

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 344
3174924

BETWEEN ANGELA CHRISTIE-BARNETT
Applicant

AND LAWLER & CO LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Pieter Venter and Angela Parlane, counsel for the Applicant
John Reardon, counsel for the Respondent

Investigation Meeting: 4 and 5 April 2023 at Auckland

Submissions and/or further evidence: 19 April 2023 from the Applicant
18 April 2023 from the Respondent

Determination: 3 July 2023

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Angela Christie-Barnett, claims that she was unjustifiably dismissed by the Respondent, Lawler & Co (Lawler), following a restructuring. Ms Christie-Barnett further claims that Lawler failed to prevent harm to her.

[2] Lawler denies that it unjustifiably dismissed Ms Christie-Barnett or caused her harm through its actions, and claims that she was justifiably dismissed as a result of a fair and reasonable restructuring process.

The Authority's investigation

[3] The Authority received written and, under oath or affirmation, oral evidence from the Applicant, Angela Christie-Barnett, and her partner, Derek Holmes.

[4] The Authority received written and, under oath or affirmation, oral evidence from the Respondent witnesses: Victoria Hatrick-Smith, Desmond Yong, Lois Lawler, and Brendan Lawler.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[6] The issues requiring investigation are whether or not:

- Ms Christie-Barnett was unjustifiably dismissed by Lawler?
- Lawler failed to prevent harm to Ms Christie-Barnett?

Background

[7] Lawler is a small general law firm based in Auckland. It was established by Brendan Lawler in 1987 and at the time Ms Christie-Barnett's employment commenced, had four employees: two full-time solicitors (in addition to Mr Lawler), Mrs Lawler who dealt with trust files and accounts, general work overflow and general office oversight, a part-time accounts person and a part-time law intern.

[8] Ms Christie-Barnett had been working at a law firm in central Auckland prior to and during the Covid-19 lockdowns. During the lockdown periods, she had worked from home (WFH) and found that she had adapted well after the initial period and considered that she was able to work effectively in that manner.

[9] Ms Christie-Barnett said she had driven past Lawler and was interested in obtaining employment there because it was close to her home. As a result, she called Mr Lawler to enquire about the possibility of obtaining employment. Mr Lawler had offered to give the matter some thought, but he did not call her back as he said he would do, so she telephoned him a second time. On that occasion he had offered to consider her proposal and said he would call her back.

[10] When he failed to do so, Ms Christie-Barnett telephoned him a third time and, on this occasion, Mr Lawler offered to meet her and discuss matters.

Meeting June 2020

[11] Ms Christie- Barnett and Mr Lawler met at a café in early June 2020. During the meeting they had discussed a number of matters, including Ms Christie-Barnett’s matrimonial break-up and resulting custodial and relationship property disputes as well as the possibility of her employment with Lawler.

[12] The terms of her potential employment at Lawler which had been discussed included Ms Christie-Barnett stating that she wanted to work on a part-time basis until 3.00 p.m. rather than 5.00 p.m. per day in order to collect her daughter from school. She also wanted to work some days on a WFH basis during the school holidays.

[13] Mr Lawler said he had reservations about the proposal since he had only employed full-time office-based solicitors previously. However, Ms Christie-Barnett assured him that if there was an important issue, she would make arrangements in regard to childcare during the school holidays so she would be available to work as required.

[14] When questioned, Ms Christie-Barnett confirmed that she had provided that assurance to Mr Lawler.

[15] Ms Christie-Barnett was engaged and commenced employment with Lawler, being provided with an individual employment agreement which the parties signed on 16 June 2020 (the Employment Agreement). The Employment Agreement stated at clause 1: “the terms and conditions herein replace any expressed terms and conditions of employment that may have applied prior to the date of this agreement.”

[16] In Schedule One it stated Ms Christie-Barnett’s employment as: “Solicitor – self managed/supported” and in Schedule Three set out the following Hours of Work:

SCHEDULE THREE – Hours of Work

Part Time

Normal hours of work are 6 hours per day on 5 days per week, Monday to Friday.

30 hours per week, excluding public holidays.

Expected hours are 9.00am – 3pm daily, with a half hour paid break, for 5 days per week.

School Holiday Hours of Work:

During school holidays, 2 out of 5 days per week, on days to be agreed, the employee will work in the office.

If the employee works from home on the other days of the week the employee will let the manager know the days on which they will work/not work at home in advance of that working week.

Days where no work is completed from home or in the office, in any working week during the School Holidays, will be annual leave days. These must be requested and approved by the manager in advance of taking them.

Where all Annual Leave entitlements have been exhausted, days off during the School Holidays will be Leave Without Pay days.

[17] Ms Christie-Barnett said that when the September–October 2020 school holidays approached, she reminded Mr Lawler and Ms Madden that she would be working from home. Mr Lawler and Ms Madden said that not having school age children, they were not aware of the dates of the school holidays, and Mr Lawler said Ms Christie-Barnett only informed him of her WFH the day before it happened.

[18] During the period of the school holidays, Lawler & Co had been involved on a major transaction with one of its main clients. Mr Lawler said he had given Ms Christie-Barnett responsibility primarily for the sale side of the transaction, but he had taken responsibility for the purchase side of the transaction because that was particularly complicated. He had asked Ms Christie-Barnett to do some routine work concerning leases and caveats, whilst he dealt with the complicated issues regarding special partnership and commercial aspects.

[19] He had been disappointed when the work Ms Christie-Barnett was to undertake had not been performed promptly or well during the days when she was WFH.

[20] Ms Madden said that due to Ms Christie-Barnett's absence, she had been required to carry out a large part of the work on the major transaction which had been assigned to Ms Christie-Barnett.

[21] Mr Lawler said that he liked to have oversight of the client files, and this was difficult with Ms Christie-Barnett not being full-time in the office to discuss any issues

and file progress and/or having the files with her while working from home during the major transaction.

12 October 2020 Meeting

[22] On 12 October 2020 when Ms Christie-Barnett returned to the office following the conclusion of the school holidays, Mr Lawler asked to speak to her in the boardroom because that was more private than the general office area. Mr Lawler said he explained why he had been unhappy with what had occurred regarding the major client transaction during the school holiday period.

[23] Following the meeting on 5 November 2020, some three weeks later, Ms Christie-Barnett wrote to Mr Lawler setting out her recollection of what had been discussed at the meeting on 12 October and during a further discussion held that same day, including her view that Mr Lawler had said that she did not appear to be happy in her role at Lawler and perhaps another firm might be more suitable.

[24] Ms Christie-Barnett stated that the ability to WFH had been a pivotal factor in her decision to join Lawler and concluded: "I want to focus on improving our working relationship and I believe we both have similar goals for Lawler & Co.

[25] In his response dated 5 November 2020, Mr Lawler stated:

I did not say you needed to start looking for a new job. I said you might like to set up on your own if you didn't want the oversight I expect

....

In summary I don't think our relationship is working and your conduct has not been appropriate in it for a number of reasons.

...

... my general expectation is you file things on the file, save them electronically, and file the client care, AML and A&I's. This is so we can find things in future and also to satisfy audit purposes. I also expect regular meetings to review files. ...Since our discussion you have engaged with me more and I appreciate that.

...

In closing, I genuinely wonder if this is the right place for you and whether you will willingly improve your communication and adapt to the way we operate here.

[26] Ms Christie-Barnett said that she felt undervalued at Lawler and was beginning to regret the move from her previous firm.

[27] Following the November 2020 meetings, there were no further discussions about Ms Christie-Barnett's performance, and Mr Lawler said she started to discuss her client files more frequently with him. Shortly before Christmas 2020, Ms Christie-Barnett received a \$5,000.00 bonus payment which Mr Lawler said was because she had worked hard and deserved it.

Meeting 16 March 2020

[28] Ms Christie-Barnett said that on 16 March 2020 Mr Lawler asked her to attend a meeting in the boardroom. Ms Madden was also present. She said Mr Lawler placed an envelope on the table which she did not read at that time because Mr Lawler proceeded to read out the content of the letter it contained.

[29] She said the letter was regarding a proposed restructuring of Lawler and was specifically aimed at changing her working arrangement and working hours.

[30] The letter stated:

... .. but with the increase in litigation the risks have increased. My understanding is that about half of all claims arise out of "simple" conveyancing. A reflection of this is that in our January professional indemnity insurance roll over our costs went up 10% ... In 5 years ... our PI premium has gone up 100%.

I have reached the conclusion that to achieve this I need two qualified full-time solicitors in the office apart from me. ...

To be clear what I am referring to is a business model of two full-time qualified lawyers working in the office. ...

My conclusion is that absent me employing another full-timer, and I don't want to do that, your position has to become a full-time in office job.

...

Just to be clear, I am inviting you to consider your position changing to a fulltime position working from our offices.

Can you have a think about what I am saying, and we can talk over any ideas you may have on Thursday face to face.

If you need more time, we could make it at the beginning of next week.

[31] Ms Christie-Barnett sent an emailed response to the letter to Mr Lawler in which she set out her view that she had not, through her work, done anything to put Lawler at risk, and that she believed she was an asset to the firm. She concluded by advising that she required some time to reflect on what had been proposed.

[32] Mr Lawler responded by return email that same day, 17 March 2021 commenting that: “the purpose of the meeting was not to criticise your performance.” He also stated that he wanted Ms Christie-Barnett to accept the full-time position: “I made it clear that I wanted you to take such a position ...”.

[33] He proposed meeting to discuss her ideas on 23 March 2021 and advised her to take advice, and that she was invited to have a support person or representative with her at the meeting.

[34] In the absence of a response from Ms Christie-Barnett, the proposed meeting did not take place on 23 March 2021.

[35] On 29 March 2021 Mr Lawler advised Ms Christie-Barnett that he needed a response to the restructuring proposal. There was no response, so on 31 March 2021 he emailed Ms Christie-Barnett, stating:

That’s nearly a month since we first met so the delay is a bit disappointing. This is a restructure not a disciplinary issue. I am simply looking for your feedback on my proposal.

[36] Ms Christie-Barnett responded by email that same date advising that she would be meeting with an employment lawyer “next Monday” (the meeting did not take place as indicated, but later on 12 April 2021 due to the public holidays).

[37] On 27 April 2021 Mr Lawler wrote again to Ms Christie-Barnett requesting that she provided feedback to the proposal by 28 April 2021; if she failed to do so, he said he would take advice and make a final decision.

[38] On 28 April 2021 Ms Christie-Barnett provided her feedback which she commenced by stating: “I fully support your plan to restructure your business.”.

[39] In the emailed response she proposed that:

- a) I would work 37.5 hours per week, with renegotiated remuneration adjusted to suit the additional hours;
- b) As a result of the change, I will have additional unforeseen costs for afterschool childcare between 3pm and 5:30pm and in fairness, Lawler and Co should cover those additional costs, which will be about \$100 per week; and
- c) I will still require working from home during the school holidays and given the additional hours I will be away from Charlotte, during the normal working week, I will require to work from home for the full term of the school holidays, on full pay. You have raised concerns before about having regular “catchups” to enable you to be fully appraised of the status and progress of files/matters. I suggest that to enable you to do so, particularly when I am working from home during school holidays, that we have “catch-up” sessions every Monday or Tuesday morning at 09:00 or 09:30.

[40] Mr Lawler said he regarded what Ms Christie-Barnett was proposing as her intending to negotiate a new employment agreement which he did not want to do. After considering her response he reached the conclusion that Ms Christie-Barnett agreed with the restructure proposal to disestablish her part-time WFH position, and also wanted to negotiate a new employment agreement on more favourable terms.

[41] Mr Lawler said that having considered the matter, he wrote to Ms Christie-Barnett on 6 May 2021 confirming the disestablishment of the part-time WFH solicitor position and advising that it would be replaced with a “full-time/work from the office” position. The letter stated: “The result is that your existing position is now disestablished, and you do not want to take up the new position; so that your employment by Lawler & Co will come to an end.

[42] The letter confirmed that her employment at Lawler & Co would cease, and she would be paid one month’s salary in lieu of notice. It was also stipulated that she had over any files to Ms Hatrick-Smith and complete a file note on each one.

[43] Although the letter was dated 6 May 2021, Ms Christie-Barnett said that she was given it on 7 May 2021 at 2.40 p.m. She was expected to do a file handover before she left the office, but this was very stressful because, since her working day finished at 3.00 p.m., she had only 20 minutes to complete this requirement.

Was Ms Christie-Barnett unjustifiably dismissed by Lawler?

[44] Ms Christie-Barnett's employment with Lawler ended as a result of her position as a part-time solicitor able to WFH home during the school holidays being required by Lawler to be an in-office, full-time position.

[45] Whilst an employer may undertake a restructure provided there are genuine grounds for so doing, the employer in that situation must act as a fair and reasonable employer could have done in all the circumstances at the time dismissal or action occurred and must act in good faith.

[46] It is not the Authority's role to substitute its view of how an employer is to run its business, but evidence of a genuine and proper evaluation by the employer of its business situation, and of the options available to the employer, must be examined to establish that a dismissal for redundancy is justifiable. This was set out in *Grace Team Accounting v Brake*¹

[47] Further the employer considering a possible redundancy situation must follow a fair process and be constructive and communicative. The employer must let potentially affected employees know what is proposed. It must provide those employees with access to relevant information about the situation and give them a reasonable opportunity to provide their views before any decision is made.

[48] In *Grace Team* the Court of Appeal observed at that:

...if an employer can show the redundancy is genuine and that the notice and consultation requirements of s 4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s 103A test.²

Was the Restructuring Proposal and redundancy genuine?

[49] In *Brake v Grace Team Accounting Limited* the Court of Appeal clearly stated that redundancy can arise in the situation in which an employee is superfluous to the needs of the business, which may arise from an employer's decision to make the business more efficient:³

... This Court was clear that the Labour Court's restrictive interpretation was wrong: what was required was that the employee was superfluous to the needs of the business. This could arise where the employer sought to make the business more efficient.

[50] Me Lawler's explanation for the restructure was that Lawler required two full-time solicitors in the office: to offer a better platform for service delivery ... to our clients". Mr

¹ *Grace Team Accounting v Brake* [2014] NZCA 541, [2014] ERNZ 129.

² Above n 1 at [85].

³ Above n 3 at [47].

Lawler also referred in the letter of 16 March 2021 to being alone in the office which was not an ideal situation because there was no other solicitor able to answer client calls.

[51] There was also an explanation that Lawler having two full-time solicitors would reduce a litigation risk. The letter referred to the importance of good systems, cross-checking and professional accuracy. Mr Lawler explained in his evidence that he liked to be able to cross-check the files the solicitors were working on and that Ms Christie-Barnett having files at home and/or not being available in the office to discuss issues after 3.00 p.m. adversely affected his ability to do so.

[52] Ms Hatrick-Smith referred to the fact that Ms Christie-Barnett working part-time meant that whilst she was out of the office on client business there was no other solicitor to deal with her clients should they telephone and require advice, and if she was the only solicitor in the office, her work was interrupted by being solely responsible for having to deal the clients who called in to, or telephoned, the office.

[53] I accept that having the part-time WFH solicitor position replaced by a full-time in office position solicitor to ensure the more efficient operation of the firm and meet client requirements was a genuine decision based on business needs.

Was it motivated by performance concerns?

[54] Ms Christie-Barnett submits that the decision to restructure was motivated by performance concerns and that rather than undertake a disciplinary process, Mr Lawler decided to initiate a restructuring which would result in her part-time, WFH position being removed.

[55] It is clear that there were performance concerns during the initial part of Ms Christie-Barnett's employment. These were initially raised during the meeting held on 12 October 2020 and there was further discussion in correspondence during November 2020.

[56] There were no further performance concerns raised during December 2020 and at Christmas, Ms Christie-Barnett received a bonus.

[57] I find that a performance issue raised in May 2021 with Ms Christie-Barnett was a minor one and centred on timekeeping rather than any inability to perform the work relevant to her role. It was moreover resolved at that time.

[58] Although in his email dated 3 May 2021 Mr Lawler stated: "I find this is a waste of time and frankly rather unpleasant" referring to the incident, I do not consider that denotes anything other than the timekeeping issue being a minor irritant rather than a disciplinary issue.

[59] I gain support for my view that there were no significant performance concerns with Ms Christie-Barnett from the fact that Mr Lawler's evidence was that he felt she had engaged more and performed well since the issue raised in October 2020.

[60] My conclusion on that point is strengthened by the fact that Mr Lawler raises no issue throughout her employment with Ms Christie-Barnett's abilities, and states categorically in the communications to Ms Christie-Barnett about the restructuring proposal that he wants her to accept the new position. There is no suggestion that she would not be suitable for such a role.

[61] However, it is clear from the evidence that Mr Lawler had reservations about the part-time WFH solicitor position from the initial contact made by Ms Christie-Barnett. The initial and repeated contact was initiated by her and it is clear that his reservations were not displaced during the period of Ms Christie-Barnett's employment.

[62] I find that the restructure was motivated by the need to render Lawler's operation more efficient by having both solicitors present full-time in the office and that there were genuine reasons for the restructure.

Was the process followed by Lawler procedurally fair?

[63] An employer who is proposing to restructure its business must not only have genuine reasons for undertaking the restructuring but must follow a fair procedure in respect of affected employees.

[64] Provisions of the Act govern questions of justification for dismissal and, in particular, by reason of redundancy. Section 4 of the Act addresses the requirement for parties to the employment relationship to deal with each other in good faith. Section 4(1A) (c) in particular is relevant to a redundancy situation and requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of an employee to provide to the employee affected:

(i) access to information, relevant to the continuation of the -employees' employment, about the decision; and

(ii) an opportunity to comment on the information to their employer before a decision is made." s4 (1A) (i) and (ii).

Access to information

[65] At the initial meeting held on 16 March 2020 Ms Christie-Barnett was handed an envelope which set out the restructure rationale and proposal but was not required to read it

during the meeting because Mr Lawler explained it orally. However, the letter provided during the meeting set out the proposal.

[66] The proposal was a simple one: to increase the part-time role to full-time by having the incumbent work until 5.00 p.m. each day, and to work wholly in the office rather than from home.

[67] I consider that Ms Christie-Barnett understood what her role as a Solicitor involved, there was no change in duties, and in those circumstances, I find that no further information was required about the nature of the role. I further note that Ms Christie-Barnett did not request any information about the proposal, and I conclude this was on the basis that she fully understood it.

Did Lawler breach the duty of good faith in the meeting of 16 March 2020?

[68] Ms Christie-Barnett submits that the meeting on 16 March 2021 was a breach of good faith because she was not given the opportunity to have a support person present or advised to seek legal advice. Mr Lawler's evidence was that he recalled advising Ms Christie-Barnett to seek legal advice at the end of the meeting.

[69] Whether it was explained to Ms Christie-Barnett or not at that stage, I find that since it was not a disciplinary meeting, and no response to the proposed restructure was required from her at that meeting; there was no requirement for Ms Christie-Barnett to have a support person present, and consequently no breach of good faith.

[70] Moreover, in the subsequent letter dated 17 March 2021, Mr Lawler proposed 23 March 2021 as the date in which Ms Christie-Barnett would have the opportunity to present any comments and provide her feedback to the proposal. In that letter Mr Lawler suggested that Ms Christie-Barnett take whatever advice she required and stated: "you are also most welcome to bring a representative or support person with you when we meet."

[71] Ms Christie-Barnett did not provide a response to the proposal for some weeks. The duty of good faith requires employers and employees to be 'active and responsive' in maintain a productive employment relationship. Although Mr Lawler requested Ms Christie-Barnett to make a response, he did not place undue pressure on her to do so. Again, I find no breach of good faith on the part of Lawler despite the lack of feedback provided to the proposal, although I note Ms Christie-Barnett was not responsive for some weeks.

[72] Ms Christie-Barnett finally provided her feedback by letter dated 28 April 2021, after she had taken legal advice. In the letter she stated: “I fully support your plan to restructure your business.”. The statement was unequivocal, and I consider that Lawler was entitled to rely on this statement as indicating that Ms Christie-Barnett, having taken legal advice and had sufficient time to consider the restructure proposal, understood the rationale for the proposal and was in agreement with it.

Opportunity to comment

[73] Ms Christie-Barnett was provided with the opportunity to provide feedback on the restructuring proposal. She did provide some feedback in a letter dated 31 March 2021 in which she enquired why the part-time legal executive could not increase her hours to full-time. The proposal was to have two full-time solicitors in the office to meet the business objectives, rather than a solicitor and a legal executive. Ms Hatrick-Smith’s evidence was that a legal executive could not meet the experience level of a solicitor. Mr Lawler’s evidence was in agreement, and he rejected the suggestion.

[74] In the letter dated 28 April 2021, Ms Christie-Barnett responded to the restructure proposal by commenting that Mr Lawler could not unilaterally alter the terms of her employment agreement.

[75] The restructure proposal did not seek to vary Ms Christie-Barnett’s employment agreement, rather it sought to disestablish her part-time WFH solicitor role and replace it with a full-time inhouse solicitor role. As such there was no unilateral variation to the employment agreement.

[76] Ms Christie-Barnett proposed in the letter dated 28 April 2021 that she would accept the new role, but on new terms which included:

- a) renegotiated remuneration adjusted for the increased hours for the additional hours from 3 p.m. to 5 p.m.;
- b) a payment of approximately \$100 per week to cover after school childcare from 3.00 p.m. to 5.00 p.m.; and
- c) full payment for WFH during the school holidays.

[77] I find that these suggested new terms were significant and represented a counterproposal for a new employment agreement rather than feedback on the proposal.

[78] I find that Lawler acted in good faith by providing Ms Christie-Barnett with a lengthy and genuine opportunity to provide feedback on the information provided before a decision to proceed with the restructuring proposal was made.

Redeployment

[79] Ms Christie-Barnett's position was disestablished because Lawler required a full-time in-office solicitor.

[80] In a redundancy situation, an employer must consider redeployment options and offer redeployment, if a suitable redeployment opportunity exists.⁴ In that respect an employer is entitled to determine whether or not the applicant for redeployment has the requisite skills and experience for the role sought.

[81] There was no dispute that Ms Christie-Barnett could perform the new role, she had the skill and ability to do so. Lawler offered her the new role and Mr Lawler made it clear that he would like Ms Christie-Barnett to accept it, stating in the proposal letter dated 16 March 2021: "Just to be clear, I am inviting you to consider your position changing to a fulltime position working from our offices"; and in the letter dated 17 March 2021: "...I made it clear I wanted you to take such a position..."⁵

Final file note requirement

[82] The provision of the letter dated 6 May 2021 confirming the termination of her employment was presented to Ms Christie-Barnett at 2.40 p.m. on 7 May 2021. The letter required her to hand her files to Ms Hatrick-Smith: "as soon as possible" and that she provided a complete file note for each file. Ms Christie-Barnett understood this to mean that she should do so before she left Lawler that day.

[83] Although Mr Lawler may not have intended that Ms Christie-Barnett do so in the 20 minutes before the time she needed to finish work for the day, and/or that she could come in after that day to finish them, I do not find that was made clear to her. I also observe that the letter dated 6 May 2021 (which was not given to her until the afternoon of 7 May 2021) stated that Ms Christie-Barnett was being paid in lieu instead of being required to work her notice period. This meant that her employment with Lawler ceased on 7 May 2021.

⁴ *Jinkinson v Oceania Gold* [2010] NZEmpC 102, *Wang v Hamilton Multicultural Services Trust* [2010] NZEmpC 142.

⁵ Letters 16 March and 17 March 2021: "to be."

[84] I determine that her understanding that she was required to provide file notes within the 20-minute period on 7 May 2021 caused stress to Ms Christie-Barnett.

[85] However pursuant to s 103A (5)

The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were-

(a) minor; and

(b) did not result in the employee being treated unfairly.

[86] I find that the requirement to provide file notes was a minor flaw in the process and did not result in Ms Christie-Barnett being treated unfairly.

Conclusion

[87] I find that Ms Christie-Barnett was treated fairly by Lawler. She fully understood the proposal and provided with ample opportunity to provide feedback on it. When she did not so, it was to state unequivocally that she fully agreed with it. She was encouraged to accept the new role She chose not to do so.

[88] I determine that Ms Christie-Barnett was not unjustifiably dismissed by Lawler.

Did Lawler fail to prevent harm to Christie-Barnett-Barnett?

[89] Ms Christie-Barnett claims that Lawler failed to prevent harm to her during the redundancy process i.e. in the period 16 March until 7 May 2021 when her employment with Lawler ended.

[90] I accept that Lawler did not offer support to Ms Christie-Barnett in the form of EAP or similar during the period of 16 March to 7 May 2021.

[91] However, during that period, there was no undue pressure placed on Ms Christie-Barnett by Mr Lawler for a response to the proposal, she had sought and obtained legal advice during that period, and when she did provide a response some weeks after the proposal was put to her, she gave an unequivocal statement to the effect that she fully supported it.

[92] On that basis, I do not find that the lack of EAP or similar support caused any harm to Ms Christie-Barnett.

Costs

[93] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[94] If they are not able to do so and an Authority determination on costs is needed the Respondent may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the Applicant would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[95] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[96] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁶

Eleanor Robinson
Member of the Employment Relations Authority

⁶ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].