

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 292
3081633

BETWEEN KELLIMAREE BENNETT
Applicant

AND JEFF AND ANNETTE
BOLSTAD
First Respondent

Member of Authority: Anna Fitzgibbon

Representatives: David Flaws, advocate for the Applicant
Nannette Bolstad, advocate for the Respondent

Investigation Meeting: 23 and 24 June 2020 in Hamilton

Submissions [and further 1 July 2020 from the applicant
Information] Received: 8 July 2020 from the respondents

Date of Determination: 29 July 2020

DETERMINATION OF THE AUTHORITY

- A. The applicant, Ms Kellimaree Bennett’s employment was not affected to her disadvantage by some unjustifiable actions by the respondents, Mr Jeff Bolstad and Mrs Annette Bolstad.**
- B. Ms Bennett was unjustifiably dismissed from her employment by the Bolstads**
- C. To settle Ms Bennett’s employment relationship problem, the Bolstads are ordered to pay Ms Bennett compensation in the sum of \$5,950 under s123(1)(c)(i) of the Employment Relations Act 2000(the Act) within 28 days of the date of this determination**
- D. Costs are reserved.**

Employment Relationship Problem

[1] The applicant Ms Kellimaree Bennett was employed by the respondents, Mr Jeff Bolstad and his wife Mrs Annette Bolstad, as Farm Manager on their farm in Te Aroha. Ms Bennett was employed from 11 November 2017 until her dismissal on 25 March 2019. Ms Bennett's role included the provision of accommodation for herself and her son on the farm.

Ms Bennett's claims

[2] Ms Bennett says she enjoyed her work for the first couple of months but for the rest of her employment says she was verbally abused by Mr Bolstad. Ms Bennett says because of Mr Bolstad's abuse, she gave notice of resignation on 1 March 2019 to take effect on 29 May 2019, being the end of the dairy milking season.

[3] Ms Bennett says following her resignation, Mr Bolstad's verbal abuse accelerated. On 4 March 2019, Ms Bennett says there was a serious incident of verbal abuse by Mr Bolstad, which was witnessed by her daughter. A further incident occurred on 19 March 2019 witnessed by another employee. Relations between Ms Bennett and the Bolstads deteriorated. On 24 March 2019, Ms Bennett received an email attaching a letter from Mr Bolstad terminating her employment with effect from 25 March 2019. Ms Bennett was informed she was to be paid two weeks' salary in lieu of notice. Ms Bennett was given 14 days within which to vacate the farm house she had been occupying.

[4] Ms Bennett says that she has an unjustifiable disadvantage claim in relation to the incidents of verbal abuse by Mr Bolstad in March 2019. Ms Bennett says her dismissal by the Bolstads by letter on 24 March 2019 came as a complete shock and was unjustified both procedurally and substantively. Ms Bennett says she has suffered emotionally as a result of the poor treatment and seeks remedies in respect of both her claimed unjustified disadvantage claim and dismissal.

The Bolstads response

[5] The Bolstads deny Ms Bennetts claims. They say their working relationship with Ms Bennett was a good one. They accept there were three occasions on which Mr Bolstad became angry and swore when speaking with Ms Bennett about her work. Those occasions were on 18 October 2018, 4 and 19 March 2019. Mr Bolstad says he did not swear at or abuse Ms Bennett on those occasions. He says he was frustrated and angry and swore about Ms Bennett's

failure to follow his instructions in relation to pasture management and her handling of the stock.

[6] The Bolstads say there were regular reviews with Ms Bennett during her employment. Mr Bolstad's sister, Ms Nannette Bolstad had a human resources consultancy business and conducted each of the reviews and kept records. The Bolstads say Ms Bennett did not complain or raise any issues about her work or Mr Bolstad at any of these review meetings. Ms Bennett found another job before telling them on 1 March 2019 that she was resigning. When she resigned Ms Bennett did not mention abusive behaviour by Mr Bolstad or say she was leaving because of it. Ms Bennett's new job was a promotion on a good farm earning significantly more than her job with the Bolstads. The Bolstads say they were very happy for Ms Bennett and Mr Bolstad immediately sent her a congratulatory text.

[7] However, the Bolstads say that following her resignation and while working her period of notice out Ms Bennett's behaviour towards them changed. They say the relationship deteriorated to a point it became untenable. There were arguments between Mr Bolstad and Ms Bennett on 4 and 19 March 2020 over Ms Bennett's work. The trigger for the dismissal occurred on 24 March 2019. Mr Bolstad says while on the farm Ms Bennett made a comment to him which he took to be a threat that she had the ability to accuse him of sexual harassment. Ms Bennett denies making such a comment. Mr Bolstad says he never sexually harassed Ms Bennett. In the circumstances, Mr Bolstad decided he could no longer continue employing Ms Bennett and have her living on the farm. Mr Bolstad accepts that Ms Bennett was dismissed by letter and without talking to her beforehand. In the event the Authority finds that the Bolstads did unjustifiably dismiss Ms Bennett, the Bolstads say any remedies should be significantly reduced because of Ms Bennett's contributing behaviour.

The Investigation Meeting

[8] The investigation meeting took one and a half days in the Authority. Ms Bennett, her daughter, Ms Raquelle Mitchell, and Mr Charles Prendergast, artificial breeding technician each filed a witness statement in the Authority. Mr Stuart King provided an unsworn statement to the Authority on behalf of Ms Bennett.

[9] Mr Jeff Bolstad and Mrs Annette Bolstad both filed witness statements. Ms Sue McKay, a former employer of Ms Bennett also filed a witness statement. During the Authority's investigation meeting it became necessary for Ms Nannette Bolstad, who was representing the

Bolstads, to give evidence. During the course of the investigation meeting it also became necessary for Mr Richard Smith, solicitor from the law firm, Bell and Graham, Matamata to answer questions by phone from the Authority and the parties' representatives.

[10] All witnesses either swore on oath or affirmed that their evidence was true and correct. Each of the witnesses giving evidence before the Authority had the opportunity to provide any additional comments and information and did so.

[11] As permitted under s 174E of the Employment Relations Act (the Act) this determination does not set out all the evidence and submissions received. The determination states findings of fact and law and makes conclusions on issues necessary to determine the application brought by Ms Bennett.

The Issues

[12] The issues for the Authority to investigate and determine are as follows:

- (a) Does Ms Bennett have an unjustifiable disadvantage claim? If so, what remedies are available to her?
- (b) Was Ms Bennett unjustifiably dismissed? If so, what remedies are available to her?
- (c) Did Ms Bennett's behaviour contribute to the personal grievance claims and if so, should any remedies awarded be reduced?

Credibility

[13] There were conflicting accounts of Ms Bennett's employment. Ms Bennett says following a couple of months of employment by the Bolstads she was regularly subject to verbal abuse by Mr Bolstad and this led to her resignation on 1 March 2019. The abuse became worse following her resignation and on 24 March 2019, Ms Bennett says she was dismissed without prior warning.

[14] The Bolstads, on the other hand, say the working relationship was a good one. There were one or two matters they had to talk to Ms Bennett about, but nothing serious. Mr Bolstad accepts that he became angry and shouted at Ms Bennett on 3 occasions in October 2018 and March 2019. He also accepts he swore on those occasions. There were no complaints by Ms Bennett until 4 March 2019, following her resignation. The Bolstads say this was the first time

that Ms Bennett told them she had been verbally abused by Mr Bolstad. From that point the Bolstads say the relationship deteriorated to a point that it was untenable and Ms Bennett was dismissed.

[15] I have carefully evaluated all the written evidence, documents provided to me, including text messages and emails, and the answers to questions of all the key witnesses. I have considered how reasonable, plausible and probable the evidence is and have taken into account what corroboration there is.

[16] The onus of proof is the balance of probabilities. This means the Authority is required to determine which version of events is more likely than not. This exercise has been challenging because of the stark contrast in much of the evidence between the parties.

[17] However, there are some significant areas in which Ms Bennett's evidence was not plausible. One example relates to Ms Bennett's evidence to the Authority that she had not raised a personal grievance claim against her former employer, RDB Farms Limited (RDB Farms) and Mrs Sue Mckay.

[18] Upon hearing this evidence the Bolstads provided the Authority with correspondence from a barrister specialising in employment law. The letter made it clear that a personal grievance claim had been brought on Ms Bennett's behalf against her former employer, RDB Farms Limited (RDB Farms) and Mrs McKay. The letter set out claims made by Ms Bennett and remedies sought by her.

[19] When questioned further by the Authority, Ms Bennett said she had never seen the letter and had never brought a personal grievance claim against Mrs Mckay.

[20] Following discussion with Ms Bennett and her advocate, the Authority contacted the instructing solicitor of the employment law barrister who had written the letter to RDB Farms and the Mckays. The solicitor confirmed that he had spoken to Ms Bennett at length about her alleged personal grievances and had instructed the employment law barrister to bring the claims. This evidence was at odds with Ms Bennett's evidence that she had spoken to Mr Smith for a few minutes only and that she did not bring personal grievance claims against the Mrs Mckay.

[21] Another example of evidence given by Ms Bennett which I find implausible was her claim that she was not able to work on a dairy farm following her experience with Mr Bolstad. Immediately following her dismissal, Ms Bennett started work on a dairy farm. She then worked as a farm manager at the start of the dairy season on 1 June 2019. These facts contradict Ms Bennett's evidence on that matter.

[22] One of the witnesses for Ms Bennett was Mr Charles Prendergast, an Artificial Breeding Technician in the Waikato area. Mr Prendergast was not the AB Technician that Ms Bennett says witnessed an altercation with Mr Bolstad on 18 October 2018. Mr Prendergast says he knew Mr Bolstad as he had participated in discussion groups held with farmers in the area. Mr Prendergast told the Authority that he had read Ms Bennett's witness statement and her assertions that she had been verbally abused by Mr Bolstad. Mr Prendergast told the Authority he was surprised by the assertions. He says Mr Bolstad could be loud and vocal at the meetings. Mr Prendergast was asked whether Ms Bennett had ever told him she had been verbally abused by Mr Bolstad. His response to the Authority was that she had not.

[23] Ms Bennett's daughter, Raquelle Mitchell says that she is one of Ms Bennett's "closest confidants". She told the Authority that she regularly spoke to her Ms Bennett on the phone when she was living in Dargaville. She says Ms Bennett told her about Mr Bolstad and how he was rude and abusive to her. At the Authority's investigation meeting Ms Mitchell was questioned about the phone calls with Ms Bennett. Ms Mitchell told the Authority that she and her mother had not been close and had not spoken for about a year leading up to December 2018 and January 2019. This seems to contradict with Ms Mitchell's evidence that she was one of her mother's closest confidants.

[24] On the basis of my review of the documentation and the answers to questions given by key witnesses, it is my view that the Bolstads gave a more credible and reliable account than Ms Bennett of what occurred during Ms Bennett's employment by them. On points of conflict in the evidence, this determination has generally preferred and relied on what the Bolstads have said. Relevant facts

Ms Bennett's employment by Mr and Mrs Bolstad - November 2017

[25] Ms Bennett has over twenty-five years' experience working on dairy farms in New Zealand. Prior to starting work with the Bolstads, Ms Bennett had both managed and worked on a dairy farm in Elstow owned by Mrs Lorae King and Mr Stuart King.

[26] Ms Bennett was employed by RDB Farms. Mr and Mrs McKay are the directors of RDB. RDB Farms had a sharemilking contract with the Kings. The statement provided to the Authority by Mr King was highly complimentary of Ms Bennett's managerial and animal husbandry skills and her conscientiousness. When Ms Bennett's employment with RDB Farms was terminated, Mrs King suggested she approach her long standing friends, the Bolstads, for work on their farm in Te Aroha.

[27] Mrs King gave Ms Bennett Mrs Annette Bolstad's phone number. Ms Bennett arranged a meeting with Mr and Mrs Bolstad on 26 October 2017. They walked around the farm and discussed the position with Ms Bennett. Following a discussion, Ms Bennett was offered the position of farm manager starting on 11 November 2017. A letter of offer was provided to Ms Bennett and signed by Mr and Mrs Bolstad on 26 October 2017 and by Ms Bennett on 27 October 2017. A written employment agreement was also provided to Ms Bennett together with a job description setting out the type of work that Ms Bennett was required to undertake during the course of her employment by the Bolstads.

[28] When Ms Bennett commenced employment, Mr Bolstad outlined the systems Ms Bennett was to follow when managing the farm. Ms Bennett was given the dairy diary which had all the contact details of service providers for the farm. These included milking machine breakdowns, veterinarians for call outs and the Bolstads' petrol account details.

[29] Ms Bennett says that she was extremely happy working on the farm and in late December 2017 wrote a handwritten letter to the Bolstads expressing her gratitude for the position. Her letter stated:

Thank you for appreciating me and treating me with such respect and kindness. I have never in my life have had such good, genuine and honest people like yourselves, as employers, and I am so blessed. I haven't been this happy in a long time and people see that in me. It is an absolute honour and privilege to be the manager of your beautiful little farm.

Kelly-Marie and Josiah (her son).

[30] Ms Bennett says that in 2018 things changed and she began being verbally abused by Mr Bolstad, on a regular basis. She says Mr Bolstad began to treat her badly and they often had arguments over animal welfare. Ms Bennett says she put Mr Bolstad's abusive behaviour down to the fact that he had financial and family problems. She says during this time he would regularly shout, swear, and abuse her. Mr Bolstad denies this. He says he speaks loudly because

he has significant hearing loss. He says he regularly spoke with Ms Bennett about his pasture management system, because she needed constant guidance with it. He says there were also some issues with Ms Bennett not answering texts which made communication difficult. Mr Bolstad says he did not have financial issues and has a good relationship with his bank. He says his grandson was having difficulties at the time which he was supporting him with.

Mid-October 2018 – cow insemination

[31] In mid-October 2018, Ms Bennett says things came to a head. Ms Bennett says she was abused and humiliated by Mr Bolstad in front of a local AB technician. She says Mr Bolstad was upset because Ms Bennett had 18 cows on heat and he did not believe there could be that many. She says he was “so obscene and abusive” to her that she was nearly in tears and that the AB technician intervened on her side and told her, after the altercation, that she should look for another job. This AB technician did not give evidence at the Authority’s investigation meeting.

[32] Mr Bolstad disputes Ms Bennett’s version of events. He says that there was an argument between them which did become heated. He says that he would have raised his voice with Ms Bennett on this occasion. He says that he was not abusive towards Ms Bennett. Rather, he was angry and frustrated, mainly with the AB technician, who should not have been inseminating cows which did not need to be inseminated, at a considerable cost to him. He was also angry at Ms Bennett for allowing this to occur.

[33] When Mr Bolstad issued an instruction to Ms Bennett to look at the cows’ behaviour to see if they were ready for insemination, before they were inseminated, he says Ms Bennett told him he could not tell her what to do. He took this as a refusal to take an instruction from him and suggested she speak to Ms Nannette Bolstad about whether or not he could issue her with an instruction. Ms Nannette Bolstad says Ms Bennett did not make contact with her.

[34] Ms Nannette Bolstad met with Ms Bennett on 4 December 2017, 29 June 2018 and 31 August 2018 to review Ms Bennett’s performance. Ms Bolstad says these review meetings were undertaken by her alone with Ms Bennett to allow Ms Bennett to speak frankly if she wanted to. There was never any mention by Ms Bennett of verbal abuse or any sort of abuse by Mr Bolstad at any of these meetings.

[35] The staff review documents completed on each of these occasions demonstrate that Ms Bennett was performing as expected. The Authority reviewed these documents which

confirmed that from November 2017, when Ms Bennett commenced her employment, she was meeting or exceeding expectations. In the August 2018 review it is noted that Ms Bennett had failed to meet expectations with regard to communication. Ms Bennett was required to check her phone hourly in order to resolve that issue. No concerns about Ms Bennett and Mr Bolstad's relationship or any abuse are recorded.

[36] For the reasons already given, I prefer the Bolstad's evidence that the working relationship was generally good. There had been a heated argument in mid-October 2018, Ms Bennett did not raise the argument as an issue with Ms Nannette Bolstad. The Bolstad's evidence is supported in my view by the documentary evidence including the staff review documents and the dairy diary.

Resignation – 1 March 2019

[37] Ms Bennett says she had intended working on the Bolstads farm for the next few years while her son finished school. She says she had been "willing to put up with Jeff's abuse" and hoped things would improve. However, she could not put up with it any longer so decided to look for another job and found one immediately.

[38] On 1 March 2019, Ms Bennett says she rang Mrs Annette Bolstad and asked her to come to her house. Ms Bennett says she was in tears and told Mrs Annette Bolstad that she was resigning at the end of the dairy season because of Mr Bolstad's abuse. She says Mrs Annette Bolstad was very upset by her news.

[39] This evidence conflicts with that of Mrs Annette Bolstad. Mrs Annette Bolstad says Ms Bennett told her she was resigning and leaving at the end of the season to manage Grant Dickey's farm. Ms Bennett was not tearful, she was very happy about her new job and she was very happy for her because it was a promotion. Mr Bolstad says he was happy for Ms Bennett as the new job was on a reputable farm on a higher salary than they could offer.

[40] Ms Nannette Bolstad says the first time Ms Bennett mentioned Mr Bolstad's "verbal abuse" to her was on 4 March 2019, following her resignation. Up until this time, Ms Nannette Bolstad believed the working relationship was good.

[41] I prefer the evidence of the Bolstads. Ms Bennett and Mr Bolstad had clashed in October 2018 over a work issue. Ms Bennett did not raise the matter as an issue with the Bolstads or with Ms Nannette Bolstad. Over four months later Ms Bennett found a better job at a higher

salary. She decided to resign on 1 March 2019 with a finishing up date 3 months later at the end of May 2019, being the end of the dairy season. I do not accept that Ms Bennett's resignation was because she was being verbally abused by Mr Bolstad. Ms Bennett did not tell Mr and Mrs Bolstad she was resigning because of Mr Bolstad's abuse. Nor did she tell Ms Nanette Bolstad that was the reason for her resignation. That was because it was not. She was leaving to take up a better position. The Bolstads were happy for Ms Bennett. Ms Bennett accepts she received a congratulatory text from Mr Bolstad. Further, it is not credible for Ms Bennett to claim she resigned because she was being verbally abused and then to work out a 3 month notice period.

4 March 2019

[42] Ms Bennett says that on 4 March 2019, she was sworn at and abused by Mr Bolstad about the way she was feeding the cows. Ms Bennett says that Mr Bolstad screamed at her and she thought he was going to hit her. Ms Bennett says her daughter, Raquelle, who was close by, witnessed the incident. Mr Bolstad says that he did swear on that occasion because Ms Bennett made a baseless accusation that he was mistreating his cows. Mr Bolstad says they had a yelling match for approximately two minutes about this matter. He denies abusing Ms Bennett but accepts swearing during a heated exchange with her about the way in which she was feeding the cows and her accusation.

[43] Ms Bennett's daughter Ms Mitchell says she witnessed Mr Bolstad swearing and shouting at her mother and she was scared for her. I do not consider Ms Mitchell a credible witness for reasons already given.

[44] Ms Nannette Bolstad says Ms Bennett called her on 4 March 2019 about an incident with Mr Bolstad. Ms Nannette Bolstad went to meet Ms Bennett at her house on 5 March 2019 to discuss the incident. Ms Nannette Bolstad also spoke to Mr and Mrs Bolstad.

[45] Following the meetings, Ms Nannette Bolstad prepared an agreement between Ms Bennett and the Bolstads about behaviour and communication between them while Ms Bennett worked out her period of notice. On 6 March 2019, Ms Nanette Bolstad sent an email to Ms Bennett as follows:

Hi Kelli

...Following our meeting on Tuesday and my meeting with Jeff and Annette afterwards. Jeff and Annette have agreed to the following terms to help complete your time on the farm without incident.....Jeff will need to visit the farm but has given an undertaking that there will be no direct communication between you both. This means that you are not to engage him in discussion also.

Any issues are to be communicated to me (not Annette). However, this should only be issues that can't be resolved via an email to Jeff...

19 March 2019

[46] On 19 March 2019, Ms Bennett says that Mr Bolstad arrived on the farm with Mr Robert (Bob) Gatman, the local carrier, and started to load a cow and calf on to the stock transport truck. An argument ensued between Ms Bennett and Mr Bolstad about whether or not the cow should be moved. Ms Bennett sent an email to Ms Nanette Bolstad at 11.07 am on 19 March 2019 stating she was unhappy about the feeding practice on the farm and also about "jeffs disgusting talk again this morning". Ms Nannette Bolstad took the matter up with Mr Bolstad who denied Ms Bennett's version of events. Ms Nannette Bolstad then spoke to Mr Gatman who accompanied Mr Bolstad to the farm. Mr Gatman told Ms Nannette Bolstad that it was Ms Bennett that initiated the argument and he was shocked by the way in which she spoke to her employer, Mr Bolstad. Mr Gatman gave this evidence in the Authority also.

[47] At 1.06 am on 20 March 2019, Ms Bennett sent an email to the Bolstads making a number of accusations. She said: "...ive a friend flying from south tomorrow to support me in this whole carryon...hes a no nonsense man, so dare you not come here with your abusive mannerisms...if this continues I will go to see someone within the employment relations! I will not tolerate your bullying and nor abuse!...

[48] On 20 March 2019 at 9.28 am Mrs Nannette Bolstad received a text from Ms Bennett, in a similar vein to the earlier email to Mr Bolstad which she considered to be a threat. It said:

I've a friend whom owns a few farms down south Nanette coming to stay here with me for a week, and he most certainly will not tolerate Jeff bolstads terubke (sic) mouth and bullying, if he goes to do it again...have a good day

[49] Ms Nannette Bolstad sent an email to Ms Bennett on 21 March 2019 at 12.22 am responding to Ms Bennett's communications of 20 March 2019. Ms Nannette Bolstad

confirmed speaking to Mr Bolstad and to Mr Gatman about the incident on 19 March 2019. She stated:

[Mr Gatman] stated that you instigated the discussion in the morning and he confirmed that Jeff did swear when talking about the calf still being fed milk. In his opinion, the language was not directed at you personally. However, he does not support your claims in regard to the discussion in the afternoon on Tuesday. In fact he was very clear that he thought it was your behaviour that was unacceptable and that Jeff remained calm and did not swear at all. He does not accept or support your claim that Jeff shouted at you.

My instructions after meeting with you 2 weeks ago was that you were not to have direct communication. That applied to you also. This applied to you also. I appreciate that Jeff had to talk to you in the afternoon to discuss the calves as that was an urgent requirement and therefore not unreasonable. Whenever possible I expect communication to be via email or text and it must be civil...

24 March 2019

[50] Mr Bolstad says on 24 March 2019 he went to the farm in his Ute and Ms Bennett came out of the shed and “accosted” him. He says she then said “I am a woman alone and I can sort this”. Mr Bolstad said the way in which she approached him and made the comment, he took it to be a threat of sexual harassment. He rang Ms Nannette Bolstad, told her what had happened and that he could not work on his farm with Ms Bennett in such circumstances. He said he was angry and frightened.

[51] At 7:02pm on Sunday 24 March 2019 following discussions with Mr and Mrs Bolstad, Ms Nanette Bolstad sent an email to Ms Bennett. The email began as follows:

Hello Kelli

Unfortunately I've been advised by Jeff Bolstad that the employment relationship has deteriorated further in the past two days. As a result, please find attached a letter advising that your employment with Jeff and Annette Bolstad is terminated.

[52] The email went on to set out the tasks that needed to be completed prior to the end of Ms Bennett's employment.

[53] The attached letter of termination from Mr Bolstad stated:

Dear Kelli

Notification of termination of employment

As the employment relationship has deteriorated to a level that is no longer tenable, this letter is to provide you with two weeks notice as per your Employment Agreement effective from 3pm Monday 25th March 2019.

As we will need the house for a replacement worker, I will also notify that you are given 14 days to vacate the house as per the Agreement.

We will pay you in lieu of notice for the next two weeks. Your final pay shall be paid following a house inspection on Monday 8th April. This will include all holiday pay and alternative days in lieu. Please leave a signed copy of this letter in the dairy diary.

Yours sincerely

J K Bolstad

[54] Ms Bennett says she was shocked by the dismissal. She says the dismissal was unjustified and seeks remedies. Ms Bennett says as a result of her experience with the Bolstads she has suffered very bad anxiety and does not want to dairy farm again. She seeks compensation for hurt and humiliation suffered by her.

[55] Ms Bennett said that she thought she was going to be out of work for six weeks. However, her new employer was able to immediately find her a temporary job until she began work for him as a farm manager on 1 June 2019. Accordingly, Ms Bennett did not suffer loss of remuneration.

First Issue

Does Ms Bennett have an unjustifiable disadvantage claim? If so, what remedies are available to her?

[56] On 29 April 2019, Ms Bennett raised a personal grievance claim of unjustified disadvantage against the Bolstads. It was unclear from the letter written by Ms Bennett's representative what the details of the disadvantage grievances were. During the course of the investigation meeting Ms Bennett told the Authority the incidents on 4 and 19 March 2019 each amounted to an unjustified disadvantage. Ms Bennett says on those occasions she was verbally abused by Mr Bolstad.

[57] I do not accept Ms Bennett's version of events. Arguments erupted between Ms Bennett and Mr Bolstad about how work on the farm was being done. Ms Bennett was not an "innocent" party on those occasions.

[58] Following the incident on 4 March 2019, Ms Nanette Bolstad met with Mr and Mrs Bolstad, and with Ms Bennett separately. Mrs Nanette Bolstad drew up a communication agreement which was to apply to communication between Mr Bolstad and Ms Bennett while Ms Bennett worked out her notice period. A further incident occurred on 19 March 2019 which Ms Nannette Bolstad investigated. Mr Bolstad and Mr Gatman had a different view to Ms Bennett of what had occurred.

[59] I do not accept that Ms Bennett suffered an unjustifiable disadvantage during the course of her employment.

Second issue

Was Ms Bennett unjustifiably dismissed? If so, what remedies are available to her?

[60] The Bolstads accept that they did not meet with Ms Bennett prior to terminating her employment on 24 March 2019. Mr Bolstad says as a result of the deterioration in their work relationship and what he perceived to be a threat of sexual harassment, he felt he had no choice but to immediately terminate Ms Bennett's employment. Ms Bennett not only worked on the farm, she also lived on the farm. Mr Bolstad says in such circumstances he felt unable to continue to work with Ms Bennett and the decision was made to dismiss her.

The Law

[61] Ms Nanette Bolstad says before the dismissal she spoke with Mr and Mrs Bolstad about incidents that had occurred following Ms Bennett's resignation on 1 March 2019. They also discussed the incident on the farm on 24 March 2019 during which Mr Bolstad says Ms Bennett made a comment that he took to be a threat of sexual harassment. Mr Bolstad felt he could no longer have Ms Bennett working and living on the farm.

[62] There is no dispute that neither Ms Nanette Bolstad nor the Bolstads met with Ms Bennett to discuss these issues so that Ms Bennett could respond. Rather, Ms Bennett was emailed a letter terminating her employment with immediate effect.

[63] Justification for dismissal is set out in s 103A of the Employment Relations Act 2000 (the Act). The test of justification is as follows:

103 Test of justification

- (1) For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).
- (2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[64] The test of justification requires that the employer acted in a manner that was substantively and procedurally fair. An employer must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[65] Section 103A(3)(a) to (d) of the Act, sets out a procedure to be carried out by an employer before dismissal. The Bolstads were required to carry out a fair investigation and follow a fair procedure into any concerns it had with Ms Bennett before dismissing her. They failed to do so.

[66] There is no evidence that prior to dismissal, the Bolstads spoke with Ms Bennett about her claimed threat of sexual harassment. A fair and reasonable employer acting in accordance with the duty of good faith, as set out in s 4 of the Act, would have discussed this concern with Ms Bennett and provided her an opportunity to explain prior to dismissal. In all the circumstances, I find that Ms Bennett's dismissal was not a decision a fair and reasonable employer could have taken.

[67] I determine that Ms Bennett was unjustifiably dismissed by the Bolstads on 25 March 2019.

Remedies

Lost wages

[68] Ms Bennett commenced alternative employment immediately upon termination of her employment and there is no claim for lost remuneration.

Compensation

[69] Ms Bennett says she suffered hurt and humiliation following her dismissal by the Bolstads. She says she became a nervous wreck following what she says was abuse and an unfair dismissal. Ms Bennett seeks compensation of \$35,000 under s123 of the Act for the humiliation, loss of dignity, and injury to her feelings.

[70] The findings I have made in this matter are that the working relationship was good for almost the entire duration of Ms Bennett's employment by the Bolstads. There was an altercation in mid-October 2018 over a work related matter. There was no complaint of abuse by Ms Bennett about it. Ms Bennett resigned on 1 March 2019 because she found a better job, at a significantly higher salary, on a reputable farm.

[71] Following Ms Bennett's resignation, there were two further incidents on 4 and 19 March 2019, between Ms Bennett and Mr Bolstad. I do not accept Ms Bennett's version of what occurred on those occasions. I do accept that Mr Bolstad raised his voice, became angry and swore. Mr Bennett's frustration was about how Ms Bennett was performing her work and in response to her accusations that he was maltreating his cows. I do not consider Mr Bolstad directed verbal abuse towards Ms Bennett personally. This was confirmed by Mr Gatman in respect of the 19 March 2019 incident. However, swearing at Ms Bennett about her performance was not appropriate and not in accordance with the obligations both parties have under s 4 of the Act to treat each other in good faith. Both parties had an obligation to maintain a productive relationship, which includes being responsive and communicative.

[72] Following her dismissal on 25 March 2019, Ms Bennett immediately found a temporary job until she started her fulltime role on Mr Dickey's farm, on 1 June 2019.

[73] Ms Bennett had already resigned from her employment to take up a better position and she was working out a period of notice when she was dismissed. Subject to my findings on contribution, I consider an award of \$7,000 for distress compensation in respect of the unjustified dismissal to be appropriate.

Contribution

[74] I am required under s 124 of the Act to consider the issue of any contribution that may influence the remedies awarded. I find that Ms Bennett's conduct on 4 and 19 March 2019 and her actions and comment to Mr Bolstad on 24 March 2019 to be behaviour which contributed

to her dismissal. I find contributory fault on the part of Ms Bennett and reduce the remedies awarded by 15 per cent pursuant to s 124 of the Act.

[75] The Bolstads are ordered to pay Ms Bennett the sum of \$5,950 as compensation following the reduction for contribution.

Costs

[76] Costs are reserved. Ms Bennett has 14 days in which to file a memorandum as to costs. The Bolstads have 14 days upon receipt of Ms Bennett's memorandum to file a memorandum in response.

Anna Fitzgibbon
Member of the Employment Relations Authority