

**ATTENTION IS DRAWN TO THE ORDER
PROHIBITING PUBLICATION OF CERTAIN
INFORMATION (REFER PARAGRAPH 3)**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2015] NZERA Auckland 32
5452771**

BETWEEN	DANDI WANG Applicant
AND	NEW ZEALAND CHINESE TELEVISION LIMITED Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Mike Harrison, Advocate for Applicant Stephen Wong, Representative for Respondent
Investigation Meeting:	13 & 14 January 2015 at Auckland
Submissions received:	14 January 2015 from Applicant 15 January 2015 from Respondent
Determination:	30 January 2014

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Dandi Wang, claims that she was unjustifiably dismissed by the Respondent, New Zealand Chinese Television Limited (NZCTV) on or about 12 March 2014 for failure to comply with instructions, primarily, instructions to return company property.

[2] NZCTV denies that it unjustifiably dismissed Ms Wang.

Prohibition on publication

[3] **I order that the name of the non-NZCTV individual involved in the incident at NZCTV premises on 13 January 2014 which is now the subject of criminal proceedings not be published. The individual is to be referred to as 'A', a letter bearing no relationship to the actual name. This order is made under Schedule 2 clause 10(1) of the Employment Relations Act 2000.**

Note

[4] This determination does not address any claim the Applicant may wish to make against the Respondent arising from the incident on 13 January 2014 which is the subject to current proceedings in another jurisdiction. Should the Applicant wish to pursue such a claim following the conclusion of those proceedings, it will be addressed in a separate Authority investigation process.

Issues

[5] The issue for determination is whether or not NZCTV unjustifiably dismissed Ms Wang.

Background facts

[6] NZCTV Limited, also known as TV33, is a broadcasting company based in Auckland. It employs approximately 30 people and is managed by Mr Stephen Wong, CEO.

[7] NZCTV is a limited liability company registered on 20 February 2013 and which commenced trading on 1 April 2013, the directors of which prior to 21 January 2014 were Mr Wong, Ms Lucy Hong Yuan, Programme Manager, Mr Jian Ting Zheng, Chief Operations Officer, and Ms Wang. The shareholders of NZCTV at the date of incorporation included Ms Wang, Mr Zheng, Ms Yuan and Chinese Media Bureau Group Limited, of which Mr Wong is the sole director.

[8] Ms Wang commenced employment with Chinese Yearbook Limited with effect from 2009 as a sales contractor. On 1 April 2010, she commenced working for Chinese New Zealand Television Limited, again in the capacity of a sales contractor until 31 March 2013. Chinese New Zealand Television Limited was struck off the register on 19 July 2013. Ms Wang became employed by NZCTV on a full-time permanent basis with effect from 1 April 2013.

[9] Mr Zheng said that in March 2013 he had given individual employment agreements to all the employees of NZCTV including Ms Wang. He said that everyone had signed their individual employment agreements and returned them except for Ms Wang. As Ms Wang was a valued employee, there had been no pressure exerted on her to return the individual employment agreement (the Employment Agreement).

[10] Ms Wang was paid on the basis of a base salary of \$26,400.00 paid as \$2,200.00 gross per month direct into her bank account minus deductions for PAYE and Kiwisaver. This is the identical amount to that referred to as the Annual Salary amount specified as clause 7.1 of the Employment Agreement.

[11] Ms Wang said she also received a payment which she explained was a commission payment based on the level of sales achieved. This payment was a cash payment for which she believed NZCTV accounted to the IRD. There is no commission payment referred to in the Employment Agreement, and Ms Wang said that was because the commission payment had been agreed verbally with Mr Wong.

[12] Mr Wong disputed that the payment was a commission based payment, and claimed that it was an ex-gratia payment from him personally to Ms Wang on the basis of her personal financial circumstances. Mr Wong stated that it had been his expectation that Ms Wang would account to the IRD for any tax associated with the payment.

[13] He explained that a NZCTV customer, Mr Dong Ping, regularly paid his account in cash which was received by Ms Wang. It had been agreed between him and Ms Wang that, for ease of administration, she retained the cash payment as her ex-gratia payment and he would remit a corresponding amount to NZCTV, identified in the company accounts as the payment from Mr Ping.

[14] Ms Wang was employed as the Marketing Manager and her duties included the organising of marketing stratagems for NZCTV, managing the sales, preparing sales conferences and liaising with clients.

[15] Ms Wang reported directly to Mr Wong. Prior to an incident which took place at the NZCTV offices on 13 January 2014 involving Ms Wang and A, Ms Wang said that she and Mr Wong had enjoyed a positive working relationship which Mr Wong confirmed. She had received no disciplinary warnings and Mr Wong confirmed that the standard of her work was satisfactory. Ms Yuan and Mr Zheng also confirmed that Ms Wang had been a valued member of the NZCTV management team.

Events following 13 January 2014 Incident

[16] Following, and as a result of, the incident on 13 January 2014 involving Ms Wang and A, Ms Wang was absent on sick leave, returning to the office on 20 January 2014 when she had been medically certified as fit to return, albeit on a half day basis.

[17] During the period prior to her return to NZCTV, Ms Wang had published a number of email comments on a social media site called WeChat on which NZCTV employees had a

closed group communication facility. The email comments published by Ms Wang included messages between herself, A, and Mr Wong.

[18] The emails published on WeChat were emotional and angry in nature and some were abusive. The emails were available to view by all the NZCTV employees. Ms Wang confirmed that she had also sent and forwarded emails to NZCTV customers.

[19] Ms Wang stated during the Investigation Meeting that she had posted the emails at a time when she had been stressed and feeling very angry as a result of the incident which occurred on 13 January 2014, and she acknowledged that they had been inappropriate.

[20] Prior to Ms Wang's return to the NZCTV premises on 20 January 2014, there had been a meeting between Mr Wong, Ms Zheng and Ms Yuan at which they said it had been agreed that, regardless of what they considered to be '*wrongdoing*' on her part resulting in and from the incident on 13 January 2014, she would be allowed to return to NZCTV as they valued her contribution to NZCTV.

[21] There had also been a decision made on or about this time by Mr Wong, Mr Zhang and Ms Yuan that Ms Wang was not fit to be a director of NZCTV and action had been taken to remove her which had been effected from 21 January 2014. In reaching this decision, Ms Yuan and Mr Zheng said they had been influenced by Ms Wang's posting of the emails on WeChat and the fact that she had communicated with NZCTV customers which they believed to have been inappropriate behaviour

[22] Mr Wong said that prior to Ms Wang's return, he, Ms Yuan and Mr Zheng had held a discussion and agreed that the appropriate course of action to take with Ms Wang was to place her on paid suspension with two conditions, the first being that she could return to work when the legal criminal proceedings connected with the incident on 13 January 2014 were concluded, and the second being the provision of a medical certificate certifying that she was fit to return to work.

20 January 2014

[23] Ms Wang said that on her return to work on 20 January 2014 Mr Zheng, with whom she was sharing an office, had given her a letter. Mr Zheng said he had been provided with the letter, which had dealt with the suspension proposal by Mr Wong, to be given by him to Ms Wang on her first day at work.

[24] Ms Wang refused to accept the letter and had informed him that she did not wish to see the letter and that he should not involve himself in a matter that might have serious

consequences for him, as a result of which Mr Zheng said he had been frightened, and had thrown the letter into a rubbish bin.

[25] Ms Wang said that following her return to work on 20 January 2014, she had found that she had been made to feel unwelcome in the workplace as a result of the various events which had taken place.

[26] She said that Mr Wong, to whom she reported, did not communicate with her following her return to work. Mr Wong confirmed that this was the case saying that he had felt embarrassed and uncomfortable following the WeChat messages that had been posted by Ms Wang, and as a result of the incident which had arisen on 13 January 2014. He had therefore delegated authority to Mr Zhang and Ms Yuan to interface and act with Ms Wang on his behalf following her return to work.

[27] Ms Wang said that she had been informed by a colleague on her return to work that the employees at NZCTV had been told that her job would be: “*over very soon*”. In addition she had been told that her clients had been advised by NZCTV that she was unlikely to return to the workplace.

[28] Mr Wong, Ms Zhang and Ms Yuan all denied that employees, customers and clients had been informed that Ms Wang would not be returning to work, and stated that the information which had been provided to NZCTV employees, customers and clients had been that Ms Wang was on long term sick leave with no definite date of return.

[29] Ms Wang claimed that the lock on the NZCTV office door had been changed and she had been unable to gain entry. Mr Zhang explained that on the morning in question, there had been a problem with the door lock as a result of which NZCTV had had to engage locksmiths and this had resulted in the lock having to be changed. As a result of the difficulties with the door lock, not only Ms Wang but all employees that particular morning, had been locked out of the building until the problem had been resolved.

[30] Ms Wang also said she had been unable to access the NZCTV bank account. Mr Wong explained that access to the bank account was a prerogative of the directors and as Ms Wang had been removed as a director of NZCTV; her access to the company bank account had accordingly been denied.

[31] Ms Wang said that she had felt upset that private and confidential emails that she had sent to third parties and to Mr Wong himself had been published on the WeChat database.

[32] Mr Wong confirmed that he had posted emails that had been sent to both A and to him by Ms Wang on the WeChat database. He had felt that he had to take this action only in

response to the emails which had been posted by Ms Wang and in order to present a balanced picture of what had occurred.

Events following 21 January 2014

[33] Mr Wong said that following Ms Wang's return to the workplace and her refusal to accept the letter containing the suspension proposal, he had sought legal advice from a Barrister, as a result of which he (Mr Wong) had drafted a letter to Ms Wang. The letter dated 21 January 2014 stated:

... So, I find myself looking at our business relationship and realise that ... I am struggling with the idea of ever working harmoniously with you ever again. In saying that ... I do blame you for most of what happened and hold you responsible.

In light of the breakdown of our relationship I think it appropriate that I meet with you to discuss the possibility that you should be dismissed. It is vital that you and I are able to work together and I just cannot see how that can ever be again.

Accordingly, I want to meet with you on Thursday afternoon at 3pm. ... I want to hear your views on the breakdown of our relationship and whether you should be dismissed.

[34] The letter concluded by advising Ms Wang to take advice and to have someone to accompany her to the proposed meeting, suggesting either an advocate or lawyer.

[35] Ms Wang said there had been a meeting held at 4pm on 21 January 2014 at which she had been provided with the letter dated 21 January 2014. Mr Zheng and Ms Yuan had also been present at the meeting. Mr Wong had provided her with the letter and told her to read it. He had then told her to take it and to see a lawyer. She had been very upset by the letter as she could see no reason for the contents.

[36] Ms Wang had returned to work the following day but she had found it very difficult to remain at work in the circumstances and on 24 January 2014 she provided a medical certificate which stated that she would be unfit for work from 24 January 2014 until 9 February 2014 because of stress and depression. Ms Wang had subsequently received ACC payments.

[37] On 24 January 2014, Ms Vivian Zhang, a lawyer instructed by Ms Wang to act on her behalf, responded to the letter dated 21 January 2014 and addressed the proposal to hold a meeting with Ms Wang. In her response, Ms Zhang stated:

While we agree that this matter needs to be dealt with as soon as possible, we are conscious that a prompt meeting may fracture our

client's already fragile mental state. A meeting this week is certainly untenable, and while we consider a meeting next week would still be too soon, we shall await the opinion (of) a medical professional to consider whether her state would be sufficiently well to attend said disciplinary meeting.

[38] Further correspondence between the lawyers followed, including a request by NZCTV for a prognosis. In response on 31 January 2014 Ms Zhang stated in a letter to NZCTV's Barrister:

We have attached our client's medical certificate ...

We note that the doctor is unable to provide a suggested duration for recovery, and would suggest that the disciplinary meeting be temporarily suspended until a medical practitioner certifies our client is sufficiently recovered to attend same. A follow up appointment will be made in about two weeks to assess the condition of our client.

We advise our client is seeking a formal assessment by a psychiatrist to obtain a formal diagnosis and treatment plan.

Events in March 2014

[39] On 10 March 2014, NZCTV's Barrister sent a letter by email to Ms Zhang and Mr Werry, who had at this time also been appointed to act for Ms Wang. The letter noted that a NZCTV car provided to Ms Wang had not been returned as requested. The letter noted that Ms Zhang and Mr Werry were aware that: "*the underlying employment problem is the relationship between Mr Wong and your client*". The letter further stated the following:

Statement of Problem

- 1. My client wants possession of its car, computer and iPhone pending your client's return to work. It will send someone to your client's house to uplift those items.*
- 2. At the same time your client is to hand over all moneys (cash and cheques), which she holds and which belong to her employer.*
- 3. Uplifting will be at 9.30am this Wednesday at your client's house.*
- 4. Failure to comply will be regarded as serious misconduct.*
- 5. Based on Mr Wong's knowledge of events and your client's activities since she stopped working, there is considerable doubt at the employer's end that your client is too ill to attend work. However on its face the medical certificate suggests work stress*

and my client wants a second opinion to satisfy itself as to the prospects of your client ever returning to the workplace. ...

[40] In the letter NZCTV's Barrister asked for Ms Wang's agreement for her to see a doctor, Dr Walls, for a second opinion as she had been off work since 24 January 2014. He stated in the letter unless Ms Wang agreed to do so by Wednesday 12 March 2014, NZCTV would: "*have to work on the basis that there is no likely date for return and it will act accordingly, i.e. it is likely to dismiss on the basis that your client is unable to perform her tasks.*"

[41] NZCTV received no response to the email dated 10 March 2014. On 12 March 2014, Mr Wong wrote to Ms Wang stating in the letter:

Dear Dandi,

Mr Parmenter's email to your lawyers on Monday asked for certain things to be done and you have not done them. I am tired of wasting time and money while you do nothing and say nothing, other than send medical reports and abusive messages. I give you notice of summary dismissal, effective immediately. The reasons for dismissal follow but I note that you are dismissed for each of the reasons separately.

Reasons

- 1. The reality is that we will never be able to work together again: our relationship is damaged beyond repair.*
- 2. You have refused to return the company's car in spite of requests that you do. You were warned that I would treat such a refusal as summary misconduct.*
- 3. You have refused to return the company's property (computer, mobile phone) in spite of requests that you do. You were warned that I would treat such a refusal as summary misconduct.*
- 4. You have refused to bank the company's money when I clearly directed you to do so.*
- 5. You have refused to allow the company to come and pick up the money.*
- 6. There is no likely date of any return to work and I infer that you are not capable of performing your tasks.*

Now that you are dismissed, the matter of the company's car and other property (including money) becomes much more serious. I insist that you take steps to have the property returned ...

[42] On 14 March 2014, lawyers, acting on behalf of Ms Wang, responded to the dismissal letter of 12 March 2014 raising a personal grievance for unjustified dismissal, and stating:

We note your instructions sent to Dandi's previous counsel on 10 March 2014. We note that the email was addressed to an email address that was not being used by Ms Vivian Zhang. We advise that Ms Zhang moved from Baker Law to Domain and that the email did not come to her attention until Thursday 13 March 2014.

[43] The letter from the lawyers acting for Ms Wang addressed the issues and requests made in the email of 10 March 2014. The letter addressed each issue and stated:

- the vehicle: Ms Wang's position was that the vehicle had been expressly gifted to her by Mr Wong for personal and business use;
- the iPhone5: Ms Wang had advised that it had been lost on 7 March 2014, and appended a Police incident report confirming the loss;
- the HP laptop: Ms Wang disputed the ownership of the laptop advising that it had been purchased for her in consideration of a personal laptop used by her for employment purposes having been stolen from NZCTV in 2013;
- the cheques: Ms Wang advised that she was not in possession of any cheques obtained in the course of her employment;
- the cash: Ms Wang was in possession of cash belonging to the company but this had been obtained in the course of her employment and she had made arrangements for the cash to be returned to Mr Wong in January but that NZCTV had taken no action to retrieve it; and
- with regard to the mental health assessment it was noted that Ms Wang had been referred to an expert clinical psychologist by her general practitioner and was undergoing an assessment. It was also noted that the medical certificate in respect of her mental health condition remained in effect.

[44] On 29 April 2014, Ms Wang filed a statement of problem with the Authority claiming unjustifiable dismissal. The parties attended mediation but this did not resolve the matter.

Determination

[45] Ms Wang was dismissed on 12 March 2014. The Test of Justification in s103A Employment Relations Act 2000 (the Act) states:

S103A Test of Justification

- i. For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be*

determined, on an objective basis, by applying the test in subsection (2).

- ii. *The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[46] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. NZCTV 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.

[47] I find that prior to Ms Wang's return to the workplace on 20 January 2014. NZCTV had regarded Ms Wang as culpable for what had occurred since the incident on 13 January 2014. It is clear from the evidence of Mr Wong, Ms Yuan and Mr Zheng that they had regarded her as "*blameworthy*" in the incident which had taken place at the NZCTV offices between her and A on 13 January 2014 and a source of "*trouble*".

[48] The evidence of Mr Wong, Mrs Yuan and Mr Zheng at the Investigation Meeting was that the decision to remove Ms Wang as a director had been made on the basis that they regarded her as: "*unfit to be a director*" citing her communications on WeChat accessible to employees and her communications to NZCTV customers in relation to the incident on 13 January 2014.

[49] Furthermore it had been agreed by Mr Wong, Mrs Yuan and Mr Zheng that Ms Wang should be placed on suspension for a period of two months pending the outcome of the criminal matter and her fitness to return to work. There had been no consultation of Ms Wang prior to this decision having been made.

[50] In *Sefo v Sealord Shellfish Ltd*¹ the Chief Judge stated:

*[37] Since Graham was decided, Parliament has added to the considerations legislatively. Section 4 ("**Parties to employment relationship to deal with each other in good faith** ") requires an employer contemplating possible suspension to be active and constructive, responsive and communicative: s4(IA)(b). If a suspension decision is one that will or is likely to have an adverse effect on the continuation of employment of an employee, the employer must provide the employee with access to appropriate and relevant information about the proposed decision and an opportunity to comment on the information before the decision is made: s4(IA)(c).*

¹ [2008] ERNZ 178

[38] So it may be seen that an employer contemplating suspension of an employee against whom serious misconduct has been alleged which must be investigated but may result in dismissal or other sanctions, will usually be required to tell the employee of the possibility of suspension, of the employer's grounds for doing so, and offer the employee an opportunity to persuade the employer not to suspend. As the judgment in Graham illustrates, that is not an immutable proposition but, as the Authority itself in this case remarked, cases will be relatively rare where an employer is justified in deciding unilaterally to suspend without advice to, or input from, the affected employee.

[51] I find the proposed decision to suspend Ms Wang without consultation to have been a breach of good faith. Whilst it did not eventuate given her refusal to accept the letter in which it was proposed, I find that it indicated a predetermined attitude towards Ms Wang by NZCTV.

[52] Following the refusal of Ms Wang on 20 January 2014 to accept the letter and thereby the proposal of suspension, Mr Wong had issued her with the letter dated 21 January 2014.

[53] Whilst the letter proposed a meeting to discuss her views: “ *on the breakdown of our relationship and whether you should be dismissed*” I find the letter to be further confirmation that Mr Wong had a pre-determined and closed mind to the outcome by the use of such phrases as: “ *... I do blame you for most of what happened and hold you responsible*” and “ *It is vital that you and I are able to work together and I just cannot see how that can ever be again*”.

[54] Information provided by Ms Zhang established that Ms Wang was on medically certified sick leave, and too unwell to attend a disciplinary meeting. The letter dated 31 January 2014 provided further medical information about the prognosis and the advice that Ms Wang was seeking a formal psychiatric diagnosis and treatment plan.

[55] I find that Ms Wang was being communicative and responsive to the enquiries made by NZCTV concerning her health and prognosis.

[56] On 10 March 2014, NZCTV's Barrister acting on behalf of NZCTV sent a letter requiring Ms Wang to provide information and comply with requests in regards to company property which it was alleged she retained.

[57] NZCTV received no response to this letter. There was no attempt made by NZCTV to ascertain whether or not the letter had reached the recipients, rather NZCTV proceeded to summarily dismiss Ms Wang on 12 March 2014.

[58] It is standard practice when a client has legal representation in such a matter for the sender to copy any correspondence to the legal representative. The email correspondence dated 10 March 2014 had not been copied to Ms Wang, and she had therefore been unaware of the allegations which had been made against her and consequently unable to address them, either by attending a meeting convened for that purpose or in writing

[59] It is clear from the response from Ms Wang's lawyers to the dismissal notification that Ms Wang had an explanation for the allegations against her which had been set out in the dismissal letter dated 12 March 2014.

[60] An employer who is proposing to dismiss an employee on the basis of serious misconduct must adhere to a proper procedure. In accordance with s 103A (3) of the Act the Authority must consider whether:

(a) ... the employer sufficiently investigated the allegations against the employee ...

(b) ... the employer raised the concerns that the employer had with the employee ...

(c) ...the employer gave the employee a reasonable opportunity to respond to the employer's concerns ...

[61] I find that a fair and reasonable employer would have established whether or not Ms Wang had received notification of the allegations made against her and have provided her with an opportunity to address the concerns.

[62] NZCTV provided no evidence to Ms Wang of the investigation it had undertaken into the allegations it made against her. Moreover in the circumstances which included the letter dated 10 March 2014 not reaching the named recipients, and Ms Wang herself receiving no copy, she did not have a reasonable opportunity to respond to NZCTV's allegations.

[63] I find that NZCTV did not act as a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred

[64] I determine that Ms Wang was unjustifiably dismissed by NZCTV.

Remedies

[65] Ms Wang has been unjustifiably dismissed and she is entitled to remedies.

Lost Wages

[66] Ms Wang was still without employment at the date of the investigation Meeting and I note is still receiving medical treatment.

[67] In the circumstances in which include both the incident on 13 January 2014, as yet not addressed by the Authority, it is difficult to adopt other than a broad brush approach to the issue of lost wages.

[68] Whilst Ms Wang claimed that she received a commission payment in addition to her base salary, Mr Wong stated that this was an ex-gratia payment made by him personally. There is no evidence confirming that the payment was a commission payment, either contractual or otherwise.

[69] I note that Ms Wang claimed that she had received no commission payment during December 2013. This was prior to the events in January 2014, and there is no indication that there was any tension between her and NZCTV at that stage. In addition, there is no evidence that Ms Wang raised a complaint about the non-payment of a commission payment at that time, which I would have expected if the payment had been a regular component of her monthly salary.

[70] The Monthly Employer IRD records provided by NZCTV confirm that Ms Wang received a monthly salary of \$2,200.00. Ms Wang received ACC compensation during her sickness absence also based on a reported income of \$2,200.00.

[71] In the absence of any contradictory documentary evidence, I therefore base the award for lost wages on the reported monthly salary of \$2,200.00.

[72] Ms Wang received a monthly salary for January 2014; however she received no payment thereafter and was summarily dismissed on 12 March 2014.

[73] **I order that NZCTV pay Ms Wang the sum of \$9,646.20 gross (calculated as 19 weeks: 6 weeks until the dismissal on 12 March 2014 and a further 13 weeks pursuant to s 128(2) of the Act at \$507.70 gross per week) as lost wages pursuant to s 128(3) of the Act, less any payments received from ACC during that period.**

Kiwisaver Contribution

[74] **I order that Ms Wang is to be paid the sum of \$289.30 (calculated as the employer's 3% Kiwisaver contribution for the 19 week period) pursuant to s 123(1)(c)(ii) of the Act.**

Holiday Pay entitlement

[75] During the Investigation Meeting NZCTV confirmed that Ms Wang had been on leave from 24 December 2013 and not from 18 December 2013 as recorded in the leave records.

[76] I order that Ms Wang be paid the amount of \$1,380.93 as holiday pay entitlement on the amount awarded as lost wages and for the 6 days between 18 and 24 December 2013 pursuant to s 16 (1) of the Holidays Act 2003.

Medical Expenses

[77] There is no supporting evidence for the sum claimed as medical expenses. Nor I am able to determine whether or not any medical expenses were purely as a result of the events following Ms Wang's return to work on 20 January 2014 or are related to the incident on 13 January 2014. I therefore do not order payment of medical expenses.

Compensation for Hurt and Humiliation under s 123 (1) (c) (i).

[78] Ms Wang sought compensation for humiliation, loss of dignity, and injury to her feelings. I accept that Ms Wang suffered significant hurt and humiliation due to the manner of the termination of her employment with NZCTV. It created financial concerns for Ms Wang whose husband is ill and unable to work, and affected her health.

[79] I order that NZCTV pay Ms Wang the sum of \$8,000.00, pursuant to s 123(1) (c) (i) of the Act.

Contribution

[80] I am required under s. 124 of the Act to consider the issue of any contribution on the part of Ms Wang that may influence the remedies awarded.

[81] Ms Wang was under a duty of good faith in relation to NZCTV. Prior to her return to the workplace in January 2014 she confirmed that she had posted inappropriate messages on the WeChat website which could be accessed by NZCTV employees. The emails had been angry and abusive in nature. She had also communicated with NZCTV customers, some of whom had lodged a complaint with NZCTV.

[82] The evidence of Mr Wong was that, while he had also posted messages on the WeChat website, these were posted in response to those posted by Ms Wang and in an attempt to: “*right the balance*”.

[83] The evidence of Ms Yuan and Mr Zheng was that they had been influenced in their view of Ms Wang by the posting of the messages, as a result of which they had concluded that she was not fit to continue as a director of NZCTV.

[84] It is clear that Ms Wang had been a valued employee of NZCTV and that her return to the workplace might have occurred without event had it not been for her posting of the email communications on the WeChat website and her communications to NZCTV customers.

[85] I consider that Ms Wang in posting the WeChat messages and communicating with NZCTV customers, had not acted in good faith toward NZCTV and this had had the effect of influencing the decision to dismiss her.

[86] I find contributory fault on the part of Ms Wang and reduce the remedies awarded by 20%.

Costs

[87] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

Eleanor Robinson
Member of the Employment Relations Authority