

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 146/10  
5122669

BETWEEN                      RODERICK YOUNG  
   Applicant  
  
AND                                BAY OF PLENTY DISTRICT  
   HEALTH BOARD  
   Respondent

Member of Authority:        K J Anderson  
  
Representatives:              Applicant In Person  
   M Beech and A Scott, Counsel for Respondent  
  
Investigation Meeting:        26, 27 and 28 August 2009 at Tauranga  
  
Submissions received:        20 November 2009 and 5 January 2010 from  
   Respondent  
   7 December from Applicant  
  
Determination:                26 March 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Mr Young, claims that the suspension from his employment, effective from 7<sup>th</sup> May 2008 until the date of his dismissal, 13<sup>th</sup> August 2008, was unjustified and constitutes a personal grievance pursuant to s.103(1)(b) of the Employment Relations Act 2000 (“the Act”). Mr Young also claims that his dismissal on the grounds of serious misconduct, was procedurally and substantively unjustified. Mr Young seeks that the Authority uphold his personal grievance claims and award him various remedies under s.123 of the Act, including reinstatement to his previous position.

[2]     The respondent, the Bay of Plenty District Health Board (Toi Te Ora – Public Health), denies the applicant’s claims and says that the suspension and subsequent

dismissal of Mr Young were options that were reasonably open to the employer given the serious breach of the organisation's policies and the consequent loss of trust and confidence in Mr Young as an employee.

[3] In addition to the evidence of Mr Young, the Authority received evidence from Mrs Song Young. For the Bay of Plenty District Health Board ("the Board"), the Authority received evidence from: Mr Philip Cammish, the Chief Executive Officer, Ms Gail Bingham, General Manager Governance and Quality, Mr Graeme Savage, Regional Manager, Ms Jennifer Roy, Human Resources Advisor, Ms Chris King-Hazel, Service Manager, Mr Graham Dyer, Chief Operations Officer, and Ms Sally Webb, Consultant to the Board. The Authority also received an agreed bundle of relevant documents and closing submissions from the parties. All of the available material has been closely considered, albeit it may not be specifically referred to in this determination.

### **Background Facts and Evidence**

[4] Mr Young commenced his employment on 26<sup>th</sup> September 2007 in the role of Health Promoter for the Social Environments team of the Board's Toi Te Ora Public Health division. Mr Young worked from the Rotorua office of the Board and was one of three members of the Social Environments team. The other two members of the team were; Ms Maria Wood, Programme Leader, and another Health Promoter, Ms Jenna Clark. The line manager for Mr Young was Mr Gavin Smith, Environmental Health Manager, but his first direct reporting line was to Ms Wood because as the Programme Leader, she held a senior role to Mr Young, albeit it seems that Mr Young had considerable difficulty accepting this.

[5] The evidence of Mr Young is that for the first three months of his employment, he participated in an induction process which was designed to explain the processes involved in the Toi Te Ora Public Health functions of the Board and its other processes, including human resources and health and safety issues. Mr Young says that the first problem he incurred in his employment was when he wished to attend certain external training courses but was not permitted to do so. However, the evidence of Ms Roy is that Mr Young expected that he should be able to attend every course or seminar that he believed would be beneficial to him, but due to funding

accountability, it was not possible, or essential, for Mr Young to attend the courses he requested. This was particularly so, given that Mr Young was a new employee at that point in time and it was not thought necessary for him to attend a “*large amount*” of external training, as he was still becoming accustomed to the requirements of his role.

[6] More relevant to the issues before the Authority is that, as early as one month into Mr Young’s employment, some communication and behavioural issues arose in regard to his interaction with Ms Wood.<sup>1</sup> There were also some indicators that Mr Young’s work performance was not as the Board envisaged it should be. An early manifestation of a communication issue is revealed in a check list of “*key orientation objectives on meeting people in Toi Te Ora – Public Health.*” The check list is attached to an email sent by Mr Young to Ms Wood on 29<sup>th</sup> October 2007. In the introduction to the check list Mr Young states:

*Maria our relationship is the area that I need to highlight as needing immediate attention. Can I raise this before our SE meeting tomorrow (30-10-07) so that you and I know how I am feeling.*

[7] On 31<sup>st</sup> October 2007, because of the concerns about Mr Young’s behaviour and performance, a meeting took place between Mr Smith, Ms King-Hazel and Ms Wood. According to the notes of this meeting there were two items on the agenda pertaining to: Mr Young’s “*behaviour around staff*” and his “*focus on work.*” Various disapproving comments from the attendees at the meeting are recorded, relating to Mr Young’s personality and his lack of performance in regard to projects that the Board had envisaged Mr Young would be involved with.

[8] A further indication of difficulties in the working relationship with Mr Young are revealed in an email dated 30<sup>th</sup> November 2007, from Ms Woods to Mr Smith:

*The Social Environments Meeting went well for a while then got off track. I have some notes but generally Roderick*

1. *has not produced work of a required standard*
2. *does not undertake reasonable request (although appears to understand at the time)*
3. *flatly refuses to embrace what we have in place*
4. *gets off track*
5. *needs training and guidance*

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<sup>1</sup> There is also evidence from Ms King-Hazel of some conflict arising between Mr Young and an administrative support assistant (Ms Tracey Bullock) at the Rotorua office. This resulted in Mr Young being moved to an office further away from Ms Bullock. Ms King-Hazel says that there were also other incidents involving Mr Young and Ms Bullock.

*He needs to be performance managed as he is becoming a detriment to getting the work done and to the dynamics of the team as well as affecting the enjoyment of the job for Jenna and I.*

*I don't want to get into a difficult (personal) position. I may have to get some guidance or training myself as he is an extremely difficult person to work with. In the meantime I will continue to comment on consecutive drafts of the project plan review and extend timelines if necessary.*

*I am limiting my contact/response to him because he is overbearing bordering on intimidating. Let me know your actions and timelines because I am finding Roderick increasingly difficult to work with.*

[9] Further concerns about Mr Young were expressed by Ms Wood to Mr Smith in emails dated 20<sup>th</sup> December 2007 and 14<sup>th</sup> February 2008. In the December email, Ms Woods records that:

*I wonder if you should consider having Roderick report to you on special projects (including helping HPO's?), and remove him from the Social Environments team? Just a thought as I don't want to want to be put in a more difficult position and need to look after my personal wellbeing, before it becomes an HR issue with me.*

[10] Because of the concerns of the Board regarding Mr Young's behaviour and professional performance, he was placed on a performance management plan beginning 17<sup>th</sup> March 2008 and lasting for 3 months. In her monthly report dated 28<sup>th</sup> March 2008, in regard to the performance management of Mr Young, Ms Wood records that:

*Tasks are very clearly laid out and still RJY [Mr Young] refuses the simplest task in the first instance. It appears he only progresses when 'enforceable.' He is still negatively affecting the dynamics of the team as well as affecting the enjoyment of the job for other staff.*

*Comment from his colleague JC [Jenna Clarke] "It should also be noted that due to his attitude and manner of dealing with people that I find myself intentionally avoiding his company, emails or phone calls. This is not a healthy environment. His lack of performance seems to be taking too much resource away from the Social Environments team and I look forward to the day this entire situation is no longer a problem for our service."*

*It appears RJY needs task management and close supervision. Not ideal for a staff member in this team. This takes a lot of time and prevents SEPL undertaking other proactive social environments public health work. Aside from tight performance management to get bare minimum outputs he does not seem to have the skill or willingness necessary to do the job. He may have to be placed in another role as his behaviour is undesirable towards women in his team and is undesirable in the workplace. He has a threatening, manipulating attitude that is really at best avoided.*

[11] The evidence of Mr Young is that in the early months of 2008 he felt that he was being "left out of the loop," that Ms Wood would not communicate with him and that she would not give him directions as to the work he needed to undertake. He says that he was no longer receiving any training and development.

[12] The first scheduled review with Mr Young regarding the performance management plan was set for 10<sup>th</sup> April 2008. This was to take place with Ms Wood and Ms King-Hazel but had to be postponed due to the absence of Mr Young on sick leave. The evidence of Ms King-Hazel is that the review meeting was rescheduled for 15<sup>th</sup> April. Mr Young contacted Ms Roy. She referred him to Ms King-Hazel who says that Mr Young called her and advised that he had some questions regarding the review, but when she asked him what the questions were, he stated that he couldn't remember but would call her back when he remembered. Ms King-Hazel says that Mr Young never called back but instead advised that he was unavailable to attend the review meeting as his support person was not available. Ms King-Hazel consequently contacted Mr Young to ask when he would be available, and to give him some alternative dates, but due to other events intervening, the review never took place.

### **The investigation**

[13] The evidence from Mr Savage is that some time in March 2008, he received a verbal complaint from Ms Wood regarding Mr Young's general behaviour. As result of this complaint he decided to review some of the email correspondence between Mr Young and his colleagues and also the staff reports of the Social Environments team. Mr Savage says that what he found concerned him and he decided that further investigation was required. The further evidence of Mr Savage is that the issues regarding Mr Young were unusual, in that there was not one specific event to point to but rather a collection of events related to his overall behaviour and performance. Because Mr Savage had previously had "*workplace issues*" with Ms Wood, he decided that the best option was to engage an independent investigator to look into the matter.

[14] On 9<sup>th</sup> April 2008, Mr Savage, along with Ms King-Hazel, met with Ms Sally Webb, Consultant. The brief notes taken by Ms King-Hazel record that Ms Webb was advised that the alleged behaviour of Mr Young, as identified by staff, included bullying, intimidation and harassment, including sexual harassment. Ms Webb subsequently presented a report to Mr Savage on 27<sup>th</sup> April 2007. Ms Webb concluded that:

- (a) Relationships within the Social Environments teams had broken down to the extent that they no longer meet as a team and team functionality is non-existent.
- (b) Both staff interviewed (Ms Wood and Ms Clarke) have been regularly reporting concerns with Mr Young since October 2007. These concerns include lack of performance, non-compliance with organisational procedures, lack of understanding of public health and inability to focus on the task at hand.
- (c) Both Ms Wood and Ms Clarke discussed incidents of bullying and intimidation. For Ms Clarke, there were two isolated and not strongly based incidents. For Ms Wood, *“this is more consistent behaviour that has led her to minimise her interaction with [Mr Young] as much as possible. Maria has no desire or energy to lodge a formal harassment complaint.”*
- (d) Both Ms Wood and Ms Clarke feel unsupported by immediate line management and expressed concern that their monthly reports had never been discussed with them despite regularly documenting their concerns.
- (e) Ms Wood had been actively performance managing Mr Young which has been a difficult task.

[15] Ms Webb concluded her report:

*The interviewer is particularly concerned for Maria Wood and recommends that management ensure she has extra support immediately plus they endeavour to find another line reporting process for [Mr Young] to ease the pressure within the social environments team.*

[16] In the meantime, on 18<sup>th</sup> April 2008, Mr Young submitted a *Reportable Event* form, ticking the respective boxes; *verbal aggression/abuse, communication and cultural harassment* and cited that Ms Wood, Ms Clarke, Mr Smith and Mr Savage were involved. Mr Young also reported that he had been *“victimised”* and *“bullied”* and was *“unsafe.”* On the same day, via an email, Mr Young notified Mr Savage of an *“Unjustifiable action resulting in disadvantage.”* The remedy Mr Young sought was to: *“Work out performance plan based on job description with Graeme Savage (Regional Manager) and Gavin Smith (Environmental Manager).”* Mr Young also cited a further unjustified disadvantage in that his employment agreement had not *“been kept to and*

*effectively changed without agreement.*” Finally, Mr Young claimed that there had been a “*Breach of employment law that affects the employment relationship.*”

[17] Mr Savage responded promptly, pointing out to Mr Young that a performance plan had been worked through with Mr Young and his manager and that if Mr Young had a grievance he should put it in writing using the Board’s process.

[18] Upon receiving the report of Ms Webb, Mr Savage met with Ms Karen Smith, General Manager – Regional Community Services, Ms Roy and Ms Bingham to discuss the seriousness of the allegations and to try to formulate a plan “*going forward.*”

[19] On 28<sup>th</sup> April 2008, Mr Young lodged a *Statement of Problem* with the Authority; the basis of the problem being that his employer was refusing to be “*open and communicative.*” Mr Savage informed Mr Young that until the issues were resolved he would be acting as Mr Young’s line manager.

[20] The evidence of Mr Savage is that following contact with Mr Dyer, a decision was made that Mr Young should be asked to “*stand down*” pending the outcome of the investigation and if Mr Young did not do so voluntarily, then suspension may be a possibility. Mr Savage deposed that given the nature of the allegations against Mr Young, it was better if Mr Young was not in the workplace until the issues were resolved.

[21] Via a letter dated 6 May 2008, Mr Dyer informed Mr Young that the Board had commenced an investigation into; “*information related to bullying, harassment (including sexual harassment) and intimidation by you towards your work colleagues.*” Mr Young was also informed that the investigation would also deal with the allegations raised by him in the reportable event form and that a meeting would take place on 20<sup>th</sup> May. Mr Young was advised to bring a legal representative or a support person. Further:

*As the allegations are serious and compromise the Health and Safety of those concerned, you are advised that you are suspended on full pay until the meeting of 20 May 2008.*

[22] Mr Young instructed a lawyer who wrote to the Board on 9<sup>th</sup> May 2008 seeking further information about the complaints. Mr Dyer responded on 13<sup>th</sup> May and informed that:

*In addition to the investigation regarding bullying, harassment (including sexual harassment) and intimidation, further potential breaches of Bay of Plenty District Health Board policies and procedures have been identified including:*

- *breach of email policy*
- *breach of New Zealand Public Services Code of Conduct.*

### **The Meeting of 23 May 2008**

[23] A meeting duly took place on 23<sup>rd</sup> May 2008 with Mr Young and his lawyer. Attending for the Board were Ms Roy and Ms Bingham. Mr Savage was to attend but was unwell on the day but he says that was informed later by the two Board attendees, that nothing was resolved at the meeting. The evidence of Ms Roy is that her recollection of the meeting is that Mr Young's lawyer advised that they were not going to comment and that Mr Young was not going to respond to anything unless advised by his lawyer to do so. Mr Dyer subsequently informed Mr Young, in writing, that his suspension from his employment would continue until the conclusion of mediation with the Department of Labour on 3<sup>rd</sup> June 2008. [Mediation was subsequently 13<sup>th</sup> June.]

[24] The evidence of Mr Savage is that in late May 2008, he prepared a draft investigation report which was provided to Mr Young, via his representative, in early June. The report opens by summarising events to date, including the concerns raised by Ms Wood and the incident report filed by Mr Young. In regard to the allegations against Mr Young:

*Allegations against Roderick relate to bullying, harassment (including sexual harassment) and intimidation by Roderick towards his colleagues. In addition to the above allegations the investigation identified further breaches of Bay of Plenty District Health Board policies and procedures. Policies related to the breaches are as follows:*

- *Management of Violence or Threatening Behaviour in the Workplace Policy, Policy 5.4.7*
- *Toi Te Ora – Public Health Protocol, “the New Zealand Public Service Code of Conduct”*
- *Email Usage Policy, Policy 2.6.2*

*If substantiated these allegations may constitute misconduct and/or serious misconduct as per the Bay of Plenty District Health Board Disciplinary Policy.*

### **The Reported Events**

[25] The report sets out a detailed chronology of events including eight particular events occurring on: 8<sup>th</sup> October 2007, 24<sup>th</sup> October 2007, 26<sup>th</sup> October 2007, 29 October 2007, 30<sup>th</sup> October 2007, 2 November 2007, 4<sup>th</sup> March 2008 and 8<sup>th</sup> May 2008. These events pertain to inappropriate and offensive behaviour by Mr Young towards Ms Wood (4), Ms Bullock (2), Ms Clarke (1) and the Personal Assistant, Regional Community Service (1). The report also highlights three inappropriate emails sent by Mr Young to Ms Wood. One of the emails makes reference to Mr Young about to carry out a bodily relief function while speaking to Ms Wood on the phone. Another contains information of a personal nature regarding the conception of Mr Young's child, and in another, Mr Young makes reference to having; "*chocolate together as a shared meal.*"

[26] The report also contains a considerable number of comments made by Ms Wood about the behaviour and actions of Mr Young, and to a lesser (but still significant) extent, by Mr Smith. The report provides (paraphrased):

- (a) The investigation has identified behaviour by Mr Young that has caused concern from the commencement of his employment and there are documented events that evidence this.
- (b) There is no evidence to support Mr Young's claims of bullying, victimisation and feeling unsafe.
- (c) The incidents highlighted in the report are not isolated but are reflective of the ongoing behaviour of Mr Young in the workplace.
- (d) Since October 2007, Mr Smith tried to address communication and behavioural concerns with Mr Young which resulted in a performance development plan being put in place to address his behaviour and performance.
- (e) Mr Young's behaviour has been consistently concerning with the documented events highlighting the severity and the impact on the work environment and performance.
- (f) There is overwhelming evidence to support the allegations in the report with grounds for them to be treated as serious misconduct.
- (g) Examples of intimidating behaviour on the part of Mr Young are described.
- (h) Examples of harassing behaviours by Mr Young are illustrated.
- (i) Examples of inappropriate behaviour on the part of Mr Young are set out.

[27] The report concludes with a recommendation:

*Based on the findings of the investigation, disciplinary action is warranted for serious misconduct against Roderick Young and in the absence of any additional mitigating information the appropriate recommendation is summary dismissal for serious misconduct as a result of the following policy breaches:*

- *Management of Violence or Threatening Behaviour in the Workplace Policy, Policy 5.4.7.*
- *Toi Te Ora – Public Health Protocol, “the New Zealand Public Service Code of Conduct”*
- *Email Usage Policy, Policy 2.6.2*

[28] The relevant policies and code of conduct provisions are:

***Policy 5.4.7 Threatening Behaviour, Bullying, Harassment & Violence in the Workplace – Management Of.***

*Employees must ensure that they:*

*Do not exhibit violent behaviour, provoke violence or threatening behaviour, intimidate/bully, or harass fellow employees.*

And, managers and supervisors must ensure that all instances of such behaviour are “*appropriately addressed.*”

***Policy 2.6.2 Email Usage***

The policy is comprehensive but the relevant provisions, as applied to Mr Young, are listed under ***Standards:***

4. *Email should be used as part of the normal execution of an employee’s responsibilities and should be used in a manner that is consistent with the employer’s standards of business conduct and professional courtesy.*
11. *Staff must not use email for inappropriate purposes as this may be deemed as serious misconduct. Inappropriate purposes include, but are not limited to: [a comprehensive list follows]<sup>2</sup>*

***New Zealand Public Service – Code of Conduct  
Performance of Duties (p.19)***

- *to obey all lawful and reasonable employer instructions and to do work as directed.*

***Respect for the Rights of Others (p.20)***

*Public servants are expected:*

- *to avoid behaviour which might endanger or cause distress to their colleagues, or otherwise contribute to disruption of the workplace;*
- *to refrain from allowing workplace relationships to adversely affect the performance of official duties.*

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<sup>2</sup> While there is nothing on the list which coincides with any of the actions of Mr Young the “inappropriate purposes” listed are not exclusive.

[29] The evidence of Ms Roy is that a copy of the report was sent to Mr Young on 6<sup>th</sup> June 2008 and that an attempt was made to discuss it with him on 11<sup>th</sup> June; however Mr Young indicated that he did not want to meet until after mediation took place.

### **The Meeting of 3<sup>rd</sup> July 2008**

[30] A meeting took place on 3<sup>rd</sup> July 2008 with Mr Young and his lawyer. Present for the Board were Mr Savage, Ms Bingham and Ms Roy. The evidence of Ms Roy is that the opportunity was given to Mr Young to discuss the content of the draft report and allegations that had been made against him. Ms Roy says that the meeting “*ran strangely*” in that Mr Young’s lawyer would not allow Mr Young to speak directly. Rather, Mr Young read from a script and would only answer questions which were posed by his lawyer. The evidence of Ms Bingham is similar, but she also says that Mr Young eventually advised that he would respond to each and every allegation and would provide the Board with his comments. In a letter dated 9<sup>th</sup> July 2008 from Mr Young’s lawyer, it was conveyed that Mr Young: “*... will provide a written answer to each of the matters raised in page 8 and 9 of the investigation report and forward same.*” This duly occurred on 22<sup>nd</sup> July 2008, when a comprehensive response was provided by Mr Young.

[31] On 25<sup>th</sup> July 2008, Ms Bingham responded for the Board informing that the investigation into the allegations against Mr Young was completed. Ms Bingham referred to the information received from Mr Young having been considered, but it did not change the recommendation contained in the draft investigation report. Ms Bingham drew attention to the earlier recommendation and added that:

*This breach of organisational policy has resulted in the organisation losing trust and confidence in Roderick Young to undertake his role as a Heath Provider in a manner that will maintain a safe work environment for all staff.*

Mr Young was informed that the recommendation was to be forwarded to the Board’s Chief Executive Officer, Mr Cammish, who would be the final decision maker, and that Mr Young would have the opportunity to meet with him before a final decision was made. Mr Young and his lawyer did meet with Mr Cammish on 8<sup>th</sup> August 2008. The evidence of Mr Cammish is that following the meeting, which lasted about one and a half hours, he reflected on what Mr Young and his lawyer had to say to him. Mr Cammish says that he was particularly concerned that Mr Young appeared to have no insight into the effect that his behaviour and approach had on his colleagues and

managers. The further evidence of Mr Cammish is that having met with Mr Young he also felt that he personally could not have confidence in Mr Young or be able to develop a level of trust in his future performance with the Board.

[32] Via a letter to Mr Young's lawyer dated 13<sup>th</sup> August 2008, Mr Cammish conveyed his decision to support the recommendation to dismiss Mr Young:

*“... as I believe that the employment relationship has now broken down to the extent that the trust and confidence necessary for Mr Young to return to his role no longer exists and that no amount of support or assistance will be able to rectify this.”*

Mr Young was informed that he was summarily dismissed from 13<sup>th</sup> August 2008.

### **Analysis and Conclusions**

[33] In assessing Mr Young's claim of unjustified disadvantage and unjustified dismissal, the test that the Authority must apply is the same. It is provided by s.103A of the Employment Relations Act 2000 whereby the Authority must objectively consider whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time that the respective actions occurred.

[34] The evidence of Mr Young, and his subsequent submissions, is generally wanting as to why he believes he was unjustifiably disadvantaged by the suspension from his employment and/or unjustifiably dismissed. Mr Young has largely presented a discourse as to why he believes that the Board were mistaken in their interpretation of the various events leading to his suspension and subsequent dismissal. Nonetheless, the onus is on the Board to show that the actions taken at the time were within a reasonable range of responses available to an employer, and that they were fair and reasonable in the circumstances.

### **The Dismissal**

[35] In his *Statement of Problem*, Mr Young claims that his dismissal was substantially and procedurally unfair and unlawful and that there was no substantial justification provided to him at the time that he was suspended from his employment. Given the overall evidence which is comprehensive and well documented, I conclude that there is no procedural deficiency to be found in the manner in which Mr Young was dismissed. On the contrary, there is little more that the Board could have done to

ensure that Mr Young was made fully aware of the allegations against him and given an appropriate opportunity to respond.

[36] In regard to the dismissal of Mr Young, it is transparently clear that the cumulative actions and behaviour of Mr Young were such that the workplace environment and the essential relationships with his colleagues, particularly his team leader Ms Woods, had become dysfunctional. Some of the matters raised with Mr Young, on their own - for example the breach of the email policy - are arguable as to whether they constitute serious misconduct going to dismissal, but as Mr Savage attested, there was not one specific event but rather a collection of events relating to the overall behaviour and performance of Mr Young. Despite the Board implementing a performance plan to address the work performance and behaviour of Mr Young, the employment relationship between Mr Young and the Board came to a point where it was not able to be salvaged. Indeed, the bond of trust and confidence, deemed to be essential to the relationship, was strained to breaking point. In the circumstances of this case it cannot be put more clearly than it was by Judge Horn in *Wellington etc IUOW v Hawthorne* [1988] 1 NZILR:

Was the dismissal justified? There may be a time when a clash of personalities between an employer and an employee not only disturbs the harmony for the time being but may render a continuance of the relationship unworkable. A point may be reached where someone must go. If the cause of severe disharmony lies at the door of management, a dismissal of a worker may be unjustified. Sometimes an employer's words and actions are at fault and are the cause of the disharmony resulting in dismissal or resignation. Conversely, if it is the words or actions of an employee which cause or continues the severe disharmony (whatever the original cause) dismissal may not only be justified but necessary.

[37] The evidence reveals that it was the continual and cumulative words and actions of Mr Young which caused severe disharmony leaving the Board with no option but to dismiss him. I find that the words, actions, poor performance and general behaviour of Mr Young, were such that termination of his employment was an action that was available to the Board as a fair and reasonable employer in all the circumstances. It follows that I find that the dismissal of Mr Young was justified.

### **The Suspension**

[38] There are several arguments espoused by Mr Young in the *Statement of Problem* as to why the suspension from his employment was an unjustified action leading to a disadvantage to him in his employment. In particular, it is said that there was no substantial justification provided to Mr Young at the time of his suspension;

7<sup>th</sup> May 2008. Further, Mr Young did not receive any warning that he was to be suspended from his employment, albeit it is clear that the Board had contemplated such action some days beforehand. There is some merit in these arguments and in many circumstances; the existence of such factors would render the suspension unjustified.

[39] It is well established that the tests for justification in a disadvantage grievance are only applicable once it is established that the employee's employment or one or more conditions of that employment was or are affected to the employee's disadvantage. In *Graham v Airways Corporation of New Zealand* [2005] 587, it was held that:

Each case about justification for suspension of employment must take account of both broad principles of procedural fairness and the particular circumstances of the employment including the consequences of both suspending and not suspending for the employee and the enterprise.

And further:

There is no immutable rule requiring that an employee must be told of the employer's proposal to suspend with a view to giving the employee an opportunity to persuade the employer not to do so.

And:

Ultimately the test in each case must be the fairness and reasonableness of the employer's conduct. In many cases that will call for advice and discussion before determining whether to suspend; in others it may not.

[40] It seems to me that there are some special or mitigating circumstances in this case. These are that on the one hand, Ms Wood, Mr Young's team leader, felt intimidated and unsafe in his presence. This was reflected further in the report from Ms Webb in that she expressed concern about Ms Wood's circumstances pertaining to her interaction with Mr Young. Then, Mr Young submitted a *Reportable Event* form indicating *verbal aggression/abuse*. He also reported to being victimised, bullied and being unsafe.

[41] Given all of this, I conclude that the Board had no option but to move promptly to alleviate the situation. While this resulted in the rather hasty suspension of Mr Young from his employment, I find in all of the circumstances, this was a fair and reasonable action on the part of the Board. But even if this is not so, given Mr Young's expression of his circumstances as set out in the reportable event form, it is

difficult to see how he could have been unjustifiably disadvantaged by removing him from the detrimental environment he alleged he was working within.

[42] I conclude that the circumstances surrounding the suspension of Mr Young from his employment were such that this action was in the best interests of Mr Young and other staff employed by the Board, in particular, Ms Woods. It follows that I find that the suspension of Mr Young from his employment was fair and reasonable in the circumstances and that there was no unjustifiable disadvantage to him

### **Determination**

[43] For the reasons given above I find that:

- (a) Mr Young was not unjustifiably dismissed; and
- (b) Mr Young was not unjustifiably disadvantaged in his employment.
- (c) Mr Young does not have a personal grievance and his claims are dismissed

### **Costs**

[44] Costs are reserved. The respondent has 28 days from the date of this determination to file and serve submissions with the Authority. The applicant has a further 14 days to file and serve submissions in response.

**K J Anderson**  
**Member of the Employment Relations Authority**