

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Judy Carelse (Applicant)
AND YMCA, Wellington Inc (Respondent)
REPRESENTATIVES Paul McBride and Nicola Whittfield for Applicant
Sacha Haskell for the Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Wellington 8 October 2004
**FURTHER INFORMATION
AND SUBMISSIONS** 15, 18 and 19 October 2004 & 1, 3, 15 & 23 November 2004
DATE OF DETERMINATION 6 January 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. The applicant has applied for an investigation in regard to whether she was offered and accepted a position of a “LifeWorks” coach with the respondent, the YMCA Wellington Inc (YMCA). She says that if it is accepted that she was offered and accepted the position then the respondent unjustifiably dismissed her on 20 February 2004 for purportedly not meeting the requisite skill level in an assessment that she had never heard of nor knew of.
2. The applicant has also requested an investigation into the respondent’s actions in regard to the applicant’s rights to seek advice on her employment agreement. The respondent denied the claims and contended that the applicant was never employed by the YMCA and was never offered employment. The respondent also denied offering Ms. Carelse a position as a “LifeWorks coach”.
3. The parties used mediation to try and resolve their problem and consequently save costs. They were not able to resolve the problem and thus the Authority is required to determine the facts and resolve the problem.

The facts

4. The Open Polytechnic of New Zealand is an adviser in providing the LifeWorks programme for the YMCA Wellington. The LifeWorks programme is a New Zealand Qualifications Authority accredited programme delivering the National Certificate in Employment Skills.
5. In early December 2003 the applicant found out that the YMCA was looking to employ tutors for the Life Works programme and might be advertising positions for LifeWorks coaches. The applicant was interested and contacted one of the managers at the YMCA about the possibility of working for the YMCA.
6. Ms. Carelse rang Ron Taukamo, the Executive Manager at the YMCA Wellington, and asked him about the possibility of work opportunities. He suggested that she email her CV to him and if a suitable job vacancy arose he would be able to contact her. The applicant sent an email with her CV on the same day (documents 1 and 2 produced).
7. On 16 January 2004 the applicant was telephoned by Sacha Haskell, the new Executive Director and invited to attend an interview for the position of a LifeWorks coach. The applicant agreed to attend an interview on 20 January 2004. The interview panel consisted of Ms Haskell, Ron Taukamo (just back to work from leave) and Caroline Hawe, a representative from LifeWorks.
8. At the interview, the specific nature of the job and flexible hours were discussed with the applicant. The requirement to be involved in observation sessions and induction training was outlined. Also Ms Carelse made some mention of having access to a motor vehicle, which was required for the role.
9. There is a dispute about whether or not the respondent said that the applicant would be assessed at either the observation or induction sessions. The applicant claims she was not told that she was to be assessed for appointment.
10. The applicant says that at the end of the interview Caroline Hawe mentioned that there would be induction training during early February. She says there was no discussion on the salary. The applicant accepts that at the conclusion of the interview, if she were to be offered a job, she would be asked to attend some observation sessions first. It is common ground that at this point, the applicant had not been offered a job.

11. On 22 January 2004 the applicant received an email from Ms Haskell inviting her to attend some observation/coaching sessions. Another person was also invited. The email stated:

“We would like to have you on our team but would think it a good idea to see how the course is delivered first.”

12. The applicant says she understood this email to mean that she had been offered a position. However, Ms Haskell says that she wanted her to see how the course was delivered before she accepted the role. She agreed to attend the sessions and requested further details (document 3 produced).

13. Also on 23 January 2004 the applicant received an email from Ron Taukamo that congratulated her on the offer of employment and arranging for her to attend the observation sessions. The applicant understood this to mean that she had been offered the position and was going on training to see whether she would accept the position. His email read as follows:

“Congratulations. I am meeting with Coaches Mandy and Lynne this afternoon and will contact you soon after with details of visit times etc.”

14. Between 28 and 30 January 2004 the applicant attended two observation sessions to observe LifeWorks coaches. She liked what she saw. She says that after the final session she met with Ms Haskell who inquired about her impressions of the visit. She says that Ms Haskell’s comments were in line with Ms Haskell’s previous email that was offering her the position subject to her seeing how the course was delivered before accepting it. The applicant says she told Ms Haskell that the job was exactly what she expected and that the job was tailor-made for her. She says that Ms Haskell was happy with this positive response.

15. As further background Ms Haskell says that on 29 January 2004 she advised the YMCA Wellington Board that the LifeWorks coach interviews had taken place. She says the calibre of applicant was not high. She says she advised the Board that two candidates had been short listed to attend student visits and the coach assessment training to assess their suitability. She says that at this meeting the Chair of the YMCA Wellington, John Fairhurst, reminded her to advise him of the outcome of the assessment before any offer of employment. She says she raised the matter during a teleconference on 16 February 2004 (A Minute document 7 Haskell). There was no other supporting evidence offered.

16. The applicant says Ms Haskell invited her to attend formal induction training from 2 to 5 February with the Open Polytechnic of New Zealand and that Ms. Haskell also asked Caroline Hawe to book the two short listed candidates into the coach assessment training from 2 to 5 February. The other candidate subsequently withdrew her application because she decided that the job was not what she expected. Ms. Haskell told the Authority that there was no need to obtain any resignation from this person because she had not been selected or offered employment. Nothing turns on this.
17. The applicant then met with Ron Taukamo to arrange for resources for training including obtaining an “engagement kit”. She says he inquired about her coaching visit and whether she had enjoyed it. The applicant says she told him that the job was exactly what she had expected and the job was tailor-made and she would accept the position having undertaken the observation sessions. She says that she confirmed that she had accepted the job and he congratulated her again and welcomed her onboard with the YMCA.
18. Ms. Carelse says that there were six other LifeWorks trainee coaches from different organisations attending the induction training on 2-5 February 2004 at LifeWorks. She says that at the end of the week all of the attendees were issued with a LifeWorks Coach start kit, which included a coach handbook, coach file and student engagement kit. She says that each trainee was also issued with LifeWorks logo clothing and a mobile phone.
19. Ms. Carelse says that during the training she became aware that everyone else on the course already had a written contract and were referred to as “employees” for those providers. She did not provide any details and examples. Thus, she says that she had a cause for concern to ask for a copy of her agreement. I have concluded that it is probable those different providers had different arrangements or that individual circumstances might have been different (Haskell and Hawe), although the Lifeworks appointment process produced by Ms. Haskell does not support different practices (see paragraph 48).
20. On 4 February 2004 the applicant emailed Ms Haskell expressing a concern about her “appointment”. The email read as follows:

“Dear Sacha,

Thank you for arranging that I be on training this week. I am finding it very challenging and stimulating. I am impressed with the presentation and high level of organisation.

However, I have a slight uneasiness about my appointment. I find it a bit confusing that you would schedule me for training as a coach, before discussing the terms of an employment contract, salary, etc and making a formal job offer.

In the meantime, could I ask that you email the offer/contract, for me to consider. Would it also be possible for us to meet on Tuesday afternoon to discuss these matters, as training ends at 1.30 pm.

21. Ms Haskell replied:

“Hi Judy,

I can understand how you feel. The most important thing is that you feel that you enjoy the job and the coach training as part of getting to understand the job. We have had other people to do the training and say it is not for them, so that is why it is important to do the training first and then discuss it.

You are paid for your time and so after training we will discuss your position on Thursday, if you are happy to proceed with the job and your coach training went well, then there will be a position for you.

An agreement will be prepared for you tomorrow. I have a meeting at 3.00pm which will take some time, so if you could come in and see me immediately after training that would be good and will give us some time.”

22. On 5 February 2004 the applicant and Ms Haskell met. Ms Haskell says that she had possession of the YMCA’s business rules and had obtained a draft individual employment agreement from the YMCA’s lawyer and she put the applicant’s name on it.
23. She says that she had obtained a template of the agreement from the YMCA’s lawyers and that she started to complete it in the event that Ms. Carelse was offered the position.
24. The schedules of the agreement outlining the responsibilities and duties and the remuneration were not attached to the agreement. The applicant says that Ms Haskell undertook to provide those by email in the morning on Monday 9 February. The applicant says that Ms Haskell offered her an annual salary of \$35,000 and a car allowance of 33 cents per kilometre and that she then asked when Ms Carelse could start work. Ms Carelse indicated that she was willing to start as soon as possible. However, she indicated that she

preferred her start date to be organised once she had received and sighted the outstanding schedules of the employment agreement.

25. Ms. Carelse says that she raised her need to buy her own car as her son had just sold his car which she had planned to use for the job. She says that she told Ms Haskell that in order to obtain finance she would need a letter of appointment from the YMCA and therefore had hoped that she would have the employment agreement ready for signing.
26. Ms Haskell says that Ms Carelse deliberately took the employment agreement. Ms Haskell says that she did not give the draft employment agreement to the applicant because the draft document was incomplete and needed corrections. Ms Haskell made a file note of the different things that were discussed at the meeting on 5 February (including salary and travel figures), because she says she was somewhat concerned by the applicant's demeanour and attitude and her agitated state at the meeting. She says that at that stage she was worried about what appeared to be a false representation from Ms. Carelse about having access to a car. She decided to pursue the matter and asked Ms. Carelse what had happened to her son's car. She says that Ms Carelse said that she could not use it because he needed it. Ms Haskell says that she concluded that this contradicted what the applicant had said in her interview on 20 January.
27. Ms. Carelse says that upon requesting an agreement Ms Haskell immediately asked her secretary to prepare an employment agreement and that Ms Haskell handed her a copy of the YMCA business rules, as well as a copy of the individual employment agreement that had her name on it (refer documents 6 and 7, para.15 of the applicant's written statement). Ms Haskell and Trish Williams, the administration manager denied this. The employment agreement with Ms Carelse's name on it had already been pre-prepared before the meeting and it is quite possible that Ms. Haskell upon taking the business rules to the meeting with the individual employment agreement may have got them both caught up. Ms. Williams told the Authority that she had no involvement in preparing employment agreements in her role. There was no reason not to accept this evidence.
28. Around 6 and 7 February 2004 the applicant says she informed her family and friends that she had obtained employment with the YMCA. A friend, Jenny du Plooy, a human resources consultant gave evidence to support this.
29. Between 9 February and 12 February Ms Carelse continued to contact the YMCA for Ms Haskell to produce the schedules that Ms Carelse says were promised. By 13 February the

applicant decided, and advised Ms Haskell, that she would come into the office to collect the two schedules (document 8 produced). The applicant sought advice from Jenny du Plooy.

30. On 13 February 2004 the applicant met with Ms Haskell at the YMCA and her husband sat in the car to wait. The purpose of the meeting was for the applicant to obtain the schedules. This appears to have become a tense meeting with both parties taking exception to each other's approach. The applicant took exception to Ms Haskell's comments that she says were discriminatory and offensive, and accused Ms Haskell of being unprofessional and insensitive.
31. At the meeting on 13 February 2004 the applicant says that Ms Haskell asked her what the story was about the use of a car and that the applicant says she told Ms Haskell that her son had sold his car. It would not be a problem for her. She could make use of the family car in the meantime, but would prefer to buy her own car. This meeting broke up with the applicant leaving and returning to her car where her husband was waiting. She says she was upset and that she felt that Ms Haskell was going to find some way to deny her a position.
32. Ms Haskell says that because the meeting was so unpleasant she decided not to wait for LifeWorks to contact her and that she would take her own steps to find out how Ms Carelse had performed. She therefore rang Caroline Hawe and asked her about the applicant's performance at the assessment training. She says Ms Hawe gave her an unfavourable verbal report about Ms Carelse's competence. She says she was told by Ms Hawe of concerns about how the applicant's performance had differed from the statements about her abilities that she had made at her interview and that Ms Carelse did not have the minimum competencies necessary for a candidate to be trained into a LifeWorks Coach. She says that Ms Hawe said that the applicant's actual abilities were below the minimum standard of competency in computer skills, comprehension and awareness of the NZQA unit standards. She requested Ms Hawe provide a written report about this from LifeWorks as soon as possible.
33. This evidence contrasted with the reply provided by the respondent in the statement of reply, which read as follows:

“2.13 Between 13 February 2004 and 16 February 2004 Sacha Haskell met with Caroline Hawe for the purpose of receiving oral reports concerning applicants' (sic) performance at the LifeWorks assessment sessions.

Ms Hawe's oral report concerning Ms Carelse was unfavourable in the following ways:

- *Ms Hawe said that Ms Carelse was disorganised and held the class up trying to keep up with the material;*
- *Mr Carelse was deficient in unit standards assessment, and was unable to follow processes without assistance;*
- *Ms Carelse had no knowledge of NZQA or experience with unit standards;*
- *Ms Carelse did not have appropriate computer skills and required training.*

Overall, Ms Hawe's assessment was that Ms Carelse appeared "desperate for a job", but did not have any passion for the role"

34. On this point Ms Hawe told the Authority that she could not recall saying that Ms. Carelse was disorganised and was emphatic that she did not say that Ms. Carelse appeared desperate for a job and did not have any passion for the role.
35. The applicant met with her friend Jenny du Plooy for lunch and described to her what had happened at the meeting. She says she was devastated and humiliated by Ms Haskell's treatment of her. She says she truly believed that she had a right to ask for the schedules and that she could insist on signing an agreement before agreeing to a specific start date.
36. The applicant denied deliberately taking the employment agreement and it seems that there would have been no reason for her to do so other than purportedly to represent it as an agreement which would be of little use when the document is so clearly a draft.
37. On 20 February 2004 Ms Carelse received a letter from Ms Haskell. The letter declined to offer her a position of LifeWorks coach on the grounds that according to LifeWorks she had not attained the requisite levels of competency. For completeness, the letter reads as follows:

"Dear Judith,

On 20th February 2004 (sic) you were interviewed for a position of LifeWorks Coach and as a result you were asked to attend a coach training session so you could understand further what the job entailed and so that we could assess your suitability for the position. Whether you would have any future employment with the YMCA was strictly dependent on your satisfactory completion of the training.

You attended this training voluntarily under those conditions, and for your time in attending this course you received payment for out of pocket expenses, which will be paid to you by the Open Polytech of New Zealand.

Over the last few days we have discussed your employment status and, in particular I informed you that any offer of employment was contingent on your satisfactorily completing the training course.

I have since received a report regarding your training at LifeWorks and this was not favourable. Unfortunately your performance at the coach training session did not meet the levels of competency expected nor the level of competency represented by you at your interview for the position.

This was discussed with the YMCA board on Thursday 29th January and a meeting was held on Tuesday 16th February 2004. As a result the board has not approved any offer of employment be made to you. I regret to inform you that the Wellington YMCA will not be offering you any employment.

Yours sincerely,

Sacha Haskell

38. Ms Hawe subsequently forwarded a copy of the applicant's coach induction training assessment/feed back form and supported her oral assessment with a letter to Ms Haskell dated 12 March 2004 (produced).

Determination

39. At issue is whether the YMCA, Wellington Inc offered Ms. Carelse a position of a LifeWorks coach and that she accepted it. There is a conflict between Ms. Carelse and Ms. Haskell. Ms. Carelse has relied upon Mr. Taukamo's evidence to support her.

40. I turn first to the conflict between Ms. Carelse and Ms. Haskell. There were three pieces of their evidence that was striking. First Ms. Carelse told the Authority that at the meeting she attended on 5 February Ms. Haskell immediately asked Ms. Williams to prepare an employment agreement. It is most probable that this did not happen because I accept that Ms. Haskell already had the draft agreement that she obtained from the YMCA's lawyer and that she filled in Ms. Carelse's name before the meeting.
41. Secondly, Ms. Hawe denied emphatically Ms. Haskell's evidence that Ms. Carelse was disorganised and Ms. Hawe emphatically denied that she said to Ms. Haskell that Ms. Carelse "*appeared "desperate for a job", but did not have any passion for the role"*". There is no reason for me not to accept Ms. Hawe's evidence on this point. It is also consistent with Mr. Taukamo's evidence where he says that in his experience Ms. Carelse was not desperate for a job (paragraph 36 of his written statement). Therefore Ms. Haskell's evidence is probably not an accurate recollection of what Ms. Hawe said but maybe was her own interpretation of Ms. Hawe's assessment. Or in the unkindest light this was an exaggeration.
42. Thirdly Ms. Haskell has attempted to paint a negative picture of Ms. Carelse by claiming that Ms. Carelse deliberately took the employment agreement. She relied on the agreement being produced by Ms. Carelse in the statement of problem when she should never have had it and never raised it until filing her problem. I can find nothing malicious about Ms. Carelse possessing the agreement since it was a draft and what Ms. Carelse was after was the schedules for her salary to arrange finance for a car. Ms. Haskell went to the meeting with the business rules and it is common ground these were handed to Ms. Carelse. It therefore might have been that the draft agreement could have got mixed up with the rules and Ms. Carelse took the agreement unintentionally and without any malice.
43. Ms. Haskell has also attempted to challenge Mr. Taukamo and tried to rely upon matters involving his employment to question his evidence that does not support the YMCA. There is a confidential agreement between Mr. Taukamo and the YMCA. I was not shown the details of the agreement. This came to light because Ms. Haskell raised Mr. Taukamo's employment that is apparently the subject of confidential terms that she should have reasonably known should have been kept confidential, and needed the Authority to caution her about.
44. Ms. Carelse produced the emails from Ron Taukamo congratulating her and welcoming her on board. Also, she has relied upon the email from Ms. Haskell that says "*We would like to*

have you on our team but would think it a good idea to see how the course is delivered first.” to support being offered an appointment.

45. Mr. Taukamo and Ms. Haskell’s practices of employing LifeWorks coaches differed. Significantly this was Ms. Haskell’s first coach appointment and of course it was open to her to do things differently and she could not be held to carry out the role the same way Mr. Taukamo might have done it previously. Mr. Taukamo was not responsible for the appointment and did not have the authority to make the appointment. He has reacted in his emails on the basis of information given to him by Ms. Carelse and how he did things in the past. It is clear from the evidence that Ms. Haskell did not inform him of any changes in the process that she was following and did not keep him in the loop in regard to her decisions on the appointments. It is of course probable that Mr. Taukamo concluded, and maybe incorrectly, that Ms. Carelse had been offered the position. He says that the panel agreed to offer Ms. Carelse an appointment. He could not be certain considering the conflicting evidence and Ms. Haskell’s involvement I hold. Ms. Carelse would not have known about Mr. Taukamo’s role in the interview and the appointment process. But it was not unreasonable for her to consider him as somebody with some knowledge and authority in the YMCA.
46. I now turn to the other evidence. Ms. Carelse says she told family and friends that she had obtained work. To support this she relied upon her friend Ms. du Plooy, who accepted that she had no first hand knowledge of the contact between Ms. Carelse and Ms. Haskell other than what Ms. Carelse told her.
47. Ms. Carelse has relied upon being told that other trainee coaches had already been employed and had employment agreements. Significantly, Ms. Hawe gave evidence that the other trainees were from other providers. She also told the Authority that providers did things differently and that individual circumstances might have been different. I accept this. Therefore just because other providers may have employed coaches for their training does not mean that the YMCA did things the same way considering the LifeWorks requirements. This evidence is not determinative that Ms. Carelse was employed by the YMCA. There was no other supporting evidence produced in regard to the other trainees and providers.
48. Ms. Haskell has relied upon a document with an appointment diagram from LifeWorks (produced) that outlined a process for appointments to LifeWorks coach positions, but did not follow it herself: for example she needed 2 verbal referee checks, which was not followed because she says Ms. Carelse did not have local referees and her referees were in

South Africa and friends. However the CV dated 20 November 2003 (CV document 3 Haskell) had two New Zealand names and I am not sure that Ms. Haskell would have known that they were friends of Ms. Carelse without contacting them. There needed to be a Police check and this was not done. An interview note and summary does not appear to have been written up. The policy stipulates that confirmation occurs after coach training.

49. It is probable that this policy was not being followed at the time and there is the probability the document has come to light since the appointment process was followed. This is because Ms. Haskell did not explain at the time clearly what the process involved. She never produced the document before. She did not explain the process to Mr. Taukamo. Also, it would seem that this evidence is somewhat inconsistent with the evidence that the other providers did things differently to the YMCA as Ms. Hawe referred to in her evidence (commented on elsewhere). Further, Ms. Haskell decided not to wait until she received the LifeWorks assessment form from the coach training and decided to ring Ms. Hawe for immediate feedback and then decided not to confirm Ms. Carelse. By this time the relationship had deteriorated, partly as a result of the unpleasantness arising at the meetings that Ms. Williams witnessed. I had the benefit of watching both Ms. Carelse and Ms. Haskell give their evidence and although Ms. Haskell appeared to be the more assertive of the two, I consider that Ms. Carelse's sense of upset and indignation about what she perceived was happening caused mutual antagonism between them both. This of course might have affected the way they behaved and could have been different to the polite way they both presented themselves in front of me. Nothing will turn on this.
50. Ms. Carelse says the observations and induction training was consistent with being appointed when she was given the LifeWorks kit including a coach handbook, coach file and student engagement kit and LifeWorks logo clothing and a mobile phone and not being told that her appointment was conditional on an assessment. She says that she was contacted later with a message from the LifeWorks call centre on the mobile asking her to contact a student.
51. Then there are the meetings on 5 and 13 February. These were unpleasant meetings. Ms. Carelse says that Ms. Haskell has tried to find a way to deny her a position. In this regard the evidence is that Ms. Haskell has relied upon Ms. Hawe's verbal assessment and she has embellished what she understood Ms. Hawe's assessment to be. Ms. Haskell has tried to establish, without success, that Ms. Carelse stole the employment agreement for an ulterior motive. She has tried to challenge Ms. Carelse's evidence and Mr. Taukamo's evidence.

On the other hand Ms. Carelse has been emphatic that she believed that she had been offered a LifeWorks coach position despite being wrong on at least one factual point, in regard to the administration manager being asked by Ms. Haskell to produce an employment agreement.

52. Another matter related to Ms. Haskell contacting the board and Mr. Fairhurst, the YMCA chairman in regard to the appointments. I requested the respondent to provide the names of witness that it wanted me to interview and Mr. Fairhurst was not offered for an interview. I cannot rely on what Ms. Haskell has said because of what happened between her and Ms. Hawe in their evidence.
53. Finally I have noted a difference between Ms. Carelse and Ms. Hawe about whether the salary was mentioned at the appointment interview. Ms. Carelse says it was not. Ms. Hawe says that the salary was mentioned albeit maybe not the sum then. The interview notes refer to **“Remuneration** – *salary fine + car allowance OK. Can start as soon as possible*”. I am not satisfied that anything turns on this except some confusion. The mention of a salary at some point is consistent with Ms. Carelse’s evidence that the sum of \$35,000 was mentioned later and taken together both are consistent.
54. On balance it is my determination that there was an offer and acceptance of a position for Ms. Carelse at the YMCA, although not all the details had been finalised on the terms and conditions including an agreement being properly presented. It was open for Ms. Carelse to reasonably conclude that she was accepting a position offered to her although the terms and conditions had not been fully agreed, (which is not, under the law, a prerequisite for employment being entered into). I have reached this determination because:
- Ms. Haskell’s evidence was not reliable having regard to Ms. Hawe’s evidence. Ms. Haskell’s evidence was wrong or an exaggeration and contradictory. This is more significant than the incorrect evidence from Mrs. Carelse about Ms. Haskell asking Mrs Williams to prepare an employment agreement.
 - There are Ms. Haskell’s emails of 22 January and letter of 4 February 2004 that signal an appointment even if what they say is not what Ms. Haskell says she meant.
 - Ms. Haskell unsuccessfully attempted to challenge Ms. Carelse and Mr. Taukamo.
 - Ms. Haskell has produced evidence after the events such as the Life Works appointment procedure. It was not properly completed anyway.

- It seems consistent with an appointment that Ms. Carelse was provided with the LifeWorks kit.
- Mr. Taukamo was on the appointment panel. Ms. Carelse would not have known his role and she could reasonably have concluded that he had knowledge of the situation, especially since he was her first contact in the organisation and given the conflicts that have emerged between her and Ms. Haskell.
- There is a question about whether Ms. Carelse was told that she would be assessed in the induction as opposed to deciding if the job was for her in attending the observations.
- It does not assist Ms. Haskell that the relationship between her and Ms. Carelse deteriorated. Ms. Haskell decided not to wait for a written assessment but made the decision on a verbal report. Ms. Haskell's evidence has proved not to be accurate considering Ms. Hawe's evidence. Ms. Haskell has also raised an issue about the provision of the motor vehicle that I consider is a side issue and another way in which Ms. Haskell has attempted to challenge Ms. Carelse. Ulterior reasons for Ms. Haskell not wanting Ms. Carelse have emerged.

55. It is more likely (on the balance of probabilities) that Ms. Haskell decided that Ms. Carelse was not suitable for personal reasons relating to the deterioration in their relationship on and before 13 February 2004. The action of the employer, YMCA, on informing Ms. Carelse that she was not successful was unjustified. I accept that Ms. Carelse had not been told of the assessment levels required for appointment and the assessment received verbally was not totally accurate and a final assessment in writing was not received until after the decision. Ms. Carelse had no further input because she had been dismissed.

56. Therefore, Ms. Carelse has a personal grievance and her employment relationship problem should be resolved as such. She is entitled to 3 months' lost wages under ss 123 and 124 and 128 of the Act. The appointment would have been initially affected by the assessments involving Ms. Carelse's suitability and requiring her to have further training (written assessment produced) from the induction sessions but the YMCA would have been responsible to provide this. Ms. Carelse reasonably concluded that she had been offered and accepted an appointment. I have noted that the terms of appointment had not all been concluded including a start date and that the claim should relate to 3 months lost earnings. Ms. Carelse did not have a job before the YMCA. Ms. Carelse was able to start as soon as

possible. Ms. Carelse obtained other work much later. I have assessed the loss to be reimbursed at 13 weeks on a salary of \$35,000 that Ms. Carelse says was referred to and not refuted since there was some discussion about a salary. The YMCA Wellington Inc is to pay Ms. Carelse \$8,749.99 lost remuneration under ss 123 and 124 and 128 of the Act. There was no contributory fault and I am satisfied that Ms. Carelse attempted to mitigate her loss and although Ms. Haskell has presented evidence of an apparent inability of the YMCA to pay it is not relevant to be taken into consideration upon the applicant's rights under the Act.

57. Ms. Carelse is entitled to compensation but has not established her claim for \$30,000. She has produced evidence that satisfied me that the sum of \$6,000 would be appropriate in regard to the impact of her dismissal on her that affected her feelings, and any humiliation. I order the YMCA Wellington Inc to pay Judy Carelse the sum of \$6,000 under s 123 (c) (i) of the Act
58. Costs are reserved.

P R Stapp
Member of Employment Relations Authority