

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 712  
3205240

BETWEEN                      GILLIAN SMYTH  
   Applicant

AND                              FONTERRA CO-OPERATIVE  
   GROUP LIMITED  
   Respondent

Member of Authority:           Philip Cheyne

Representatives:                Mary-Jane Thomas and Katherine McDonald, counsel for the  
   Applicant  
   Rebecca Rendle and Jessica Dellabarca, counsel for the  
   Respondent

Investigation Meeting:        22 and 23 August 2023 in Invercargill

Further Information            4 September 2023 from the Applicant  
Received:                         1 September 2023 from the Respondent

Date of Determination:        28 November 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Gillian Smyth worked at Edendale for Fonterra Co-Operative Group Limited (Fonterra) from 2003 until her employment was terminated by notice given in April 2022.

[2] Ms Smyth raised personal grievance claims with Fonterra by her solicitor's correspondence in July 2022. Ms Smyth says that Fonterra unjustifiably dismissed her.



discriminated against her on the basis of a disability and did not comply with the provisions of Schedule 3A of the Employment Relations Act 2000.

[3] The problem arises out of Fonterra's Covid-19 directives and Ms Smyth non-compliance with the requirement to wear a mask. Ms Smyth says she could not comply with Fonterra's mask directive because of her health condition. To settle her personal grievances, Ms Smyth seeks reimbursement of wages and other monies lost, compensation of \$30,000.00 for humiliation, loss of dignity and injury to her feelings and costs.

[4] Fonterra says its decision to dismiss Ms Smyth was procedurally and substantively justified. It also says that Ms Smyth was requested to but did not provide medical information so it could consider any reasonable accommodations. Fonterra's position is that the Schedule 3A requirement to exhaust all reasonable alternatives to termination of employment does not apply, but in any event it did so.

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

[5] There is extensive documentation covering the relevant events. Helpfully, much of that material was provided with the statements of problem and in reply. Some additional material was provided as part of the exchange of witness statements and some documents were produced just prior to and during the investigation meeting.

[6] Ms Smyth gave evidence in support of her claims. Ms Smyth's daughter (Prinita Smyth) and a church family worker (Erna Raath) gave evidence about the effects for Ms Smyth of her dismissal. An employee of Fonterra gave evidence about arrangements between him and Fonterra, in response to his decision not to wear a mask while working in circumstances covered by Fonterra's Covid-19 directives.

[7] Murray Dalley is Fonterra's Southern Operations Facilities manager who decided to dismiss Ms Smyth. He gave evidence. Angela Lawrie was Ms Smyth's team leader and was involved in events before Mr Dalley decided to initiate the formal process that ended with Ms Smyth's dismissal. Ms Lawrie was not part of the formal process, but gave evidence about the prior events. Daniel Norris is Fonterra's General Manager of Global Critical Risk. He



gave evidence about Fonterra's Covid-19 directives. Michael Spalding is Distribution Centre Operations manager at Edendale. He gave evidence about arrangements with the employee referred to above.

[8] Witnesses all appeared, gave evidence and answered questions on oath.

[9] Counsel provided full submissions as part of the investigation meeting with some further information provided shortly after.

[10] In this determination, I will state relevant factual findings, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders.

[11] It will be helpful to outline in more detail the events that give rise to those issues.

### **What happened**

[12] Ms Smyth was a supervisor in Fonterra's canteen at Edendale. The work involved preparing, cooking and serving food, customer service, organising staff cover, ordering supplies and deputising for the team leader as required. Ms Smyth usually worked with two others in the kitchen each shift. Ms Smyth also received orders and deliveries to the canteen from external suppliers each day.

[13] Ms Smyth was a member of the Union and was covered by the Fonterra Dairy Workers Collective Agreement. The agreement requires workers to comply with Fonterra's instructions regarding health and safety. It includes provisions about disciplinary procedures covering warnings and dismissal. Four weeks' notice of termination is required, except that serious misconduct may result in instant dismissal without notice.

[14] During the first mandatory lockdown from March 2020, at her doctor's initiative Ms Smyth was certified as having an underlying medical condition which put her at risk of serious complication from Covid-19. Fonterra as an essential service continued to operate, Ms Smyth was not required to attend work but was paid from the date of her certificate.



[15] From September 2021, Fonterra directives started to specifically refer to a requirement to wear masks in defined circumstances. By October 2021, Fonterra's Covid-19 controls at Edendale required masks to be worn where social distancing of at least 2 metres was not possible, with surgical or KN95 masks required by anyone receiving goods on site. The mask directive applied to Ms Smyth's work area generally, and to her role when receiving goods delivered to the canteen.

[16] Ms Smyth's evidence which I accept is that at first she wore a mask at work. However, Ms Smyth says that this exacerbated her asthma. Ms Smyth stopped wearing a mask at work.

[17] In November 2021 Ms Smyth applied for and received a mask exemption card, issued by the Disabled People Assembly. The application process was in accordance with Ministry of Health requirements then in place. Ms Smyth's evidence, which I accept, is that she gave a copy of this to her interim team leader. He accepted it and did not insist on her wearing a mask. The situation continued for about 10 weeks.

[18] In February 2022, the interim team leader asked if Ms Smyth would wear a face shield. In a message on 14 February 2022, he told Ms Smyth that he had a face shield for her. Ms Smyth's evidence, which I accept, is that she started wearing the face shield at work.

[19] At that time, the Fonterra directive<sup>1</sup> required at least a surgical mask to be worn when working indoors. If 2 metre social distancing could not be achieved an N95 mask was required. Reminders were distributed by email to all staff at Edendale on 23 January 2022 and 31 January 2022.<sup>2</sup> Face shields were not expressly mentioned.

[20] Fonterra formulated its own face mask exemption process for its employees. The version published on 3 March 2022 set out the process for employees to apply for an exemption, but included the following:

**Face masks** are an effective control for all employees on operational sites and are likely to be required into the future to lower the risk of transmission in the

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<sup>1</sup> Bundle of documents tab 16, published on 6 January 2022.

<sup>2</sup> Bundle of documents tabs 17 and 20.



workplace. **Face shields** alone are no longer effective against aerosol transmission; however, do serve to lower risk if used in combination with masks.

... For those who are both unvaccinated and unable to wear a mask, we do not have adequate alternative controls available to us that reduce the risk of COVID exposure and transmission to an acceptable level. Accordingly, we cannot approve mask exemptions for unvaccinated workers. ...

[21] Ms Smyth's team leader returned from parental leave on 8 March 2022. The team leader's evidence is that she had a limited hand-over from the interim team leader. There is no reason to doubt this evidence. When the team leader returned, canteen staff except Ms Smyth were wearing N95 masks at work.

[22] On 9 March 2022 Fonterra circulated by email its decision to introduce as a reasonable alternative to termination of employment, daily rapid antigen testing (RAT) for unvaccinated employees, from 1 April 2022. Fonterra had previously intended to adopt a vaccine requirement from 1 April 2022.

[23] Ms Smyth's evidence is that there were two or three times when the returning team leader spoke to her about her use of the face shield. The team leader's evidence is that there were approximately six informal conversations. It is not necessary to resolve that difference. The team leader disputes Ms Smyth's evidence that she told the team leader that she had asthma. It is not necessary to resolve that point. There is no reason to doubt the team leader's evidence that during March 2022 she received verbal complaints and comments from others about Ms Smyth not wearing a mask but using a face shield. The team leader sought some advice from HR. The advice confirmed that face shields were not an acceptable alternative to face masks.

[24] There was a discussion between the team leader and Ms Smyth on 24 March 2022. There are several disputes about what was said, but they do not need to be resolved. The team leader was not involved in the later process that resulted in Ms Smyth's dismissal and an unjustified disadvantage personal grievance claim based on the exchange was not raised within time. In summary, the team leader referred to the requirement to wear a mask and Ms Smyth said that she could not wear a mask because of a medical condition. Ms Smyth was either told to or opted to stay away from work in the meantime.



[25] On 25 March 2022, the team leader sent Ms Smyth a message that her absence from work would be treated as paid not worked (PNW).

[26] Mr Dalley arranged a meeting for 31 March 2022. Ms Smyth attended remotely. The meeting was also attended by the team leader and a union delegate. During the meeting, Mr Dalley confirmed that Ms Smyth was not allowed on site without a mask, that there is a mask exemption process but no exemptions have been granted for unvaccinated staff and that not following the mask directive would start another process involving Mr Dalley and “HR” which could lead to dismissal. Mr Dalley foreshadowed a further meeting “next week”.

[27] Following the meeting, Ms Smyth contacted her medical centre. Ms Smyth said her employer had requested a letter and she also asked for a medical certificate to support sick leave rather than PNW.

[28] Ms Smyth received a medical certificate confirming that she was not fit for work for seven days from 4 April 2022. Her doctor also sent her the following letter dated 4 April 2022:

Dear Fonterra

The above mentioned has asked me to write to you to confirm underlying health conditions and ability to wear a face mask during work hours.

While we cannot offer a mask exemption we can comment on the patients underlying conditions and prolonged mask use. But further feel that this is a health and safety issue and should be discussed with the ministry or through your own health and safety team.

...

[29] Mr Dalley wrote to Ms Smyth to raise a “concern” about her “alleged ongoing refusal to wear a mask in the workplace” as required. Mr Dalley set out Fonterra’s understanding of the background. It gave rise to a concern that Ms Smyth’s actions might amount to serious misconduct. The letter dated 6 April 2022 was left in Ms Smyth’s letterbox and invited her to meet via Skype on Friday 8 April 2022. Ms Smyth was encouraged to seek support or representation, given the meeting might result in disciplinary action such as dismissal.



[30] Ms Smyth and a union representative attended remotely. Also present on 8 April 2022 were Mr Dalley and another manager in support of him. The meeting was recorded. A transcript is in evidence.

[31] Ms Smyth's position about wearing a mask at work was unchanged. Mr Dalley had not received the doctor's letter, so Ms Smyth said it would be sent to him but also paraphrased what it said. Mr Dalley again said it was "highly unlikely" that Ms Smyth would receive an exemption for work in the café, given her vaccination status. Ms Smyth said she had a medical certificate to support sick leave. Mr Dalley confirmed that they would not make a decision, but he would consult with "ER and HR" to give them a summary. Arrangements were outlined for a further meeting on 11 April 2022.

[32] Mr Dalley received a copy of the doctor's letter after the meeting.

[33] The meeting actually was held on 14 April 2022. The day before, Mr Dalley's letter dated 14 April 2022 had been placed in Ms Smyth's letterbox. It set out a "Proposal to terminate employment". Some of the background was set out. Mr Dalley accepted that Ms Smyth "may have" an underlying health condition that "may" impact on her ability to wear a face mask at work, but noted that the doctor's letter did not confirm that "from a medical perspective". Mr Dalley did not consider that Ms Smyth's refusal to wear a mask was serious misconduct or a deliberate breach of the directive or terms of the employment. However, it appeared that a medical condition meant that Ms Smyth was unable to fulfil a requirement of her role "namely the requirement to wear a face mask". There was not sufficient medical information for Fonterra to consider what reasonable accommodations could be made and, in any event, the doctor had deferred to Fonterra's health and safety team which had determined that exceptions could only be considered for vaccinated staff.

[34] Mr Dalley stated that a final decision would follow after Ms Smyth had responded at the 14 April 2022 meeting.

[35] Ms Smyth attended the meeting by Skype. A union delegate, Mr Dalley and a supporting manager attended. Ms Smyth confirmed that her that her refusal to wear a mask



had not changed. Ms Smyth had nothing further to add to that point. Mr Dalley said that Ms Smyth's refusal to wear a mask left him with no other option than to terminate her contract. Notice would be set at four weeks.

[36] Shortly after the meeting, Mr Dalley sent Ms Smyth an email confirming four weeks notice "as of today" with a formal letter to be issued on 27 April 2022.

[37] Later on 14 April 2022, a letter headed "Confirmation of dismissal from employment" dated 14 April 2022 under Mr Dalley's signature was placed in Ms Smyth's letterbox. The letter said that Ms Smyth was entitled to two weeks' notice of termination but Fonterra would pay notice in lieu and her employment would end as of 18 April 2022.

[38] The letter was followed by another "Confirmation of dismissal from employment" letter dated 26 April 2022 under Mr Dalley's signature. There were several minor edits, but a statement that Ms Smyth was entitled to "4 weeks notice of her employment", which would be paid in lieu with the employment still ending with effect from Monday 18 April 2022. Both letters set out background and summarise the process. The reason given for dismissal is:

... I decided our concerns were upheld due to a medically unspecified and undisclosed condition and you are unable to fulfil the requirement of your role, namely the requirement to wear a face mask while performing your role.

[39] Mr Dalley did not consider a "lesser sanction" was appropriate.

[40] There is an "Employee Pay Advice" for the period ended 18 April 2022 covering Ms Smyth's final pay banked on 27 April 2022.

[41] On 31 March 2022 Fonterra announced that from 4 April 2022 mask wearing was no longer required in several specified circumstances. This did not affect the directive regarding work in the café. For Edendale, this was characterised as "Although the mask wearing rules are being relaxed, they are not being removed."

[42] On 3 June 2022 Fonterra announced that from 9 June 2022 as part of its "Winter shut", mask use in many areas at the Edendale plant including the café would be voluntary.





In early August 2022, Fonterra adopted “Masks encouraged” as part of “Business as usual” protocols for its sites but left open a “Mask required” directive if site infection rates increased.

[43] Ms Smyth raised personal grievances of unjustifiable dismissal, unlawful discrimination and a failure to adhere to clause 3 of Schedule 3A to the Employment Relations Act 2000 through her solicitor’s correspondence to Fonterra on 11 July 2022. It is common ground that these grievances were raised in compliance with s 114 of the Employment Relations Act 2000 given the 14 April 2022 meeting and termination of employment effective 18 April 2022.

### **Justification for the dismissal**

[44] Ms Smyth was dismissed on notice. Whether the dismissal is justifiable must be determined on an objective basis by assessing whether Fonterra’s actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time. I must consider whether Fonterra sufficiently investigated the matter considering available resources; whether it raised its concerns with Ms Smyth before deciding to dismiss her; whether it gave Ms Smyth a reasonable opportunity to respond to the concerns before dismissing her; and whether it genuinely considered Ms Smyth’s responses before deciding to dismiss her.

[45] I may consider other factors, if appropriate.

### *Sufficiency of the investigation*

[46] Fonterra is a major employer with access to resources to allow it to fully investigate matters before dismissing an employee.

[47] Mr Dalley first met informally with Ms Smyth who confirmed that she would not work if required to wear a face mask due it aggravating her asthma. Mr Dalley foreshadowed a formal process to investigate Fonterra’s concerns about Ms Smyth not wearing a face mask in compliance with Fonterra’s directive.



[48] Fonterra's investigation comprised Mr Dalley meeting with Ms Smyth on 8 April 2022, receiving the doctor's letter and meeting again on 14 April 2022.

[49] Circumstances to be explained meant that Fonterra should have continued its investigation following the revised concern expressed in Mr Dalley's 14 April 2022 letter. By not doing so, Fonterra did not sufficiently investigate matters.

*Fonterra raised concerns*

[50] In his letter dated 6 April 2022, Mr Dalley raised Fonterra's concerns with Ms Smyth. The concern was Ms Smyth's "alleged refusal" to wear a mask while working on site, contrary to the mask directive. The concern involved an allegation of serious misconduct, having regard to Fonterra's "Conduct and Behaviour Standard", its "values" and the collective agreement. The letter quoted, copied and referenced specific provisions.

[51] The nature of Fonterra's concern changed after the 8 April 2022 meeting and following receipt of the doctor's letter. The change is set out in Mr Dalley's 14 April 2022 letter under the subject line "Proposal to terminate employment". He accepted that Ms Smyth may have "underlying health conditions" that "may impact" on Ms Smyth's ability to wear a face mask. He did not consider that Ms Smyth's refusal to wear a face mask constituted serious misconduct or was a deliberate breach of the directive. Fonterra's concern had become that Ms Smyth was unable to fulfil the requirements of her role to wear a face mask by reason of a "medically unspecified and undisclosed condition".

[52] Ms Smyth was later dismissed for the reason set out in the 14 April 2022 letter. The sequence of events establishes that Fonterra raised this concern with Ms Smyth beforehand.

*Fonterra did not give Ms Smyth a reasonable opportunity to respond*

[53] Ms Smyth's evidence is that Mr Dalley placed the 14 April 2022 letter in her mailbox on 13 April 2022. It included arrangements to meet at 1.00pm on 14 April. The earlier electronic invite included the title "Investigation outcome meeting".



[54] I find that Ms Smyth was not given a reasonable opportunity to respond to Mr Dalley's expressed concerns as at 14 April 2022.

[55] Although Mr Dalley concluded that Ms Smyth in not wearing the face mask had not committed serious misconduct, he did not extend Fonterra's investigation to allow Ms Smyth a reasonable opportunity to respond to Fonterra's new concern that she was not able to fulfil the requirements of her role because of a medically unspecified and undisclosed condition.

[56] Mr Dalley's evidence is that he made the decision to dismiss Ms Smyth based on risks to others in the workplace if Fonterra continued to employ her in her role without her wearing a face mask. Ms Smyth was not eligible under the Fonterra process for a face mask exemption, as Fonterra had concluded that there were no adequate "alternative controls" for unvaccinated staff.<sup>3</sup> Ms Smyth did not have an opportunity to respond to this concern.

*Fonterra did not genuinely consider Ms Smyth's explanation*

[57] I take from the change in concern that Fonterra genuinely considered Ms Smyth's responses prior to the 14 April 2022 expressed concern.

[58] The opportunity to respond at the meeting on 14 April 2022 was more apparent than real. As a result, Ms Smyth added nothing further for Fonterra to respond to.

[59] In the absence of a reasonable opportunity to respond to the 14 April 2022 concerns, Fonterra cannot establish that it genuinely considered Ms Smyth's explanation before it dismissed her.

*Other factors*

[60] Fonterra's Code of Business Conduct includes in its "6 Life Savers" an expectation that staff will always wear and use required Personal Protective Equipment (PPE).<sup>4</sup> Face masks as part of PPE for café workers were introduced as part of Fonterra's response to Covid-19. They had not previously been required.

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<sup>3</sup> COVID-19 Face Mask Exemption Process for Employees, document 22.

<sup>4</sup> Bundle of Documents 49 at page 318.



[61] After more than 15 years of her employment, wearing a face mask at work became a binding requirement of Ms Smyth's role by effect of clause 7.1 of the collective agreement. To paraphrase, Ms Smyth was required to comply with Fonterra's directions regarding health and safety and to take all practicable steps in her work not to undermine the health and safety of others.

[62] Although he accepted that Ms Smyth had not deliberately breached the directive to that point, Mr Dalley nonetheless considered that Ms Smyth had breached the Fonterra policy. The collective agreement permits Fonterra to issue a "First Warning or Verbal Warning" for "breaches of Fonterra policy and procedures, although "any of the types of warning" might be used depending on the seriousness of the issue. Only "serious misconduct" could result in instant dismissal without an earlier warning.

[63] Although Mr Dalley described the concern as Ms Smyth being unable to meet a requirement of her role, Fonterra was still required to apply clause 8 of the collective agreement covering disciplinary procedures before it could justifiably give notice of dismissal under clause 9.

*Ms Smyth has a personal grievance*

[64] A fair and reasonable employer would comply with disciplinary procedures in the binding employment agreement.

[65] Fonterra's concerns changed from a fault-based allegation of serious misconduct to a no-fault based concern that Ms Smyth was not able to fulfil the changed requirements of her role. Ms Smyth was not given a reasonable opportunity to respond to the latter concern.

[66] It follows that Ms Smyth was unjustifiably dismissed and has a personal grievance.

[67] It is not necessary to consider other grounds relied on by Ms Smyth.



## **Settlement of the personal grievance**

### *Reimbursement*

[68] There is a claim for reimbursement of lost remuneration.

[69] Ms Smyth has lost remuneration as a result of the personal grievance. By effect of s 128(2) of the Employment Relations Act 2000, I must order Fonterra to pay the lesser of the sum equal to that lost remuneration or 3 months' ordinary time remuneration. However, under s 128(3) of the Act I have a discretion to order Fonterra to pay a greater sum as reimbursement of loss.

[70] Ms Smyth's evidence that she would have earned over \$19,600.00 for the three months following her dismissal. The figure is calculated from her total earnings in the previous year, a figure that would have included payments for working extra hours. While the evidence does not establish what 3 months' ordinary time remuneration would have been, it is clear that Ms Smyth's lost remuneration as a result of the personal grievance greatly exceeds 3 months' ordinary time remuneration.

### *Ms Smyth has mitigated her loss*

[71] There is documentary evidence to establish that Ms Smyth sought to mitigate her lost remuneration by applying for other positions, but was unsuccessful. Ms Smyth says that she applied for other positions as well. Ms Smyth also secured part-time work from June 2022. Ms Smyth's income from employment after the dismissal has been about \$16,000.00.

[72] I find that Ms Smyth has taken reasonable steps to mitigate her loss.

### *Fonterra must pay Ms Smyth more than 3 months' ordinary time remuneration*

[73] It is likely that Ms Smyth's employment at Fonterra would have continued, but for the personal grievance.



[74] Fonterra's response to the pandemic evolved in response to the changing nature of the threat posed by the virus, increased scientific understanding of it, changing Government initiatives, vaccination uptake and the availability of rapid antigen testing. By early June 2022, Fonterra had changed the mask directive to a recommendation.

[75] There is evidence about arrangements between Fonterra and a forklift operator who would not wear a face mask, despite working in an area where it was necessary to meet overseas market access requirements. An accommodation was reached that avoided termination of the employment. He went on leave without pay, but returned to work on 18 April 2022. By then, he could resume work in compliance with the relaxation in the face mask directive in his working environment. If a similar accommodation had been afforded Ms Smyth in April 2022, she would have been able to return to work from 9 June 2022 when mask wearing became voluntary in her work environment.

[76] Ms Smyth is entitled to recover lost remuneration from 9 June 2022 until the date the investigation meeting commenced (22 August 2023), subject to the following. Loss should be calculated based on Ms Smyth's position as a L6 Amenities Team Supervisor working her standard roster including the winter roster, but without regard to extra hours that might have been worked in that period, given the uncertainty of such work. Any Fonterra superannuation contributions that would have been paid to Ms Smyth's account should be added. Ms Smyth's gross earnings from other employment between 9 June 2022 and 22 August 2023 should be deducted from that amount.

[77] Leave is reserved to either party if there is any disagreement about the calculations.

#### *Compensation*

[78] There is a claim for compensation of \$30,000.00 to remedy the humiliation, loss of dignity and injury to her feelings suffered by Ms Smyth as a result of her personal grievance.

[79] Ms Smyth's evidence gave evidence of the "huge shock", "suddenly" being jobless with no income, feeling "very alone and isolated", being "continually worried", finding it difficult to leave the house, losing her "confidence and joy for life", being "very tearful" and



“anxious” and the significant effect on her financial position now and likely in the future. There is no reason to doubt this evidence.

[80] Ms Smyth’s daughter and her pastoral support person also gave evidence that corroborates and adds to Ms Smyth’s description of the effects. I accept their evidence.

[81] I am referred to *Mikes Transport Warehouse Ltd v Vermuelen* and *Richora Group Ltd v Cheng*,<sup>5</sup> both as to applicable principles and quantum. Counsel for Fonterra also referred me to *Smith v Life to the Max Horowhenua Trust* in support of a submission that there is a need for moderation in awards.<sup>6</sup> I do not read *Mikes Transport Warehouse* or *Richora Group* as a departure from that principle. Rather, the latter two cases reflect a principled approach to the assessment of compensation taking account of the passage of time.

[82] There is no medical or other evidence of a diagnosis of a condition attributable to the personal grievance. However, the evidence establishes that Ms Smyth has been significantly affected by the personal grievance. An order for \$30,000.00 compensation would restore that loss.

[83] Ms Smyth did not contribute in a blameworthy manner to the circumstances giving rise to her personal grievance.

### **Summary and orders**

[84] Fonterra unjustifiably dismissed Ms Smyth. Ms Smyth has a personal grievance.

[85] To settle that personal grievance, Fonterra Co-Operative Group Limited is to pay Gillian Smyth within 28 days of this determination:

- (a) compensation of \$30,000.00 (without deduction); and
- (b) reimbursement of lost remuneration of an amount to be calculated as indicated.

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<sup>5</sup> *Mikes Transport Warehouse Ltd* [2021] NZEmpC 197; *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

<sup>6</sup> *Smith v Life to the Max Horowhenua Trust* [2010] NZEmpC 152.



[86] Leave is reserved for either party if they are not able to agree on the calculation of reimbursement.

[87] Costs are reserved. A claim for costs may be made by lodging and serving supporting submissions within 14 days of this determination. The other party may lodge and serve submissions in reply within a further 14 days. I will then determine costs, with regard to those submissions in the context of the Authority's approach to costs.



Philip Cheyne  
Member of the Employment Relations Authority

