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## Elliott v Coastal Cabins Limited [2022] NZERA 254 (17 June 2022)

Last Updated: 28 June 2022

<b>IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND</b>		
<b>I TE RATONGA AHUMANA TAIMAHI TĀMAKI MAKAURAU ROHE</b>		
		<a href="#">[2022] NZERA 254</a> 3143481
	BETWEEN	ARIANNA ELLIOTT Applicant
	AND	COASTAL CABINS LIMITED Respondent
Member of Authority:	Rachel Larmer	
Representatives:	Geoff Martin, counsel for the Applicant David Grant, advocate for the Respondent	
Investigation Meeting:	22 April 2022 at Auckland	
Date of Determination:	17 June 2022	
<b>DETERMINATION OF THE AUTHORITY</b>		

### Employment Relationship Problem

- Mrs Elliott was interviewed by Coastal Cabins Limited (the Respondent) on 5 January 2021 for a role as a sales representative/consultant. Later that day Mrs Elliott accepted the offer of work and she started work for the Respondent the next day, 6 January 2021.
- The Respondent gave Mrs Elliott a contract after she had started work. She took about three days to discuss and review the contract with her husband.
- On 11 January 2021 Mrs Elliott advised the Respondent of the changes her husband recommended be made to the contract she had been given. Mrs Elliott said Lance Tomsett, the Respondent's contract Sales Manager, told her that no changes would be made to the contract.
- Mrs Elliott signed a "contract for the provision of services" on 11 January 2021 ("the contract"). Mrs Elliott told the Authority she felt coerced into signing the contract because she had already started work and the Respondent said no changes would be made. The Respondent signed the contract on 20 January 2021.
- Mrs Elliott claimed that despite the contract stating she would be an independent contractor, the real nature of the relationship between the parties was that of an employment relationship.
- The Respondent disputed that. It said the Authority did not have jurisdiction over this matter because Mrs Elliot was an independent contractor, not an employee.

Mrs Elliott also claimed that she was constructively dismissed from her employment on 28 January 2022. The Respondent denied that it had dismissed Mrs Elliot. It said she resigned when she had elected to walk out and not return.

Mrs Elliott also claimed that the Respondent had unjustifiably disadvantaged her in her employment by revoking her sales leads, causing her to lose sales and therefore money. Mrs Elliot claimed the revocation of sales leads was also a breach of contract.

The Respondent denied these claims. It said that it had been gradually training Mrs Elliott in different types of sales to ensure she mastered the information relating to each category of sales before being required to take on all of the sales responsibilities for the full product line immediately.

Mrs Elliott also claimed the Respondent breached its duty of good faith to her by failing to provide her with proper training, by humiliating and bullying her at work, by failing to consider changes she wanted made to the contract, by breaching natural justice, by giving her menial tasks to do and by a lack of process.

The Respondent denied all of these allegations and maintained that she has been treated fairly at work.

### **Authority's investigation**

The Authority conducted an in-person investigation meeting in Auckland on 22 April 2022. Each party's witnesses were required to attend the investigation meeting in person. They were questioned by the Authority and the other party's representative.

At the conclusion of the evidence, the Authority gave the parties a preliminary indication of the outcome of Mrs Elliott's claims in the hope that would help the parties to resolve their issues by agreement. That did not occur, so this determination records the Authority's findings on each of Mrs Elliott's claims.

### **Issues**

The following issues are to be determined:

(a) Did the Authority have jurisdiction to investigate Mrs Elliott's claims?

(b) If there is an employment relationship, did the Respondent revoke Mrs Elliott's sales leads?

(c) If so, did the revocation of sales leads:

- (i) Amount to a breach of contract? and/or
- (ii) Unjustifiably disadvantage Mrs Elliott?

(d) If so, what if any:

- (i) Penalty should be imposed on the Respondent for a breach of contract; and/or
- (ii) Remedy should be awarded to Mrs Elliott for the disadvantage?

(e) If there is an employment relationship, did the Respondent breach its good faith obligations?

(f) If breaches of good faith occurred, should a penalty be imposed on the Respondent for those breaches?

(g) Was Mrs Elliott dismissed?

(h) If so, was dismissal justified?

(i) If not, what if any remedies should Mrs Elliott be awarded?

(j) What if any costs should be awarded?

### **Did the Authority have jurisdiction to investigate Mrs Elliott's claims?**

The Authority only has jurisdiction to investigate employment relationship problems involving parties to an employment relationship, with very limited exceptions, such as those

relating to aiding, abetting, inciting or instigating breaches of an employment agreement and claims involving a person

involved in a breach of minimum employment standards.<sup>1</sup>

Mrs Elliott bears the onus of establishing on the balance of probabilities that she was in an employment relationship with the Respondent and was not engaged as an independent contractor. [Section 6\(2\)](#) of the [Employment Relations Act 2000](#) (the Act) required the Authority to assess the real nature of the parties' relationship.

[Section 5](#) of the Act interprets an employment relationship as any of the employment relationships identified in [s 4\(2\)](#) of the Act.

[Section 4\(2\)](#) of the Act defines an employment relationship as (among other things) a relationship between an employer and an employee employed by the employer. [Section 4\(2\)](#) of the Act does not include parties who are in an independent contractor arrangement.

[Section 6](#) of the Act defines a meaning of "employee". It includes any person employed by an employer to do any work for hire or reward under a contract for service.

[Section 6\(2\)](#) of the Act requires the Authority, in determining whether or not a person is an employee, to determine "the real nature of the relationship" between the parties.

When doing so, [s 6\(3\)](#) of the Act requires the Authority to consider all relevant matters, including the intention of the persons involved, but it is not to treat statements by the parties describing the nature of their relationship as determinative.

The labelling of a relationship by the parties is therefore merely one of the factors to be considered within the overall mix. So the intention of the parties is relevant, but not decisive of the question of whether or not Mrs Elliott was an employee.

The control test, integration test and fundamental/economic reality tests are all relevant factors for the Authority to consider when it is determining the real nature of the relationship, along with any other relevant matters. The Authority's inquiry into the real nature of the relationship between the parties is therefore necessarily an intensely factual one.

<sup>1</sup> [Section 134\(2\)](#) and [s 142W](#) of the Act.

#### *Job advertisement*

The advertisement that Mrs Elliott responded to did not mention that the Respondent was seeking an independent contractor for the position. Mr Tomsett said the Respondent wanted to leave open the possibility of engaging an employee or a contractor, to generate as much interest in the position as possible.

The job advertisement said "[The Respondent has] a team supporting you [...]", which tended to indicate the role was part of its business.

#### *Job interview*

During the interview Mrs Elliott was told that she would be an independent contractor. Mrs Elliott told the Authority she had never worked as an independent contractor, so was naive about what that meant in practice.

Mrs Elliott said the details of an independent contracting arrangement were not discussed with her at the outset, which caused her stress and anxiety later. She said if she had known what that meant, she would not have accepted the Respondent's offer.

#### *Remuneration*

Mrs Elliott believed that the remuneration package being offered to her, of commission and a retainer component, aligned with an employment relationship and not an independent contractor arrangement.

#### *Job offer*

Mrs Elliott's job interview was on 5 January 2021, she was offered and accepted the position the same day by telephone. The parties arranged for Mrs Elliott to start work the next day, which she did on 6 January 2021.

There was no explanation during the interview about the implications of Mrs Elliott becoming an independent contractor, instead of being engaged as an employee. Mrs Elliott was not given a copy of the "contract for the provision of services" until after she had already started work on 6 January 2021.

The Respondent did not check that Mrs Elliott understood she was being engaged as if she was in business, on her own account, not as an employee.

#### *The documentation*

A day or two after starting work Mrs Elliott was provided with a "contract for the provision of services". The Authority

notes that the reference to contract **of** services denotes an employment relationship while a contract **for** services denotes an employment agreement.

The contract identified Mrs Elliott as “*the contractor*”. It also referred to the fact that “*the company has agreed to engage the contractor for the provision of services outlined in this agreement and attached schedule*”.

Again, the reference to “*of*” denotes an employment relationship while the reference to the “contractor” denotes an independent contractor arrangement. The Authority considered that the use of the word “of” instead of the word “for” was likely a drafting mistake.

#### *The contract*

Clause 3 dealt with “*The Relationship Between the Contractor and the Company*”. It said that:

The relationship between the company and the contractor is and shall be for all purposes that of an independent contractor [...] The parties agree that the [Employment Relations Act 2000](#) does not apply to this contract. For the avoidance of doubt, the parties acknowledge and agree that this contract should not operate as or constitute an offer of employment and/or contract of employment either during its currency or expiry for whatever reason.

The Authority finds that the contract recorded that Mrs Elliott was an independent contractor and not an employee.

#### *Intention of the parties*

Although the contract stated that the relationship was to be an independent contractor arrangement, the Authority is not satisfied that was the mutual intention of the parties.

Mrs Elliott’s evidence to the Authority was that she did not want or intend to be an independent contractor.

Mrs Elliott was not set up in business on her own account. Her affairs were not ordered in a way that would have enabled her to have obtained the advantages of an independent

contractor arrangement. She did not understand the differences between being an independent contractor or an employee and the Respondent did not ensure that Mrs Elliott understood the distinction.

The Authority finds that the decision to offer Mrs Elliott an independent contractor arrangement, as opposed to engaging her as an employee, was a unilateral one that was made by the Respondent at the job interview without any discussion with, or input from Mrs Elliott.

#### *Payment arrangements*

Clause 6 of the contract dealt with the contractor’s fees. This required Mrs Elliott to submit weekly invoices, which would be paid on the Thursday after the invoice was submitted.

Clause 6.2 of the contract provided that Mrs Elliott would invoice the company on a weekly basis for commission retainer of \$30,000 per year, paid weekly and sales commission on all sales and rental sales made by her at the rate of two percent (calculated on the GST exclusive figure of the sale), over and above retainer paid each month including GST if any.

Mrs Elliott said she did not understand this meant the Respondent advanced her

\$30,000 of her expected sales commission, that she had to later repay out of the commissions she had earned. This was not discussed during the interview and it was not clear to her from the contract.

The Authority finds that the Respondent failed to adequately explain the nature of the “contractor fees” to Mrs Elliott. That was a serious omission given that she was not someone in business on her own account but was rather operating in the way that was directed of her by the Respondent.

Mrs Elliott told the Authority she believed that the reference to “*commission retainer*” meant that she would be paid a base salary with no conditions and then be entitled to commission on any sales that she expected that would be paid to her in addition to the base retainer.

The fact that the retainer was deducted from any commissions she earned meant her remuneration was therefore commission only. That was not made clear to her in the job advertisement, the job interview, or even in the contract. Mrs Elliott said she would not have accepted the position if she knew that it was commission only.

Mrs Elliott did not know how to do the invoicing so the respondent had to set up the invoice templates for her.

#### *Taxation*

Mrs Elliott was not GST registered. She did not obtain any taxation related benefits by working as an independent

contractor versus an employee. Under the contract Mrs Elliott was responsible for her own income tax and ACC premiums.

### *Bargaining power*

The contract was presented to Mrs Elliott after she had started work, on a take it or leave it basis. She told the Authority she felt she had been coerced into signing the contract because she had already begun work and wanted to get along with everyone. That meant Mrs Elliott felt she could not insist on being an employee at that late stage.

### *How did the relationship operate in practice?*

Mrs Elliott says she was required to be in the sales office each day during the week. She told the Authority that Lance Tomsett told her "I want you here". Mrs Elliott saw that as an instruction that she had to be present at the office each day.

It was never explained to her that she could work from home or come and go as she pleased. Mrs Elliott's evidence was that the arrangement did not have the flexibility or autonomy associated with an independent contractor arrangement.

Mr Tomsett told the Authority that Mrs Elliott could choose when she wanted to be in at the sales office but that it made sense for her to be there within working hours because then she would be able to respond to enquiries. He described it as "going to fish where the fish are".

The Authority finds that Mrs Elliott was expected and required to be in the sales office each day during the week. She was never told that she could select her own hours or was not required to be present at the office in order to do her job. It would likely have been frowned on if she had in fact done that. This requirement to be in the office during normal office hours is a feature of an employment relationship.

Mrs Elliott was required to put the flags out and to bring them in each day. In addition she was required to lock up the display cabin at the close of business each day, which she said meant she had to be there at 5.00 pm.

The Respondent said that everybody had to do those tasks. However, the evidence was that while Mrs Elliott was working, it was something she was required to do. She was not aware others would do it, if she did not.

Putting out the Respondent's business flags and locking up business premises is something that an employee would be expected to do, but not so much an independent contractor.

### *Training*

The Respondent expected to and did train Mrs Elliott. She was not already versed in the nature of the sales services she was providing, so had to receive on the job training. The level of training she required was indicative of an employment relationship.

### *Tools*

Mrs Elliott was provided with the Respondent's laptop, she could not use her own laptop. She did have to use her own phone and vehicle for getting to and from work. When she was at work she used the office computers and phones.

### *Branding*

There was no uniform or dress code. Mrs Elliott was given business cards that were branded with the Respondent's information. The business cards did not identify Mrs Elliott as being in business on her own account but instead made it look like she was part of the Respondent's business.

### *Ability to subcontract*

Mrs Elliott had no ability to subcontract the work she had been engaged to do.

### *Ability to work for others*

The issue of Mrs Elliott working for others never arose. This was a full time position and she was expected and required to be at the sales office during normal business hours.

### *Industry practice*

There was no evidence about industry practice.

### *Control test*

The control test looks at the degree of control that is exerted over the work and the manner in which it is to be done. The greater extent to which an individual is regulated and supervised then the more likely they are to be considered an employee.

Mr Tomsett exercised a relatively high level of control over Mrs Elliott in terms of allocating the hours of work, setting the expectations regarding her location of work, the type of work to be done, and the type of sales leads that she was able to follow up. He also provided training and gave her tasks to do, such as bringing in the flags and locking up the show cabins.

The Authority considered that there was a high degree of control exhibited that was indicative of an employment relationship.

#### *The fundamental/economic reality test*

The fundamental test looks at whether a person performing services is in business on their own account. The evidence did not establish that Mrs Elliott was in business on her own account.

Mrs Elliott did not receive any taxation benefits, or other benefits of self-employment. She had not structured the role to personally benefit herself, it was structured solely towards meeting the Respondent's needs.

Mrs Elliott did have the ability to profit from her own endeavours. The more sales she made the more commission she received. Mrs Elliott also took the risk, in that if she did not make sales then she would not be paid, other than the commission retainer which was to be deducted from the sales she had in fact made.

The Authority finds that the fundamental/economic test supported the existence of an independent contractor relationship.

#### *Integration test*

The integration test considers whether the work Mrs Elliott performed was an integral part of the Respondent's business and whether she had effectively become part and parcel of its organisation.

There was nothing to suggest that Mrs Elliott could or would be seen by outsiders as anything other than the Respondent's employee.

There was no evidence to suggest that she was operating distinctly or independently from the Respondent in any way. The customers who Mrs Elliott gave sales advice to and sold cabins to, would not have known that she was not part and parcel of the Respondent's organisation.

Mrs Elliott was required to answer the phone during work hours with the Respondent's name and then her own name. She received a "New Team Member" induction to the business when she started work and she was treated as part of the Respondent's "team".

Mrs Elliott's business card recorded her Coastal Cabins email address and had the Respondent's company name and logo on it. Anyone contacting Mrs Elliott by phone or email would consider her to be an employee.

The integration test is indicative of an employment relationship.

#### *Real nature of the relationship*

After standing back and weighing all of the various factors to determine the real nature of the relationship, the Authority has concluded that Mrs Elliott was more likely than not to be an employee, who was in an employment relationship with the Respondent, as defined by [s 6](#) of the Act.

Because Mrs Elliott has established on the balance of probabilities that she was more likely than not an employee, in terms of the [s 6\(1\)\(a\)](#) definition of employee in the Act, the Authority was satisfied it had jurisdiction to investigate her claims.

#### **Did the Respondent revoke Mrs Elliott's sales leads?**

Mrs Elliott claimed that the Respondent revoked her sales leads. The evidence did not support that claim, so it did not succeed.

Mrs Elliott was given training on the different types of sales. It was reasonable to expect that she would gain experience and familiarise herself with each type of sale before moving to the next type. This was not a matter of sales leads being revoked but was instead a training and experience issue.

#### **Breach of contract/unjustified disadvantage claims**

Because Mrs Elliott's claim that the Respondent had revoked her sales leads was unsuccessful, it follows that her breach of contract and/or unjustifiably disadvantage claims arising from that allegation also do not succeed.

## Did the Respondent breach its good faith obligations?

### Contract related issues

Mrs Elliott claimed the Respondent breached its duty of good faith by refusing to engage with her about her feedback on the contract she had been given and/or by failing to consider changes she wanted made to the contract.

As an employer, the Respondent had the good faith obligations set out in [s 4](#) of the Act. This required the parties to deal with each other in good faith.

[Section 4\(1A\)\(b\)](#) of the Act states that parties in an employment relationship must be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, amongst other things, responsive and communicative.

The Respondent failed to meet this obligation. Mrs Elliott provided written feedback on the contract she had been provided on or around 6 January 2021 (after starting work). The points that she wanted to raise with the Respondent were legitimate ones and would have considerably improved the contract.

However, instead of engaging actively or constructively with Mrs Elliott, the Respondent failed to be responsive and communicative because it dismissed her feedback out of hand and declined to discuss her husband's feedback with her.

The Respondent formed the incorrect view that the changes proposed would have turned the contract into an employment agreement, so its attitude was that it did not want to hear Mrs Elliott's feedback because nothing was going to change.

That was a breach of good faith. The Respondent had an obligation to listen to Mrs Elliott's feedback about the proposed contract and then to respond to it. While ultimately the Respondent could have decided not to have accepted any of her suggested changes, it did at least need to hear her out and it should have replied to the points that she had raised.

### SoP claims

In her Statement of Problem Mrs Elliott claimed the Respondent breached its duty of good faith to her by failing to provide her with proper training, humiliating and bullying her at work, breaching natural justice, giving her menial tasks to do and by a lack of process.

None of these breaches of good faith claims succeeded.

Mrs Elliott was given appropriate training. The evidence did not establish any incidences of Mrs Elliott being humiliated or bullied at work. Mrs Elliott presented as a sensitive person who became upset easily, such as by being asked to put the flags in or out, or getting sales information wrong on items that she had not yet been trained in.

While the Authority accepted that Mrs Elliott did feel humiliated when she made obvious mistakes during a sales call, the humiliation arose from her own feeling of disappointment at getting something wrong and not from anything unreasonable or inappropriate that the Respondent had said or did.

Mrs Elliott appeared to dislike being trained, because she preferred to learn by just observing or overhearing others. She did not appear to welcome feedback and declined to do sales exercises that would have helped her. She also appeared reluctant to take up offers of assistance, preferring to do things privately her own way and in her own time.

The Respondent accepted Mrs Elliott's refusal to do practice sales exercises and tried instead to train her in a way that she was comfortable with, such as by setting expectations and then discussing sales calls with her. That was not inappropriate, but it did lead to Mrs Elliott leaving.

The evidence did not support Mrs Elliott's claim of bullying. The Authority concluded that Mrs Elliott's allegation that Mr Tomsett had told her "*she wasn't suited to the job and would be better off selling fabric*" was not proven on the balance of probabilities.

Mr Tomsett was enthusiastic about Mrs Elliott joining the team. He was happy with her sales skills and focused on helping her succeed. The Authority considered it more likely than not that Mrs Elliott misinterpreted legitimate feedback, because she was overly sensitive about her own performance due to the very high standards she had for herself.

There was no disciplinary process to give rise to her claims that there had been breaches of natural justice and/or lack of process.

What Mrs Elliott viewed as menial tasks (putting out/bring in sales flags and unlocking/locking the sales cabins at the beginning /end of the day) were tasks that everyone had to do and did in fact do as part of contributing to the team. Mrs Elliott did not object to these tasks at the time, so asking her to do this was not bullying conduct.

### **Should a penalty be imposed for the breach of good faith?**

[Section 4A](#) of the Act provides that a penalty may be imposed for certain breaches of good faith. Mrs Elliott failed to establish that any of these requirements for the imposition of a penalty existed.

The Authority finds that the failure to engage with Mrs Elliott regarding her feedback on the contract she had been given was not a deliberate serious or sustained breach of good faith.

It was a negligent breach which was inadvertent because the Respondent was not aware the parties were in an employment relationship or that the duty of good faith applied. The Respondent also believed that no changes could be made to the contract, because the same contract applied to everyone else.

That approach was dismissive of Mrs Elliott (and therefore breached good faith), however the failure was not intended to undermine bargaining for an individual employment agreement, an employment agreement, or an employment relationship.

The Authority therefore declined to exercise its discretion to impose a penalty for the breach of good faith that occurred.

### **Was Mrs Elliott dismissed?**

Mrs Elliott says that on 28 January 2021 she was speaking on the phone to a customer about ‘rent to buy’ sale and got some of the details wrong. Mr Tomsett overheard her and began to discuss that with her. Other customers came into the sales office so Mrs Elliott and Mr Tomsett went upstairs to finish their discussion.

Mrs Elliott claimed that Mr Tomsett told her that she “*wasn’t suited to the job*” and that she would be “*better off selling fabrics in a retail store*”. Mr Tomsett denied making these disparaging comments to her.

Mr Tomsett was not authorised to dismiss anyone and he did not want to dismiss Mrs Elliott. She was a new employee, who was still learning the ropes, so he wanted to help her become successful.

Mr Tomsett told the Authority he wanted to talk to Mrs Elliott about how her sales call could be improved and to discuss training with her. He intended to do so in an informal discussion, which is why they moved upstairs. He had no reason to put her down.

Mr Tomsett told the Authority that Mrs Elliott was sensitive about the incorrect information about the rent to buy option she had given out during the sales call. Mr Tomsett said that when he tried to discuss it with Mrs Elliott she repeatedly asked him if he wanted her to leave.

Mr Tomsett said he told Mrs Elliott that it was up to her, but he was not thinking that way, i.e. about her leaving, but he was concerned about her reluctance to undertake sales training or product knowledge training, so he wanted to have a discussion with her about that.

Mrs Elliott responded by leaving work. She collected her handbag and walked out. She did not say if/when she would be returning, but instead left an impression that she could have been leaving for good. The Respondent tried to clarify with her later that day whether she would be returning and she made it clear she would not be.

The Authority finds that the initiative for the ending of the employment came from Mrs Elliott.

Mrs Elliott was unhappy doing what she considered were “*menial*” aspects of the role. She was not comfortable with the way that the Respondent wanted to train her. She was embarrassed her sales call had not gone well and that others had overheard her give out incorrect information to a customer. She did not like having to be in the office during normal office hours and she objected to being asked to lock and unlock the cabins.

and probably a bit stressed she had not met her own high standards when issues such as her reluctance to undergo training and the information errors were raised with her by Mr Tomsett.

Mrs Elliott’s reaction was to leave. She simply walked out and did not return.

The Authority was not satisfied to the required standard of proof that the Respondent said or did anything unjustified

that caused her to do that. It was normal and appropriate for Mr Tomsett to discuss with Mrs Elliott the incorrect information he had heard her give a customer on the rent to buy sales call. There was also nothing wrong with him wanting to discuss training options with her.

The Authority considered that Mrs Elliott overreacted by leaving work. The Respondent had to be able to speak to Mrs Elliott about normal work matters without her becoming defensive or upset.

The Authority did not consider the Respondent had engaged in a course of conduct that was designed to get Mrs Elliott to resign. Nor did the Respondent fundamentally breach any of Mrs Elliott's terms and conditions of employment. It was also not reasonably foreseeable that Mr Tomsett's informal chat with Mrs Elliott after her rent to buy sales call would have resulted in her resignation.

Mrs Elliott told the Authority that Mr Tomsett had bullied her, however the evidence fell far short of supporting such serious allegations. Mr Tomsett wanted Mrs Elliott to be successful and he was imparting his knowledge and expectations to her in line with that. While this was not well received by Mrs Elliott, it was not bullying.

Mrs Elliott needed to be able to take on feedback and undergo training as part of her role. The Authority finds that Mrs Elliott likely left because she was not enjoying the job and felt she was not doing well. That was her choice.

The Authority considered it more likely than not that Mrs Elliott's walking off the job was a genuine resignation, because the initiative for leaving came entirely from her. Mrs Elliott was not asked to resign, she was not encouraged to resign, she was not pressured into resigning and there was no fundamental breach of duty that would have made her resignation reasonably foreseeable.

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It was therefore not a constructive dismissal.

Mrs Elliott's dismissal grievance does not succeed because her employment ended due to her resignation and not as a result of a dismissal.

### **What if any costs should be awarded?**

Mrs Elliott is the successful party because at least one of her claims (the breach of good faith claim) succeeded. However, that was only a small aspect of her overall claims. The vast amount of the Authority's time was spent on issues that Mrs Elliott did not succeed on. Therefore any costs that she would be awarded as the successful party would need to be adjusted to reflect that.

The parties are encouraged to resolve costs by agreement. If that does not occur, and the Authority is required to determine costs, Mrs Elliott has 14 days within which to file costs submissions with the Respondent having 14 days within which to reply. Costs will not be considered outside this timeframe, unless it has been previously extended by the Authority.

This was a one day investigation meeting. The starting point for assessing costs is

\$4,500, being the Authority's notional daily tariff for a one day investigation meeting. That will then be adjusted to reflect the specific circumstances of this case. Proof of the actual costs incurred is required in support of a costs claim.

**Rachel Larmer**

**Member of the Employment Relations Authority**

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