

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2020] NZERA 484  
3078753

BETWEEN                      ZNW  
   Applicant  
  
AND                              GLOBALCAMPERS LIMITED  
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Peter Cahill, advocate for the Applicant  
   Volkmar Wollenweber, advocate for the Respondent  
  
Investigation Meeting:        26 August 2020 at Christchurch  
  
Submissions Received:        26 August 2020 from the Applicant  
   26 August 2020 from the Respondent  
  
Date of Determination:        26 November 2020

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**DETERMINATION OF THE AUTHORITY**

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- A      ZNW was unjustifiably disadvantaged in her employment and unjustifiably dismissed from her employment.**
- B      GlobalCampers Limited is ordered to pay to ZNW the following taking contribution into account:**
- (a) Reimbursement of lost wages under s 123(1)(b) of the Employment Relations Act 2000 in the sum of \$6,372 gross.**
- (b) No interest is awarded on this sum.**
- (c) Compensation of \$13,500 without deduction under s 123(1)(c)(i) of the Act.**

**C GlobalCampers is ordered to pay costs to ZNW in the sum of \$2,250 together with reimbursement of the filing fee of \$71.56.**

**Prohibition from publication**

[1] The applicant worked at GlobalCampers Limited (GlobalCampers) initially as a prisoner on a release to work scheme from in or about April 2019 and then after she was granted parole in or about May 2019.

[2] GlobalCampers is a company carrying on business in the campervan and rental area. It employed the applicant as a campervan detailer and her hourly rate was \$17.70. Her hours set out in her employment agreement were 40 per week.

[3] The applicant explained to the Authority that she had found obtaining employment difficult. There was some discussion about prohibiting from publication her name. There was no opposition to this from the sole director of Global Campers, Volkmar Wollenweber.

[4] The general principle is that justice should be administered openly and that a high standard must be met to depart from that principle with evidence of specific adverse consequences.<sup>1</sup>

[5] The Employment Court has commented of recent times on an increasing awareness about the impact of publication on future employment prospects of individuals named in litigation and access to justice.<sup>2</sup>

[6] In this particular case alongside the usual impact of publication of names on future job prospects there is the additional element of the applicant's incarceration. The applicant is particularly vulnerable to publication with respect to her ability to earn a living in the future even if she is successful with her claim. There is also a medical issue of a sensitive nature.

[7] The Authority has the power to prohibit from publication the parties names under clause 10(1) of the second schedule to the Employment Relations Act 2000 (the Act).

[8] Weighing as I must the general principle of open justice with the particular and specific adverse features in this case I am satisfied there should be an order for permanent

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<sup>1</sup> *XYZ v ABC* [2019] NZEmpC 40 at [65] and [66] with reference to the Supreme Court in *Erceg v Erceg* [2016] NZSC 135

<sup>2</sup> *Elisera v Allianz New Zealand Limited* [2019] NZEmpC 123 at [63]

non-publication of the applicant's name. It is not opposed by the respondent because there is a real understanding of the difficulties that could arise in the future for the applicant in obtaining employment.

[9] I order non-publication of the applicant's name under clause 10(1) of the second schedule to the Act. She shall be referred to as ZNW which three letters are selected randomly.

### **The investigation process**

[10] Many of the material events and meetings including the meeting following which ZNW was dismissed involved the then General Manager of GlobalCampers who I shall refer to as Joanna. Joanna initially dealt with the claim by ZNW, lodged a statement in reply and attended a telephone conference with the Authority and asked for extensions to lodge statements of evidence. Extensions were granted however GlobalCampers did not comply with the Authority directions to lodge statements of evidence. None were received.

[11] The parties did not undertake mediation although they were directed to do so and the applicant was prepared to attend. On that basis the matter was set down for an investigation meeting.

[12] On the day of the investigation meeting Mr Wollenweber attended for Global Campers. He advised that Joanna no longer worked for GlobalCampers. His evidence was limited to matters that he was involved in. That placed GlobalCampers in a somewhat difficult situation with some of the claims. In investigating the matter I questioned ZNW about matters set out in attachments to the statement in reply setting out GlobalCampers view of the matter.

### **Grievances raised within 90 days**

[13] The Authority needs to identify which grievances were raised within the 90 day statutory timeframe.

[14] Mr Cahill accepted there were some matters that did not appear to have been raised within that time frame. He also accepted that the grievance of discrimination on the basis of medical grounds was in all likelihood incorrectly included as a claim in the statement of problem.

[15] Mr Cahill confirmed that the claim for a penalty for a failure to provide a wage and time record is not maintained and neither is the other generally claimed penalties for breaches of the Act.

[16] Personal grievances were raised in two letters from Mr Cahill. The first letter in which a grievance was raised is dated 5 August 2019. The grievance raised was that ZNW was subjected to bullying about her relationship with another employee and that this exceeded what was appropriate. It was set out in the letter that this disadvantaged ZNW. Allowing some ten days for delivery that would mean a grievance was raised for actions of this nature after 15 May 2019.

[17] A further letter sent by email by Mr Cahill on 3 September 2019 raised another grievance. It was that ZNW had been called to a meeting the previous day where she was advised her remuneration was to be decreased and she was effectively demoted and that she was told she was not allowed to contact her representative during business hours. It was noted in the email raising the grievance that there was no notice given of the meeting and that ZNW was prevented from having her legal representative present. This letter raised a further claim of unjustified disadvantage and a breach of good faith.

[18] There were further personal grievances raised in the statement of problem which was lodged with the Authority on 17 October 2019. The Authority is able to ascertain the date of service from subsequent emails sent to the Authority officer by GlobalCampers. It is clear that by 24 October 2019, the statement of problem had been received by GlobalCampers. Additional grievances of unjustified disadvantage were raised within the statutory timeframe with respect to two written warnings that were stated in evidence to have been given to ZNW on 6 August 2019 and alleged unjustified dismissal.

[19] The applicant seeks reimbursement for lost wages, compensation, interest and any costs and disbursements.

[20] The respondent does not accept the grievances as alleged. It says that ZNW raised her own concerns about the relationship and that "it is surprising" that she now alleges that management was intrusive into her personal life. Further that she requested to be trained in customer service and then wanted to step back from her role which was accommodated. It denied that she was demoted. GlobalCampers say that it sought guidance from the probation service because of the applicant's deterioration in attendance at work and mood swings. It

says that the warnings were justified and the dismissal was justified and that effectively ZNW left after announcing she was not returning and she was going on a benefit and had to resign and go on sick leave.

### **The Issues**

[21] The Authority needs to determine the following issues that it has concluded were raised within the statutory timeframe for raising a grievance:

- (a) Were there unjustified actions that caused disadvantage to ZNW during her employment as below:
  - (i) Conversations about her relationship?
  - (ii) Two warnings?
  - (iii) Was ZNW demoted with a reduction in her pay unjustifiably at a meeting on 2 September 2019 and prevented from having Mr Cahill represent her and prevented from contacting him during business hours?
- (b) Was ZNW dismissed?
- (c) If ZNW was dismissed then was the dismissal justified?
- (d) If the grievances are made out then what remedies should be awarded and are there issue of contribution and mitigation?

### **Were there unjustified actions that caused disadvantage in ZNW's employment?**

[22] Section 103(1)(b) of the Employment Relations Act 2000 (the Act) provides that an employee may bring a personal grievance against their employer or former employee because their employment or one of more conditions of the employment was affected to their disadvantage by some unjustifiable action of their employer. There are overarching statutory obligations of good faith as contained in s 4 of the Act that a fair and reasonable employer could be expected to adhere to.

[23] There are several components to establishing a grievance of unjustified disadvantage that can be seen from s 103(1)(b) of the Act. One of more conditions of employment

including any conditions that survive employment need to be affected to the employee's disadvantage. There needs to be some action (or omission) on the part of the employer that is unjustifiable.

[24] Section 103A contains the test of justification. The Authority needs to determine whether an action such as a warning was justifiable on an objective basis by considering whether the employer's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time of the action. There are also procedural fairness factors set out in s 103A (3)(a) to (d) of the Act that must be adhered to.

#### *The relationship issues*

[25] In or about May 2019 ZNW formed a close relationship with another employee who was also a released prisoner. She advised Probation as required on 11 June 2019 and there were no concerns raised at that time about the relationship.

[26] After that time she says that she was asked by Joanna if she was in a relationship with the employee. She advised that she was and said she was told that the other employee had a "temper." She said that there were other discussions with Joanna that made her feel uncomfortable about her relationship including matters about the other employee's financial situation. ZNW did not feel that it was appropriate that she should be required to hear such things. In her oral evidence she said that she felt management was becoming "overly involved" in her relationship and that she started to become stressed and unhappy with the continued questioning and advice.

[27] She was then advised by Probation that the service would not be supporting the relationship because of a call made by Mr Wollenweber that the other employee was violent. Mr Wollenweber in his oral evidence was unclear about when he had contacted Probation.

[28] In or about June 2019 the employment of the person ZNW was in a relationship with ended.

[29] ZNW said that she received a telephone call from Mr Wollenweber on 27 June 2019 in which he asked her to meet him at a coffee shop. ZNW agreed to do so. She said that she was advised that she was making "a bad decision" and that if she needed to get out of the relationship she should go to him. She said that she asked Mr Wollenweber if he thought that

she could “be hit” and that he responded in the affirmative. ZNW recalled the entire conversation being about the person she was in a relationship with and how she should leave him.

[30] In his oral evidence Mr Wollenweber had no clear recollection of the meeting. In respect of comments made by Joanna he said that her background was taking care of people.

[31] On 28 June 2019 ZNW received a text message from Mr Wollenweber asking her to call him. At that time she was with the person she was in a relationship with and felt uncomfortable. She managed to leave without telling him where she was going and met with Mr Wollenweber at 7pm at a Christchurch restaurant. He was with his son. He showed her his phone and there was an article about the person she was in a relationship with under a different name and his then offending. ZNW said that she felt that she was invading her partner’s privacy in viewing the material and felt guilty of “betraying him.” She advised Mr Wollenweber that she did not know what to say. ZNW said that she stated that she was not scared or worried but Mr Wollenweber did not listen and said that she needed a safety plan.

[32] Mr Wollenweber accepted that he showed ZNW the article and that he told her to have a safety plan. He did not accept that he called ZNW weak but agreed with ZNW that he did say that she should be careful about her upcoming parole hearing. He said that was on the basis that the other employee had stolen some keys. He denied ZNW’s evidence that if she did not end the relationship she would not have a job.

[33] I cannot conclude with the required degree of certainty that Mr Wollenweber told ZNW that she would not have a job if the relationship did not end. I do however accept that ZNW felt concerned about the security of her job by what was said at the meeting. I think it more likely Mr Wollenweber did refer to ZNW as “weak.” She was quite specific about that word being used.

[34] I also accept from the evidence that Mr Wollenweber showed another employee the article about the person ZNW was in a relationship with. This is supported by the fact that ZNW received a Facebook message from that employee expressing concerns about the relationship shortly before she met with Mr Wollenweber on 28 June 2019.

[35] ZNW said that this meeting caused her to doubt her relationship and she felt under pressure because of the comments about her job and parole hearing. She said that she did not feel she could trust anyone with her personal information. She said that she felt boundaries were blurred and that everybody was talking about her relationship and she was stressed and unhappy in the work place.

[36] ZNW did not accept as written in the attachment to the statement in reply that she had raised concerns about her relationship with other employees and/or management. I do not place too much weight on any discussion with colleagues. Even if ZNW had raised concerns about her relationship with her colleagues from time to time that is a different matter to management raising concerns about the relationship to ZNW. I am not satisfied that ZNW raised concerns with management about her relationship.

[37] ZNW instructed Mr Cahill to raise a grievance about what was referred to as bullying with respect to her relationship. He did so in the letter of 5 August 2019. It did not appear to have been responded to and on 6 August 2019 ZNW says that she was provided with two written warnings that I shall refer to shortly.

[38] There is a line between an employer being supportive and caring and becoming overly involved and concerned with an employee's personal life even if it is intended to be well meaning. I find that the line was crossed when continued concerns about the relationship were raised by Joanna and then Mr Wollenweber in a manner that made ZNW feel uncomfortable, anxious and stressed. A more appropriate way of dealing with the matter would have been to ask ZNW generally if everything was all right and/or remind her that if she needed assistance or help she could ask for it. I also weigh this was not a one off discussion about the relationship on the basis that there was a perceived threat to ZNW's wellbeing. There were a series of concerns about the relationship raised over an extended period with ZNW and that impacted in a negative way on her in her employment.

[39] The manner in which concerns about her relationship and personal life were raised with ZNW breached the employers obligations including those set out in the employment agreement to provide a safe working environment for employees.<sup>3</sup> Further it breached obligations of good faith. As a result I find there were unjustified actions that disadvantaged ZNW. She felt less secure in her role and her level of stress and anxiety at work increased as

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<sup>3</sup> Clause 20 of the employment agreement between GlobalCampers Limited and ZNW.

a result. There was evidence that ZNW's feeling of awkwardness in the workplace contributed towards subsequent absences for depression and anxiety.

[40] ZNW has made out her grievance of unjustified disadvantage with respect to comments made to her about her personal life.

*The two warnings?*

[41] On 6 August 2019 ZNW says that she was given two written warnings but that there was no process or investigation before she received these warnings.

[42] One warning in a letter dated 23 July 2019 was for traveling in a vehicle provided to ZNW by GlobalCampers to Blenheim with her partner to uplift a vehicle for her. This was on the basis that the car was only provided to ZNW to travel to and from work.

[43] The second warning was in a letter dated 6 August and was because ZNW was off site for a longer lunch break than 30 minutes (55 minutes) but did not reflect that in her signed timesheet. It stated in the letter that there was a staff meeting the day after 29 July and employees were reminded about putting incorrect times on their timesheet in a hope that this would prompt them to correct any error but ZNW did not do so. The letter stated that the information about the timesheet can be confirmed and clarified by her supervisor. Good faith obligations required all information be provided to ZNW in advance of the warning so that she could properly answer the allegation.

[44] Mr Wollenweber said in his evidence that he was not involved when the warnings were issued. ZNW recalled these being given to her following a meeting with Probation on 6 August 2019 by Joanna. I accept in all likelihood Mr Wollenweber had expressed his concern earlier to ZNW about her taking the car to Blenheim. I am not satisfied that was an opportunity for ZNW to answer the concerns with advance knowledge that she may be subject to disciplinary action. Rather I accept her evidence that disciplinary action was a foregone conclusion when the issue was raised with her.

[45] I am not satisfied that the concerns were raised with ZNW before she was given warnings in a way that enabled her to properly respond. The process did not satisfy the procedural fairness requirements in s 103A(3) of the Act. That in turn impacts on any substantive basis for the warnings. In respect of the car ZNW said that she was never advised there were limits or restrictions on the use she may have of the car but did not get an

opportunity to explain that and have that explanation properly investigated and considered. In relation to the second matter ZNW said that she was sure that she would have completed her timesheet properly. The timesheet was not disclosed with the warning letter. The warnings disadvantaged ZNW as her employment was made less secure. Both warnings provided that her employment was to be terminated if there was a repeat of the incident and/or a repeat of a disregard of managerial directives. The warnings were for a period of six months.

[46] ZNW has made out her grievance of unjustified disadvantage in respect of the warnings.

*Was ZNW demoted with a reduction in her pay unjustifiably at a meeting on 2 September 2019 and prevented from having Mr Cahill represent her and prevented from contacting him during business hours?*

[47] This grievance is about a meeting called by GlobalCampers on 2 September 2019 with ZNW. It was not a meeting that ZNW was advised about in advance and she asked that Mr Cahill be present. ZNW said in her evidence that she was advised Mr Cahill was not “a real lawyer” and she was effectively prevented from having her representative of choice present at the meeting. I understand from the evidence that there was a support person for ZNW but not Mr Cahill who she wanted.

[48] I could not be satisfied from ZNW’s evidence that she was demoted at the meeting. I find it more likely having felt obliged to take on a role with additional responsibility there was discussion that she return to her original detailing role. The employer’s record about hours worked show ZNW only worked three days after that meeting before the employment relationship ended.

[49] I asked for information about any reduction in pay but could not be satisfied that there was any.

[50] I accept that there may have been some discussion about limiting telephone use however the evidence did not satisfy me that such contact with Mr Cahill was limited to outside of business hours.

[51] Mr Cahill was not permitted to represent ZNW. It was a meeting held shortly before the disciplinary meeting on 6 September when issues in the employment relationship were apparent. The minutes from the disciplinary meeting on 6 September confirm that there was some discussion at that 2 September meeting about absences and obtaining a medical certificate from a doctor who was either sick or overseas that had delayed that. I accept that some distress was caused because ZNW's choice of representative was questioned. Mr Cahill's presence even by way of telephone would have assisted to address the inequity of power in the relationship that clearly existed and would have been in accordance with good faith obligations.

[52] This aspect of the meeting I find in refusing to allow Mr Cahill to attend was an unjustified action that caused disadvantage.

### **Was ZNW dismissed?**

[53] ZNW was provided with a letter dated 20 September 2019 that advised her employment was terminated summarily on the basis of a finding of serious misconduct.

[54] I am satisfied that ZNW was dismissed following a disciplinary meeting on 6 September 2019.

### **Was the dismissal justified?**

[55] On 3 September ZNW was provided with a letter from Joanna advising that she was to attend a meeting on 6 September 2019 to discuss matters of concern. There were two main concerns.

[56] The first was that it was alleged there was provision of a misleading "medical certificate" dated 20 August 2019. Further that there were misleading and deceptive text messages about a series of medical appointments that day for ZNW's health issues when it was not the case.

[57] The second concern was repeated failures to follow management directives about personal phone use, not to use cell phones around campervans, refusing to provide a medical certificate when a week of unapproved absence was indicated to be for medical reasons and excessive absences from the workplace without notice or prior approval.

[58] A disciplinary meeting was held on 6 September 2019. ZNW attended with a support person from the Salvation Army and Mr Cahill attended by telephone. Joanna attended and there was a note-taker Karen.

[59] I have considered the typed minutes.

[60] The medical certificate or letter provided for 20 August 2019 stated the doctor could confirm ZNW was seen by her with her partner for medical reasons and that ZNW was unable to attend work. By way of explanation ZNW did not disagree that the medical certificate was from her partner's doctor but said that she had had blood tests herself earlier that day and went to the doctor as support for her boyfriend. She said that she was unable to provide a medical certificate about her tests.

[61] The excessive absences were put to ZNW and the minutes record she had nothing to add. It was accepted that there had been receipt of medical certificates but they did not account for all the time. ZNW handed up a further medical certificate for the period between 26 August and 5 September although the hours of work records support she worked on 3 and 5 September. Possibly the certificate accounts for appointments on those days.

[62] ZNW said by way of explanation that she had only found out recently that there was limited use of cell phone and denied using her phone or knowing that she should not use it on work time. Joanna is recorded as saying that there have been a lot of new staff and a lot of changes. Further she is recorded as saying that ZNW is not aware of the goings on with "her large amount of absences" where she misses staff meetings at 8.00am or is not present. Summaries are taken and memos and notes put up for staff.

[63] Joanna is recorded as saying she would have to discuss the explanations with Mr Wollenweber.

[64] There was no further meeting before ZNW's employment was terminated by letter dated 20 September 2019. In the letter of termination it stated that:

You had no explanation for providing a misleading "Medical Certificate" or more particularly providing a dishonest and fraudulent representation to us namely a letter from your boyfriends doctor that you asserted to be a Medical Certificate for yourself with respect to your own personal medical issues.

That you had no explanation for taking unapproved leave and excessive absences without prior approval or notice.

That you had no explanation for not following company procedure and disregarding directives from management with respect to continued overuse of your personal phone(s) during work time and in and around company vehicle.

[65] Mr Cahill had asked for paperwork including a copy of the minutes during the 6 September 2019 meeting. Joanna is recorded as saying that she had had advice to “hold off” sending the paper work through until it was compiled and the disciplinary meeting had been completed. I accept the minutes were provided to Mr Cahill but no further information was provided.

[66] Some elements of the process were fair. ZNW was advised that she could be, and was, represented at the meeting. She was able to give an explanation to some of the allegations.

[67] There were however other aspects of the process that were not fair and not in a minor way. It was concluded by GlobalCampers that the medical certificate on 20 August was a dishonest and fraudulent representation. That was not the original allegation ZNW was asked to explain. The medical certificate or letter dated 20 August 2019 was signed by the doctor who concluded that ZNW was unable to attend work. A proper investigation would have included a question about why the doctor would say ZNW was unfit for work. Joanna was advised by text message from ZNW on 22 August 2019 that she was having a miscarriage. What was happening on 20 August would have to be considered with that information provided two days later and any explanation about earlier blood tests and suggestion of possible hospitalisation. The Authority could not be satisfied that it was considered as part of the process. That supports a lack of an open mind. Joanna did not give evidence and Mr Wollenweber’s recollection of what occurred was somewhat vague even though the evidence supports the decision to dismiss was made by both him and Joanna.

[68] There was no information supplied before the disciplinary meeting or after about dates and times when management directives were not followed. The Authority is left unclear as to how many times it is alleged there was such a failure to comply with management directives. It does appear from the minutes that a directive was given about phone use on 19 August 2019 however there was only one day that ZNW attended after that on 21 August before she received the invitation to the disciplinary meeting on 3 September 2019. There is reference to using a phone in the caravan on 21 August however that was

denied by ZNW. The next day of work was 3 September 2019 and ZNW was given the disciplinary letter.

[69] There was no information supplied about any policies and procedures or notes recording these management directives. Given the limited attendance at work in August and an explanation that ZNW was unaware of the directives this should have been investigated and information supplied to properly assess the seriousness of the conduct. It is also concerning that the findings in the termination letter indicate that there was no explanation for the disregarding of management directives. That contrasts with the minutes that record ZNW explained she did not know about limited use of cell phones and denied using her phone and knowing that she wouldn't use it on work time. It supports a lack of any proper investigation.

[70] It was further unclear which absences were covered by a medical certificate and which were not particularly in light of the medical certificate provided at the disciplinary meeting for a week. Whilst on the face of the records the absences were significant in August the Authority is unable to conclude what absences did not have supporting medical certificates.

[71] The process was unfair and not in a minor way. It is unfair to the extent that it overlaps with any conclusion a fair and reasonable employer could have made that the actions amounted to serious misconduct and a fair and reasonable employer could conclude dismissal was justified.

[72] The dismissal was unjustified.

[73] ZNW has established her grievance that the dismissal was unjustified and further that several actions of GlobalCamps were as well. She is entitled to consideration of remedies.

## **Remedies**

### *Lost wages*

[74] ZNW said that she went onto a benefit after the termination, signed up with agencies and went on Trade Me to look for a job. There was no evidence provided about efforts made to seek new employment however I accept some attempts were made. It would have been more difficult for ZNW to obtain employment because of her background. In the statement

in reply it was stated ZNW had said prior to termination that she wanted indefinite sick leave so that she could go on a sickness benefit and would resign. In reply to questioning at the Authority investigation meeting ZNW adamantly denied that and said at that stage her relationship with Joanna and Mr Wollenweber had broken down. I find it less likely taking all matters into account that ZNW did say that.

[75] I have weighed the absence of clear evidence about efforts to seek alternative employment and potentially a period of continued unwellness. In those circumstances subject to any finding of contribution reimbursement of lost wages is limited to 10 weeks. At the rate of \$17.70 per hour for the 40 hours per week as reflected in the employment agreement that is the gross amount of \$7,080.

### *Compensation*

[76] It is appropriate in the circumstances of this case to assess compensation for the unjustified disadvantage and dismissal grievance on a global basis. It is difficult and somewhat artificial to separate the grievances for the purpose of a compensatory award. ZNW initially found the work place a good, supportive and happy one until she entered into a relationship with the other employee. She saw what occurred from that point as part of a continued break down in the employment relationship. This included the warnings and the refusal to permit Mr Cahill to represent ZNW in a meeting shortly before the disciplinary meeting. Absences that followed were in part she says caused by stress about work because of the concerns raised with her about her relationship. Absences were part of the reasons for dismissal.

[77] I find that ZNW did suffer humiliation and loss of dignity and injury to her feelings as a result of the actions and dismissal. The evidence supported a feeling of powerlessness about how she was treated that added to her distress. I have weighed that there were a number of stressors facing ZNW at that time and responsibility for all the stressors in her life does not fall to GlobalCampers.

[78] In line with similar cases and subject to any issues about contribution there should be an award for compensation in the sum of \$15,000 for the grievances found established.

## **Contribution**

[79] The Authority is required when it finds a personal grievance under s 124 of the Act to consider whether remedies should be reduced because actions by the employee contributed towards the situation giving rise to the grievance.

[80] This is the point where the Authority makes findings on the balance of probabilities about whether what was alleged to have occurred did occur.

[81] I do not find ZNW contributed to the grievance about her relationship. I am not satisfied to the required standard in the absence of a proper process that ZNW understood she could not drive her work vehicle to Blenheim. The Authority was not provided with a copy of the timesheet to support that ZNW did not record her break properly and ZNW did not accept that she had. I do not find that the medical certificate was deliberately misleading in all the circumstances. Whilst there may have been concerns about telephone use the evidence was not specific enough for me to conclude blameworthy conduct on the part of ZNW. It was further unclear the extent of any absences unsupported by a medical certificate however my view of what occurred with attendance at work does support a somewhat random approach to absences.

[82] A business needs to know as soon as possible whether an employee will be attending or not so that it can make alternative arrangements for the work to be carried out if necessary. The lines were somewhat blurred in this case because Joanna had told ZNW that she could take time off if she needed. Further it was known that ZNW had been out of the workplace for a number of years and there would be a learning curve. I do conclude some blameworthy conduct because GlobalCampers was not informed of absences in a consciously consistent manner. There is to be a 10% reduction to the remedies above.

## *Interest*

[83] I am not minded to award interest on the reimbursement of lost wages.

## **Costs**

[84] The meeting took half a day. ZNW was successful and is entitled to a contribution towards costs in accordance with daily tariff of \$2,250 together with reimbursement of the filing fee of \$71.56.

**Orders made**

[85] I order GlobalCampers Limited to pay to ZNW taking contribution of 10% into account the following:

- (a) The sum of \$6,372 gross being reimbursement of lost wages under s 123(1)(b) of the Act.
- (b) The sum of \$13,500 without deduction being compensation under s 123(1)(c) (i) of the Act.
- (c) Costs in the sum of \$2,250 together with reimbursement of the filing fee of \$71.56.

Helen Doyle  
Member of the Employment Relations Authority