did not provide any reasons for his incapacity. DFJ responded by advising that Mr Reddy had the right to refuse to work in an unsafe working environment.

[128] On 19 January 2021 Mr Finn said the HR Business Partner PFC requested information related to Mr Reddy's ongoing absence from work, and expressed HCC's view that Mr Reddy appeared well enough to review and respond to the preliminary decision because he had been constructing and sending emails to HCC contractors and HCC suppliers and other internal emails within HCC.

[129] A further medical certificate was provided on 20 January 2021 to HCC which stated that Mr Reddy was "unfit to resume work due to distress and allegations at work".

[130] On 25 January 2021 DFJ contacted HCC seeking further documents and advising that a Statement of Problem for Mr Reddy would be lodged in the Authority within the following few days.

[131] On 26 January 2021 PFC emailed DFJ advising that HCC believed Mr Reddy was in a position to review and respond to the preliminary decision due to the fact that Mr Reddy:

- a) had been capable for constructing and sending emails to BDF and another contractor;
- b) been liaising with payroll regarding payment of his annual leave;
- c) DFJ had advised that Mr Reddy had been able to consult with him in regard to constructing a statement of Problem;
- d) The medical certificate did not specify any date on which Mr Reddy could be expected to resume work; and
- e) His best interests would be seen to not further delay the disciplinary process.

[132] Mr Finn said his preliminary decision letter dated 26 January 2021 was attached to PFC's letter. The letter requested feedback by 5.00 p.m. on 28 January 2021. Mr Finn said his preliminary decision was that dismissal was the appropriate outcome. He said in reaching that conclusion he had considered the following as relevant:

- A. Mr Reddy's existing written warning which showed he had failed to work harmoniously and co-operatively with others;
- B. The detrimental impact of Mr Reddy's behaviour and conduct towards others;
- C. Mr Reddy's avoidance to address the behaviours and conduct breaches which had been raised;
- D. The severity, frequency and the consequences of those breaches which had resulted in a complete loss of trust and confidence in his ability to perform his role; and
- E. An inability on Mt Reddy's part to uphold HCC's expected behaviours, policies and procedures.

[133] On 26 January 2021 DFJ wrote to HCC again as a purported disclosure. The communication referred to Mr Reddy, but did not expressly state it was in response to the proposal to dismiss Mr Reddy.

[134] On 26 January PFC responded to DFJ's Privacy Act request dated 20 January 2021 and advised it was being reviewed by the relevant teams within HCC.

*Final outcome decision 29 January 2021*

[135] On 29 January 2021 Mr Finn said that in the absence of any formal response to the preliminary outcome, he wrote to Mr Reddy via DFJ confirming that HCC had found evidence of both misconduct and serious misconduct. As a result his employment would be terminated without notice from 5.00 p.m. that day, 29 January 2021. The letter stated:

In the absence of a response to our preliminary decision, issued 26 January 2021, I write to confirm the final decision ...

We confirm that as there were findings of both misconduct and serious misconduct your employment with HCC will be terminated effective immediately ...

I confirm that prior to finalising the decision that dismissal was the appropriate outcome, we consulted with you ... however you chose not to respond. We also considered lesser sanctions, such as a Final written warning. We have determined that no lesser outcome is appropriate in the circumstances due to the reasons provided in our letter dated 26 January 2021 and most importantly, that we have lost trust and confidence in your ability to perform your role.

**Was Mr Reddy unjustifiably dismissed by HCC?**

[136] Mr Reddy was dismissed from his employment with HCC on 29 January 2021. Justification for dismissal is set out at s 103A of the Act. The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair.

[137] An employer must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[138] Mr Reddy was dismissed for misconduct and serious misconduct following a finding that there had been a large number of misconduct and serious misconduct breaches during the course of his employment.

[139] The decision was made taking into consideration an earlier written warning, and the continued failure to address his behaviours and conduct impacting on HCC. As a result HCC reached the decision that it had lost trust and confidence in him.

[140] I find HCC had substantive justification for its conclusion.

*Procedural Justification*

[141] HCC must not only have had substantive justification, it needed to follow a fair and reasonable process. I find it did so. The decision was reached following a prolonged process throughout which I find the HCC acted in a fair and reasonable manner.

[142] Following the receipt of a number of complaints during the first stage of Mr Reddy's employment, Ms Botje had sought advice from Mr Collins. That advice was to provide Mr Reddy with direct feedback and coaching, and also to engage an external coach.

[143] Ms Botje's evidence was that Mr Reddy had excellent skills in project management and that he assisted to develop a new number of new practices which helped improve the overall performance of the project management team. As a result HCC acted in accordance with the advice provided by Mr Collins to support Mr Reddy by she and QMC actively supporting Mr Reddy. In addition HCC funded an external professional coach through the Effect to assist him.

[144] However complaints continued to be received, and HCC decided to engage the External Investigator. I find this was an appropriate action as it ensured there would be an impartial and independent review of the situation.

[145] I note that QMC had been requested to write out the verbal complaints he had received and confirm them with the complainants, which he did. I have considered whether this resulted in QMC or HCC inducing complaints to be made against Mr Reddy, I find that it did not. The complainants were all interviewed as part of the external investigation and the complaints verified independently of HCC.

[146] I find HCC acted appropriately by informing Mr Reddy that the external investigation was to be undertaken and the reasons for it in the meeting held on 14 July 2020. The letter provided to Mr Reddy encouraged him to seek EAP support during the process. Mr Reddy was provided with a copy of the Terms of Reference for the investigation and asked for comment on them prior to the commencement of the investigation. Mr Reddy was also provided with a summary of the complaints and notes of the interviews which had been held.

[147] It was only after the investigation was completed that the decision was taken to commence a disciplinary process into the External Investigation report's findings of a number of breaches of the HCC Code of Conduct by Mr Reddy amounting to potential misconduct.

[148] HCC advised Mr Reddy of the allegations about him and he had the opportunity to respond to them in the meeting held on 22 September 2020 at which he had professional representation.

[149] The decision to issue Mr Reddy with a first written warning was made after HCC had considered of his explanation.

[150] HCC devised a plan to support Mr Reddy following his return to work on 28 September 2020. Part of the return to work plan involved QMC providing Mr Reddy with support at meetings at the contractor BDF, and holding weekly meetings. The support through the professional coach from the Effect was also continued.

[151] Although Mr Reddy had continuing concerns about QMC as set out in a letter to HCC, he also stated in the letter that he was not describing “any of his action as bullying or harassment”.

[152] In that situation I find HCC did not act unreasonably in continuing to offer QMC as a support to Mr Reddy, particularly as QMC was Mr Reddy’s direct line manager and closely associated with both him, the contractors and clients, and in the best position to offer that advice and support.

[153] Despite the support provided to Mr Reddy by QMC, Ms Botje and the external coach, HCC continued to receive complaints about Mr Reddy and this resulted in a letter dated 19 November 2020 which proposed a disciplinary meeting on 9 December 2020 to respond to the concerns. I note that although this was provided to Mr Reddy via his representative, DFJ chose not to give it to Mr Reddy at that point in time. As a result it was not until 2 December 2020 that Mr Reddy received the letter, a delay not caused by HCC.

[154] Mr Reddy refused to attend the proposed meeting and HCC made a preliminary decision which was outlined, with the reasons for it, in the detailed letter dated 9 December 2020.

[155] At this point Mr Reddy was not attending work as medically certified and therefore HCC postponed his response time. However by 26 January 2021 HCC concluded, since Mr Reddy was capable of taking other actions during the period, that he had been in a position to consider its preliminary decision. I find that was a reasonable conclusion for HCC to reach.

[156] HCC’s final decision to dismiss was notified on 29 January 2021. I find that this was a decision open to a fair and reasonable employer in all the circumstances at the relevant time.

[157] I also have considered if HCC acted as a fair and reasonable employer considering that Mr Reddy was suffering from distress and stress during that period. I find that HCC acted appropriately in what were difficult circumstances for all involved.

[158] I determine that Mr Reddy not unjustifiably dismissed by HCC.

**Was Mr Reddy unjustifiably disadvantaged by HCC failing to properly investigate his claims of bullying?**

[159] The HCC Management Policy – Harassment, Bullying, and Discrimination’ defines bullying as “repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm”

[160] The policy sets out options in cases in which the employee believes they are suffering some form of harassment, these are set out as including “talking to a manager, People, Safety and Wellness” and “Laying a formal complaint”. The Policy also states that if “the situation is not appropriate to be resolved at a lower level, then a formal complaint may be lodged”

[161] At the time Mr Reddy had raised his concerns of being bullied and harassed with Mr Collins on 8 July 2020, Mr Collins was already aware that Ms Boje and QMC had concerns about how Mr Reddy was interacting with the contractors and clients.

[162] Irrespective of Mr Collins belief that the examples raised by Mr Reddy were not sufficient to constitute bullying, Mr Reddy told him that he wanted his concerns to be treated as confidential. I find that placed Mr Collins under an obligation to respect Mr Reddy’s decision and not breach his trust and confidence in him.

[163] Mr Collins had spoken to Mr Reddy about several options for addressing the concerns, including the making of a formal complaint, which Mr Reddy confirmed he did not wish to do. Mr Collins also provided Mr Reddy with a copy of the HCC Harassment, Bullying and Discrimination Policy.

[164] I find that Mr Collins acted appropriately in the difficult situation in which Mr Reddy’s wish to keep the matter on a confidential basis had placed him. He did advise Mr Reddy of the options open to him and checked on the support he was receiving both from QMC and Ms Botje, and from the Effect team.

[165] I also note that Mr Collins also told Mr Reddy that he was available if Mr Reddy needed any help, but there is no evidence that Mr Reddy did approach him further and ask him to take action.

[166] I determine that Mr Reddy was not unjustifiably disadvantaged by HCC failing to properly investigate his claims of bullying.

**Costs**

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

[168] If they are not able to do so and an Authority determination on costs is needed HCC may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Reddy would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[169] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[170] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>1</sup>

Eleanor Robinson  
Member of the Employment Relations Authority

---

<sup>1</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].