

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 282/09  
5079174

BETWEEN                      ROBERT WALTER ADAMS  
   Applicant  
  
AND                                THE WAREHOUSE LIMITED  
   Respondent

Member of Authority:      Dzintra King  
  
Representatives:            Applicant in Person  
   Penny Swarbrick, Counsel for Respondent  
  
Investigation Meeting:     19 and 20 March 2009  
  
Submissions Received:    7 June 2009 from Respondent  
   14 July 2009 from Applicant  
  
Determination:              14 August 2009

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**DETERMINATION OF THE AUTHORITY**

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[1]    The applicant, Mr Robert Walter Adams, says he has been unjustifiably disadvantaged and unjustifiably dismissed by the respondent, The Warehouse Limited.

[2]    The issues for determination are:

- (a)    Whether there was an unjustified disadvantage in relation to events leading up to the applicant leaving the Whangaparoa store;
- (b)    Whether the applicant was constructively dismissed in July 2006 from the Whangaparoa store;
- (c)    Whether there was an unjustified disadvantage by failure to pay the applicant his bonus post his employment at the Whangaparoa store;

- (d) Whether there was an unjustified disadvantage as a result of telephone calls received since 13 January 2007;
- (e) Whether the applicant was constructively dismissed in March 2007 from the Glenfield store.

[3] The respondent says that the matters raised in paragraphs (a) to (c) were first raised by the applicant in January 2007. They are therefore outside the 90 day time limit and the applicant requires leave to bring the issues before the Authority as the respondent does not consent. No application for leave has been made.

### **Background**

[4] Mr Adams was first employed in February 2005 as a loss prevention officer working at the Whangaparoa store. He worked there until his resignation in July 2006. A loss prevention officer's duties include taking a leading role in in-store loss prevention initiatives.

[5] On 14 August 2006 Mr Adams took up a temporary role at the Newmarket store for approximately three months until 3 November. On 12 November 2006 he started a permanent role at Glenfield. He was a loss prevention officer at both stores.

[6] During his employment at the Whangaparoa store Mr Adams made a number of complaints about the store managers, including the store manager Mr Clayton Simmons. The company investigated the various issues that Mr Adams raised. As a result of the complaints made against Mr Simmons an investigation was undertaken and the Police were contacted.

[7] Mr Graham Zuill is the Managing Director of SLS Retail Control Limited, a private security company specialising in security and loss prevention. Prior to his employment there Mr Zuill was employed by the respondent for approximately five years, having commenced there in August 2002. While he was employed by the Warehouse he was the Regional Loss Prevention Manager for the Auckland and Northland areas. In that role he was responsible for 22 Warehouse stores and 14 Warehouse Stationery Limited stores. He reported to the National Loss Prevention Manager.

[8] The Whangaparoa store which was within Mr Zuill's area had two dedicated loss prevention people of whom Mr Adams was one.

[9] In May 2005 Mr Simmons was appointed to the position of Store Manager. Mr Adams raised concerns with Mr Zuill regarding Mr Simmons and two other managers, Mr Geoff Perrett and Mr Richard Pitout.

[10] Mr Zuill said that he learned that in late 2005 or early 2006 Mr Simmons was likely to be transferred to the Manukau store. Knowing that it was imminent he decided he would undertake an investigation once Mr Simmons was no longer in the Whangaparoa store. Mr Zuill discussed Mr Adams' concerns and the information he was providing to him with his Manager and colleague, Mr Kevin Booley, who was also a Loss Prevention Manager with the company. Once Mr Simmons had moved to the Manukau store in February 2006 Mr Dooley and Mr Zuill went to Whangaparoa to try to understand what had been going on. By that stage Mr Perrett had already left the company's employment in June 2005 so the only other person there who Mr Adams was concerned about was Mr Pitout.

[11] Mr Dooley interviewed Mr Adams. Mr Zuill said their inquiries revealed there was some substance to Mr Adams' concerns but they could not substantiate all of them. In consultation with his manager, Mr David Christian, and the Senior Operations Manager as well as the HR team the company decided to institute disciplinary proceedings regarding Mr Simmons. Mr Zuill said he understood a letter was written to Mr Simmons but the process was unable to proceed because Mr Simmons left the company's employment without notice.

[12] Mr Zuill said that based on the information he had he visited the Police on 2 May 2006 when he met with Constable Paul Moody. The Police reviewed the information that the company had and concluded that it was an employment related matter; and not a priority for them to proceed with a criminal prosecution. Mr Zuill said throughout the course of the inquiry he kept Mr Adams informed as to what was happening. However Mr Adams was, at the end of the matter, extremely vocal in his disappointment that Mr Simmons in particular had not been locked up. He continued to refer to the matter and his disappointment and would not let it go.

[13] Mr Zuill said that he learned in about July 2006 that Mr Adams had resigned. He recalled hearing that this was due to Mr Adams having had health issues that

required him to work shorter days in a job with less time on his feet. He then heard that Mr Adams was unemployed. At the time the Newmarket store was undergoing a refit and he contacted Mr Adams to see if he was looking for work. Mr Adams seemed very pleased to be asked and was keen to work in Newmarket. Mr Adams then commenced working at Newmarket on a temporary contract. From there he undertook a permanent role in Glenfield which Mr Zuill was instrumental in helping him to obtain as he knew there was an opportunity in Glenfield at the same time the Newmarket contract expired.

[14] Mr Zuill said that when Mr Adams was at Glenfield he complained to him that he thought it unfair that he had not received a bonus. He was annoyed that his service with the company at Whangaparoa did not count as continuous service for the purposes of the bonus scheme. Mr Zuill made representations to HR on Mr Adams' behalf that this service should count. The decision was out of his hands and not one in which he should really have been involved.

[15] Ultimately the decision was made that Mr Adams was not entitled to the bonus.

#### **Mr Adams' Complaint April 2006**

[16] Ms Kathy Kramer is employed as the National Operations Manager New Formats. She previously held the position of Regional Manager of Region 6. She has been with the company for eight years. Ms Kramer said that the first complaint she received from Mr Adams was a letter dated 12 April 2006 concerning the behaviour of two store managers, Mr Simmons and Mr Pitout. The letter made a number of allegations including that the store managers had been selling stock to staff, were intoxicated at work and generally behaving badly.

[17] Mr Adams asked to meet with Ms Kramer to discuss the situation. At that time Mr Simmons was no longer at the store having been moved to Manukau. She arranged the meeting with Mr Adams to discuss his concern, meeting with him for approximately two hours in May 2006. Mr Adams told her what he had witnessed occurring during the time when Mr Simmons was Manager of Whangaparoa. She could not comment on what had happened because she had not been involved in store operations during that time. She was however aware that an investigation had been carried out in relation to Mr Simmons.

[18] Mr Adams told Ms Kramer that he was unhappy in his current role and that the events had affected his job satisfaction and motivation. Ms Kramer expressed disappointment about that and asked Mr Adams what he wanted. Ms Kramer made a file note of this meeting. Mr Adams told her that the only way he would be happy again was if he felt that Mr Simmons and the other managers had been punished for what they had done. She told Mr Adams she would follow up on his concerns and find out whether a full investigation had been undertaken and what the result of that was.

[19] As part of the follow up she spoke to Mr Zuill and Mr Norman Fairweather who had undertaken the investigation into Mr Simmons and the other managers. She was told that a full investigation had occurred and that Mr Adams had been interviewed on a number of occasions and had been involved with providing evidence. She advised that the Police had been contacted and before a disciplinary process could be commenced Mr Simmons left the company.

[20] Ms Kramer went back to Mr Adams to let him know that she had followed up on his concerns and that a full investigation had been completed. She did not tell Mr Adams the actual outcome of the investigation because that was confidential. Mr Adams thanked her for getting back to him but said he was not satisfied with the outcome. She suggested that he needed to let the matter go and move forward and it was not healthy to carry on feeling how he did, the managers in question no longer worked at the Whangaparoa store and had nothing to do with Mr Adams or his work at the Warehouse. She heard nothing further from Mr Adams on the issue and as far as she was aware no one else had. She did not recall Mr Adams speaking to her about his resignation which was effective 11 July 2006. She said since it had been over two months since she had formally spoken to him regarding his previous concerns she did not connect his resignation with his complaint letter. Mr Adams contends he raised a personal grievance at this time.

### **Mr Adams' Complaint January 2007**

[21] On 16 January 2007 Ms Kramer saw Mr Adams at the Glenfield store whilst she was on a store visit. He told her he had dropped off a letter to Ms Gayle Theunissen, the Regional Assistant for Region 6, the day before and that he was meeting his lawyer later that week. He also talked about his wife's disciplinary meeting which was to take place the next day. His wife was also an employee of the

company at the Whangaparoa store. An issue had arisen with her conduct and a meeting was to be held but she resigned before the meeting could take place.

[22] Ms Kramer told Mr Adams she had not seen the letter yet but she would read it when she returned to the regional office later in the week. Mr Adams had written two letters. One raised several issues, some of which were new to Ms Kramer; the other was a covering letter to her. He claimed to have over twenty serious complaints and advised he would be contacting the press and media in regard to these.

[23] The first issue he noted was that he had not received his bonus and that as a result he felt he must go public about the last fifteen months of his employment with the Warehouse. Mr Adams had dropped off two envelopes addressed to Mr Stephen Tindall, founder of the company, and Mr Ian Morrice, the Chief Executive Officer, which Ms Kramer said she assumed contained copies of the letter she had received. She forwarded those documents by internal mail with her own covering email explaining the background to the letter and outlining the two issues. She copied Mr Fairweather, Ms Clokie and Ms Mary Marshall, the Employment Relations Manager, into that email in their capacities as the HR team.

[24] Ms Kramer met with Ms Marshall the following day. They decided that Ms Kramer should meet Mr Adams to discuss the letter and ascertain exactly what the complaints were that Mr Adams had so they could decide what to do. Ms Kramer telephoned the Glenfield store and left a message for Mr Adams to call her. He telephoned her at about 12.15pm on 17 January 2007. They spoke for approximately 45 minutes.

[25] She asked Mr Adams if he wanted to meet to discuss the concerns in his letter but he went into the issues in detail on the telephone. He spoke briefly about being dissatisfied with not receiving his bonus for the period up to July 2006. He said he was unhappy with Mr Fairweather because it was he who had decided that Mr Adams' bonus would not be paid. Ms Kramer explained to Mr Adams that that decision was in fact her's and it had been declined because Mr Adams had resigned from the Warehouse before the bonus became due. It was company policy that an employee must be employed at the time the bonus is due for the employee to be eligible. While Mr Adams later took up the temporary contract at Newmarket and was working there when the bonus would have become due, because he had resigned

and left the employ of the Warehouse he had not been continuously employed and was not eligible for the bonus. Temporary employees were not eligible for bonuses.

[26] Ms Kramer said Mr Adams then went on to talk about the previous managers at the Whangaparoa store. He spoke at length about other incidents that had occurred during his time at the Warehouse that had upset him including an incident where Mr Adams had approached a customer and this had resulted in a complaint being received from the customer. Mr Zuill dealt with it. Mr Adams was not disciplined for this incident.

[27] Mr Adams told Ms Kramer that he believed there was a management cover up. He was taking this cause as a champion not only for himself but for the other team members who had been adversely affected by Mr Simmons. She asked Mr Adams whether he had spoken to these other individuals about the matter and whether they wanted him to represent them. He said he didn't care, he was doing it anyway and he would have them all subpoenaed to tell the truth. Mr Adams said he had sent letters to all the media in the hope that Mr Tindall or Mr Morrice would front up to television to discuss the issues with him. He said he was going to visit the parents of a 16 year old girl that Mr Simmons had been rumoured to be in a relationship with while working at the Whangaparoa store.

[28] He also advised Ms Kramer that if he was not going to be heard on TV then he was prepared to do what was necessary to make sure his story was told, including standing outside the front of the store with a megaphone to tell the public what was going on. He felt he was due compensation for the manner in which he had been treated when Mr Simmons was in the store; and not receiving his bonus was the last straw. He now had a large legal bill to pay and he felt the Warehouse owed him. Ms Kramer said they agreed there was no point in meeting and she would await contact from his lawyer. After getting off the phone she made a note of the phone call and the telephoned Ms Marshall and told her of the recent developments.

### **Mr Zuill's Visit**

[29] On 19 January Mr Adams telephoned Ms Kramer to tell her that he was standing down from his job at the Glenfield store as he needed to be at home with his wife. Mr Adams disputes this and said he spoke to Ms Kramer not about his wife but about Mr Zuill. Mr Adams told her that Mr Zuill had telephoned him and visited him

at home the previous afternoon. Ms Kramer was unaware that Mr Zuill had made this contact. Mr Adams said Mr Zuill had come around to find out what Mr Adams was following up on, that Mr Zuill was abusive and had used offensive language. Mr Adams also confirmed that the Warehouse would be receiving a letter from his lawyer that afternoon.

[30] After speaking with Mr Adams she rang Mr Zuill to talk to him about the visit. Mr Zuill said that he had initially telephoned Mr Adams and subsequently called around to his house to finish the conversation. He had done this with the best of intentions to try and understand why Mr Adams wanted to reopen the Simmons investigation and to see whether the matter could be resolved without lawyers.

[31] Ms Kramer told Mr Zuill about the allegations of swearing. He denied using such language. Later that afternoon she received a letter from Mr Mark Ryan, at that stage Mr Adams' lawyer, advising that Mr Adams was raising an employment relationship problem and requesting Mr Adams' personal file.

[32] Mr Zuill said he became involved in the matter when Ms Kramer contacted him to tell him that Mr Adams had written letters to senior managers. She said she would be dealing with it as a Regional Manager and that Ms Marshall the Senior HR person would also be involved. Mr Zuill said he was extremely concerned when he heard this and he wanted to do something to prevent Mr Adams from undertaking a course of action which was obviously not in his best interests or those of the company. Because of his long association with Mr Adams and the fact he felt they had a reasonably close relationship he decided he would try and speak to him personally to see if he could persuade him to stop his protest or somehow contain it. He could see that if it was dealt with by very senior managers such as Ms Kramer Mr Adams might quickly escalate the issue out of all proportion. Mr Zuill felt Mr Adams was more likely to respond positively if he became involved.

[33] Mr Zuill said when he telephoned Mr Adams he told him he was aware he intended to raise the Simmons issue again and he was disappointed that Mr Adams felt it necessary to revisit the investigation and that Mr Zuill felt it was a direct slight on his management and investigation skills.

[34] Mr Adams told him he did not accept the decision and final outcome because he had not had any involvement and that he was also annoyed about the outcome of

the French customer complaint. Mr Zuill said that he explained that both decisions were for the benefit of the company and that they were not Mr Adams' responsibility. Mr Adams felt he should have been involved in the process and that Mr Zuill had made decisions in a self interested manner. He then said he was going for constructive dismissal for his time at Whangaparoa.

[35] By the end of the phone conversation Mr Zuill said he wanted more of a personal touch and thought that a face to face discussion would be preferable to a telephone discussion. He therefore went to his home which he had visited on a number of previous occasions in the course of work.

[36] He said he considered it appropriate to contact Mr Adams on a personal basis because he had confided in him about personal problems, his wife's disability, his previous marriages and his relationship with his children. Mr Zuill said he wanted to help Mr Adams as he had done in the past.

[37] Mr Adams said that when Mr Zuill phoned him he started to abuse him and the abuse carried on until the phone went flat. He could not get a word in. Mr Adams suggested they go next door and have a drink and Mr Zuill said "*not with a fucking arsehole like you.*" Mr Zuill said that he did not abuse Mr Adams, that he did not use the word "*fuck,*" he did not accuse him of selling him out for thirty pieces of silver or say that he could cost him his job

[38] Mr Zuill said he would describe his approach to Mr Adams as being firm and to the point. He said things like "*come on Bob what the hell do you think you are playing at, what is all this about wanting to go on TV?*" Mr Zuill said that throughout the conversation both on the telephone and at the home of Mr Adams, Mr Adams was very dogmatic about his view that he should have been involved with decisions regarding Mr Simmons and with the customer who had complained about him. He felt very aggrieved that other people had reached conclusions about matters which were in fact were to do with him. He did not appear to appreciate the way these things were dealt with in a company the size of the Warehouse.

[39] He was also very irritated about his service not being treated as continuous for the purpose of obtaining a bonus. Mr Zuill said he was at Mr Adams' house for no more than 15 minutes. By the end of that time he realised Mr Adams was taking absolutely no notice of anything that was said and made his farewells and left.

[40] It makes very little sense for Mr Zuill to have abused Mr Adams either on the telephone or in person if his intention was to dissuade him from a course of action.

### **Resignation From Whangaparoa**

[41] On 23 January 2007 Ms Kramer received a telephone call from Ms Sandy Sharma, Team Leader at the Glenfield store. Ms Sharma told Ms Kramer she had been speaking with Mr Adams and asked him whether or not he was coming back to work. Ms Kramer rang Mr Adams to clarify the position as when he had first talked to her on the 19th he had said the reason for his standing down was to look after his wife and that he would advise in a week's time whether he was returning to work. Mr Adams told her that as a result of Mr Zuill's visit he believed his position was untenable and he would be standing indefinitely until this was resolved. This was not the reason he had initially given for standing down.

[42] On 5 February 2007 Ms Kramer received a letter from Mr Adams. This advised he would be protesting outside the Whangaparoa store. A copy of the handout he proposed to hand out was not attached to the letter, but Mr Adams had given a copy to the current Loss Prevention Officer and she had forwarded it to Ms Kramer. Ms Kramer contacted Ms Marshall. At that stage the company's lawyers, Swarbrick Beck, became involved and communicated with Mr Ryan. Mr Adams did not stage a protest.

[43] A mediation was attended on 2 March but no settlement was reached. Mr Adams formally resigned on 5 March 2007.

### **90 Day Issue**

[44] Section 114 Employment Relations Act 2000 requires an employee to raise any personal grievance within the period of 90 days beginning with the date on which the incident alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later. A personal grievance is raised with an employer as soon as the employee has made the employer aware that the employee alleges a personal grievance which the employer must address.

[45] Mr Adams said that he had raised the personal grievance when he brought his concerns to the attention of Ms Kramer in April 2006. Mr Adams did not say he had been disadvantaged by the actions of Whangaparoa managers but was concerned that

the Warehouse had not dealt with matters in a manner Mr Adams believed appropriate professionally. The reason that he brought them to Ms Kramer's attention was because he was unhappy that the store managers had not, to his knowledge, faced disciplinary and/or criminal consequences for their actions. The Warehouse could not reasonably infer from Mr Adams' comments that he was raising a personal grievance.

[46] The Whangaparoa issues first arose in the context of a personal grievance in January 2007 which was well outside the 90 day limit.

[47] I am aware that it is the issues regarding Mr Simmons and others while Mr Adams was employed at Whangaparoa that are of pre-eminent concern to him. However, because personal grievances were not raised at the time or notified within the 90 day period I am unable to deal with these issues.

### **Bonus Issue**

[48] Mr Adams was not paid a bonus because he had not been in continuous employment at the time the bonus became payable and was therefore not eligible to receive this discretionary payment.

### **Unjustified Disadvantage – January 2007**

[49] Mr Adams says he has suffered a disadvantage due to Mr Zuill's behaviour in January 2007 during the telephone conversation and subsequent visit to his home.

[50] In order for there to be a disadvantage, three elements must be satisfied:

- (i) That there was an action by the employer;
- (ii) That the action was unjustifiable; and
- (iii) That that unjustifiable action affected one or more conditions of the employee's employment to the employee's disadvantage.

[51] The respondent says that the action was not that of the employer. Mr Zuill was not acting as or with the authority of the employer. Mr Adams did not report to Mr Zuill. Mr Zuill was acting as a concerned colleague and acquaintance of Mr Adams. He had an ongoing relationship with Mr Adams and he had assisted Mr Adams with personal matters, including making representations to help Mr Adams

find employment by recommending him to receive a pay rise and bonus and assisting him with family matters. Those matters were accepted by Mr Adams at the hearing.

[52] The conversation took place outside working hours and outside the work place between two colleagues. Mr Adams says that Mr Zuill should have been suspended while his allegations were being investigated. The respondent says that even if Mr Zuill's actions amount to actions of the employer, the mere fact that he contacted Mr Adams and attempted to persuade him from going to the public arena with adverse comments about the Warehouse and its employees is not unjustified. Mr Zuill had been to Mr Adams' house previously and had had many communications with him outside of normal working hours.

[53] It is clear from the documents I have seen and the testimony of Mr Adams that he had developed very firm and longstanding views about the illegitimacy and unsatisfactoriness of what had occurred regarding Mr Simmons and the two other managers at the Warehouse. Mr Adams did not appear able to accept that once he had brought matters of concern to his employer's attention it was then for the employer to deal with the matter in the manner in which the employer thought appropriate for that particular set of circumstances.

[54] I say this because I accept the respondent's submission that Mr Adams' ongoing concern about what had happened at Whangaparoa and his belief that the company had not dealt with those matters in all probability tainted his ability to give objective factual evidence about anything to do with what had happened at Whangaparoa, and that included his recollection of Mr Zuill's visit to his home. Mr Zuill made contemporaneous notes of his discussions with Mr Adams which were produced in evidence.

[55] I think it more likely that not that Mr Adams perceived any attempt to dissuade him from his planned course of action as highly negative and consequently interpreted Mr Zuill's behaviour as abusive. I accept Mr Zuill's account of his dealings with Mr Adams.

[56] Mr Adams has to show that as a result of the employer's unjustified action, one or more of the conditions of his employment has been affected to his disadvantage. There is no evidence of how he has been disadvantaged by the alleged unjustified action. Despite there being considerable communication between Mr

Adams, Mr Ryan and the Warehouse in the period 18 January to March, at no stage was it asserted that Mr Zuill's visit caused him any disadvantage in his employment. That correspondence referred to the Whangaparoa issues. Mr Zuill's visit was not referred to until Mr Ryan's letter of 7 March which was nearly two months after the incident.

[57] There was no unjustified action and no disadvantage.

### **Constructive Dismissal – Glenfield Store – March 2007**

[58] There are three categories of circumstance which amount to constructive dismissal. They are set out in *Auckland Shop Employees Union v. Woolworths NZ Limited* [1985] 2 NZLR 372:

- (i) An employer gives an employee a choice between resigning or being dismissed;
- (ii) An employer has followed a course of action with the deliberate and dominant purpose of coercing an employee to resign; or
- (iii) A breach of duty by the employer causing the employee to resign.

[59] It appears that Mr Adams' claim falls within the third category.

[60] The elements that must be satisfied are set out in *Auckland Electric Power Board v. Auckland Provincial District Local Authority Union of Workers* [1994] 2 NZLR 415, namely:

- (i) there is a breach of duty;
- (ii) the breach of duty caused the employee to resign;
- (iii) the breach must be sufficiently serious to warrant a termination;
- (iv) to be sufficiently serious it must be reasonably foreseeable by the employer that the employee would not continue working under those circumstances.

**Breach of Duty**

[61] Mr Adams claimed in his letter sent on 7 March that his resignation was the result of Mr Zuill's behaviour in January 2007. On 7 March Mr Adams had not returned to work since he stood himself down in January 2007. He had told Ms Kramer on 23 January that he was standing down because of his wife's health. I acknowledge that Mr Adams denied that he had ever mentioned his wife but I accept Ms Kramer's contrary evidence.

[62] The parties had attended mediation on 2 March. Mr Adams had not identified what if any action or remedy he expected the Warehouse to take in the circumstances.

[63] The evidence does not establish that Mr Zuill's visit caused the resignation which occurred several weeks after the visit complained of. Mr Adams had previously raised several other reasons why he felt it necessary to stand down, which included his wife's health and an untenable work environment. I accept the respondent's submissions that the untenable work environment clearly related to events at the Whangaparoa store in 2005 – 2006.

[64] During his stand down he attempted to stage a protest outside the respondent's store. It was his intention to hand out a leaflet. The focus of this leaflet was on taking on the Warehouse and described the complaints Mr Adams had made in 2006 against the store managers. It was written after Mr Zuill's visit to which there is only passing reference.

[65] Mr Adams resigned because of his personal feelings regarding the appropriate disciplinary action that Mr Simmons should have received, which was borne out at the hearing by his statement that his concerns would have been addressed had the Whangaparoa managers been dismissed and criminal action taken against them.

[66] Mr Adams' fixation on what had happened at Whangaparoa is evident in the list of witnesses to whom he asked the Authority to issue summonses. The twenty people on the list all had to do with the events that had happened at Whangaparoa. Mr Adams wrote to the Authority stating:

*Please send copy of witnesses required to attend and issue appropriate witness summons I will write questions to be directed at each witness. This time I want things done properly. This has been the most traumatic time of*

*my life. [My emphasis] Please once again I request copy of hearing conducted into Clayton Symonds. I will prove in hearing this has been requested before.*

[67] In his witness statement Mr Adams said he had been constructively dismissed “*by way of intimidation abuse and underhand conduct by a variety of management.*”

[68] In his evidence Mr Adams said that when he complained to Mr Zuill about Mr Simmons, Mr Zuill called him outside and told him “*to keep his fucking nose out of it – managers were his business.*” However after this Mr Zuill helped Mr Adams obtain employment both at Newmarket and at Glenfield.

[69] Mr Adams in his evidence said “*I believe Zuill was setting me up for dismissal with regard to French lady where Graham falsified a conversation between myself and himself surprise surprise no signed by me but there for the tribunal to see.*”

[70] Mr Adams was not even disciplined for this incident. The major focus of Mr Adams’ evidence is on what happened at Whangaparoa and he states “*all witnesses named to testify to what happened at Warehouse Whangaparoa.*”

[71] The letter Mr Adams wrote to Ms Kramer on 13 January said “*I am writing this letter after speaking with Norman of Human Resources. I am told the Warehouse will not pay my bonus as it might set a precedent. All I ever wanted was the money I worked so hard for.*” Much of this letter deals with what happened during his period at Whangaparoa and the problems with Mr Simmons. Also in this letter he says “*I have the highest regard for Graham Zuill*”. Of Mr Simmons he said “*it makes me feel sick that bastard got away without any discipline or court case.*” The entirety of this letter deals with Whangaparoa.

[72] Mr Adams was not constructively dismissed.

[73] Mr Adams does not have a personal grievance and was not entitled to a bonus.

**Costs**

[74] If the parties are unable to resolve the issue of costs the respondent should file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of the receipt of the respondent's memorandum.

Dzintra King  
Member of the Employment Relations Authority