

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 42
5313459

BETWEEN LYNETTE BAINBRIDGE
 Applicant

AND SAFE AIR LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Greg Lloyd, Counsel for Applicant
 Tim Cleary, Counsel for Respondent

Investigation Meeting: 26 October 2011 at Blenheim

Determination: 7 March 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Bainbridge) claims that she has suffered a personal grievance by reason of having been unjustifiably dismissed from her position for redundancy. Furthermore, Ms Bainbridge claims that she was the most qualified person for the remaining role after the restructure, that the decisions made by the respondent employer (Safe) were in the hands of managers who were prejudiced against her and that she was not adequately consulted in respect of Safe's redundancies. She also claims breaches of good faith and a grievance by disadvantage.

[2] Safe says that it undertook a major reorganisation of its business, that Ms Bainbridge was one of a large number of employees who were affected by the restructure and that her position disappeared in the reorganisation. A single position in Ms Bainbridge's subject area of Data Integrity Clerk replaced two previous positions, and the two incumbents competed for the one job. Ms Bainbridge was unsuccessful and Safe says that the decision making-process which resulted in Ms Bainbridge exiting the organisation, was fair and just and that throughout the

process Ms Bainbridge had had proper opportunities to be heard and had been properly consulted on all occasions.

[3] In February 2010, Safe announced a restructure. This restructure became necessary because of significant financial losses which the company was suffering as a consequence of the indefinite and continuing delay in the commencement of a new contract. The thrust of the proposal communicated to staff in February 2010 was that over 100 positions could potentially disappear.

[4] At all times, Ms Bainbridge was a member of the New Zealand Amalgamated Engineering Printing and Manufacturing Union Inc (the Union), and it follows that the terms and conditions of her employment were covered by a collective agreement between the Union and Safe. In terms of the agreement, the relevant schedule on redundancy sets out Safe's obligations in respect of consultation. As a consequence, Safe, by common consent, engaged extensively in consultation with the Union over a period of some five weeks, undertaking weekly meetings with the Union as a particular means of fulfilling its obligations. At that weekly meeting, Union representatives were able to ask Safe questions and information previously sought could be provided.

[5] In addition, as part of the restructuring process, affected staff were all given fact packs and a letter which clearly sets out the process to be undertaken. In addition, the letter makes clear that consultation with employees is very much a part of the process. The relevant provisions are as follows:

I would emphasise that this structure (the new proposed structure) is a proposal and may change following consultation with you and other employees who may also be affected by the proposal and their representatives.

I would therefore welcome your feedback on the new structure as it affects you or generally by 5pm Friday 19 March 2010. Please forward your feedback to Katie McNally (HR Manager, Safe Air) either directly or via your representative.

[6] In fact, Wolfgang Waechter who was the supply controller and therefore Ms Bainbridge's immediate superior, made representations on behalf of both Data Integrity Clerks and his own position. He suggested that rather than reduce the two clerical positions to one, that both be retained but each work reduced hours. As a consequence of that and other submissions around this area, there was a second proposal put out on 31 March 2010 and Ms Bainbridge made her own submissions

about that directly. This second round of consultation concluded with Safe's decision that there ought to be only one full time position as Data Integrity Clerk. In the new structure, the position was to be retitled Procurement Administrator.

[7] Then, Safe proceeded to develop the criteria for each role in the new structure. Broadly, trade skills were given a 60% weighting and interpersonal skills a 40% weighting. Applicants for the various roles were rated on a score of 0-9 on a matrix of desired skills.

[8] Ms Bainbridge was interviewed for the new role of Procurement Administrator along with the incumbent of the other Data Integrity Clerk position. Put shortly, Ms Bainbridge scored poorly against the other applicant, notwithstanding Ms Bainbridge's greater experience.

[9] In the result, no other positions being available to Ms Bainbridge, she was paid redundancy compensation on the termination of her employment.

Issues

[10] Ms Bainbridge raises a number of issues concerning Safe's decision, first to disestablish the two roles and then to appoint her colleague to the single role that replaced the two Data Integrity Clerk positions in the earlier structure. It will be convenient if the Authority considers the following questions:

- (a) Was Ms Bainbridge ever actually a Data Integrity Clerk;
- (b) Was the assessment of Ms Bainbridge prejudiced; and
- (c) Was the decision not to appoint Ms Bainbridge unjust?

Was Ms Bainbridge ever actually a Data Integrity Clerk?

[11] This curious issue arises because Ms Bainbridge maintained in her evidence before the Authority that she was not employed as a Data Integrity Clerk at all but was actually employed in another role. She told the Authority that she was initially employed by Safe as a Supply Clerk and her job description changed a number of times during the eight years of her employment but in 2005 she says she was appointed to a role as Logistics Administration Clerk and she made her position on that subject quite clear to the Authority:

As far as I am concerned I remained in that role until my dismissal even though I was supposedly in a new role called Data Integrity Clerk. I have never had that role confirmed and I was never interviewed for the job even. But I was assessed for that role for the redundancy process even though the new job that was being created had again changed to Procurement Administrator.

[12] Evidence given for Safe denied any confusion about the role that Ms Bainbridge was undertaking in the business. Both the managers who appeared to give evidence in the Authority said that the data integrity structure had started in early 2008 and comprised a team of three people led by Mr Waechter and with two Data Integrity Clerks reporting to him, one of whom was Ms Bainbridge.

[13] The Authority is satisfied that the issue of the title of Ms Bainbridge's role is neither here nor there; as a matter of fact, the Authority is satisfied that Ms Bainbridge referred to herself by both titles and there is no evidence that she was picked up by Safe for using the inappropriate one. The important issue, from the Authority's perspective, is the content of the role rather than the name of it.

[14] In that latter respect, Ms Bainbridge's evidence is full of complaints over a reasonable period of time prior to the restructure, that she was being deprived of the opportunity to perform work at an appropriate level or at least at the level that the other Data Integrity Clerk was performing at. The evidence for this is not just Ms Bainbridge's *viva voce* evidence but also a long email trail in which she has endeavoured to communicate her concerns, both to Safe's management and to her Union. The nub of her conclusion (which the Authority, based on the email trail, is inclined to accept), is that by virtue of the various changes that were made to the content of her role in the two year period leading up to the restructure, she was deprived of the relevant skill set (or some of it) such that when she came to compete for the single new role in the new structure, she was at a disadvantage.

[15] Safe says, in response, that as it never accepted Ms Bainbridge's various complaints, there is in effect no ground for concern. But that sets the bar too high in the Authority's view. This employee was clearly concerned enough about the content of her role to raise it regularly with various officials of her Union and with various officers of the employer, including the general manager of Safe.

[16] The Authority is concerned that Ms Bainbridge has properly raised issues around the content of her role over a lengthy period of time, particularly in respect of

the range of work that she ought to be engaged in which would, of itself, develop the skill set required of the role of Data Integrity Clerk. Because those concerns were never satisfactorily addressed in the Authority's view, there remains a residual concern that when the restructure took effect and the competitive process required Ms Bainbridge to compete for the single job with one other incumbent, by virtue of the history of her work at Safe, she was disadvantaged because the other applicant had had more current experience in developing the skill set for the new role than Ms Bainbridge had. Indeed, there has to be a sense that the selection was not on a level playing field.

[17] After all, this was not a situation where Ms Bainbridge had come from another part of the business and was competing for a role with which she was not familiar. This was a situation where two incumbents were competing for a single role in the restructured organisation, but on the Authority's finding, although Ms Bainbridge was an incumbent, she was an incumbent with a significant disadvantage.

Was the assessment of Ms Bainbridge prejudiced?

[18] Ms Bainbridge argues that her assessment was prejudiced because she had complained regularly about being bullied by her supervisors and, while there was never any acceptance by Safe that bullying had in fact taken place (indeed, the evidence of the two Safe witnesses before the Authority was that they knew nothing about the bullying allegation), the fact is that Ms Bainbridge had been complaining about being bullied for years. She had complained to various of her managers, again including Ms Deacon, the general manager, but as with the complaints about the content of her role, nothing was actually done.

[19] Safe says that this is because the bullying was a figment of Ms Bainbridge's imagination and that it could not do anything about something that did not exist. But if that is so, there is a lot of evidence before the Authority that a number of people believed that there was bullying of Ms Bainbridge (and of others) in the Safe workplace. In particular, the Authority feels obliged to take seriously the evidence of two witnesses for Ms Bainbridge, both of whom were, at the relevant time, officials of the Union. One of those officials, James Anderson, made the categorical statement (which he stood by under cross-examination), that a particular manager was well known for being a bully and that, contrary to Safe's earlier contention, that same manager had been involved in the assessment of Ms Bainbridge for redundancy

purposes. Another former official, Leslie Wilson, indicated that Ms Bainbridge felt she was “*being marginalised*” by her immediate superiors and that she:

... did not know what her role was, who she was supposed to be reporting to and even if she was still a Logistics Administrator or a newly created Data Integrity Clerk.. [Ms Bainbridge] felt she was having jobs taken off her and given to [others] ... basically she was left out in the cold and eventually felt she barely had any work to do. [Ms Bainbridge] did talk to me about these concerns and I tried to take it up with the company. ... As far as I could tell nothing was ever done about it ... before she was made redundant. Given that [Ms Bainbridge] had spent the previous two years complaining about the way she was being treated ... it is just completely inappropriate to then let those same people [the ones complained about] assess her for the purposes of redundancy. In my view that is nothing more than a continuation of the terrible bullying behaviour [Ms Bainbridge] had consistently been subjected to and Safe Air management need to stand up and take responsibility for their action, or more to the point, inaction.

[20] Those observations are trenchant criticisms of the situation Ms Bainbridge found herself in prior to the restructure. The Authority cannot ignore such obvious concern from mature and experienced Union officials. The Authority is not persuaded that Safe’s failure to identify bullying is a conclusive stay. The extent of the Union’s concern about this situation suggests that proper inquiries may not have been made by Safe and, for present purposes, raise the spectre of a prejudicial assessment of Ms Bainbridge.

[21] Safe initially tried to deflect attention from this aspect by alleging that the assessment of Ms Bainbridge was not done by the particular manager who she most frequently alleged had bullied her but, despite maintaining that stance in the statement in reply and in the evidence filed in the Authority on the day of the investigation meeting, Safe had to confirm (as the Union’s witnesses had always maintained) that the manager particularly complained about by Ms Bainbridge was part of the assessment process.

[22] The Authority’s view is that the congregation of the role confusion which Ms Bainbridge appears to have suffered (and the concomitant failures to give her the range of duties which the other incumbent had been given), together with assessment of Ms Bainbridge by managers who there is significant evidence regarded Ms Bainbridge uncharitably, raises the prospect of a partial assessment of Ms Bainbridge for the purposes of redundancy selection. In the Authority’s opinion, the apparent absence of a level playing field creates the scent of unfairness. Indeed, it

almost appears that Safe itself was anxious about Ms Bainbridge's rating score because her assessment was put out to two other managers who knew her to validate the initial number.

[23] While the issue of which managers performed the assessment is itself important and goes to the issue of whether the assessor comes to the task with an unsullied view of the assessee, the more important aspect, in the Authority's view, is Ms Bainbridge's apparent lack of access to the range of work which her competitor did have access to. Ms Bainbridge complained about that situation in her email traffic, both with Safe and with her Union, pointing out that she was not necessarily privy to the range of tasks and duties which her compatriot was privy to. That of course is of no consequence while the structure of the workplace is unchanged but as soon as Safe made the decision to reduce two positions down to one, it needed in good faith to ensure that the selection process did not automatically favour one of the incumbents over the other. In the Authority's opinion, the combination of the involvement of managers who had had issues with Ms Bainbridge in the past together with the more important factor that Ms Bainbridge appears to have been deprived of the range of work that was available to her colleague (and therefore the skill base associated with that range of work), puts the whole process in jeopardy.

[24] Safe maintains that there was no difference in the range of work being performed by the two incumbents and that Ms Bainbridge was mistaken in her allegations that she was being deprived of work that was available to the other incumbent. But there is no evidence before the Authority to suggest that Safe addressed this concern which Ms Bainbridge raised more than once, and in fact, the evidence suggests that Ms Bainbridge's claim that the Data Integrity Clerk role was never actually formalised in 2008 when it was created, has some force and effect. For example, Ms Bainbridge maintained on oath that she was never interviewed for the role of Data Integrity Clerk although her colleague was, and Ms Bainbridge also gave evidence that her observations about the Data Integrity Clerk structure created in 2008, were never responded to by Safe.

[25] Ms Bainbridge told the Authority that in the eight years she had worked at Safe, her job had changed on previous occasions but there had always been a process and a degree of formality. In particular, she referred to receiving a letter from Safe on previous occasions, setting out the changes to her role and identifying the name of the

new position. She says “*this time I got nothing. I had (Mr Urquhart and (Mr Waechter) telling me that I was the Data Integrity Clerk and answerable to them and I had the HR manager telling me nothing had been confirmed*”.

[26] In fact, that seems to be a reasonably accurate assessment of the position because Mr Sutherland, a manager with Safe who gave evidence at the investigation meeting, confirmed Ms Bainbridge’s evidence that the job description for the position of Data Integrity Clerk had not been finalised. He says in his brief of evidence:

... it was highlighted to me that the job description was still in draft and so I was asked to review it along with the incumbents and the Union delegates.

[27] That admission seems to the Authority to give credence to Ms Bainbridge’s view that the creation of the data integrity role in 2008 had not been finalised and, if that is so, it seems to the Authority more rather than less likely that Ms Bainbridge’s various complaints about the nature and extent of the role she was being asked to perform, has some credence.

[28] The view that Ms Bainbridge’s tasks were fundamentally different from those asked of the other incumbent is further supported by the fact that until about a year before the 2010 restructure, Ms Bainbridge was not co-located with the other incumbent and Mr Waechter. Indeed, she worked in another part of the campus altogether and on both her evidence and the evidence of Safe, she had a materially different role. It seems to follow that for only the last year or thereabouts before the 2010 restructure could it be said that Ms Bainbridge was doing work that, in terms of its range and span, was anything like the work that was performed by the other incumbent. In the Authority’s view, that must mean that, when it came to selection time, Ms Bainbridge would have had less experience at the range of work for the subject position than her competitor, particularly considering the various email complaints from Ms Bainbridge about being deprived of the opportunity to use various screens in the computer system and her requests to be trained in aspects of the role with which she was not familiar.

Was the decision not to appoint Ms Bainbridge unjust?

[29] The Authority’s conclusion is that the decision not to appoint Ms Bainbridge was unjust and was not the action of a good and fair employer. That conclusion is based on the observations already made in this determination about the deficiencies in

the raw assessment process as it applied to Ms Bainbridge, together with the comments which follow about the consultation process.

[30] The Authority is persuaded by Ms Bainbridge's argument in respect of consultation which essentially proceeds on the footing that, while Safe consulted adequately with the Union at what might be called a "macro" level, it also had obligations to consult at a micro level with the affected staff and it did not do that.

[31] The Authority considers that Safe has failed to fulfil its obligations to consult in terms of the applicable law. In that regard then, the specific submission made by Safe that it had complied with the requirements of the law as set out in *Simpsons Farms Ltd v. Aberhart* [2006] ERNZ 825, is not accepted. Looking first at the applicable employment agreement, the Authority is satisfied that there is no particular obligation set out in the employment agreement that requires consultation with individuals directly. The references are throughout about consultation with the Union on behalf of employees. Clearly, the Union is seen as a conduit through which the employer conducts discussions that affect the employee. But it is the content of the consultation, not the party it is directed to, that is in issue. Consultation which is directed through the Union may still be inadequate if it does not cover the range and extent of material which the law requires.

[32] What happened in a practical sense was that the structure of the process was agreed between the Union and Safe. It may be that the word "agreed" puts it too strongly; the Union's witnesses were at pains to point out that at a number of points in the discussion, their agreement was not a recognition of being happy with the situation but rather an understanding and acceptance that the process proposed by Safe was fair and just.

[33] It is common ground that at no stage were individual employees taken aside by Safe and given access to their matrix scores. Nor was there any point at which affected staff were advised that they were, as it were, "in the frame" to be made redundant. What happened was simply that the employer followed the process that it had got the Union to accept, from beginning to end, and at the end certain employees (including Ms Bainbridge) were dismissed for redundancy.

[34] Section 4(1A)(c) of the Act requires that, in order for the duty of good faith to be satisfied, the employer must provide to the employee who is affected by a decision on

the continuation of their employment, access to information about the decision and an opportunity to comment before the decision is made. It seems to the Authority axiomatic that Safe's failure to give Ms Bainbridge the opportunity to review her score once the results of the matrix emerged and to comment on her then likely redundancy, fails to meet the obligation of good faith set out in the Act. It follows from the foregoing conclusion that Safe is in breach of its good faith obligation in respect of its failure to adequately consult with Ms Bainbridge herself.

[35] To reach this conclusion the Authority has considered the decision of the present Chief Judge in *Simpson's Farms v. Aberhart* [2006] ERNZ 825 and the decision of the former Chief Judge in *Cammish v. Parliamentary Service* [1996] 1 ERNZ 404. In particular, the Authority has reflected on these words from Chief Judge Colgan in *Simpson's Farms*:

Genuine efforts must be made to accommodate the views of the employees. It follows from consultation that there should be a tendency to at least seek consensus. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done.

[36] If, as in the present case, there is in fact no consultation at all about the actual selection of individual employees for redundancy, then it seems to the Authority that it cannot be said that Safe has "*sought consensus*" or has "*listened to what others have to say*" or "*considered their responses*" when the consultation that has taken place has been exclusively about the process that the employer will adopt and not about the identification of the individuals who are adversely affected by the decision. The Authority considers that the whole point of the law in this area is to provide some reasonable opportunity for the people adversely affected by a restructuring process to be involved in it and to comment on it before the axe falls. In Ms Bainbridge's case, that simply did not happen, either directly with her or indeed via her union. The only consultation that took place was, as the Authority has described, consultation at the macro level around the process that the employer proposed to use. The Authority is satisfied that if there is no consultation around who is actually affected by a restructuring proposal, then it is not, in truth, a "*genuine effort ... to accommodate the views of the employees ...*".

[37] What is more, the failure of the employer to meet the test imposed by the law by s.4(1A) (c) of the Act is, in the Authority's view fatal because, as the Chief Judge remarked in *Simpson's Farms*:

A fair and reasonable employer must, if challenged, be able to establish that he or she or it has complied with the statutory obligations of good faith dealing in s4 including as to consultation because a fair and reasonable employer will comply with the law.

The Court held that the statutory obligations of good faith must *inform* the question of justification under s103A of the Act.

[38] It is interesting that while the employer refused to engage with Ms Bainbridge about her matrix score before the termination of the employment, it was at least consistent and refused to engage with Ms Bainbridge's representatives after the decision was made. Mr Alan Clarence, an organiser for the Union, happened to be on site the day that the redundancies were declared. He was not involved in the instant matter but was on site attending to other Union business. When Ms Bainbridge came to see him on that day, he undertook to try to get the results of Ms Bainbridge's matrix scores from the employer. Ms Bainbridge had tried unsuccessfully to get them from the employer and Mr Clarence was equally unsuccessful. His evidence to the Authority was that there was an intemperate exchange between himself and the HR manager for Safe in which she absolutely refused to reveal the scores.

[39] Safe makes the point in its closing submissions that because Ms Bainbridge never asked for the scores prior to the termination of the employment, there was no breach. It is suggested that Ms Bainbridge knew the process and knew when the scores would be available, but took no steps to establish them. The issue here is on whom the onus should lie. Safe refers the Authority to an earlier decision *Waines v. Karamea Information & Resource Centre* [2011] NZERA Christchurch 143 as evidence for the view that an employee who does not ask for information affecting them cannot then complain if the employer does not provide it. But *Waines* is a case of dismissal for cause. The issue in *Waines* was access to video cassette recordings allegedly showing irregularities in respect of cash handling. Ms Waines did not seek to see that material and then protested it after the dismissal. What is important about the *Waines* decision is that the Authority concluded it could not assess the employer's conduct based on what might have been but rather on the basis of what was.

[40] This is not that situation. Here, the Authority is satisfied that, in order to fulfil its statutory obligations of good faith, Safe must be “*open and communicative*” in its engagement with its employees and, in the particular circumstances of a redundancy, where the employer has the dominant position in terms of the possession of relevant information, the Authority is satisfied that the employer ought to at least offer the opportunity for employees to engage with it and to comment on the matrix scores before a final decision is taken.

[41] In that regard also, the Authority does not accept the logic advanced by Safe that the matrix score represents a final decision rather than a proposal. It is, the Authority considers, actually neither, but it is more like a proposal than a final decision. This is confirmed by the fact that Safe clearly was anxious about Ms Bainbridge’s score because it put the score out to two other managers to audit the results. In the Authority’s opinion, what they should have done was put the score out to her as well and invite her comments before it took the matter any further. The Authority’s conclusion then is that *Wrigley v. Massey University* [2011] NZEmpC 37 is directly on point and not distinguishable as Safe maintains. This was, in the Authority’s opinion, a situation where the process included the use of a matrix and was not a situation where the matrix was the decision. The latter view, as the Authority has just noted, was not consistent with Safe’s own behaviour in relation to Ms Bainbridge’s score which suggests that the persons administering the matrix were, at least in part, conscious of the fact that the matrix had shown up a result which certainly on the Union’s submission in the present case was an aberrant one. Ms Bainbridge had 30 odd years experience in this sort of work and was displaced by a co-worker who had a fraction of that experience.

[42] In *Wrigley*, the Full Court emphasised the inequality of employment relationships, arguably none more so than those employment relationships touched by restructuring or redundancy considerations. At paragraph 48, the Court said:

Recognition of the inequality of power in employment relationships is also directly relevant. When a business is restructured, the employer will, in most cases, have almost total power over the outcome. To the extent that affected employees may influence the employer’s final decision, they can do so only if they have knowledge and understanding of the relevant issues and a real opportunity to express their thoughts about those issues. In this sense, knowledge is the key to giving employees

some measure of power to reduce the otherwise overwhelming inequality of power in favour of the employer.

[43] It follows from the foregoing passage that Safe had an absolute obligation to make available to its affected staff sufficient material which would give those staff a genuine ability to participate in the process and to offer worthwhile comments on a way forward. As an absolute minimum, Safe ought to have disclosed to Ms Bainbridge her matrix scores and told her that, on the basis of those scores, she was likely to be made redundant. The provision of that material is likely to have promoted an exchange between the parties which may have both suggested an alternative way forward and/or achieved better understanding of each other's positions such that the present litigation became unnecessary. As the Court observed in *Wrigley*, s4(1A)(c) of the Act *requires the employer to give the employee an opportunity to comment before the decision is made. That opportunity must be real and not limited by the extent of the information made available by the employer.*

Here the paucity of information provided by Safe really ensured that there was no real opportunity to comment and so the engagement of Ms Bainbridge in the process was unreasonably truncated.

[43] It is the Authority's considered view that Safe's decision not to appoint Ms Bainbridge was unjust, for the reasons advanced above.

Determination

[44] The Authority is satisfied that Ms Bainbridge has made out her claim, but only to the limited extent available as a consequence of breaches of process and a breach of the duty of good faith. There has been no challenge to the genuineness of the redundancy, nor does the Authority find any evidence that the redundancy was not anything other than genuine. However, insofar as the test of justification contained in the Act requires the employer to reach a measured and rational conclusion after applying a proper process, the Authority finds the process adopted by the employer to be unfair and accordingly the Authority's considered view is that the decision to dismiss Ms Bainbridge for redundancy is tainted.

[45] Of course, the law only allows compensation for the wrong done and the Authority's decision can only be read as identifying unfairness in the process and it is that, and only that, that can attract compensation. As a matter of fact, Ms Bainbridge

has already been paid redundancy compensation so the compensation that applies in the present case is only in respect of the procedural infelicities.

[46] Ms Bainbridge claimed to have been unjustifiably dismissed and to have suffered a disadvantage grievance as well as a breach of good faith. The Authority is satisfied that Ms Bainbridge has a personal grievance as a consequence of the unjustified dismissal (but on the limited basis provided by the law when the redundancy process is itself genuine) and the Authority is also satisfied that there is a breach of the employer's duty of good faith. The Authority is not persuaded that the claim for a disadvantage grievance is made out, or at least not made out as a separate head from the claim around the dismissal.

[47] It is available to analyse the present factual matrix as either a dismissal grievance but on a limited basis relating to procedural unfairness or on the basis of treating the same facts as being a disadvantage grievance. Either way, the Authority's point in the present case is that it makes a finding of one grievance on the limited basis discussed above. Breach of good faith is also made out for the reasons already analysed.

[48] Before turning to consider remedies, the Authority has reflected on whether Ms Bainbridge has done anything to contribute to the circumstances giving rise to her personal grievance. The Authority has not found any such contribution: s.124 of the Act applied.

[49] To remedy Ms Bainbridge's grievance, and to also take account of the established breach of the duty of good faith by Safe, the Authority directs that Safe is to pay to Ms Bainbridge the aggregate sum of \$5,000 under s.123(1)(c)(i) of the Employment Relations Act 2000, that sum reflecting both the breach of good faith (for which Safe could sustain a penalty), and the established personal grievance. Ms Bainbridge gave clear evidence of the effect the irregularities of process had on her well being such as to justify this compensation.

[50] There can be no sustainable claim for wages lost; they were lost as a consequence of the loss of the position not from the circumstances giving rise to the personal grievance.

Costs

[51] Costs are reserved.

James Crichton
Member of the Employment Relations Authority