

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 6/09  
5084485

BETWEEN TONI COTTON  
Applicant  
AND GENERAL DISTRIBUTORS  
LIMITED  
Respondent

Member of Authority: Paul Montgomery  
Representatives: Hamish Evans, Counsel for Applicant  
Stephen Langton, Counsel for Respondent  
Investigation Meeting: 3 & 4 June 2008 at Christchurch  
Submissions received: 26 June 2008 for Applicant  
30 June 2008 for Respondent  
Determination: 21 January 2009

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**DETERMINATION OF THE AUTHORITY**

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[1] Mrs Cotton, who is married with two adult children, began working at the respondent's Woolworths Bishopdale store in 1995 as a casual night filler. During her employment the applicant progressed through various positions being promoted to Grocery Manager in November 2005. For about four years previous to this promotion, Mrs Cotton was covered by the collective employment agreement (CEA).

[2] Upon the promotion, the applicant was told that as she now held a management role, under the Company policy she was unable to remain covered by the CEA but would be covered by an individual employment agreement (IEA). Mrs Cotton says that the circumstances surrounding the signing of the IEA were highly irregular, a matter to be considered later in this determination. The IEA was signed on 14 November 2005.

[3] Mrs Cotton says she was unjustifiably dismissed by her employer and wants her lost wages reimbursed, compensation of \$15,000 and her legal costs.

[4] In its defence the respondent says it did not wish to dismiss Mrs Cotton, in fact it wanted to retain her services in a parallel role at its Bush Inn store when the Bishopdale site closed upon the expiry of the lease and it ceasing to trade on 7 January 2007.

[5] The respondent's position is that Mrs Cotton accepted the transfer, later withdrew that acceptance, then attempted to negotiate a redundancy package and when that failed to bear fruit, refused to transfer when directed to do so. That, says the respondent, was a wilful breach of a reasonable and lawful instruction which under the terms of the employment agreement is able to be regarded as serious misconduct.

[6] Given its views on the matter the respondent is not prepared to meet Mrs Cotton's remedies.

[7] The parties attempted to resolve the problems with mediation assistance from the Department of Labour, but were unable to reach agreement.

### **Background facts**

[8] It is common ground that Mrs Cotton was a well regarded and competent employee whose performance as a Grocery Manager was rewarded with bonus payments while at Bishopdale. The narrative relevant to the problem begins in November 2005 when Mrs Cotton was promoted to the Grocery Manager's role and the move from the CEA to an IEA. Mrs Cotton says Mr Rex Jones, the Store Manager, called her to his office and told her he needed to sign an individual agreement. The applicant says she asked for a copy of the document to take away and, if necessary, take some advice. However, Mr Jones said the terms were identical to the CEA and he needed the agreement signed without delay. Mrs Cotton said she trusted that Mr Jones were not mislead her on the agreement's terms and that she signed the agreement *on a number of pages*. The parties agreed that the agreement was signed on 14 November 2005 and that it had been dated 8 November 2005. Mrs Cotton says she signed *pages 9, 10 and 11* of the agreement and asked Mr Jones for a copy of the whole agreement and he undertook to provide this however *he did not do so until approximately one year later*.

[9] On 31 November 2006 all staff at the Bishopdale store attended an 8pm meeting with senior managers and were told the store was closing and that the last

trading day would be 7 January 2007. They were also told that in the following days there would be meetings with each of them to discuss the options open to staff.

[10] The following day around noon Mrs Cotton was called to Mr Jones's office to discuss the options available to her but says she told Mr Jones and Mr Tom Dear, the Area Manager, she was not ready for such a discussion as she was still coming to terms with the previous evening's announcement. She said she was *pretty stunned* at the news.

[11] The meeting proceeded none-the-less and Mrs Cotton told the managers she preferred to stay in the grocery section if possible as a Grocery Manager and preferably in the north western part of Christchurch. The following day Mr Jones returned from a store managers meeting and told the applicant all managers were keen to employ her. Further, Mr Jones advised Mrs Cotton that the manager from the Bush Inn store was calling into the Bishopdale store to speak to her about a vacancy he had.

[12] Mrs Cotton says she had some reluctance about working for Mr Langton, the Bishopdale Store Manager *because I had seen him in action and had heard some rumours about what he was like*. The two met and as a result the applicant was offered the Grocery Manager's position at Bush Inn which unlike the role she held at Bishopdale incorporated the tasks of a Duty Manager. Mrs Cotton made it clear that she did not want to undertake Duty Manager's tasks as she believed it would be too onerous for her and preferred to concentrate on the grocery section. Mr Langton conceded and told the applicant the position was hers agreeing that she could start at Bush Inn after the closing date at Bishopdale. Further, Mrs Cotton says Mr Langton told her he would send her *details of the contract, for example the salary, the hours of work and what I was to do*.

[13] Mrs Cotton says she received a telephone call from Mr Langton on 3 November 2006 confirming the salary at \$42,000 per year and days of work as Tuesday to Saturday. As the hours were different from those she was currently working, the applicant said she would consider this and get back to Mr Langton.

[14] On 8 November Mrs Cotton visited the Bush Inn store and says she discovered that following a discussion between Mr Langton and Mr Dear, they had decided the applicant needed to start at the store within a week. This was resolved as was Mrs Cotton's concern about days to be worked. Mrs Cotton told the Authority she was

concerned to ensure that the new role was similar to that at Bishopdale. She acknowledged Bush Inn was a substantially larger operation but says the different structure of the middle management at the Bush Inn would in fact reduce her role to a *highly paid day filler*, and that her present management tasks would be performed by others.

[15] Mr Langton strongly disagreed with Mrs Cotton's analysis. He says he assured Mrs Cotton that while the store was larger it was well resourced and operated in a similar, if not the same, fashion as the Bishopdale store. On the issue of stock ordering Mr Langton says he made it clear to Mrs Cotton that she would be ordering stock during her working day and would also be required to ensure that online shoppers requirements were met. Specifically, Mr Langton said *I have read paragraph 74 of Mrs Cotton's (sic) brief where she claims she would not be ordering any stock. This is incorrect.*

[16] On 16 November 2006 the applicant telephoned Mr Langton and accepted the position. He says he was relieved to have an experienced Grocery Manager on board. He also says he told Mrs Cotton that she could start as soon as she was able and is adamant *at no time did I tell her that she had to start her employment at the Bush Inn store immediately and that she had little or no choice in the matter* as the applicant has claimed. Further, Mr Langton categorically denies that the role was as described by the applicant. He told the Authority *I do not believe that I gave Ms Cotton the impression that she would be a highly paid day filler as this was not the case. The store required a grocery manager, not a day filler.*

[17] On 20 November 2006 Mrs Cotton left a note on Mr Jones's desk advising him that she had decided to decline the position at the Bush Inn and wished to stay in her position at Bishopdale until it closed on 7 January 2007.

[18] On receipt of this note Mr Jones notified Mr Dear of the applicant's change of mind and he in turn notified Mr Langton. When Mr Dear told Mr Langton of this change of heart, he asked that Mr Langton hold the position open to allow Mr Dear some time to resolve any issues the applicant saw as preventing her taking the role. Although very disappointed at the development, Mr Langton agreed to Mr Dear's request.

[19] Following a meeting on 28 November attended by Mr Dear and Ms Leanne Jones the Company's Human Resources Adviser, and Mrs Cotton who was accompanied by Mr Roy Appley as a support person, it was agreed that the respondent would provide the applicant with a letter outlining the role at the Bush Inn. This was, according to Mr Dear's evidence, in spite of Mrs Cotton stating at the meeting that she did not want to work with Mr Langton or Mr Bruce, who was the Dry Goods manager at the Bush Inn.

[20] There followed a number of letters between the parties the contents of which are well known to those involved. There is no need to traverse all their contents as they simply restate (and at times) clarify the positions held by each party. In essence, Mrs Cotton said the Bush Inn position was radically different, while the respondent, through Mr Dear maintained it was not. He observed that the position description for the Bush Inn provided after the meeting with Mrs Cotton and her support person was identical to that given to Mrs Cotton in 2005 when she was appointed as Grocery Manager at Bishopdale.

[21] On 7 December 2006 Mr Jones and Mr Dear met with Mrs Cotton and Mr Dear emphasised that the respondent was not declaring her surplus to its staffing requirements; that the company was not contracting out or selling its business; that a transfer was consistent with the terms of her IEA; and that while reporting lines and structures at Bush Inn were different from those at Bishopdale, these were needed in a considerably larger store; that Mr Langton had moved to meet the applicant's preferred days and hours of work; that if the starting date at Bush Inn was unsuitable to Mrs Cotton that matter could be addressed in the light of the applicant's preferences; Mr Dear assured Mrs Cotton that his objective was to provide her with ongoing continuity and security of employment.

[22] Further, Mr Dear says he advised Mrs Cotton that if she declined the transfer it may be interpreted as a rejection of her employment agreement, but to ensure this did not occur, he asked the applicant if there were other positions she could identify as preferable to her. He says he advised Mrs Cotton that if this was the case, he would willingly explore those options some of which may have been at the Ferrymead store. The meeting adjourned to allow Mrs Cotton to consider her response to the issues put before her.

[23] There was no response from Mrs Cotton.

[24] The respondent then arranged for mediation assistance in an attempt to resolve the impasse. This took place on 20 December 2006 but failed to produce a resolution.

[25] Mr Dear says that the day following the mediation he wrote to Mrs Cotton confirming her ongoing employment with the company and advising her that effective of 8 January 2007 her employment would be as Grocery Manager Woolworths Bush Inn. He also advised her that her days of work would remain the same as those she had at Bishopdale and restated his view that any concerns she had about her role at Bush Inn could be resolved. Finally, he says he reassured the applicant of his personal support in her transition to the Bush Inn role.

[26] Mrs Cotton did not reply to that letter. However, on 2 January she wrote to Mr David Chambers. This letter complains of not receiving *a position description or a contract offering me the position and detailing duties*. Further, the letter puts the proposition that with the closure of Bishopdale her position *must therefore be redundant*. Mrs Cotton also advised that in response to a question from Ms Jones whether redundancy would resolve the matter for her, Mrs Cotton says she told Ms Jones it would and asked Mr Chambers to resolve the issue by way of declaring her position redundant.

[27] Mr Chambers replied to that letter which he received on returning from leave and confirmed the Company's position that the applicant was not surplus to the Company's requirements and there was not legitimate ground on which it could base a genuine redundancy.

[28] In Mrs Cotton's letter of 2 January 2007 she advised Mr Chambers that she was feeling very unwell and that as a result of her situation she was taking medical advice. She advised that her doctor had told her that she would be off work for some time and that in his view her health had been detrimentally affected by her dealings with Mr Dear. She advises Mr Chambers that she will formally advise him in respect of her health and requests that she no longer have dealings with Mr Dear.

[29] Shortly after this letter the applicant provided the respondent with medical certificates, the first of which is dated 8 January 2007 indicating that the applicant would be fit to resume work on 29 January. A further certificate was issued on 24 January 2007 indicating that Mrs Cotton would be fit to resume work on 12 February.

[30] On 26 January 2006 the applicant wrote to Ms Jones in which she advises that she will continue to provide medical certificates in advance of any sick leave her doctor considers necessary. She also confirms that her doctor is not willing to disclose any information about her condition and that she also will not provide this. Finally she confirms *I am not resigning from my position that I currently hold with Woolworths.*

[31] On 2 February 2007 the respondent, through Ms Jones, wrote to the applicant as follows:

*Dear Toni*

*Following the announcement of the pending closure of Woolworths Bishopdale, you were advised that you would transfer to Bush Inn in your position as Grocery Manager effective from 8 January 2007. The change in location is in accordance with provisions of your employment agreement.*

*The Company has attempted to work with you in good faith to facilitate this transfer, however you have advised on three separate occasions that you are not prepared to transfer to Bush Inn.*

*While you have advised that you are not resigning from your position with Woolworths, it is reasonable for the company to conclude that your continued refusal to transfer to Bush Inn and to work with us to find a solution is a deliberate attempt to frustrate your employment agreement and undermine the employment relationship.*

*This has been interpreted by the Company as repudiation of your employment, effective immediately. Your final pay will be direct credited into your account 7 February 2007.*

*Yours sincerely*

*Signed Leanne Jones, HR Adviser*

*cc Tom Dear, Dave Chambers*

[32] A further medical certificate was provided by Mrs Cotton. It is dated 12 February 2007 and indicates that she should be fit to resume work on 26 February 2007.

## **The Issues**

[33] To resolve this employment relationship problem the Authority needs to make findings on the following issues:

- Was the 2005 IEA validly executed; and
- Was the respondent entitled to transfer the applicant to the role of Grocery Manager at the Bush Inn store under the terms of that agreement; and
- Did the applicant refuse to transfer to the Bush Inn store; and
- If so, was such a refusal in breach of her employment agreement; and
- Was the dismissal justified; and
- Did the respondent, in all the circumstances, do what a fair and reasonable employer would do; and
- If the dismissal was unjustified what, if any remedies are due to the applicant; and
- If the applicant has a personal grievance, to what extent if any, did she contribute to the circumstances giving rise to that grievance.

### **The investigation meeting**

[34] At the investigation meeting the Authority heard evidence from Mrs Cotton herself and from her husband Stephen. It also heard evidence in support of the applicant from Dr Tim Wilson and Snr Sgt. Appley, the applicant's support person.

[35] For the respondent evidence was presented by Mr Tom Dear, Ms Leanne Jones, Mr Shane Langton, and Mr Rex Jones. In addition the Authority received sworn affidavits from Mr Allen Bell the respondent's Health and Safety Manager and from Mr David Chambers.

[36] All witnesses presented their evidence in a straight forward manner answering questions from the Authority and from counsel in a clear and uncomplicated way. I thank the witnesses for their efforts and also record the Authority's appreciation of counsel for each party which ensured a relatively complex matter retained its shape as the investigation proceeded.

## **Analysis and discussion**

[37] On the face of the evidence put before the Authority over the two days, neither party was likely to emerge as an outright victor. Each party was represented by very able and experience counsel and both sought, as they should, to maximise the strengths and minimise the weaknesses of their respective clients cases.

[38] Some basic principles are evident. Mrs Cotton signed an employment agreement in which she agreed to accept transfer if that became necessary. I accept there are issues around the circumstances in which the IEA was signed. However, on objective analysis, Mrs Cotton had no reason to quibble with the agreement or the circumstances until some 12 months after it was entered into. I found her a credible witness yet I have reservations about her dating of some relevant events and of her misunderstanding of her situation under the employment agreement.

[39] It was clear from Mrs Cotton's own evidence that she believed her employer was required to provide her with a new *contract* covering her possible re-deployment to Bush Inn. That, or another, eventuality was covered by the IEA she had signed and she accepts that she had signed it at least in part in 2005. Regardless of the circumstances under which she accepted the terms of that agreement, there is no doubt she did not challenge the agreement's legitimacy until the instant issue arose with the announcement of the Bishopdale closure.

[40] In regard to this particular point I have been mindful of the evidence of Mr Jones, the Store Manager who told the Authority that approximately one month before the date on which the IEA was signed, he had provided a full copy of the Company's standard IEA to the applicant for her consideration and that as Mrs Cotton had the whole agreement in her possession, simply gave her the relevant pages that needed to be signed. His evidence was also clear that he had no recollection of telling the applicant that she had to sign the agreement or he would find someone else to do the job.

[41] I think on balance and given that Mrs Cotton's promotion had already been agreed it is most unlikely that Mr Jones made this threat.

[42] I have also been mindful of the applicant's evidence that she acted *in faith* that Mr Jones would not deceive her and consequently signed the relevant pages on that basis. Suffice to say that prior to the announcing of the Bishopdale closure, the issue

of the validity of the agreement between the parties was not an issue and each had performed their respective obligations to the other without any undue difficulty.

[43] Turning to the issue of whether the parties needed to enter into a new IEA to sanction the transfer, it is quite clear that this was not required. I accept that Mrs Cotton, having opted to stay with the grocery section of the respondent's business and with a stated preference for a grocery manager's position, was entitled to satisfy herself on the days, hours of work, and the responsibilities involved in the new role. I am satisfied that this information was provided to her by Mr Langton and that her preferences in terms of days and hours worked were eventually accommodated.

[44] It is significant in this case that Mrs Cotton actually conveyed her acceptance of the Bush Inn position to Mr Langton on 16 November 2006 without any reservations.

[45] Later, she withdrew that acceptance, cited her reason as not wanting to work with Mr Langton and Mr Ellis. That raises the question as to why, on her own evidence, having heard rumours about Mr Langton's management style of which she apparently disapproved, she accepted this position in the first place.

[46] To cut to the issue, I accept the respondent's evidence that in any of its stores a grocery manager is a grocery manager. While each store, dependant on its requirements may modify how the grocery manager's tasks integrate with the other personnel, the key tasks are similar, if not identical, to those in any others of its stores nationwide.

[47] Another issue is whether Mrs Cotton was free to withdraw her acceptance of the Bush Inn role. I am of the view that had Mrs Cotton been a *new* applicant for that position as in one responding to a public advertisement, she had every right to withdraw. However, she had accepted the role and the respondent had every right to rely on that acceptance. In order to be clear, I find there was no need for the renegotiating of a new individual agreement as such an agreement was already in place between the parties.

[48] The change of mind by Mrs Cotton was one she was entitled to exercise. However, her refusal to communicate with Mr Dear or Ms Jones and thus engage in investigating other alternatives for redeployment seriously undermined her position.

[49] I also need to take into account the decision of the respondent, no doubt frustrated at the lack of response to its overtures to assist the applicant find an alternative position within its business operation, and while the applicant was on sick leave, to terminate her employment. This consideration goes to justification under s.103A.

[50] This whole matter is far from simple. It is a situation in which I accept the respondent attempted in good faith to meet Mrs Cotton's changed expectations, attended mediation in an attempt to resolve the issues inspite of having no response to its proposals to continue to assist her.

[51] Following mediation Mr Dear confirmed to Mrs Cotton she continued to be employed by the respondent but that *effective 8 January 2007 ... your base store will change to Woolworths Bush Inn*. Further, in that letter Mr Dear offered his personal support to assist the applicant with the transition.

[52] The 2 January 2007 letter from Mrs Cotton to Mr Chambers which he received on 16 January 2007 after returning from leave was the first direct communication from the applicant since the mediation took place on 20 December 2006. In his reply dated 22 January 2007 Mr Chambers set out the respondent's position and in particular declined to consider redundancy as sought by Mrs Cotton. Further, he pointed out that *considerable effort* had been made to accommodate the applicant's preferences and concerns resulting in significant changes being made to reflect her personal preferences.

[53] It is clear from the evidence that Mrs Cotton withdrew her initial acceptance of the Bush Inn position. That withdrawal need not have been the end of the relationship had the applicant responded to the Company's offer to canvas other vacancies on her behalf.

[54] It is also clear that Mrs Cotton was bound by the terms of the November 2005 IEA a specific term of which was the right of the respondent to transfer her. There was therefore, no requirement to negotiate a new IEA in respect of her employment at the Bush Inn store. Clear also is that in transferring the applicant to the Bush Inn, the Company adjusted the hours and days of work to those identical with the same role at the Bishopdale store and increased the applicant's proposed salary.

[55] I think it is fair to say the respondent made every effort to accommodate Mrs Cotton's preferences in remodelling the Bush Inn position, however it was unable to meet a dominant preference, one which having heard the evidence I am now convinced Mrs Cotton saw as non-negotiable, that is the position was not in Bishopdale or the north west of Christchurch.

[56] I have also considered the evidence of offers of positions at Ferrymead in coming to this view as well as the fact that the applicant's home is less than one kilometre from the Bishopdale shopping complex.

[57] In her evidence at para.23 Mrs Cotton says that she told Mr Dear that the any position needed to be *over my side of town (ie the northwestern area)*. This meeting was on 1 November 2006.

[58] In some contemporaneous notes taken by the applicant at the time she says in respect of the transfer *I thought about it all weekend and talked it over with my husband. I have heard a lot of stories ... about how rude Shane and Edward are – also from people who work within the company said don't go there. So Monday morning I phoned Shane and told him I decided to decline the offer.*

[59] I find that Mrs Cotton was less than candid with her employer in not disclosing a predominant reason for her not wishing to relocate. I accept, in the light of her quest for redundancy compensation that the applicant wished to leave the respondent's employment but wished to do so on terms to her financial benefit.

[60] Standing back and considering the evidence as a whole I am of the view that had Mrs Cotton been up front as to the two predominant reasons she wished to avoid a transfer to the Bush Inn store, the respondent would have been spared hours of effort readjusting the position to meet what it understood was the applicant's preference for conditions parallel to those she enjoyed in the Bishopdale store. When questioned by Mr Langton, counsel for the respondent Mrs Cotton made it clear she did not want to transfer to the Bush Inn store but would look at other things if they came up. In the course of that interchange the applicant accepted there was an instruction to transfer, that she understood it would constitute a breach of her IEA if she did not move but said that if the matter was unable to be resolved then redundancy was an appropriate outcome.

[61] On the matter of Mrs Cotton's claim for compensation I take the view that an applicant approaching the Authority with a grievance does their credibility little good when, having denied the respondent's formal requests for information regarding their ill health – information which may have altered the Company's understanding and decision making process – they wheel their General Practitioner into the investigation meeting and adduce evidence of stress and anxiety in a remedies setting. I have no difficulty whatsoever regarding the accuracy of Dr Wilson's evidence. My concern is the manner in which it has been used in this particular case.

[62] There another aspect to this issue. The final medical certificate dated 12 February 2007 states Mrs Cotton *should be fit to resume work on 26 February 2007*. The applicant commenced working as Manager of KB's Bishopdale Bakery on Wednesday 21 February 2007. So while unable to attend to her employment situation with the respondent due to her ill health, Mrs Cotton was well enough to seek alternative employment, attend an interview, accept the position offered and commence her new job. Given that the first medical certificate was issued on 8 January 2007 and her condition was expected to prevail until 26 February, it is somewhat surprising Mrs Cotton was able to engage in the stressful business of job hunting.

[63] Turning to some key submissions put before me by Mr Evans, I do not accept the Company had an obligation to refer the applicant to a doctor of its choice. I take this view because Mrs Cotton had refused to comply with the transfer clause in her agreement up to that point. I think it highly likely she would not have hesitated to refuse this requirement as she was intent on protecting her privacy on medical issues. Mrs Cotton was not *reluctant* to provide or have Dr Wilson provide details of her ill health; she refused.

[64] Nor do I accept the applicant's submission that the respondent failed to consider the option of medical retirement. It clearly said it did, but in the face of Mrs Cotton's refusal to provide medical information which might have given grounds for such an approach, that prospect faded. I note the applicant's evidence was she could not afford not to have a job and started applying for other jobs in late February 2007, even though unfit to work until 26 February according to her last medical certificate.

[65] That said, I also do not concur with the view of Mr Langton who submitted that although the Company's approach may not have been the orthodox *tick box*

approach to procedural fairness, the procedure it did adopt was in line with the principles of procedural fairness and that it did in fact discharge its obligations under s.4A of the Act. I think for the most part the Company acted very appropriately in the face of the difficulties it experienced with the applicant. However, regardless of the frustrations being experienced, a fair and reasonable employer would not, in the particular circumstances of this case involving a long term employee on sick leave, have issued a letter of dismissal without giving the applicant the explicit opportunity to comment on the proposed course of action.

[66] In the light of the evidence I heard I think it unlikely that anything Mrs Cotton might have had to say to the respondent would have altered the ultimate decision. However, her right to be heard on that proposal and perhaps the opportunity to offer an alternative solution apart from the redundancy which had been declined, is a serious right.

### **The determination**

[67] Returning to the issues as set out above in this determination I find that:

- The individual employment agreement entered into between the parties in November 2005 was validly executed. From the date it came into force both parties were therefore bound by its terms.
- The respondent was entitled to transfer the applicant to the role of Grocery Manager at the Bush Inn store under the terms of the individual employment agreement between the parties.
- On her own evidence the applicant agrees she refused to transfer to the Bush Inn store.
- The refusal was in breach of her employment agreement and particularly in the light of the efforts made to accommodate what the applicant said were her preferences in the event of that transfer. The dismissal was unjustified but solely on the ground that it failed to put its proposed termination action to the applicant for her comment. The applicant has a personal grievance and I now turn to the remedies due to her.

## **Remedies**

### *Lost remuneration*

[68] The applicant claims three weeks lost wages of \$2,367.00 gross. She also claims a differential loss over nine weeks in her new employment at \$160.00 gross per week which equates to \$1,440.00 gross. The total wages claim is therefore \$3,807.00 gross.

[69] I have an issue with this head of Mrs Cotton's claim. The applicant refused to honour a term in her individual employment agreement, and on her own evidence understood she would be in breach if she did not move. Further, her evidence was if she refused to transfer, she believed redundancy and compensation was the alternative. That is scarcely altruistic and was an ill-founded belief.

The Authority however is bound to follow Section 128 of the Act, and has no discretion in an amount of lost remuneration as a result of her personal grievance.

The respondent is to pay Mrs Cotton the sum of \$3,807.00 gross under this head of claim.

### *Compensation*

[70] The applicant's claim for \$15,000 which is a substantial amount. The Act is clear that compensation must relate to humiliation suffered as a result of dismissal, the loss of dignity suffered and the injury to the dismissed person's feelings. An applicant needs to produce evidence establishing causal connection between the behaviour of the employer and the detriment suffered as a result of the actions of that employer.

[71] This matter arose from the inability of the respondent to renegotiate a lease on the Bishopdale store site. All Bishopdale staff were affected as they lost their jobs upon the store's closure on 7 January 2007. Everyone involved faced uncertainty and stress in that situation as was acknowledged by Mr Jones, the Store Manager of the time.

[72] While the applicant's difficulties may have been more pronounced than those of other staff, I find it difficult to sustain the argument that such experiences can be

laid solely at the door of the respondent. It did everything possible to provide continued employment for Mrs Cotton in what I find was a substantially similar role.

[73] As noted above, the respondent handled the final phase of the employment relationship poorly and that no doubt occasioned some distress arising from the manner in which the severance was effected. However, this must be viewed in the context of the persistent refusal to transfer and to provide even basic information on her health to her employer.

[74] Weighing the factors presented through the evidence of both parties I think a modest compensatory payment of \$2,000 is just in this case.

[75] As required by s.124 of the Act I have considered the matter of contribution on Mrs Cotton's part. Owing to the inherent difficulty in assessing contribution where an applicant is suffering a significant depressive episode (regardless of its origin) during a critical stage of the employment relationship, I believe it more just to both parties to provide moderate remedies based on the evidence heard rather than to apportion contributory fault.

### **Summary of orders**

- The respondent is to pay the applicant the sum of \$3,807.00 gross under s.123(1)(b) of the Act.
- The respondent is to pay the applicant the compensatory sum of \$2,000 under s.123(1)(c)(i) of the Act.

### **Costs**

[76] Costs are reserved. Counsel are to attempt to resolve this matter between themselves. If that is unable to be achieved Mr Evans is to lodge and serve his memorandum within 30 days of the issue of this determination. Mr Langton is to have a further 14 days in which to lodge and serve his memorandum in response.

Paul Montgomery  
Member of the Employment Relations Authority