

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 12  
5363279

BETWEEN            LISA MARIE IVA  
                                 Applicant  
  
AND                    STRANDBAGS PTY LIMITED  
                                 Respondent

Member of Authority:    Trish MacKinnon  
  
Representatives:        Nicola Ridder, for the Applicant  
                                 Dean Kilpatrick, for the Respondent  
  
Investigation Meeting:    15 November 2012 at Wellington  
  
Submissions Received:    Orally 15 November 2012  
                                 Written 21 and 22 November 2012  
  
Determination:         30 January 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Lisa Iva was a sales assistant with Strandbags in Queensgate, Lower Hutt, from February 2011 until the termination of her employment on 25 September 2011. Mrs Iva claims she was dismissed, either actually or constructively, on 25 September 2011.

[2]     Mrs Iva also claims she was affected to her disadvantage by unjustifiable actions of her manager throughout her employment. Those actions included the manager speaking aggressively, swearing, and demonstrating racial and other prejudice, belittling, intimidating and humiliating Mrs Iva in front of customers, and treating her unfairly. Mrs Iva says her employer failed to address significant concerns she expressed about the conduct of her manager, being removed from the roster, and having her pay stopped.

[3] Strandbags denies it dismissed Mrs Iva or disadvantaged her by any of its actions. It says Mrs Iva had not raised any issues with her employer regarding her manager's conduct through the period of her employment, and she chose to resign of her own accord.

[4] The parties had attended mediation without success.

### **Issues**

[5] The issues for the Authority to determine are:

- (a) Whether Mrs Iva was actually dismissed from her employment on 25 September 2011; or
- (b) Whether she was constructively dismissed from her employment on that date; and
- (c) Whether she was affected to her disadvantage by unjustifiable actions of her employer consisting of:
  - (i) her manager speaking aggressively, swearing and demonstrating racial and other prejudice, belittling, intimidating and humiliating her in front of customers; and
  - (ii) her employer's failure to address Mrs Iva's concerns about her manager's conduct; being removed from the roster; and having her pay stopped.

### **Background - the Working Relationship**

[6] Mrs Iva reported to Shelley Sellwood, the store manager at Strandbags, Queensgate. Although her employment was described as casual, she worked part-time hours on a regular basis over the period of her employment.

[7] Mrs Iva says throughout her employment she experienced inappropriate and unacceptable behaviour from Ms Sellwood, who would habitually swear, shout, and intimidate the store's employees. She says Ms Sellwood would also be derogatory about customers, particularly those of Asian or Indian descent. Mrs Iva found this type of behaviour upsetting and unpleasant and it made her very uncomfortable.

[8] She also says Ms Sellwood would frequently interrupt her when she was interacting with customers, urging her to be faster in her sales. She would gesture with her hand when she thought Mrs Iva was talking too much with customers, and tell her off in front of her colleagues.

[9] Ms Sellwood does not deny swearing occasionally, but denies ever swearing or yelling at staff. She denies making any racist comments about customers and says that not only does she sponsor 4 children of different races through World Vision, but she counts a number of Asian people among her personal friends.

[10] She says she found Mrs Iva a difficult employee to manage because she was strong-willed, very opinionated, had a strong personality and always saw herself to be in the right. Nonetheless, Ms Sellwood accepted the challenge to manage Mrs Iva and believed she did so in a way that maintained a good working relationship.

[11] Ms Sellwood says it was part of her role to coach employees and she would talk to employees if she felt they had taken too long in serving customers or if they were not following the correct processes for sales. She saw it as her job to tell staff there were quicker ways to perform particular functions when appropriate. She did not see that as humiliating or intimidating Mrs Iva but as part of the coaching process.

[12] Another employee, Melissa Harding, says she has never been sworn at by Ms Sellwood, and never experienced or witnessed aggression or bullying from Ms Sellwood. Ms Harding, who described Mrs Iva's claims as outrageous, had written to the Australian Retail Operations Manager of Strandbags, Fred Bryson, on 4 October 2011 to give her perspective on the situation. She says she did this to support Ms Sellwood and her employer because Mrs Iva's claims were not true.

[13] Mrs Iva says Ms Sellwood treated her unfairly in comparison to other employees throughout her employment. She felt constantly badgered and harassed by her manager who would unreasonably and repeatedly raise issues which had been dealt with in the past and had not recurred. In oral evidence Mrs Iva claimed that Ms Sellwood also badgered and harassed another employee, whom Mrs Iva advised to complain to Ms Sellwood's manager, Abbey White.

[14] Mrs Iva gave as an example an instance early in her employment when a member of her family had sat at the back of the store while the shop was closing. When Ms Sellwood became aware of this she informed Mrs Iva that under no

circumstances was any family member to be at the back of the store at any time. Mrs Iva told the Authority Ms Sellwood raised this issue with her every week throughout her employment, although none of her family had been at the back of the shop since the first and only incident. This made her feel badgered, particularly when she saw friends and family of other staff members at the back of the shop. Ms Sellwood acknowledges she told Mrs Iva of the store's policy about family members and friends not being permitted to be at the back of the store, but denies continually raising it as an issue.

[15] Mrs Iva acknowledged in the course of the investigation meeting she had been guilty of bad behaviour towards Ms Sellwood on two occasions. The first occurred at a time when the shop was busy and another employee was engaging with family members rather than serving members of the public. Mrs Iva interrupted Ms Sellwood, who was attending to a customer at the time, and urged her to tell the employee to help her out. In her own words, Mrs Iva was in an agitated state at the time.

[16] Ms Sellwood also referred to that incident in her evidence noting that, after Mrs Iva had interrupted her during her sale and yelled at her to sort out the other employee, she had suggested to Mrs Iva the two of them should go offsite for a coffee to discuss any issues. Ms Sellwood said she noted that Mrs Iva would bottle up problems and then *blow*.

[17] Ms Sellwood used the opportunity over coffee to suggest strategies to Mrs Iva about dealing with issues, suggesting that if she felt she was going to *blow up* while she was on the shop floor she should tell Ms Sellwood she was going out to the back of the store, which would give her the opportunity to cool off. Ms Sellwood said if she was not busy with a customer at the time, and if Mrs Iva needed to, she could take Ms Sellwood out to the back of the store with her and vent at her. Mrs Iva acknowledged this was helpful and she had taken that advice.

### **Events of and leading up to 25 September 2011**

[18] In August 2011 Ms Sellwood put a sign in the store window advertising for a part-time worker to provide temporary cover for the upcoming period of Ms Harding's annual leave. Mrs Iva and another employee approached Ms Sellwood and persuaded her they could increase their hours to cover Ms Harding's leave. As a

result Mrs Iva's hours increased from an average of approximately 14 hours per week to an average 28 hours for the last three weeks of her employment.

[19] The second occasion on which Mrs Iva acknowledged she had behaved badly towards her manager was Sunday 25 September 2011, which turned out to be her final day of employment with Strandbags.

[20] Mrs Iva's account of the incident is that she was processing a complex multi sale involving discount vouchers, for which the customer wanted to know the sale price of each item. Ms Sellwood approached her and said *Stop talking, she can work it out for herself*. Mrs Iva replied *NO*. She says the customer was embarrassed, and when Mrs Iva closed off the sale Ms Sellwood told her not ever to do that again, to which Mrs Iva *directly and firmly* replied *No, I have had enough Shelley – you are rude and disrespectful and I have had enough*. Ms Sellwood then asked her to clock out for the day and said she would contact her for a meeting.

[21] Ms Sellwood's account of the incident is that she had explained to Mrs Iva she would be occupied with a data-entering task for a while and asked her to concentrate on the sales floor that morning. She became aware at some point that Mrs Iva was spending a lot of time with one customer at the till while there was a bottleneck of other customers waiting to be served. Ms Sellwood said very quietly to Mrs Iva *(C)ome on Lisa remember short sharp and punchy*. In saying that, she was referencing a conversation she had had the previous day when telling Mrs Iva and another employee they would need to be short, sharp, and quick on the till in the lead-up to the busy Christmas period.

[22] Ms Sellwood says when she reminded Mrs Iva of the need to be short, sharp and punchy on 25 September, Mrs Iva turned around and yelled at her *No, no I will not, I'm going to finish serving my customers*. Ms Sellwood said she was surprised and shocked by Mrs Iva's reaction, but recognising this was a volatile situation she explained to the waiting customers that Mrs Iva would not be long. After the shop cleared of customers, Ms Sellwood asked Mrs Iva to sign out for the day and told her she would be in contact to arrange a meeting. She wasn't sure when that would be, but told Mrs Iva she would contact her. Ms Sellwood told the Authority she could see Mrs Iva was very upset from her outburst and felt it would be better for her (Mrs Iva's) state of mind if she went home to cool off and calm down. This was something Ms Sellwood had never had to suggest to an employee before.

[23] Ms Sellwood telephoned Mrs Iva that evening to arrange a meeting. She says she also wanted to talk through what had occurred in the store that day and was shocked when Mrs Iva told her she would not be returning to her employment and had asked for a meeting with Abby White, the Retail Manager of Strandbags. Ms Sellwood says she was also shocked at accusations made by Mrs Iva in the course of the telephone conversation that she had been bullied, harassed and intimidated during her employment. She felt she had been supportive to Mrs Iva throughout her employment and, although unhappy with Mrs Iva's behaviour the previous day, had thought they could talk through the incident and sort it out.

[24] Mrs Iva confirms that telephone conversation and says she *firmly stated* to Ms Sellwood she would not be returning to Strandbags and that she had left a message for Abby White to be at her exit interview. She spoke with Ms White the following day and they agreed a meeting would take place on 4 October 2011. Ms White says she asked Mrs Iva if she would return to work on Wednesday (28 September), Mrs Iva's next rostered day, but Mrs Iva was very clear she did not wish to return to work at all and the meeting on 4 October was to be her exit interview.

[25] Before that meeting, Mrs Iva prepared a letter, dated 30 September 2011, addressed to Ms White, setting out her perspective of Ms Sellwood's management of her during the 8 – 9 months of her employment with Strandbags. The letter made numerous allegations against Ms Sellwood, including staff bullying and racial discrimination and prejudice in customer relations. It also accused Ms Sellwood of having double standards, citing incidents where Mrs Iva was taken to task for having a family member at the back of the store while other staff were not censured for the same conduct.

[26] The meeting scheduled for 4 October 2011 took place in the Board room at Queensgate with Mrs Iva, her father, Graham Walshe, Ms White and Ms Sellwood. While accounts of the meeting vary among those present, there is general agreement that Mrs Iva talked about the issues she had raised in her letter of 30 September.

[27] Mr Walshe then spoke on his daughter's behalf. He told Ms White of his view that Ms Sellwood had *broken just about every rule known to the HR world and that it was the worst case of employee abuse in New Zealand that I had had the misfortune of hearing*. Mr Walshe went on to tell Ms White that Australian companies could not

come to New Zealand and abuse their staff and that New Zealand had laws that protected employees against abusive employers.

[28] Mr Walshe informed Ms White his daughter was not seeking reinstatement but would seek compensation for loss of wages and for hurt and humiliation. Ms White says she asked for clarification of the compensation being sought and Mr Walshe responded *\$30,000 to \$40,000*.

[29] Ms White says she found Mr Walshe to be intimidating throughout the meeting and felt she was being pressured to make a decision on the compensation issue on the spot. She felt threatened by his approach which seemed to her a premeditated attempt to gain compensation for Mrs Iva. She informed Mr Walshe and Mrs Iva she would need to involve Mr Bryson in the matter.

[30] The meeting ended and Ms Walshe and Ms Sellwood discussed the meeting and the allegations made against Ms Sellwood by Mrs Iva. Ms Sellwood had only received a copy of Mrs Iva's letter on the day of the meeting and shortly before it had started. She was too upset at the time to provide responses and agreed to provide Ms White with written responses within the next two days.

[31] Apart from one telephone call on 4 October and an email exchange on 10 and 11 October between Mrs Iva and Strandbags there was no further contact from Strandbags to Mrs Iva until 27 October 2011 when Mr Bryson responded to the second of two letters from Mrs Iva's lawyers alleging their client had been dismissed on 25 September 2011. Mr Bryson's response noted that Mrs Iva had clearly indicated her resignation, but he also offered her employment at one of the other Wellington branches of Strandbags.

**First Issue: Was Mrs Iva actually dismissed on 25 September 2011?**

[32] When Ms Sellwood told Mrs Iva to clock off on 25 September 2011, I do not believe that she intended to convey, or did convey, to Mrs Iva that she was to clock off permanently and not return to her employment.

[33] By her account and Mrs Iva's account, Ms Sellwood advised Mrs Iva to clock off; informed her she would have a meeting with her; and she would contact her about the meeting. Ms Sellwood duly did contact Mrs Iva that evening to arrange a meeting and discuss the events of the day. If there had been any chance Mrs Iva had

misinterpreted her manager's action in telling her to clock off earlier that day, the phone call from Ms Sellwood to arrange a meeting would have dispelled that interpretation. By both their accounts, Ms Sellwood was shocked when Mrs Iva told her she would not be returning to work.

[34] The situation in the store was volatile and sending Mrs Iva away from the workplace was a reasonable response to behaviour which Mrs Iva acknowledged to the Authority was bad behaviour on her part. Ms Sellwood and Mrs Iva were the only employees on duty in the store at the time and Ms Sellwood's decision to remove Mrs Iva from the store allowed breathing space for them. Mrs Iva said in answer to questions that her behaviour was inappropriate and it was wrong of her to do as she did in the store that day. In her words *I was out of line big time*.

[35] Counsel for Mrs Iva submitted that if the events of 25 September 2011 did not amount to a dismissal, Strandbags dismissed Mrs Iva when it subsequently stopped her pay. I will return to this submission later.

### **Second Issue: was Mrs Iva constructively dismissed on 25 September 2011?**

[36] It is well established that an employee may be constructively dismissed by the employer when no explicit words of dismissal have been used. The Court of Appeal in *Auckland Shop Employees Union v Woolworths (NZ) Ltd*<sup>1</sup> held that constructive dismissal includes, but is not limited to, cases where:

- (a) An employer gives an employee a choice of resigning or being dismissed.
- (b) An employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign.
- (c) A breach of duty by the employer causes an employee to resign.

[37] Through counsel, Mrs Iva says her manager's conduct towards her throughout her employment was a breach of the employer's duty to provide her with a safe working environment. She cites the Strandbags' Anti Bullying and Anti Sexual

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<sup>1</sup> [1985] 2 NZLR 372, (1985) ERNZ Sel Cas 136 (CA)

Harassment Policy as clearly stating the employer will not tolerate such behaviour. She also refers to case law establishing that the cumulative effect of conduct or events an employee experiences over time may give rise to constructive dismissal.

[38] Mrs Iva says if she did resign, her resignation was motivated solely by the behaviour of Ms Sellwood to her, the impact of that behaviour on her, and the failure of Strandbags' management to address her concerns in any meaningful way and resolve them. She notes the obligation on an employer to treat a resignation tendered in the heat of the moment with extreme caution.

[39] A difficulty for Mrs Iva is that no other witness corroborated her evidence about Ms Sellwood's alleged bullying and intimidating behaviour. Ms Harding had expressed her annoyance, in an unsolicited letter to Mr Bryson, at being cited by Mrs Iva as someone who was being bullied, stating she had found Ms Sellwood *to be nothing but professional and respectful towards her staff*. Ms Harding said she had not once found Ms Sellwood to be a bully or a racist, or witnessed her treating other staff in that manner.

[40] Ms Harding's view of Ms Sellwood was endorsed by Rose Davies, an employee also cited by Mrs Iva as having been a victim of Ms Sellwood's bullying management style. While I am cautious about according too much weight to Ms Davies' evidence, which was given by affidavit and unable to be tested, I nonetheless note her statement that she did not remember ever hearing Ms Sellwood shout or swear. I also note Ms Davies' denial that Ms Sellwood ever shouted at, or bullied her, and her statement that she would not stay working at Strandbags if she were being bullied.

[41] Mrs Iva's claims regarding the treatment received by other employees were not borne out by evidence presented by those employees. Their evidence pointed to a manager who was firm, fair, and supportive and who neither swore in the shop nor intimidated the employees. Neither of them had ever witnessed any display of racial prejudice by Ms Sellwood.

[42] Not all employees worked in the store at the same time and there may have been incidents involving Mrs Iva and Ms Sellwood which were not witnessed by other employees. However, having had the benefit of questioning all witnesses except Ms

Davies, I have concluded it is most unlikely Ms Sellwood treated Mrs Iva in the bullying, intimidating and humiliating manner she alleges.

[43] Mrs Iva presented as a person of considerable self-confidence, strong opinions and a large personality. Evidence of that personality was exhibited in the store's diary in which staff communicated with each other about various matters. Mrs Iva's many entries in the diary suggest someone who enjoyed her job and her colleagues, not one who was suffering from victimisation and bullying.

[44] A copy of the employer's Anti Bullying and Anti Sexual Harassment Policy was kept at the back of the store as well as being available to employees online. Mrs Iva confirmed to the Authority she was aware of it and had read it. If she had been subjected to the treatment she alleged from Ms Sellwood, I find it very likely Mrs Iva would have complained to Ms White. She did not do so throughout her employment despite giving evidence that she had urged another employee, Ms Davies, to do so.

[45] A number of the examples Mrs Iva gave of Ms Sellwood's alleged abusiveness involved other employees or customers. The examples involving other employees were not supported by the evidence of those employees. Even if the specific incidents involving customers were true, which I find unlikely, any humiliation would have been suffered by the customers, rather than by Mrs Iva. The incidents would, if true, indicate poor customer relations on Ms Sellwood's part but would not establish a breach of duty to Mrs Iva.

[46] Many of Mrs Iva's allegations were general and lacked specific information about dates and times, for example the allegation that Ms Sellwood *poked and prodded constantly at me about talking too much and taking too long with customers*. I note Ms Sellwood's evidence that she would talk to the store employees if she felt they were taking too long serving customers or not following store processes. I accept this to be a part of her role as Manager and find it did not constitute belittling, undermining or bullying behaviour.

[47] One specific incident in which Mrs Iva says she was belittled occurred on Friday 23 September 2011, two days before her final day of employment. Mrs Iva says Ms Sellwood approached her towards the end of the evening and asked about her "loyalties", which I understand are where customers are signed up to the company's loyalty scheme. Mrs Iva replied she was saying what she'd been told to say about

loyalties but customers didn't want to join. Ms Sellwood then said she wasn't feeling any interest from Mrs Iva, and asked her to look her in the eye and tell her how passionate she was. Mrs Iva says this made her feel completely belittled and humiliated and she responded in an agitated manner that she did care about the loyalty percentages. Ms Sellwood then told her all she was seeing was aggression.

[48] Ms Sellwood recalls that when she asked Mrs Iva about her loyalty sign ups on that Friday evening, Mrs Iva turned her back and started walking away. Because of that Ms Sellwood told Mrs Iva she was not seeing that she cared about loyalties which led to Mrs Iva responding in the agitated manner she'd described in her evidence. Ms Sellwood commented that Mrs Iva seemed to very angry at being asked about her loyalty sign ups and because of the way she avoided her, then hung on to the counter and glared at her, she may have told Mrs Iva all she was seeing was aggression. I do not find that incident to constitute bullying or humiliating behaviour by Ms Sellwood.

[49] Mrs Iva has alleged Ms Sellwood unfairly applied double standards concerning employees' family members and friends in the store. Mrs Iva told the Authority of one occasion when she reported Ms Harding having a friend at the back of the store. She said she did not know if Ms Sellwood ever spoke to Ms Harding about it. Ms Sellwood's evidence was she had talked to Ms White about the matter which was then addressed by Ms Harding being coached. I find it appropriate that Ms Sellwood did not disclose to Mrs Iva the actions taken in relation to another employee.

[50] Another instance cited by Mrs Iva as demonstrating Ms Sellwood's double standards concerned a Saturday when Ms Davies had family in the store. Mrs Iva asked Ms Sellwood why Ms Davies was permitted family in the store, and was told the employee had informed Ms Sellwood they were coming to buy luggage and a bag. That was one of the instances when Mrs Iva acknowledged her behaviour had been inappropriate. Ms Sellwood's evidence made clear there was no policy prohibiting the families of employees from shopping at the store. I do not find any substance to Mrs Iva's claim of being unfairly subjected to double standards imposed by Ms Sellwood.

[51] Ms White told the Authority Ms Sellwood was a fair manager who had a good relationship with her staff and was direct in her communications with them. She had

witnessed Ms Sellwood giving feedback to staff and had not identified any problems in her delivery.

[52] Mrs Iva had recently doubled her hours of work at her own request. She agreed under questioning this would have added to the pressure she was experiencing. I think it likely that pressure led Mrs Iva to react the way she did on 25 September 2011 to her manager's quiet comment about being short, sharp and punchy.

[53] I find Mrs Iva was not constructively dismissed on 25 September 2011 when her manager asked her to clock off, telling her she would contact Mrs Iva for a meeting. Mrs Iva told Ms Sellwood very clearly that evening, when Ms Sellwood telephoned her to talk through the incident and arrange a meeting, that she would not be returning to work and had asked Abby White to be present at her exit interview.

[54] This was not a decision made in the heat of the moment by Mrs Iva. Her account of the telephone conversation indicates she was calm and clear about her intentions. She noted in evidence she had told Ms Sellwood *..for both our sakes we need to be professional in how this is handled.* Prior to the telephone call, Mrs Iva had spoken with her husband and taken advice from her father about her legal position.

[55] Ms White acted appropriately in agreeing to meet Mrs Iva for her exit interview and in following up with Ms Sellwood the complaints made in Mrs Iva's letter of 30 September 2011. Her evidence was that she was satisfied Ms Sellwood was doing her job properly and was not guilty of the bullying, racism or belittling alleged by Mrs Iva.

[56] She says she also followed up with other Queensgate store employees who did not corroborate Mrs Iva's perception of Ms Sellwood's attitudes and manner. Her evidence on that latter matter was not confirmed by Ms Harding who had no recollection of the discussion, and was unable to be tested with Ms Davies who did not give her evidence in person. I do not find that particularly significant, however, as I view Ms White's investigation as an internal one undertaken by the company to ascertain whether Mrs Iva's claims had any basis.

[57] Mrs Iva had made clearly known that she had no intention of returning to work for Strandbags and the meeting of 4 October 2011 was, in Mrs Iva's words, to get some *accountability*. I am satisfied Mrs Iva and Mr Walshe approached that meeting

with the aim of gaining compensation for Mrs Iva, and not to achieve a return to work for her. It is unfortunate Strandbags did not communicate more promptly with Mrs Iva after the meeting on 4 October. However I note Mr Bryson's evidence that he adopted a cautious approach because he believed Mrs Iva to be pursuing an *aggressively litigious* approach rather than one seeking a resolution that would have resulted in her remaining with the company.

[58] Counsel for Mrs Iva invited me to find a breach of good faith by Strandbags in not sufficiently investigating Mrs Iva's complaints about Ms Sellwood's conduct. I decline to do so. The obligation of good faith operates for both parties to the employment relationship and requires them *to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative*<sup>2</sup>.

[59] If Mrs Iva had serious concerns about her manager's conduct, as expressed in her letter of 30 September 2011 to Ms White, she should have made those concerns known during her employment. It was too late to do so after she had conveyed to both her manager and the Regional Manager her intention not to return to her employment and her wish for the Regional Manager to attend her exit interview. Mrs Iva conveyed that intention calmly and emphatically to Ms Sellwood several hours after she had been sent home, after she had discussed the matter with family and taken advice on her legal situation from her father. She reiterated her decision to Ms White the following morning in the course of what was a *calm and professional discussion* according to Ms White. It was not a heat of the moment decision that her employer was obliged to ask her to reconsider.

### **Third Issue – was Mrs Iva disadvantaged by unjustifiable actions of her employer?**

[60] This is a two-part issue with the first part relating to Mrs Iva's allegations of her manager speaking aggressively, swearing and demonstrating racial and other prejudice, belittling, intimidating and humiliating her in front of customers. I have already found Ms Sellwood's conduct in the specific instances cited by Mrs Iva not to be bullying, belittling or humiliating. I note Ms Sellwood does not deny swearing occasionally but said she never swears at staff. Ms Harding gave evidence she had

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<sup>2</sup> Section 4 Employment Relations Act 2000

never heard Ms Sellwood swearing in the store and never seen her behaving aggressively.

[61] There was no corroboration of the claims of *racial and other prejudice* and I have found the instances cited by Mrs Iva unlikely to have occurred in the manner she described. It follows that I find no disadvantage to Mrs Iva in her employment from these allegations.

[62] The second part of the issue relates to Mrs Iva's allegation of failure by Strandbags to address her concerns about her manager's conduct; being removed from the roster; and having her pay stopped. I will deal with each of these in turn.

[63] Mrs Iva telephoned Ms White and left her a voice mail message on 25 September 2011. This was not a working day for Ms White who called Mrs Iva the next morning. Ms White says Mrs Iva was clear about her decision not to return to Strandbags and about wanting both Ms Sellwood and Ms White to be present at a meeting that would be her exit interview. This was Ms White's first intimation from Mrs Iva that she had any concerns about Ms Sellwood's management of her.

[64] This can be distinguished from the case of *Clear v Waikato District Health Board*<sup>3</sup> case involving an employee who had made repeated complaints during her employment about her manager's treatment of her. Mrs Iva made no complaints about Ms Sellwood's management until after she decided to resign. Although counsel for Mrs Iva referred me to this case as pertinent to her situation, I can see little relevance because of Mrs Iva's delay in making her concerns known. She was aware she could contact Ms White over any concerns, as evidenced by her urging another employee to do precisely that. The fact she did not avail herself of that means of having her own concerns addressed suggests those concerns did not exist until late September when she was under the pressure of working extended hours at her own request.

[65] Mrs Iva made the following statement in her first written statement to the Authority: *I firmly stated to her (Ms Sellwood) that I would not be returning and that I had left a message for Abby and requested that she be at my exit interview.* In her second written statement three weeks later, Mrs Iva said *I did say to Abby that I wanted the meeting to be like an exit interview.* I do not find Mrs Iva's revised

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<sup>3</sup> [2008] ERNZ 646

version of what she said to be convincing, and am satisfied she stated the situation correctly the first time. She had decided to leave her employment, and wanted the meeting Ms Sellwood had indicated she wished to have to be her exit interview from Strandbags.

[66] Regardless of whether Strandbags did or did not investigate the complaints made by Mrs Iva, there could be no disadvantage to Mrs Iva in her employment as she had by that stage made her intention clear that she was not returning to Strandbags. In any event I am satisfied Ms White did investigate the complaints made by Mrs Iva by eliciting Ms Sellwood's response to those complaints and, although there was some conflicting evidence on this, by talking with other store employees. Strandbags was not obliged to report back to Mrs Iva the results of its investigation as she had resigned and had indicated her intention to seek compensation from her former employer.

[67] When Ms Sellwood sent Mrs Iva home on 25 September 2011 she told her she would contact her for a meeting but was unsure when the meeting would be. I find removing Mrs Iva from the roster for her next rostered hours the following Wednesday to be reasonable given Ms Sellwood's uncertainty at the time whether the meeting would occur on, or before, that Wednesday. I accept Ms White's evidence that she asked Mrs Iva in the course of their telephone discussion of 26 September 2011 whether she would go to work on the Wednesday (28 September) and Mrs Iva was very clear that she did not want to return to work at all. I find no validity to Mrs Iva's claim to have been disadvantaged by her removal from the roster.

[68] It follows from my finding that Mrs Iva resigned on 25 September 2011 that the stopping of her pay from that date did not disadvantage her in her employment, provided she received payment for that day and any outstanding holiday pay entitlements. It also follows that I do not find Strandbags dismissed Mrs Iva by stopping her pay.

### **Determination**

[69] For the reasons given I find Mrs Iva resigned from her employment and was not unjustifiably dismissed. She was not disadvantaged in her employment by any actions by Strandbags.

**Costs**

[70] The issue of costs is reserved.

Trish MacKinnon  
Member of the Employment Relations Authority