

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 553
3121592

BETWEEN EMMA HUNT
 Applicant

A N D VIVO BEAUTY LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Rachel Rolston and Warwick Reid, advocates for the
 Applicant
 Rita Nabney, counsel for the Respondent

Investigation Meeting: 17 August 2021

Submissions Received: 17 August 2021 and 25 August 2021 from the Applicant
 17 August 2021 and 23 August 2021 from the Respondent

Date of Determination: 10 December 2021

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Emma Hunt worked for Vivo Beauty Limited in one of its hair salons, Vivo Papamoa, from 31 July 2019 until 16 June 2020.

[2] Throughout the time that Ms Hunt worked at Vivo Papamoa she had concerns about how she was performing. Ms Hunt says her concerns arose because she was not properly inducted in terms of the salon's operating systems, which impacted on her efficiency and productivity and caused her to miss breaks and become overworked. Ms Hunt also says she was not trained properly on products and techniques.

[3] This all came to a head in May 2020 when Ms Hunt advised Vivo Beauty that she was suffering from high anxiety and stress due to being bullied and victimised in her job.

[4] Vivo Beauty responded to this, acknowledging the seriousness of the situation and seeking to meet with Ms Hunt to put a plan in place to ensure Ms Hunt felt safe in her work environment and was able to return to work.

[5] Vivo Beauty held two meetings with Ms Hunt in May and June 2020 to understand her concerns and explore what could be done to assist her at work.

[6] Vivo Beauty then held a third meeting with Ms Hunt on 16 June 2020 in which the focus changed; Vivo Beauty having investigated the issues raised by Ms Hunt had become concerned that there was no basis for Ms Hunt's allegations and in fact believed there was now a breakdown in the relationship resulting in a loss of trust and confidence in her by Vivo Beauty.

[7] The meeting on 16 June 2020 ended with Vivo Beauty concluding that there was no evidence to support Ms Hunt's allegations, rather there was conflict between Ms Hunt and other members of the team, which meant the team could not function effectively. This in turn meant there was an irreconcilable breakdown in the relationship and based on this Vivo Beauty terminated Ms Hunt's employment.

[8] Ms Hunt raised a personal grievance for her dismissal based on an alleged failure by Vivo Beauty to follow a fair process in dismissing her and not having a substantive basis for that dismissal i.e. there was no basis to conclude there was incompatibility within the team caused by Ms Hunt, and that as a result the employment relationship had broken down irreconcilably.

[9] Ms Hunt and Vivo Beauty were unable to resolve the grievance and Ms Hunt lodged a statement of problem in the Authority claiming an unjustifiable dismissal.

The Authority's investigation

[10] It is Ms Hunt's claim for unjustifiable dismissal that I have investigated. I did this by receiving written evidence and documents, holding an investigation meeting on 17 August 2021 and assessing the oral and written submissions of the parties' representatives.

[11] I received witness statements from Ms Hunt, Stephanie Standing, Chrissy de Mey, Talia Dent, Patricia Pfab, Michelle Urwin, Luke Penney and Eesa Belk. In my investigation meeting, under oath or affirmation, Ms Hunt, Ms Standing, Ms de Mey, Ms Dent and Ms Pfab confirmed their statement and gave oral evidence in answer to questions from me and the parties' representatives. The representatives then provided oral and written submissions.

[12] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

[13] This determination has been issued outside the statutory period of three months after receiving the last communication from one of the parties. When I advised the Chief of the Authority this would occur he decided, as he is permitted by s174D(3) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s174D(2) of the Act.

The events

Ms Hunt starts work at Vivo Papamoa

[14] Ms Hunt is a qualified hairdresser who lived and worked in the United Kingdom. In 2014 Ms Hunt travelled to New Zealand and spent some time travelling and working on a 12 month working holiday visa.

[15] As the 12 month visa came to an end Ms Hunt met Fernando Lima and began a relationship. This prompted her to extend her stay in New Zealand and over the course of about three years she married Mr Lima, took up a salon manager role at a salon she had been working at in Mount Manganui and then became pregnant.

[16] Ms Hunt then returned to Wales with Mr Lima but after a two year period both Ms Hunt and Mr Lima wanted to return to New Zealand. As they had previously lived in the Bay of Plenty and had friends and family there Ms Hunt started looking for hairdressing opportunities in the Bay of Plenty.

[17] In the course of her search for work Ms Hunt came across Vivo Beauty, which had a number of hairdressing salons across New Zealand, including 12 salons in Bay of Plenty and Hawkes Bay; so in March 2019 Ms Hunt contacted a Vivo Beauty Auckland regional manager asking about work opportunities.

[18] Ms Hunt's details were then passed on to Chrissy de Mey who was Vivo Beauty's Regional Manager for Bay of Plenty and Hawkes Bay at that time. Ms de Mey conducted a telephone interview with Ms Hunt on 20 March 2019. Ms Hunt also sent through a portfolio of her work.

[19] After this recruitment process, Vivo Beauty offered Ms Hunt a role as a stylist working 30 – 35 hours per week; Ms de Mey being satisfied with Ms Hunt's skills and experience. Ms Hunt accepted the role, in particular she says she did so based on assurances of training and support from Ms de Mey; Ms Hunt being concerned about having been out of the industry for a couple of years.

[20] Whilst there was a delay in the processing and granting of Ms Hunt's work visa, it was issued and she was able to commence work at Vivo Papamoa on 31 July 2019.

Ms Hunt is concerned about work and becomes stressed and anxious

[21] When Ms Hunt started work at Vivo Papamoa she received an induction. Ms Hunt believed this induction was inadequate and that she never properly received training on the salon's systems. This continued as a recurring concern for Ms Hunt and she says as a result she was not able to manage her work load and she frequently missed breaks, including her lunch breaks.

[22] It is clear that Ms Hunt never really settled into her work at Vivo Papamoa and it appears there was a combination of factors that contributed to this.

[23] From Ms Hunt's perspective she felt unsupported and believed her managers, Patricia Pfab and Stephanie Standing just could not be bothered assisting her and she was left to "sink or swim". She also spoke of the team being unhappy, which was an issue she raised with Ms de Mey.

[24] From Vivo Papamoa's perspective Ms Hunt was struggling to adapt to life in New Zealand and seemed unhappy and stressed when she was at work. Ms Pfab and Ms Standing noted that Ms Hunt was telling staff that she was feeling pressure with her life in New Zealand and there were some issues with her family. They both asked Ms Hunt about how they could help her but say they were reassured by her that she was fine and did not need anything.

[25] In September 2019 Ms Hunt took time off work on three occasions citing stress resulting from immigration problems and settling into New Zealand. In October 2019 Ms de Mey met with Ms Hunt and discussed her work performance and her wellbeing, noting her performance was down and that she seemed to be coming to work upset. There was some discussion around how Ms Hunt could improve her work and how Ms de Mey would support her.

[26] Things did not improve with Ms Hunt and this began to have an impact on the staff at Vivo Papamoa, with Ms Hunt continuing to make comments to staff about her home situation and her anxiety. Ms Hunt then began making negative comments about Vivo Papamoa and became confrontational with Ms Pfab and Ms Standing.

[27] This culminated with Ms Hunt raising issues with Ms de Mey, about the staff at Vivo Papamoa being unhappy. Ms de Mey held a meeting with all the staff to discuss this but no one came forward with any concerns. This in turn left Ms Pfab and Ms Standing upset and disappointed about the allegations and confused about what the actual situation was with their team.

[28] Ms Standing says after the team meeting Ms Hunt's behaviour deteriorated; she made no effort to meet her work targets and was moody and aggressive at work. Staff complained to Ms Standing and she passed on the complaints and her concerns to Ms de Mey. Ms de Mey met with Ms Hunt on two occasions during March 2020 and discussed the issues she was having at home and how that was impacting on her work. There was some discussion about Ms Hunt moving back to Wales but this was never confirmed.

[29] In any event, the discussions in March 2020 were not progressed immediately as Ms Hunt took further time off work and then the Covid-19 Level 4 lockdown prevented her from returning to the salon.

[30] In April 2020, during the Level 4 lockdown, Ms de Mey attempted to follow up on the March discussions by sending an email to Ms Hunt enquiring about her intentions, particularly as it appeared she would not be able to get a flight to the UK. In that email Ms de Mey offered to support Ms Hunt in whatever way she wanted including an offer to arrange part time work rather than Ms Hunt finishing up as she had indicated she would. Ms Hunt did not reply to that email.

Ms Hunt complains of bullying and victimisation and Vivo Beauty investigates this

[31] On Saturday, 16 May 2020, Ms Hunt returned to work at the salon. Unfortunately she got behind with her work and a client was kept waiting for about one hour and then was unhappy with the cut. Ms Standing intervened and waived the cost of the service; Ms Hunt was unhappy with this.

[32] On Monday 18 May 2020, Ms Hunt called Ms de Mey and discussed what had happened and the problems she was having at work, particularly around anxiety. Ms de Mey believed Ms Hunt wanted to leave work and followed up the 18 May meeting with an email on 19 May 2020 in which she stated:

Was great to talk to you yesterday and you know I will help you in any way I can.

I think the easiest move now is for me to accept your resignation immediately, so you can take time to focus on your health and your families well being.

....

[33] On 20 May 2020 Ms Hunt responded by email stating:

I do not wish to resign.

You will recall from our previous conversations, that I am being bullied and victimised in my workplace by management.

...

I am suffering from high anxiety and stress due to being bullied and victimised in my job, and it has become untenable. My Doctor has confirmed this.

....

[34] On 21 May 2020 Ms de Mey responded by email stating::

I apologise for any confusion, I was under the understanding from you that you would not be returning due to stress and anxiety. I was not aware you considered it directly attributable to your current work situation. The allegations in your email are not words you have used previously, but nonetheless are extremely serious and I will be working with you and your team to ensure there is no basis to them.

I would like to organise a meeting with you so I can put in place a plan to make you feel comfortable in your work environment.

The last few conversations with you have led me to attribute your mental health problems to your current home situation and various immigration issues you have.

....

[35] On 22 May 2020 Ms Hunt responded by email stating:

Thank you for your understanding. I have attached the 2 medical notes from my Doctor.

I was perplexed myself, at the realisation that I have been experiencing bullying for some time.

I have been embarrassed that at 31 years old, I am having to admit to being bullied and victimised in my workplace.

....

[36] Ms Hunt then met with Ms de Mey on 25 May 2020. Ms Hunt had her sister with her as a support person and both Ms Standing and Ms Pfab attended the meeting.

[37] Both parties viewed the meeting as being unproductive. Ms Hunt says her managers focussed on her alleged shortcomings at work, whilst Ms de Mey and Ms Standing say Ms Hunt's sister was dominant and aggressive in the meeting making accusations that Ms Hunt was the victim of bullying without providing any examples of the bullying behaviour complained of.

[38] On 26 May 2020, Ms de Mey invited Ms Hunt to a further meeting and in a follow up email on 27 May 2020 advised her the meeting was to investigate the allegations of bullying and victimisation.

[39] This second meeting was held on 12 June 2020 and Ms Hunt attended with her sister and Ms de Mey attended with Vivo Beauty's counsel. This meeting proved to be more productive than the first one with Ms Hunt setting out her concerns. This included:

- (a) That she did not have enough time in her day to get through her work, primarily resulting in her not having breaks, particularly lunch breaks which were removed from her diary or not put in because there was no time between appointments.
- (b) That she had not been given enough training or an induction and this compounded her work efficiency issues.
- (c) That her managers did not respond appropriately when she raised issues around breaks and needing more training or assistance. She felt her managers did not have enough time to help her or could not be bothered and nothing was ever followed up. Ms Hunt used the 16 May 2020 incident with her client to support her allegation that her managers did not support her.
- (d) As time progressed she was aware of snide comments being made by her managers about her or her work, including comments such as “maybe the salon is not for you”.
- (e) When she raised her concerns she felt pressure to leave; this coming from her managers and from Ms de Mey when she spoke to her about her concerns.

[40] After the 12 June 2020 meeting, Ms de Mey spoke to Ms Standing and Ms Pfab and two staff members about the issues raised by Ms Hunt. She also reviewed the Vivo Papamoa system to see what the dairy had recorded for breaks and training. As a result of this investigation Ms de Mey concluded:

- (a) There was no evidence to support Ms Hunt’s allegations regarding breaks, her induction and training generally.
- (b) That Ms Hunt was provided with support and managers did not act as alleged including the allegation of snide comments.
- (c) In contrast there was an issue with Ms Hunt not being part of the team, this being particularly evident with her choosing not to participate in the group messaging platform and therefore not participating in various discussions including around returning to work after the Covid-19 Lockdown.

(d) Ms Hunt's account of the incident with her client on 16 May 2020 was an exaggeration and, in part, fabricated in relation to Ms Standing's intervention.

(e) That Ms Hunt had never previously raised bullying and victimisation in any of the previous meetings, rather she had referred to issues in her home life as creating stress and anxiety for her.

[41] Overall, Ms de Mey concluded that Ms Hunt had completely misrepresented what had occurred during her time at the salon and in fact what had eventuated was a serious breakdown in the relationship between Vivo Beauty and her and there were now irreconcilable differences, including an obvious dislike for her managers and her colleagues.

After investigating Ms Hunt's complaint, Vivo Beauty commences a disciplinary process with Ms Hunt

[42] So, having reached this conclusion, Ms de Mey invited Ms Hunt to discuss this. In an email on 14 June 2020 Ms de Mey advised Ms Hunt:

We would like to meet with you on Tuesday 16 June at 3pm.

This meeting will be to discuss the irreconcilable breakdown in trust and incompatibility between yourself and Vivo.

This has resulted in a complete loss of confidence and trust by Vivo

...

Vivo has analysed your statement at the meeting and will provide you with a response at the meeting.

A possible outcome of this meeting may be the termination of your contract due to an Irreconcilable Breakdown in trust and confidence.

[43] In the meeting on 16 June 2020, Ms de Mey outlined her findings, as set out above and then concluded:

(a) That having investigated Ms Hunt's complaints there was no evidence to support any of them. That the salon could not function effectively with such conflict. And that Vivo Papamoa no longer had any trust and confidence in Ms Hunt, particularly in relation to her ability to be part of the team.

- (b) In short there was a complete breakdown in the relationship, which was irreconcilable. And there was no alternative but to dismiss Ms Hunt from her employment.

[44] Ms de Mey concluded the meeting by confirming Ms Hunt's employment was terminated with immediate effect.

Was Ms Hunt's dismissal justified?

[45] The question of whether Vivo Beauty's dismissal of Ms Hunt was justified is assessed in two parts. First, whether Vivo Beauty carried out a fair process in coming to the decision to dismiss and second, whether its decision to dismiss was substantively justified.

[46] In terms of process, a fair process is governed by s 4(1A) and s 103A of the Act. Based on these sections, in order to carry out a fair process when dismissing Ms Hunt, Vivo Beauty needs to show that:

- (a) It investigated what occurred in terms of the concerns it had about Ms Hunt. Those concerns being that she had fabricated the bullying and victimisation claims giving rise to a conflict in the salon, there was no longer any trust and confidence in Ms Hunt at work and there was an irreconcilable breakdown in the relationship with her.
- (b) It set out these concerns, provided relevant information and explained the possible implications of an adverse finding, so that Ms Hunt could consider all of this and respond.
- (c) It gave Ms Hunt a reasonable opportunity to respond to these concerns, before it made its decision on what had occurred and whether this justified dismissal.
- (d) It properly considered the explanations given by Ms Hunt before it made its decision on dismissal.

[47] I am satisfied that Vivo Beauty did enough to investigate Ms Hunt's complaints about bullying and victimisation and that it did enough to investigate the consequential concerns about the conflict within the Vivo Papamoa team, the loss of trust and confidence in Ms Hunt and the breakdown of Ms Hunt's relationship with the team.

[48] Based on the investigation I conclude that a fair and reasonable employer could have concluded there was no bullying and victimisation as alleged and there were concerns about the conflict created by Ms Hunt and the difficulties evident in her relationship with her managers and colleagues. And based on this a fair and reasonable employer could conclude a disciplinary process was appropriate.

[49] However the process then falls down as it is clear that Vivo Beauty did not properly set out these findings as concerns for Ms Hunt to address nor did it provide the relevant information that it had to Ms Hunt - for example, there were written statements from Ms Standing, Ms Pfab and the two colleagues of Ms Hunt that were not provided to Ms Hunt.

[50] And then Vivo Beauty did not give Ms Hunt an opportunity to respond to the concerns. In essence, Ms Hunt only received an outline of the concerns in the 16 June 2020 meeting – she had no real detail, no opportunity to consider what the concerns were and no opportunity to consider what her response was to the concerns.

[51] As there was no proper chance to understand the concerns and respond to them, there was no substantive response that could be considered, so Vivo Beauty failed to consider what Ms Hunt did say or what she could have said in response.

[52] In this regard, the failure to provide information, the failure to give Ms Hunt an opportunity to respond and the inability for Ms Hunt to respond such that there was no consideration of her views by Vivo Beauty means the process was not justified.

[53] Given the complete lack of consultation over the concerns and complete lack of consideration of any input from Ms Hunt I cannot conclude that a fair and reasonable employer could have decided that there was an irreconcilable breakdown in the relationship that justified dismissal. And therefore there is no substantive basis for Ms Hunt's dismissal

[54] I conclude that Vivo Beauty unjustifiably dismissed Ms Hunt, both on a procedural and substantive basis.

Remedies

[55] As Ms Hunt was unjustifiably dismissed I may award any of the remedies provided for under s 123 of the Act; Ms Hunt seeks compensation and reimbursement.

Compensation

[56] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers, pursuant to s 123(1)(c)(i) of the Act.

[57] My task in assessing this remedy is to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings suffered. In doing this I must consider the effects of the dismissal on Ms Hunt, identifying the harm caused to her and the loss she suffered as a result. I must then quantify that harm and loss. I do this by assessing where that sits on the spectrum of harm and loss suffered by those that have been unjustifiably dismissed and where that corresponds to the spectrum of quantum awarded as compensation.¹

[58] Ms Hunt's evidence of the loss and harm she suffered included:

- (a) She was dumbfounded and shocked by her dismissal. She burst into tears at the time and described herself as feeling completely powerless.
- (b) She experienced ongoing anger and then sadness over what occurred.
- (c) She was embarrassed and humiliated by what occurred and continues to feel that way. She had and continues to have self-doubt over her abilities.
- (d) Throughout this she had to deal with the immediate and significant effect of losing her job by making arrangements to leave New Zealand and return to Wales.
- (e) Feeling grief over losing her dream of living and working in New Zealand; this grief and embarrassment over having to leave New Zealand continues.

[59] Ms Hunt seeks \$20,000.00 for compensation and based on this evidence I accept that is appropriate and award that amount as compensation pursuant to s 123(1)(c)(i) of the Act.

Reimbursement

[60] Ms Hunt seeks reimbursement for the earnings she has lost as a result of her unjustified dismissal pursuant to s 123(1)(b) of the Act.

¹ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

[61] As I am satisfied that Ms Hunt has a personal grievance and she has lost remuneration as a result of that grievance, then pursuant to s 128 of the Act I must award her the lesser of her lost remuneration or three months ordinary time remuneration.

[62] For Ms Hunt three months ordinary time remuneration is \$13,000.00. In contrast her actual loss is greater than that as she was without work for more than three months.

[63] It is appropriate in this case to award Ms Hunt \$13,000.00 for lost remuneration.

Contribution

[64] As I have awarded remedies, I must now consider whether Ms Hunt contributed to the situation that gave rise to her personal grievance and if so whether the remedies should be reduced for contribution.²

[65] The approach to assessing contribution including quantifying this has been addressed in *Xtreme Dining Ltd v Dewar* and more recently in *Maddigan v Director-General of Conservation*.³

[66] Applying the approach in these cases I am satisfied that Ms Hunt did not act in a culpable or blameworthy way nor did her behaviour contribute to the events that gave rise to her grievance – particularly the failure to carry out a justified disciplinary process. There is no basis to apportion any contribution and reduce the remedies awarded.

Orders

[67] Vivo Beauty Limited unjustifiably dismissed Ms Hunt. In satisfaction of this personal grievance Vivo Beauty must pay Ms Hunt:

(a) \$20,000.00, without any deduction, for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.

(b) \$13,000.00 (gross) for reimbursement pursuant to s 123(1)(b) of the Employment Relations Act 2000.

² Section 124 of the Employment Relations Act 2000.

³ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136; *Maddigan v Director-General of Conservation* [2019] NZEmpC 190.

Costs

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

[69] If they are not able to do so and a determination on costs is needed, any party seeking an order for costs may lodge and serve a memorandum on costs within 28 days of the date of this determination. The other party will then have 28 days from the date of service of that memorandum to lodge and serve any reply memorandum.

Peter van Keulen
Member of the Employment Relations Authority