IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2014] NZERA Christchurch 152
5411907

	BETWEEN	LYNLEY MAY CARRINGTON Applicant
	A N D	TAYSIDE SPRINGS LIMITED Respondent

Member of Authority:	David Appleton
Representatives:	Lyn Carrington in person Manav Soni, representative for the Respondent
Investigation Meeting:	28 August 2014 at Timaru
Submissions Received:	28 August 2014 from Applicant and Respondent
Further information received:	From Applicant on 2 and 4 September 2014. From Respondent on 18 September 2014.
Date of Determination:	1 October 2014

DETERMINATION OF THE AUTHORITY

A. The applicant was unjustifiably constructively dismissed.

B. The applicant suffered an unjustified disadvantage in her employment.

C. No personal grievance has been raised in respect of alleged age discrimination, and so this aspect of the claim is dismissed.

D. The applicant was not legally represented for the Authority's investigation, and no legal costs can be awarded, save for reimbursement by the respondent of the Authority's lodgement fee.

Employment relationship problem

[1] Ms Carrington complains that she was unjustifiably constructively dismissed from her position working for the respondent's hotel, the Benvenue Hotel, because her hours were systematically reduced until her income was too low to live off. She also claims an unjustified disadvantage in relation to that reduction in hours. Ms Carrington also alleges in her statement of problem that she was discriminated against on the grounds of her age.

[2] The respondent denies that it reduced Ms Carrington's hours. It says that, if Ms Carrington's hours reduced, it was because Ms Carrington did not want to work the breakfast shift. It also said that a dip in her hours occurred naturally because of the off-season between December and March.

Brief account of the events leading to the resignation

[3] Ms Carrington had worked for the Benvenue Hotel for approximately two years prior to her resignation. For around the first year of her employment, the hotel was owned by another company which was, in turn, owned by Mr and Mrs Lancaster. Mrs Lancaster gave evidence on behalf of Ms Carrington at the Authority's investigation meeting. The respondent company purchased the hotel from Mr and Mrs Lancaster in March 2012.

[4] It is common ground between the parties that the respondent agreed to take on Ms Carrington, and two other members of staff, whom the Lancasters regarded as key employees, on the same terms and conditions of employment as they had been employed before it purchased the hotel. Unfortunately, the individual employment agreement in accordance with which Ms Carrington had been employed by the Lancasters could not be found by either Ms Carrington or Mrs Lancaster, although it would appear to be the case that the contract was the July 2009 version of an individual employment agreement produced by the Hospitality Association of New Zealand (HANZ).

[5] Mrs Lancaster made available to the Authority a full copy of the July 2009 version of the HANZ template agreement which she believed she had prepared on behalf of Ms Carrington when the respondent company had taken over the hotel, in order to assist the respondent company to understand the terms and conditions that Ms Carrington was employed under.

[6] Clause 2.1 of this template document states as follows:

> ***2.1 full-time employees***
>
> *Full-time employees are those employed for a minimum of thirty (30) hours.*

[7] Clauses 6.1 to 6.4 state as follows:

> *6.1 The ordinary hours of work should not normally exceed thirty (30) hours in any one week or 10 hours in any one day and may be worked on no more than five days of the week, Monday to Sunday inclusive, except as provided in Clause 6.2. These hours will be paid at ordinary rates of pay, as set out in Schedule A to this Agreement irrespective of the day of the week or the time of the day on which the work is performed.*
>
> *6.2 Notwithstanding Clause 6.1 above, where an employee and the employer agree, the ordinary hours of work may be spread over 6 or 7 days of the week and/or exceed 40 hours in any week, provided that no more than 50 hours is worked in any week without agreement between the parties. Any hours worked in excess of 40 hours per week will be paid at the employee's ordinary rate of pay as set out in schedule A.*
>
> *6.3 The hours and/or days of part time employees may be increased or decreased by the employer in order to meet variations and fluctuations in trading patterns and labour requirements.*
>
> *6.4 The employer shall, wherever reasonably practicable, give 7 days notice of any change to rostered hours.*

[8] Schedule A (entitled Summary of Terms and Conditions of Employment) contained the following terms:

> *Flexible hours as required by the employer.*
> *Hours may vary from week to week.*

[9] It is Ms Carrington's evidence that she was not given a copy of an employment agreement by the respondent company, although some of her colleagues were. The Authority saw a copy of part of an individual employment agreement between the respondent and Ms Carrington which the respondent says was signed by Ms Carrington and which Mr Soni said, in his evidence, had been returned to him by Ms Carrington a month or two after his company had taken over the hotel.

[10] Ms Carrington is, however, adamant that she had never seen that contract before and that the signature that it bears is not her signature. Effectively, she says that her signature has been forged. She says that the document was first made

available to her after she had resigned when the parties' respective legal advisers were in correspondence with one another.

[11] On the balance of probabilities I find that it was not Ms Carrington who signed the document. However, as forging someone's signature on a legal document is a serious action, which could even have implications under criminal law, given the limited evidence I have heard on the matter, I am not able or willing to go so far as to attempt to identify who did so. For the purposes of this determination, though, I am satisfied that Ms Carrington is telling the truth when she says that she did not see the contract nor sign it during her employment with the respondent.

[12] As I am unable to reach any satisfactory conclusion as to who signed the contract purporting to be Ms Carrington I can also make no finding of bad faith under the Employment Relations Act 2000 (the Act) against the respondent in this respect. Furthermore, the agreement was not presented to Ms Carrington until after her employment had ended, by which time the respondent's duty towards her under s.4 of the Act had ended in any event.

[13] Ms Carrington's evidence is that, while she was employed by the Lancasters' company, from about November 2011 her role changed and she started to oversee the running of the hotel during the afternoon shift and often worked a night shift. The Authority saw the final eight pay slips that she received prior to the respondent taking over the hotel and they show that, in February and March 2012, her hours of work which were paid at $20 per hour were supplemented by three or four hours a week as a night porter, which were paid at $65 per hour. I understand from Ms Lancaster's evidence that Ms Carrington's night porter duties were paid at such a high hourly rate deliberately in order to boost Ms Carrington's income, which would otherwise have been low. Ms Lancaster's rationale was that she did not wish to lose Ms Carrington as an employee.

[14] Immediately after the respondent took over the ownership of the hotel, according to Ms Carrington, her duties remained the same, including doing night porter duties. Pay slips for the first 12 weeks of the respondent's ownership of the hotel were not available, although the Authority saw copies of Ms Carrington's bank accounts showing her net pay over this period. It shows that, during this period, her estimated gross pay would have varied between around $600 to $1,400 per week,

averaging $923 per week over that period. Ms Carrington confirmed that she was not unhappy with her hours or pay during this period.

[15] Ms Carrington says that she stopped being given night porter duties after a few weeks, but that she did not complain about this because she was getting sufficient hours to maintain a reasonable income. Mr Soni confirmed that he stopped giving her night porter duties because he, himself, was staying at the hotel during the nights and he, therefore, carried out those duties.

[16] Ms Carrington says that she began to become unhappy with her hours around July or August 2012. It is her evidence that she trained new staff members who were being recruited by the respondent and that, during her training of these staff, her hours were acceptable. However, Ms Carrington says that she found the respondent started to give her fewer hours and the new staff more hours. It would appear, though, that staff whom Ms Carrington called *new staff* were either already working for the respondent company at a different hotel or were recruited fairly soon after the respondent company took over the Benvenue Hotel.

[17] Ms Carrington says that she did ask Mr Soni why she was getting fewer hours and whether she could get more hours, but had little communication from him. She says that he was not there very often and that her communications were sometimes through other members of staff.

[18] Mr Soni says that Ms Carrington did not want work during the breakfast shift and that, if she had, she would have been able to make up her hours to around 40 per week. Ms Carrington denies that she refused to do the breakfast shift, although it appears from her evidence that she was not particularly keen to do so. Her evidence is that, whereas she used to start the afternoon shift at 3pm, she was now being asked to start at 5pm or 6pm. Mr Soni explained that this was because the bar did not open until 5pm and the restaurant until 6pm. Also, he was there at 3pm and did not need two people to be there.

[19] Mr Soni also said that Ms Carrington was not keen on using the technology that was necessary to work on reception, although it would appear that this is an exaggeration, as Ms Carrington had been working on reception when employed by the Lancasters. It appears more likely that Mr Soni decided that another staff member should work on reception, for an unknown reason.

[20] Around the beginning of February 2013 Ms Carrington spotted an advertisement that had been placed in the situations vacant page of the *Timaru Herald* advertising for a full time role as restaurant manager at the hotel. Ms Carrington understood that this was her role, although it would seem that, by February 2013, Ms Carrington was being used mainly to work in the bar during the afternoon and evening shift. In any event, no restaurant manager was recruited and Mr Soni said that this advertisement had been placed by his lawyer in the incorrect newspaper, it being intended for the *Christchurch Press*, as he was seeking a restaurant manager for his Christchurch hotel. Given that no restaurant manager was recruited at the Benvenue Hotel, on balance I accept Mr Soni's evidence in this respect.

[21] Ms Carrington says that, around this time, she was particularly unhappy at work and had mentioned to staff that she was thinking of resigning. It seems that the staff found this amusing. Mr Soni said that this was because Ms Carrington had said four or five times that she was going to resign but did not do so. It appears that Ms Carrington was not aware of the behaviour of the staff in this respect until after her resignation and so it cannot have any bearing on the issues to be decided by the Authority, as it cannot have caused her a disadvantage in her employment.

[22] By February 2013 Ms Carrington was particularly unhappy and approached a local firm of solicitors, Timpany Walton, to raise a personal grievance on her behalf. This letter was written on 12 February 2013 and stated that the purpose of the letter was to formally raise a personal grievance pursuant to the Employment Relations Act. It stated that the grounds relied upon in support of her grievance were *unjustifiable dismissal* and *unjustifiable actions by employer*.

[23] The letter goes on to say that Ms Carrington had been working in excess of 40 hours a week prior to Tayside taking over the hotel. However, Ms Carrington accepted that this was an error on the part of Timpany Walton and that she had not been working in excess of 40 hours per week during that time. She also accepted that, at the time the letter was written, she had not yet resigned.

[24] On 25 February 2013 Ms Carrington resigned from her employment in the following terms:

> *To Mr Soni*
>
> *I hereby tender my forced resignation effective as of today Monday 25th Feb 2013, giving one week's notice and Friday 1st March being the final day of employment at the Comfort Hotel Benvenue.*

[25] On the same day, Timpany Walton wrote to the Mediation Services, seeking mediation. This stated that it had not received a reply from the respondent to its last letter. It does not appear to have been copied to the respondent. On 1 March 2013 Davidson & Associates wrote to Timpany Walton on behalf of the respondent, denying that Ms Carrington had been unjustifiably constructively dismissed. This letter went on to state the following:

> *Our client does not accept your client's claim that full-time work has not been made available to her since taking possession of the business she is employed to work in. Our client advises that the terms of the parties employment agreement provide that she is a full time employee, which is defined in section 2.1 of the employment agreement to be for a minimum of 30 hours per week. We are advised that the employer continued to provide this for many months, but was unable to do so in reception on the hours your client had been normally rostered to work.*
> *Our client advises that discussions were held with your client regarding the possibility of her working split shifts in order to maintain her 40 hours work per week, but that she refused to consider this option. Our client advises that without this option being available for your client that he was unable to continue to justify her then shifts and as a consequence had no option but to reduce the hours she worked as a direct consequence of this. .....*
> *Our client confirms that it be prepared to reemploy your client, but can only practicably do so if she agrees to be more flexible and agree to work split shifts. .....*

[26] Timpany Walton replied to this letter stating, inter alia, the following:

> *It will be apparent by now that our client does not wish to withdraw her resignation or return to working for your client. Your client has had ample opportunity to provide Ms Carrington with full time work he has failed to do so. Even in the face of her resignation, no additional hours were provided let alone offered to our client. Your client chose not to discuss her resignation with her at all. .....*
> *...*
> *Our client instructs that she was never offered split shifts as a way to provide her with 40 hours per week. Split shifts were only discussed with our client on one occasion. This consisted of a very brief discussion in which Mr Soni stated to our client, "You don't like mornings do you?" Our client confirmed that this was the case and told Mr Soni that it was better for the business to have our client there at night and Miss Graham there during the day. .....We reiterate that at no point was our client offered split shifts on the basis that this would mean she would receive her 40 hours full time work. The breakfast shift was put to her as an alternative to working in the bar.*

> *In any event our client was removed from the bar area three nights per week. Previously it was common occurrence for her to work behind the bar and attend to reception during quiet times.*

[27] Timpany Walton's letter then sought payment of $5,521 from the respondent, being the cost of 276.05 hours, which it said was the total shortfall in hours suffered by Ms Carrington between July 2012 and March 2013, taking 40 hours per week as the baseline. It also sought a further $350 for night porter work, which had not been paid, together with payment for working on statutory holidays. These last two categories have not been pursued by Ms Carrington before the Authority, however. Lost wages following her resignation and compensation under s123(1)(c)(i) of the Act were also sought. No reply appears to have been received to this letter.

The issues

[28] In order to determine whether or not Ms Carrington has a personal grievance for unjustified constructive dismissal, it is necessary to consider the following:

(a) Whether a valid personal grievance was raised by or on behalf of Ms Carrington within 90 days of the date of her resignation.

(b) If a valid personal grievance was raised in respect of the resignation:

i. whether the respondent followed a course of conduct with the deliberate and dominant purpose of coercing Ms Carrington to resign; or

ii. whether the respondent committed a breach of duty which led Ms Carrington to resign.

[29] The Authority must also determine whether or not Ms Carrington suffered an unjustified disadvantage in her employment due to a reduction in her hours.

[30] The Authority must also determine whether a valid personal grievance was raised by Ms Carrington in relation to her complaint of unjustified discrimination on the grounds of her age.

Was a valid personal grievance raised by or on behalf of Ms Carrington within 90 days of the date of her resignation?

[31] Although Timpany Walton's letter dated 12 February 2013 expressly raised a personal grievance for unjustified dismissal, it was sent prior to the resignation taking place, and so, on its face cannot amount to the raising of a personal grievance in respect to an event which had not yet taken place. However, this letter did set out in some detail the reasons why Ms Carrington would resign if her concerns were not addressed, and Davidson & Associate's letter of 1 March did not take issue with the purported raising of a personal grievance for unjustified dismissal prior to the resignation. In addition, Timpany Walton's letter of 24 April clearly contemplates that a personal grievance for unjustified constructive dismissal had been raised, and it expands on the reasons why it believes Ms Carrington was constructively dismissed.

[32] Taken all together, I believe that this correspondence raises with sufficient specificity the concerns that Ms Carrington had, and which the respondent clearly understood. Furthermore, the respondent has not raised any objection that the personal grievance in respect of unjustified constructive dismissal has not been correctly raised. I therefore accept that a valid personal grievance for unjustified constructive dismissal was raised within the statutory 90 day period.

Did the respondent follow a course of conduct with the deliberate and dominant purpose of coercing Ms Carrington to resign?

[33] On balance, I do not believe that I can safely make this finding. Ms Carrington produced a handwritten letter from a former chef of the respondent dated 15 April 2013 (after Ms Carrington's resignation) which stated that Mr Soni had told him in November 2012 that he was trying to get rid of Ms Carrington. However, the writer of this letter was not present at the Authority's investigation meeting to confirm the veracity of this statement and so it cannot carry as much weight as Mr Soni's sworn testimony that he had not ever intended for Ms Carrington to leave. Davidson & Associates had also stated, on behalf of the respondent, that the respondent would take Ms Carrington back into employment if she would work split shifts, and this was repeated to the Authority by Mr Soni in his final submissions received on 18 September 2014.

[34] Therefore, I reject the claim that the respondent followed a course of conduct with the deliberate and dominant purpose of coercing Ms Carrington to resign.

Did the respondent commit a breach of duty which led Ms Carrington to resign?

[35] A key element in deciding this issue is to determine what minimum hours per week Ms Carrington was entitled to work, if any. There is contradictory evidence on this. First, there is the statement in Schedule A of the template agreement which Mrs Lancaster believes she prepared for Mr Soni when he took over the hotel, and which states *Flexible hours as required by the employer. Hours may vary from week to week.* This statement is also contained in the agreement which Mr Soni says was proffered to him by Ms Carrington but which she denies she had ever seen.

[36] Then there is the acknowledgement in the Davidson & Associates letter dated 1 March 2013 which stated that Ms Carrington was *a full time employee, which is defined in section 2.1 of the employment agreement to be for a minimum of 30 hours per week.* The Authority has not seen the employment agreement which was in force between the Lancasters and Ms Carrington although I understand that it is likely to be the same as the template document which Mrs Lancaster has provided.

[37] Finally, there is the assertion on behalf of Ms Carrington by Timpany Walton that she was entitled to work 40 hours a week, which forms the basis of the claim for $5,521 contained in its letter dated 24 April 2013.

[38] It is my finding that Ms Carrington had no entitlement to work a minimum of 40 hours per week. This is, first, because of the terms of the HANZ employment agreement which I believe Ms Carrington continued to be employed under when the respondent took over the hotel. These terms included that Ms Carrington was a full time employee, and that full time employees are those employed for a minimum of 30 hours a week. Apart from that minimum, Ms Carrington's hours could contractually vary from week to week.

[39] Second, I note that Ms Carrington's weekly hours in February and March 2012, prior to the respondent taking over the hotel, averaged just under 25 a week, ignoring the 3 or 4 hours a week she worked as a night porter. Whilst this average is greater than the average weekly hours from 13 January to 3 March 2013 (which averaged 20 a week) the February and March 2012 weekly hours were nowhere near 40.

[40] Whilst Ms Carrington's night porter duties made up her income to a satisfactory level in February and March 2012, she admits that she did not complain when Mr Soni took over the night porter duties. Therefore, if Ms Carrington did have a contractual right to work three or four hours of night porter duties per week, she acquiesced to the removal of that right, and thereby waived the consequential breach of her contract, when she continued to work and failed to protest about it for several months. She also did not raise any personal grievance in respect of the night porter duties being taken away.

[41] It is my finding that Ms Carrington's hours were flexible, and changed from week to week depending upon demand, but were not to drop below 30 hours a week. This is confirmed by the letter from Davidson & Associates referred to above, sent on behalf of the respondent. Whether or not the respondent offered Ms Carrington sufficient hours to enable her to work those 30 hours a week (or more, according to Mr Soni) and she unreasonably refused, or whether she was not offered additional hours, is a matter of hot dispute between the parties.

[42] However, it is not necessary to ascertain this question for the issue of whether Ms Carrington was unjustifiably constructively dismissed because it is my view that the respondent did fail to comply with its duty of good faith under s4 of the Act, and in particular s4(1A) when, despite having received Timpany Walton's letter dated 12 February 2013 stating that Ms Carrington was contemplating resigning if her full time hours were not reinstated immediately, the respondent took no steps to speak to Ms Carrington about her concerns and to resolve them.

[43] Even if Mr Soni fundamentally disagreed with the assertion that Ms Carrington was entitled to regular full time hours, or if he believed that he had offered her those hours, he was put on very clear notice that one of his employees was so aggrieved as to engage a lawyer to write a letter, and to threaten to resign. This should have triggered a response by the respondent, as required by s.4(1A) of the Act, to attempt to *maintain a productive employment relationship.* At the very least, Mr Soni could have offered to meet with Ms Carrington to explain his point of view. Instead, he did not reply, but published the next week's roster which showed that her hours were no better than before.

[44] This failure was a fundamental breach of contract by the respondent, which had the result of repudiating the contract between the parties. Furthermore, this

failure to engage with its aggrieved employee was not the action that a fair and reasonable employer could have taken in all the circumstances at the time. [1]

[45] Therefore, I am satisfied that Ms Carrington was entitled to resign from her employment when she received the roster after her lawyer's letter had been written without having received any response from the respondent. Her resignation was therefore a constructive dismissal and was unjustified.

Did Ms Carrington suffer an unjustified disadvantage in her employment due to a reduction in her hours?

[46] First, it must be established that Ms Carrington raised a personal grievance in respect of the matter. Section 114 (1) of the Act provides that every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.

[47] However, the earliest evidence of a valid personal grievance being raised in respect to Ms Carrington getting fewer hours was contained in Timpany Walton's letter dated 12 February 2013. This means that Ms Carrington's personal grievance for lost wages arising out of the fewer hours that she says she was being given to work cannot go back beyond 16 November 2012.

[48] However, I have already found that Ms Carrington's hours were flexible, and changed from week to week depending upon demand but that she was entitled to a minimum of 30 hours a week. From the period ending 13 January 2013 until the period ending 3 March 2013, Ms Carrington did work fewer than 30 hours per week, although her final week was only 5 days long (and so her minimum entitlement during that week was 21.5 hours).

[49] On balance, I believe that Ms Carrington was not offered enough work to enable her to work her contracted 30 hours a week, and that she was not offered split shifts, or if she was, it was not offered in a sufficiently clear manner for her to properly consider the offer. Therefore, she did suffer a disadvantage in her

[1] S 103A(2) of the Act.

employment when she was rostered to work weekly hours less than 30 each week (and less than 21.5 in her final week), and that disadvantage was unjustified because no fair and reasonable employer could have failed to have offered her a minimum of 30 hours a week in all the circumstances, given her contractual entitlement.

[50] This means that there was a total of 72.05 hours which Ms Carrington should have been offered, but was not, over the eight week period leading to her dismissal, when the short hour rosters began. This equates to a gross sum of $1,441.

Was a valid personal grievance raised by Ms Carrington in relation to her complaint of unjustified discrimination on the grounds of her age?

[51] There is no evidence that a personal grievance for unjustified discrimination on the grounds of her age was raised, and therefore I cannot investigate this complaint any further.

Remedies

[52] Having established that Ms Carrington was unjustifiably constructively dismissed, I have to consider what remedies she is entitled to. Ms Carrington does not seek reinstatement.

[53] Section 123(1) of the Act provides as follows:

> *(1) Where the Authority or the court determines that an employee has a personal grievance, it may, in settling the grievance, provide for any 1 or more of the following remedies:*
> *...:*
> *(b) the reimbursement to the employee of a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance:*
> *(c) the payment to the employee of compensation by the employee's employer, including compensation for—*
> *(i) humiliation, loss of dignity, and injury to the feelings of the employee; and*
> *(ii) loss of any benefit, whether or not of a monetary kind, which the employee might reasonably have been expected to obtain if the personal grievance had not arisen.*

[54] Section 128 of the Act provides as follows:

> ***128 Reimbursement***
> *(1) This section applies where the Authority or the court determines, in respect of any employee,—*
> *(a) that the employee has a personal grievance; and*

> *(b) that the employee has lost remuneration as a result of the personal grievance.*
> *(2) If this section applies then, subject to subsection (3) and section 124, the Authority must, whether or not it provides for any of the other remedies provided for in section 123, order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration.*
> *(3) Despite subsection (2), the Authority may, in its discretion, order an employer to pay to an employee by way of compensation for remuneration lost by that employee as a result of the personal grievance, a sum greater than that to which an order under that subsection may relate*

[55] Ms Carrington says that she had no job to go to when she resigned, but found new employment on 1 June 2013. I need to consider whether Ms Carrington mitigated her losses, and one issue in particular is that Davidson and Associates stated in its letter dated 1 March 2013 that the respondent was prepared to reemploy Ms Carrington, if she agreed to be more flexible and work split shifts. Ms Carrington did not take up this offer. However, Ms Carrington advised the Authority that she had basically lost trust and confidence in the respondent and did not wish to return. Given her reasons for resigning, I accept that evidence, and do not believe that it would have been reasonable to have expected her to have taken up that offer. I therefore believe that Ms Carrington should not be penalised for failing to do so.

[56] Ms Carrington found new employment three months after her resignation, and so she would be entitled to payment of three months' pay, calculated at $20 per hour, for 30 hours per week. That amounts to a gross sum of $7,800.

[57] Turning to compensation for humiliation, loss of dignity and injury to her feelings, Ms Carrington's evidence was that she was stressed by the lack of communication from Mr Soni and the reduction in her hours, to the extent that she resigned without any employment to go to. Rather than to attempt to separate her injury to feelings arising out of the unjustified disadvantage from those arising from her constructive dismissal, I believe that a global figure is appropriate. I fix that sum at $7,500.

[58] Under s.124 of the Act, where the Authority has determined that an employee has a personal grievance, the Authority must, in deciding both the nature and the extent of the remedies to be provided in respect of that personal grievance, consider the extent to which the actions of the employee contributed towards the situation that

gave rise to the personal grievance; and if those actions so require, reduce the remedies that would otherwise have been awarded accordingly.

[59] I have heard no evidence whatsoever that justifies a view that Ms Carrington contributed to her dismissal, or her disadvantage arising out of the failure to give her 30 hours work a week. Although Mr Soni says she refused to work the breakfast shift, I believe that she would have agreed to do so if the offer had been made to her in clear and unambiguous terms. I do not believe that she had unreasonably refused to work split shifts. All in all, it is therefore not appropriate to reduce the remedies awarded to her under s124.

Orders

[60] I order that the respondent pay to Ms Carrington the following:

a. The gross sum of $1,441 in respect of lost wages arising out of the unjustified disadvantage she suffered, awarded under s123(1)(b) of the Act;

b. The further gross sum of $7,800 in respect of lost wages arising out of the unjustified constructive dismissal, awarded under s123(1)(b) of the Act; and

c. The sum of $7,500 awarded under s123(1)(c)(i) of the Act, for compensation for humiliation, loss of dignity and injury to her feelings.

Costs

[61] Whilst Ms Carrington had engaged lawyers shortly before she resigned, and in the month afterwards, she did not use legal representation in the lodging of her statement of problem, nor in her conduct of the proceedings. Therefore, she has not incurred any legal costs than can be the subject of an order of the Authority. However, she will have incurred the filing fee of $71.56 and I order the respondent company to pay this sum to Ms Carrington.

David Appleton
Member of the Employment Relations Authority