

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2022] NZERA 303  
3127516

BETWEEN                      ASHLEIGH BELK  
   Applicant  
  
AND                                GENERAL DISTRIBUTORS  
   LIMITED  
   Respondent

Member of Authority:        David G Beck  
  
Representatives:              Allan Halse, advocate for the Applicant  
   Kylie Dunn, counsel for the Respondent  
  
Investigation Meeting:        25 May 2022 at Hamilton  
  
Submissions Received:        27 May 2022 from the Applicant  
   31 May 2022 and 06 July from the Respondent  
  
Date of Determination:        7 July 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ashleigh Belk was employed as a Perishables Assistant by General Distributors Limited trading as Countdown Supermarkets (Countdown) in Hamilton, from 2012 until she resigned in October 2021.

[2] Ms Belk has identified an unjustified disadvantage claim concerning how Countdown sought to discipline her in February 2020. The claim also identifies an alleged failure of Countdown to provide a safe work environment and to properly investigate concerns Ms Belk had raised about her immediate Line-Manager, who had supplied the information that led to the disciplinary process being initiated. Ms Belk seeks compensation

for time she took off work without pay and compensation for either a finding that she was being bullied in the workplace or the impact of the Countdown decision to pursue a disciplinary process against her.

[3] Countdown by contrast, maintain generally that the disciplinary concerns were genuine but later not pursued and that the issues raised by Ms Belk were appropriately dealt with in a full and fair investigation and that Ms Belk's claim of being bullied was not established and therefore Ms Belk was not disadvantaged in her employment.

### **The Authority investigation**

[4] At the investigation meeting, I heard evidence from Ms Belk, her partner Christopher Seager and Countdown's Group Manager, Shaun Wall.

[5] As permitted by s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence and submissions except to observe the parties assisted in giving evidence and submissions that I have carefully considered. Countdown noted Ms Belk continued to be employed by them until October 2021.

### **Issues**

[6] The issues to be decided are:

- (a) Was Ms Belk unjustifiably disadvantaged in her employment?
- (b) If an unjustified disadvantage is established what remedies should be awarded considering Ms Belk's claims for:
  - i. Lost wages; and
  - ii. Compensation of \$20,000 pursuant to s 123(1)(c)(i) of the Act.
- (c) If Ms Belk is successful in all or any element of her personal grievance should the Authority reduce any remedies granted because of any contributory conduct?
- (d) An assessment of whether either party should contribute to the incurred costs of representation.

### **What caused Ms Belk's employment relationship problem?**

[7] Ms Belk commenced employment with Countdown in 2012; initially at their Chartwell store, then from early 2017 she transferred to the Dinsdale store (both in the Hamilton area). Ms Belk worked in various departments such as: nightfill, deli, seafood, the bakery and butchery. In late 2018, Ms Belk began working permanent full-time nightshifts in Countdown's perishable stock department (a span of hours generally between 6:30pm – 3 am depending on days worked – five nights per week). Ms Belk was a Perishables Assistant - a role that involved maintaining the stock of perishable goods during periods when the store was closed and ensuring adequate stock was ready for sale during daylight opening hours.

[8] Ms Belk says she was not the subject of any disciplinary or performance issues up until early 2020 and she enjoyed her job and considered herself a loyal and committed employee. Mr Wall acknowledged no significant employment issues arose with Ms Belk and that she was known as “a hard worker and just got on with the job”.

[9] Mr Wall says that in early 2020, it was brought to management's attention that Ms Belk was leaving earlier than her allocated shift finish time and having relationship problems with the recently appointed perishables manager who worked on day shift. Rather than discuss the concerns with Ms Belk, the perishables manager (who only communicated with Ms Belk by notes left in a shared communication book), sought the assistance of the Fresh Food Manager. The latter manager wrote to Ms Belk on 24 February 2020, asking her to attend a “disciplinary investigation meeting” on 27 February.

### **Disciplinary investigation letter**

[10] The letter broadly describes Countdown's concerns to Ms Belk as “your potential unauthorised absence and failure to follow instructions”. There then followed five bullet points detailing allegations dating from 28 January 2020. These claimed Ms Belk, without authorisation, left work early at times between 2:33 am to 2:47 am, when her shift end time was 3 pm and four suggestions that Ms Belk had refused to follow her perishables manager's instructions dating back to 7 January 2020.

[11] The letter indicated disciplinary sanctions up to dismissal were open to Countdown should the allegations be considered serious misconduct. CCTV stills were provided, along with extracts from the perishables communication book and cross reference was made to potential transgression of Countdown's attached Code of Conduct and Work Rules. The letter emphasised the purpose of the meeting was to "understand your version of events and to gain clarity on your understanding of the relevant Company policies and procedures". Countdown noted that no decision would be made at the initial meeting and that any "tentative decision" would follow the outcome of an investigation. Ms Belk was apprised of her right to representation and offered counselling from an independent Employee Assistance Programme.

[12] Ms Belk consulted an advocate (Mr Halse) who emailed Countdown's Customer Services Manager on 26 February, establishing his authority to represent Ms Belk and requesting: Ms Belk's personal file, the employment agreement and a copy of the staff roster. The advocate suggested that Ms Belk was overworked in an understaffed role and that her perishables manager did not work alongside her on the same shift. The advocate then indicated:

Although Ashleigh didn't come to see me about workplace bullying but when I had her complete the Worksafe NZ bullying behaviour list, I was immediately concerned. Ashleigh is currently off work because she is depressed and anxious after receiving .... letter out of the blue without any discussion.

[13] The fresh food manager emailed in response that the proposed 27 February meeting, was now postponed "due to advice from our Employment Relations Team" and that they would be further in touch with a new meeting date.

[14] Ms Belk's advocate emailed Countdown on 5 March, requesting an early meeting date (the following week) and information already requested. In response by email of 6 March, Shaun Wall informed he was taking over management of the matter and would be the decision-maker "in relation to any outcome". Mr Wall then indicated:

On reflection, we have decided that termination of employment will not be a potential outcome of this process. Rather, it may result in disciplinary action up to a final written warning.

[15] Mr Wall further indicated a request to place Ms Belk on paid special leave in the interim was declined and aware that Ms Belk had no available sick leave entitlement, he

suggested she was “of course entitled to take unpaid sick leave”. Mr Wall ended his email by indicating the personal information requested was still being collated and that he would be in touch to arrange a meeting.

[16] I note that it emerged during the investigation meeting that Ms Belk was not asked to provide a medical certificate to support her extended absence.

[17] Mr Halse, in an email response of 10 March, that had an attached a Worksafe NZ document highlighting potential bullying indicators, suggested Mr Wall had been misled as to the reason why Mr Halse’s company was involved in Ms Belk’s case and then indicated (in summary) that: he held concerns about “Countdown’s failure to provide a safe work environment”, those concerns were based upon Ms Belk being required to work evenings on her own and that she was being bullied. Mr Halse reiterated an expectation that Ms Belk be placed on paid “special leave” until matters had been resolved.

[18] Mr Wall responded on 11 March by email, attaching Ms Belk’s requested personal file and roster information and then offered to meet on 20 March to discuss what he saw as “some serious matters” identified by Mr Halse – Mr Wall suggested he wished to obtain further information regarding these matters and allow Ms Belk an “opportunity to elaborate on her concerns”. Mr Wall then indicated the concerns appeared “entirely unrelated” to the disciplinary process and Countdown was prepared to delay that process until they had met to obtain “further information regarding these separate concerns”.

[19] Mr Wall then emphasised that Countdown would “be proceeding with that separate disciplinary process concurrently with any investigation into concerns raised by Ashleigh”. Mr Wall ended the email by restating that Countdown would not provide Ms Belk with paid leave.

### **First personal grievance**

[20] In an immediate response to Mr Wall’s 11 March email, Mr Halse signalled a personal grievance for unjustified disadvantage - asserting that Countdown was “providing Ashleigh with an unsafe work environment, causing serious mental health harm and for refusing to pay special leave”. Countdown did not acknowledge the emailed grievance and

the next event was a meeting on 20 March. Then meeting was recorded and the subject of an agreed transcript.

### **20 March 2020 meeting**

[21] Ms Belk, Mr Halse and Mr Seager (Ms Belk's partner) attended the 20 March (a Friday) meeting. Countdown was represented at the meeting by Mr Wall and an employment lawyer. Quotations used in the following are from the agreed meeting transcript and I highlight what I consider the relevant matters discussed.

[22] The meeting commenced with Mr Wall suggesting the extant disciplinary proceedings would "be put on pause for now". Despite this, the initial part of the meeting traversed the context of the disciplinary allegations with Mr Halse making the point that they had been formalised without a preceding discussion or counselling about timekeeping issues and communication matters with her immediate manager.

[23] Countdown's lawyer then attempted to focus the meeting on Ms Belk's latterly expressed concerns of health and safety matters and potential bullying. Mr Halse suggested that how Countdown approached the disciplinary matter was potentially bullying and "heavy-handed" given dismissal had initially been mooted and had become "a big part of what caused the complaint".

[24] Mr Wall proceeded to suggest the disciplinary meeting letter was "just an invitation so we can talk to Ashleigh about the concerns in there". Mr Wall then acknowledged that if he found any substance to Ms Belk's concerns then the disciplinary issue would be reviewed in a different light and Countdown's lawyer reiterated that dismissal was not now being contemplated.

[25] When invited to discuss her concerns, Ms Belk outlined her struggles with her workload including overloading of stock causing hazards and a lack of managerial support. Ms Belk also described the chiller and freezer areas being a "complete and utter mess" with too much stock dangerously stacked blocking access, that she felt day shift with greater staffing resources was not dealing with. Ms Belk confirmed she had only had one conversation with a duty manager and felt discouraged to raise the issue further. Ms Belk described the impact of Countdown not replacing a night shift co-worker on her workload.

[26] Ms Belk then went on to describe how the perishables manager did not communicate except through a shared communications book and that exchanges were negative and she believed unreasonable expectations were being communicated in an arrogant fashion. Ms Belk expressed a view that she perceived the problem was the perishables manager overfilling stock during day shifts that impinged on her ability to do her job and caused her unnecessary work.

[27] When asked about her bullying allegation, Ms Belk confirmed the only person she had difficulty with was the perishables manager who she believed had a negative view of her, due to Ms Belk exposing his mistakes in overfilling stock during the day. Mr Halse suggested that the perishables manager was raising the timekeeping and communication concerns about Ms Belk as retaliation for Ms Belk highlighting his shortcomings to management.

[28] After some discussion in which Mr Seager expressed his views about a general deteriorating store culture, a break was taken in the meeting.

[29] Upon returning, Ms Belk spoke of the comments in the communications book from the perishables manager and the impact on her that she felt were “basically saying I’m not doing my job” and that he had nothing positive to say about her. Ms Belk used a term “verbal abuse” but did not expand on this nor was she asked to do so.

[30] Mr Wall, after some discussion on other managers being able to assist on the night shift and Ms Belk saying she did not approach them, asked if Ms Belk considered the behaviour of the perishables manager fitted into ‘a definition of bullying? Ms Belk affirmed a belief she had been bullied by both his unreasonable expectations of her workload and negativity of comments in the communication book (that was viewed by two co-workers). On the latter, Ms Belk acknowledged that she latterly responded negatively in the communications book to the perishables manager.

[31] Ms Belk concluded that the negative comments and workload situation were causing her daily stress, exhaustion/poor sleeping patterns and she was feeling isolated to the point that by the end of January 2020: “I just gave up”. Ms Belk then confirmed the perishables

manager had not spoken to her about timekeeping issues or other matters Countdown had highlighted in their disciplinary letter.

[32] The parties then discussed Ms Belk's return to work with Mr Wall offering an alternative role either in store or at another location – suggestions that Ms Belk declined, indicating she was comfortable returning to night shift at Dinsdale provided she had a person assisting her.

[33] In response, Mr Wall discussed workload expectations and said he would check with the store manager but that one solution was merging perishables and groceries and having a "blended" approach to staffing. After some discussion, Mr Wall said he could give no assurance of providing additional staff and perhaps a stock filling tool that gave guidance on work expectations, would assist.

### **Return to work**

[34] After some further discussion Ms Belk agreed to return to work on the following Sunday (22 March).

[35] A discussion then ensued on Countdown's unwillingness to pay Ms Belk discretionary leave. Mr Wall suggested if his subsequent investigation found Ms Belk had been treated unreasonably or bullied, then Countdown would look at reimbursing Ms Belk for wages lost.

### **The investigation**

[36] I observe from the meeting recording (and during the investigation meeting) that Mr Wall treated Ms Belk with respect and asked several pertinent questions.

[37] Following the meeting, Mr Wall, as agreed, investigated Ms Belk's concerns raised about the perishables manager. This included, Mr Wall first reviewing the communication book comments and conducting an interview with the perishables manager on 31 March.

## **First interview**

[38] However, before interviewing the perishables manager, Mr Wall spoke to Ms Belk's longtime/perishable's supervisor and former perishables manager on 27 March. No one else was interviewed to comment upon anything they had observed of the interactions between Ms Belk and the perishables manager, his management approach or how day shift was arranging stock.

[39] The typed notes of the interview show Mr Wall opened by saying he was investigating a complaint raised by Ms Belk but he did not (confirming this during the investigation meeting) detail what the complaint was or who it was about.

[40] Mr Wall then said he "would like to discuss your version of events and put together a statement of your version of events to sign". Mr Wall made it clear any statement made would be disclosed to Ms Belk. Mr Wall after confirming the previous working relationship the supervisor had with Ms Belk, asked if there had been an arrangement that Ms Belk could finish early when she had completed work tasks. After receiving a response that no arrangement was in place and that Ms Belk had on occasion left early "without notice" and often wouldn't take breaks, Mr Wall did not question whether Ms Belk had been admonished about this.

[41] Mr Wall then concluded the interview with an open question "Is there anything else that you would like to add before we conclude the meeting? This elicited a response from the supervisor that Ms Belk used to "be an absolute rock star" in her work but had indicated to her that she was losing her morale because a day shift worker (not the current perishables manager) was leaving a mess for Ms Belk to clean up. A fall off in Ms Belk's performance was described. Mr Wall asked no follow up questions and indicated a statement would be put together by him to be reviewed and signed by the supervisor.

[42] Following the meeting, in a memorandum of 28 March the longtime/perishable's supervisor signed a statement that I record accurately followed the disclosed notes of the meeting.

## **Comment**

[43] Despite giving an assurance that the disciplinary process was ‘on hold’ and assuring the Authority he has been involved in “six or so” previous bullying investigations, Mr Wall focused the interview with the former perishables manager on time keeping issues and did not allude to Ms Belk’s bullying complaint in any detail – nothing was asked about any observation of Ms Belk’s relationship with the new perishables manager (the subject of Ms Belk’s complaint). It was apparent that the key issue Mr Wall sought to confirm, was to rebut Ms Belk’s claim that she had an arrangement to leave early as she worked thorough her breaks. Mr Wall did not make it clear that Ms Belk was facing a potential disciplinary issue.

## **Second interview**

[44] On 31 March, Mr Wall met with Ms Belk’s perishables manager who was the subject of the bullying complaint. This was a formal meeting and Mr Wall’s typed and unsigned notes provided after the investigation meeting record that fact, but do not appear to be a verbatim account (no other notes were produced).

[45] Mr Wall records he presented the allegation as:

It is alleged that you behaved in an inappropriate manner towards Ashleigh Belk through comments made in the Perishables communication book on the 31 January 2020 as well as two other occasions. We have enclosed these comments for your perusal.

[46] Mr Wall continued, after saying only one allegation was at issue, that the purpose of the meeting was to seek clarity on the perishables manager’s version of events. Mr Wall then explored the interface problems between day and night shifts that Ms Belk had highlighted. In response, the perishables manager claimed the issue dated back to the 2019 Christmas period and that he had communicated to day shift workers about keeping the floor clean for the night shift and that he had communicated to Ms Belk about the need to be more focused in completing tasks. He also emphasised it was not correct his tasks mirrored Ms Belk’s. He then expressed concerns about Ms Belk’s communication of messaging him with photos about overfilling and other matters at 10:30 pm that he was unable to download. He

claimed he was having to do Ms Belk's job in the morning and this had led to frustrating comments he had made in the communication book.

[47] Mr Wall asked the perishables manager how he thought Ms Belk felt after receiving negative comments in the communications book such as "stop complaining" and he replied: "I have no idea how she would feel". Mr Wall then established that no meetings had occurred between the parties and there was no 'face to face' communication occurring. It was then established the manager harboured no concerns about the load of work Ms Belk undertook but he perceived that she was being distracted doing other things (unspecified tasks apart from "relays"). It was established no filling tool was available for Ms Belk.

[48] Mr Wall then got a negative response to the question: "What recorded conversations do you have with Ashleigh regarding her performance that would initiate a formal meeting?".

[49] Countdown, after the Authority investigation meeting, disclosed a follow up: "FILE NOTE – NO OUTCOME" dated 7 April, to the perishables manager that after mentioning meetings held on Friday 27 March"; summarised responses given and then noted the decision was his actions "do not constitute a disciplinary meeting therefore disciplinary action is not warranted on this occasion". Mr Wall then set out some performance expectations that were (in summary) that:

- Any performance concerns should not be detailed in a shared communication book and instead a 1:1 meeting should occur.
- Coaching should normally precede any meeting about performance issues and this may involve the perishables manager working overtime.
- All performance meetings and discussions needed to be recorded.

### **Comment**

[50] The notes above were not, at the time, shared with Ms Belk and she was given no further opportunity to comment on what the perishables manager had conveyed about her.

[51] Subsequent to the investigation meeting, Countdown disclosed a 27 March 2020 meeting invite that was forwarded to the perishables manager by Mr Wall before he was interviewed. This letter referred to Mr Wall's awareness of a behavioural allegation concerning three "inappropriate" comments in a communications book that had been directed against Ms Belk. No other issues were identified. Mr Wall's letter warned that any retaliation towards Ms Belk or other participants in the investigation, would be viewed "very seriously".

### **Third Interview**

[52] Inexplicably, given the assurance that the disciplinary process was ostensibly 'on hold', Mr Wall on 2 April, briefly interviewed another ex-manager of Ms Belk, now working in another store. This interview followed the same format as the first interview described above, in that Mr Wall said he was investigating an unspecified complaint raised by Ms Belk, before asking about her timekeeping issues. The response was no ad-hoc agreement was in place over Ms Belk leaving early and Mr Wall facilitated the ex-manager making a brief statement confirming the latter and a statement (not recorded as being discussed in the minutes) that: "Ashleigh hasn't said anything to me about any safety issues with me at Countdown Dinsdale".

### **Comment**

[53] I have the same concerns that I have expressed as comment above on the first investigation meeting. I also note that despite indicating to the two ex-managers that their statements would be shared with Ms Belk, they were not, until Mr Halse filed the matter with the Authority.

[54] Subsequent to the investigation meeting, Countdown also (on request) disclosed a further unsigned statement from the Assistant Longlife Manager at Countdown Dinsdale, that confirmed Ms Belk had provided photos of shelf overfilling and these had been shown to the perishables manager and another manager. The statement ended with an identical wording as above, that Ms Belk "hasn't said anything to me about any safety issues with me at Countdown Dinsdale". No notes were provided of any interview conducted by Mr Wall

but given the latter I will assume an interview took place and that Mr Wall provided the wording of the statement.

### **Communication of investigation outcome to Ms Belk**

[55] Rather than seek Ms Belk's comment on the preliminary interviews, Countdown's lawyer wrote to Mr Halse (14 May 2020) and after the letter had traversed background events, it noted a subsequent investigation had been conducted by Mr Wall and that two former managers confirmed no arrangement existed for Ms Belk to leave her shift early and that this matter would "be further addressed in the disciplinary process in due course". The letter indicated the overfilling of stock by day shift had been examined but the perishables manager had attributed this to someone else and it was being resolved.

[56] It was then communicated in the 14 May letter that Mr Wall had:

.... concluded that the complaint of bullying by (the perishables manager) had not been substantiated and no formal action was warranted. That said, he acknowledged that the method of communication used in the team diary could be improved upon as has taken the opportunity to use this as a coaching opportunity to support (the perishables manager) with team management. In particular Shaun clarified his expectations with (the perishables manager) that:

- (a) any performance concerns with a team member should not be addressed in the communication book;
- (b) specific feedback to a team member should not be included in a shared communication book but should be addressed one to one with a team member;
- (c) any performance issues should be discussed and coaching provided directly to the team member; and
- (d) all performance meetings and discussions should be recorded.

[57] Further, the letter described how some practical assistance had been offered to Ms Belk on night shift but she had indicated a desire to work alone and that since Ms Belk had initially used the stock filling tool, she had raised no workload concerns. The letter invited Ms Belk to approach Mr Wall with any further issues.

[58] The letter concluded that the stalled disciplinary process would commence "in due course" but Countdown was anticipating a personal grievance regarding the non-payment of special leave for the period Ms Belk was absent after receiving the disciplinary letter of 24 February.

[59] In the investigation meeting, Mr Wall expanded on his intervention with the perishables manager describing it as counselling of a recently appointed and very inexperienced manager who was having to cope in an unusually busy time (Christmas/New Year period then Covid lockdown) and that he had impressed upon him, the need to spend some time with night shift staff and not just communicate in writing.

### **Comment**

[60] I observe that although the 'investigation' was limited in scope and sharing of documentation, Countdown's letter above, accurately describes the disclosed notes of the interaction between Mr Wall and the perishables manager. Evidently, Countdown took Ms Belk's concerns seriously and undertook some practical measures that by any standard were reasonable and objectively apt in the circumstances including concluding that one of Ms Belk's concerns (day shift overstocking) was not undertaken by the perishables manager. Mr Wall's assessment of the communication book comments being inappropriate was a fair call (Ms Belk had conceded she also responded 'in kind') but he did not explore the trail that led to the disciplinary concerns being raised against Ms Belk, which had originated from the perishables manager, as the disciplinary letter alluded to a concern that Ms Belk was not following his instructions. Whilst this was perhaps a wise judgment by Mr Wall in choosing to focus upon communication 'best practice', the investigation interview morphed into a management counselling session rather than a thorough fact-finding exercise.

### **18 June 2020 personal grievance**

[61] Mr Halse, in a letter of 18 June, detailed a personal grievance of unjustified disadvantage, alleging Countdown had generally failed to provide Ms Belk with a safe working environment and pay her special leave "when she was forced to leave the workplace due to it being unsafe". Mediation was sought.

[62] Countdown's lawyer responded by letter of 23 June: first asserting that any claim based on matters prior to 21 March 2021 was out of time, that no disciplinary action had so far been advanced against Ms Belk and then detailed (as above) steps Countdown had taken to address Ms Belk's concern about workload issues and negative communications.

[63] The parties engaged in further ongoing attempts to resolve matters and attended an unsuccessful mediation. It is noted that during this period Countdown chose to not further pursue any disciplinary action against Ms Belk.

### **Assessment**

[64] In assessing Mr Belk's disadvantage claims and whether Countdown took sufficient steps to address Ms Belk's identified concerns, I utilise s 160(3) of the Act that allows the Authority to not be bound:

.... to treat a matter as being a matter of the type described by the parties, and may in investigating the matter, concentrate on resolving the employment relationship problem, however described.<sup>1</sup>

[65] In applying the above 'broad' approach to resolving matters, I make the following assessment.

[66] I am not satisfied that Countdown properly addressed Ms Belk's concerns about why she had not been afforded the courtesy of a prior informal discussion about her timekeeping and alleged failure to follow instructions. Whilst I acknowledge the disciplinary process was initially curtailed, by an indication dismissal was not at issue then abandoned, it was based upon historical matters that should have been informally addressed in the first instance. Mr Wall appeared to acknowledge this deficiency in process and expectation of his subordinate managers and put it down to an inexperienced new manager. Nevertheless, Ms Belk was put through an unnecessary and prolonged period of distress and the cost of advocacy.

[67] Mr Wall's investigation was not thorough, could have been better documented and he did not properly explore the motivation behind the initial disciplinary matters being identified that objectively may have had an element of retaliatory behaviour motivating such. Mr Wall, despite giving an assurance that the disciplinary concerns were 'on hold', proceeded to use his investigation to explore the issue of Ms Belk's timekeeping – this was inappropriate and lacking in exploration of contextual issues.

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<sup>1</sup> Section 160 Employment Relations Act 2000.

[68] Whilst Mr Wall moved swiftly to identifying what was an ideal way forward (and made his expectations clear to the perishables manager) this was done with little fact-finding analysis of whether the concerns were more widespread amongst other employees and thus Ms Belk's assertion that she was the subject of an 'arrogant' approach was not fully tested. Mr Wall, I find unintentionally confused his role of being responsible to conduct a fact-finding investigation with his management role.

[69] Having identified some deficiencies in process, I nevertheless objectively consider that Countdown took reasonable and constructive measures to address Ms Belk's concerns and Ms Belk did not, in giving evidence, strongly suggest otherwise.

[70] I do not consider a finding of workplace bullying has been made out and note this was a case where unusually there was little physical interface between the parties. The comments in the communication book were robust and the language less than ideal from both the perishables manager and latterly from Ms Belk but it is understandable that Ms Belk was disproportionately impacted given her length of 'loyal' service and the lack of 'face to face' interactions.

[71] Countdown addressed the workload expectation issues and health and safety matters in an adequate fashion although I accept not totally to Ms Belk's satisfaction.

[72] I find that Countdown also addressed poor communication practice and did so in a reasonable and fair manner by highlighting the inadvisability of it being conducted in an open forum and they shared with Ms Belk what they had done to resolve her concerns including by implication, given it was not pursued further, that any further disciplinary matter of this nature should not proceed without first an informal and timely discussion.

### **Finding on the disadvantage claim**

[73] Whilst I have not found that Ms Belk has established a workplace bullying or breach of health and safety obligations claim, I do find Ms Belk was disadvantaged by the initial approach Countdown took to initiating disciplinary proceedings and the unnecessary prolonging of such (albeit that a detrimental conclusion was not reached). Ms Belk is entitled to consideration of remedies.

### **Compensation for humiliation, loss of dignity and injury to feelings**

[74] Ms Belk and her partner gave evidence on the impact upon Ms Belk during the period she was under the threat of disciplinary action. This included worry about her financial situation and a negative perception that her employer was not taking her contextual concerns seriously. Objectively, the distress was temporary regarding the threat of dismissal (up to 6 March) and then until the first meeting on 20 March. Thereafter, whilst Ms Belk was assured her concerns would be addressed, the residual prospect of a lesser disciplinary sanction up to a final warning, continued.

[75] Ms Belk described being stressed and anxious when she took unpaid leave on receipt of the disciplinary letter and poor sleep patterns (although she described such being partly due to workload pressure). Ms Belk's partner observed Ms Belk being de-motivated and not being her usual outward self. Ms Belk did not seek any assistance with her stress symptoms and considered she was entitled to paid stress leave. Ms Belk acknowledged Countdown did not press her to provide a medical certificate to support her absence on sick leave.

[76] In assessing compensation for the distress Countdown caused Ms Belk by their actions and omissions, I consider that this be assessed at a reasonably moderate level as the period of distress was lessened when Countdown confirmed, at a relatively early stage, that dismissal was not being contemplated and they did constructively engage with Ms Belk albeit with an ongoing threat of a final written warning.

### **Finding**

[77] Taking account of the evidence proffered and awards made by the Authority and Court in similar situations, I consider that Ms Belk's evidence warrants an award of compensation that I fix as \$4,000 under s 123(1)(c)(i) of the Act.<sup>2</sup>

### **Lost wages**

[78] Ms Belk claimed for lost wages resulting from her having to utilise her annual leave followed by unpaid sick leave, on the basis that her absence was caused by Countdown

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<sup>2</sup> See summary of compensatory approaches in comparable cases in *Richora Group Ltd v Cheng* [2018] ERNZ 337 at [65] – [66].

advancing formal disciplinary proceedings in an inappropriate manner. In this regard, I have found a causative connection in a finding that Ms Belk was successful in her unjustified disadvantage grievance, and I observe that Countdown abandoned the disciplinary concerns.

[79] Taking all the above factors into account and exercising discretion on an equitable basis, I award under s 123(1)(b) of the Act, sixteen days lost wages in the amount claimed of \$2,624.00, on the basis that had Countdown progressed concerns first in an informal or less confrontational manner, it was likely that Ms Belk would not have taken a combination of annual leave and leave without pay. I do not accept the claim by Countdown that this is effectively reinstating Ms Belk's entitlement to holiday pay – I am merely awarding wages lost on the basis that 'but for' the grievance Ms Belk would have been at work and entitled to her ordinary earnings for the 16 days.

### **Contribution**

[80] Section 124 of the Act states that I must assess the extent to what, if any, Ms Belk's actions contributed to the situation that gave rise to her personal grievance and then assess whether any calculated remedy should be reduced. To assess whether the remedy should be reduced I have considered the relevant factors recently summarised by the Employment Court in *Maddigan v Director General of Conservation*<sup>3</sup>.

[81] I find that Ms Belk's approach to the communication book and her failure to escalate her workload concerns earlier were less than ideal and could be viewed as contributing factors but overall, it would not be equitable to reduce the compensatory remedies awarded.

### **Summary**

[82] I find that:

- (ii) Ashleigh Belk was unjustifiably disadvantaged by General Distributors Limited addressing potential disciplinary concerns in an inappropriate manner and that Ms Belk's expressed concerns about her working environment were not thoroughly investigated.

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<sup>3</sup> *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

(ii) In the circumstances, General Distributors Limited must pay Ashleigh Belk:

- (i) \$4,000 compensation without deductions pursuant to s 123(1)(c)(i) Employment Relations Act 2000.
- (ii) \$2,624.00 (gross) lost wages pursuant to s 123(1)(b) Employment Relations Act 2000.

### **Costs**

[83] Costs are at the discretion of the Authority and are reserved. The parties are encouraged to make an agreement on costs. If no agreement is achieved, Ms Belk has fourteen days following the date of this determination to make a written submission on costs and General Distributors Limited has a further fourteen days to provide a response. I will then determine what costs are appropriate.<sup>4</sup>

**David G Beck**  
**Member of the Employment Relations Authority**

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<sup>4</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)