

Attention is drawn to paragraph 9 prohibiting publication of certain information contained in this determination.

Determination Number: CA 38/06  
File Number: CEA 191/05

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Tania Johnson (Applicant)  
**AND** Badminton New Zealand Limited (Respondent)  
**REPRESENTATIVES** Susie Tait, Counsel for Applicant  
Rex Chapman, Counsel for Respondent  
**MEMBER OF AUTHORITY** Helen Doyle  
**INVESTIGATION MEETING** 19 December 2005  
**DATE OF DETERMINATION** 10 March 2006

DETERMINATION OF THE AUTHORITY

***The Employment Relationship Problem***

[1] Tania Johnson was employed by Badminton New Zealand Limited (Badminton NZ) from 15 April 2003 to 12 November 2004 as the South Island Badminton Development Manager.

[2] Badminton NZ is the national body responsible for developing and promoting badminton in New Zealand. It has a membership of 27 regional associations. The regional associations are separate business entities to Badminton NZ.

[3] Badminton NZ is governed by an elected eight member Board. The Board appoints a full time executive director. Ms Johnson reported to the executive director Peter Dunne whilst she was employed at Badminton NZ. Mr Dunne was based in Wellington.

[4] Ms Johnson was party to two one year fixed term agreements with Badminton NZ. The second fixed term employment agreement commenced on 15 April 2004 and was to terminate on 14 April 2005. Ms Johnson resigned before the expiration of the second fixed term period in circumstances that she says amount to a constructive dismissal.

[5] Ms Johnson was required under clause 7 of her fixed term employment agreement to perform duties as outlined in a job description dated 14 April 2003.

[6] The purpose of Ms Johnson's role was set out in the job description. It was to progress, at Association level, the development and delivery of regional and national programmes designed to increase participation and enjoyment amongst players, coaches, officials and administrators. She was to work with key personnel in Badminton Associations in their respective regions to identify opportunities to assist the Associations to develop to their maximum potential.

[7] In her role Ms Johnson supported eight Associations and two sub-Associations in the South Island.

[8] Ms Johnson had difficulties in her relationship with one of the key personnel from one of the Associations. I shall refer to that officer as Z.

[9] The Authority did not hear from Z or the Association that she worked for. The Association unequivocally refuted the claims by Ms Johnson in a letter to Badminton NZ dated 15 November 2004. I prohibit from publication any details that may identify Z and the Association that she worked for under clause 10(1) of schedule 2 of the Employment Relations Act 2000.

[10] Ms Johnson resigned by letter dated 31 August 2004 to Mr Dunne in which she advised her final day would be Friday 12 November 2004. There were no reasons given in the letter of resignation. Ms Johnson said in her evidence that she resigned because she was very unhappy she had been bullied by Z with whom she had been required to share office space. She said that she decided that *enough was enough*. The other reason for resigning was that although Mr Dunne was aware of the situation he had done nothing to support her.

[11] Ms Johnson claims remedies of reimbursement of \$4790.00 gross together with interest for lost wages, compensation of \$10,000.00 and costs.

[12] Badminton NZ does not accept that it refused to act on the allegations. It says there is an issue as to the level of awareness it had about the situation and that it acted reasonably in the circumstances given its knowledge. It also says that after Ms Johnson handed in her resignation there was a meeting at which time Ms Johnson was given the opportunity to submit her complaints in writing for some action to be taken. Shortly after that it says, without giving Badminton NZ an opportunity to investigate the matter, Ms Johnson formally resigned.

[13] The purpose of my determination is not to determine the rights and wrongs of the behaviour between Z and Ms Johnson although it seems clear that it was not a happy relationship.

[14] I am required to focus on what Badminton NZ was told by Ms Johnson about her relationship with Z and whether Badminton NZ took reasonable steps in the circumstances given the knowledge it had about the relationship.

### ***The Issues***

[15] Ms Johnson bases her claim of constructive dismissal on alleged breaches of implied duties Badminton NZ had to:

- Provide a safe and secure workplace.
- Not conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust, confidence and fair dealing.

[16] The claim falls into the third category in the Court of Appeal case of *Auckland etc Shop Employees etc IUOW v Woolworths (NZ) Ltd* [1985] ERNZ Sel Cas 136; [1985] 2 NZLR 372.

[17] There was no express term in Ms Johnson's employment agreement about work conditions or health and safety.

[18] In a judgment of the Employment Court *Rae Healey v the Mercury Bay Area School Board of Trustees* (unrep) 11 May 2005 AC 21/05 Shaw J had regard to the judgment of the Court of Appeal in *Attorney General v Gilbert* [2002] 1 ERNZ 31 at pg 47 with respect to a safe workplace and the Health and Safety in Employment Act 1992. Shaw J referred in *Healey* at paragraph 131 of the judgment to a statement from the Court of Appeal judgment:

*It is clear from this statement that the obligations imposed on employers under the Health and Safety in Employment Act 1992 are not limited to rights of private prosecution against an employer as suggested by the defendant but have become so enmeshed with the requirement to provide a safe workplace that it can be argued that even when the Health and Safety in Employment Act 1992 is not specifically referred to in a contract it may form part of the implied terms.*

[19] It is necessary for me to determine whether there were breaches of duty owed to Ms Johnson by Badminton NZ. If there were breaches then were they of sufficient seriousness to make it foreseeable that Ms Johnson would not be prepared to work under the conditions prevailing at the time she resigned.

***What Badminton NZ knew about Ms Johnson's relationship with Z?***

***Commencement of employment to early September 2003***

[20] Ms Johnson said Z made it clear to her at a very early stage following the commencement of her employment that there was nothing Ms Johnson or Badminton NZ could do to help the Association Z worked for. Z also made it clear that she did not appreciate what she thought was Ms Johnson's interference in her role and the work of her Association.

[21] The first major incident with Z that Ms Johnson recalled probably took place after June 2003. Z was unhappy when a video tape was provided to Ms Johnson to be forwarded to another organisation. She complained to Ms Johnson in no uncertain terms that she was doing the Association's work.

[22] Ms Johnson decided at that point that something had to be done to try to resolve the issues between herself and Z. I accept Ms Johnson's evidence that she talked to a colleague, Corinne, another development officer with Badminton NZ, about what she should do given her difficult relationship with Z. Corinne suggested that Ms Johnson take Z out for morning tea to discuss the issues in a mature way. Z was initially resistant to the idea of talking the issues through but she agreed after about a week to go to a café with Ms Johnson.

[23] It was generally agreed that this café meeting would have been in late August or early September 2003. Immediately after the meeting Ms Johnson telephoned Mr Dunne. She accepted that this was probably the first time that she had really talked to him about the situation with Z. Ms Johnson said that she was in tears at the start of the conversation. Mr Dunne could not recall that. I find that Ms Johnson must have sounded upset because Mr Dunne told her to have that afternoon off work.

[24] I accept Ms Johnson's evidence that she told Mr Dunne what had taken place in the café. She relayed to Mr Dunne that Z would not calmly talk through her issues in the cafe and accused

Ms Johnson of taking over things that were part of her role in a raised aggressive voice. Z was angry. Z told Ms Johnson that she thought things were so bad she was considering leaving her job. Ms Johnson I am satisfied would have told Mr Dunne that she offered to have him sit down with both of them and discuss the issues and the boundaries between the two roles. Z did not feel that things had got to that stage. Z told Ms Johnson as she got out of the car after the meeting at the café that she felt the talk had been a waste of time. Ms Johnson did not agree with her and suggested that they continue to have a professional relationship.

[25] Ms Johnson asked Mr Dunne for mediation during the telephone conversation following the meeting with Z. Mr Dunne did not think mediation was necessary because Ms Johnson had done everything she could. I find that Ms Johnson did not push mediation because she felt that Mr Dunne was supporting her and as she put it to me *felt she had done her side of the bargain*. In any event Mr Dunne said that he did not see mediation as *a good way forward or achieving anything*.

[26] Mr Dunne told Ms Johnson during the telephone discussion that if the Association did not want her assistance then that was all right. There were still some projects that Ms Johnson had to work together with the Association on. Ms Johnson's position was however independently funded and she would have other work to occupy her time with the remaining seven Associations and two sub-Associations.

[27] Ms Johnson relied on a letter written by Mr Chapman dated 1 March 2005 in which he said *The Board accepts that inability to engage in a professional relationship with any of the Administration/Development Officers in any of the regions will effect the Development Managers job performance. The Board naturally would take any steps necessary to correct this*. There is no evidence that Badminton NZ held Ms Johnson responsible for that difficulty or that her difficulties in working with the Association were regarded as a performance issue at any time during her employment relationship. Ms Johnson received a pay increase during her time of employment with Badminton NZ and appeared to be well regarded by her employer.

[28] Ms Johnson said the reaction to her offers of support to other Associations was much more positive and she developed excellent relationships with most of the Associations and their key personnel.

#### ***September 2003 until June 2004***

[29] After the café meeting Ms Johnson said that her relationship with Z took a down turn. Z, she said, would deliberately ignore her by refusing to say anything and turning her back on Ms Johnson. She said that on occasions Z would walk away whilst she [Ms Johnson] was talking to her. The relationship deteriorated to the point where Z would not make eye contact and would only answer questions monosyllabically. Ms Johnson said that Mr Dunne was aware of how things were.

[30] Mr Dunne said that he was not aware that Z was ignoring Ms Johnson and that Ms Johnson told him that her relationship with Z was better after the café meeting.

[31] Ms Johnson accepted that she probably did not tell Mr Dunne what was happening between her and Z on a daily basis or mention to him every detail of the interaction between the two of them including Z's body language. Mr Dunne did not have an opportunity to observe these interactions because he was not based in the same office.

[32] Mr Dunne and Ms Johnson did have regular Tuesday telephone conversations and I accept that probably the relationship with Z was discussed.

[33] Z and the President of the Association requested a meeting with Mr Dunne at the Badminton NZ AGM in November 2003. Ms Johnson understood that the reason for the meeting was to discuss her relationship with Z. She indicated to Mr Dunne on two occasions that she wanted to be present at the discussion. Ms Dunne said that he would deal with the matter.

[34] Mr Dunne did not recall the meeting being requested specifically to discuss Ms Johnson's relationship with Z. He says that as far as he could recall it was to discuss the improvement of the relationship between Badminton NZ and Badminton Canterbury of which Ms Johnson was a part. The meeting did not take place and Mr Dunne said in his written evidence that this *clearly indicates it was not deemed to be of significant importance*.

[35] When the proposed meeting did not take place I am not satisfied that Ms Johnson made it clear to Mr Dunne that she still wanted to meet with Z and the President of the Association.

[36] Ms Johnson did ask Mr Dunne in late 2003 or early 2004 if she could move to another office away from Z. I am satisfied that the main reason for the request was that Ms Johnson had difficulties in her relationship with Z. Relocation for Ms Johnson would also have had other positive spin-offs in terms of interaction for Ms Johnson with other sporting personnel and no doubt a more suitable office. Ms Johnson said in her written evidence that her office was a *tiny old uniform store cupboard* with a sliding window down the full length of one side and if she did not keep her curtains pulled members of the public could see in.

[37] Mr Dunne was supportive of Ms Johnson moving office space. That request and the approval for a move to other office space are inconsistent with an improvement or at least a permanent improvement in the relationship between Z and Ms Johnson.

[38] The arrangements for moving were left to Ms Johnson because she was based in Christchurch. It was difficult for Ms Johnson to find appropriate office space in Christchurch. Ms Johnson continued to try during the early part of 2004 to locate some suitable office venue without success.

[39] During the time it took to secure another office Ms Johnson felt that Z was deliberately undermining her by not tabling documents at her Association's committee meetings. Ms Johnson said that she did discuss one particular plan with Mr Dunne on several occasions. She said that despite Z's agreement to table the plan she did not do so for almost a year. Ms Johnson did not disengage completely from her work with the Association at any time during her employment. She continued to send them letters and emails which she sent to other Associations.

[40] There was some email communication between Ms Johnson and Mr Dunne about the situation with Z and the availability of office space in April/early May 2004.

[41] The first email was about a letter Mr Dunne received dated 20 April 2004 from the President of the Association Z worked for. The letter was copied to the Chair of the Badminton NZ Board and Ms Johnson. The complaint was amongst a number of other matters in the letter. Many of those matters were positive. The criticism of Ms Johnson was that she did not introduce the local Association personnel or refer to the Association as the local badminton provider. It stated at the end of the letter *we would be happy to discuss this matter further*.

[42] Three emails between Ms Johnson and Mr Dunne provides some insight into how Ms Johnson felt about the matter. She initially telephoned Mr Dunne, was very upset and said something to the effect *here it goes again*. The relevant extracts from the emails that followed that telephone call are set out below.

[43] In an email dated 26 April 2004 Ms Johnson noted at the end *Feeling much better now- thank you*. Mr Dunne in an email dated 27 April 2004 said amongst other matters – *Good to see you are feeling better. Don't doubt yourself – you know I AND the Board have faith in you. I encountered the same with Counties rugby and the experience has made me better for the experience*. Ms Johnson said in her response to Mr Dunne by email – *I was lying in bed thinking about it last night and you are right – I know the experience will make me better for it. I sometimes lose sight of that (like yesterday morning-you caught me in a bad moment). It wasn't actually what she said in the letter because it is very trivial and easily ironed out, if she had come to come and talked about it with me. It is more the fact that once again it was negative comments. Thank you again for your support*.

[44] Ms Johnson thought that Mr Dunne would follow up on the letter and respond to the President having heard her view on the matter. Mr Dunne never went back to the President about the complaint in the letter. Mr Dunne said that he did not see it as a great issue to do anything about and that it was constructive feedback. He said that he never told Ms Johnson he was going to respond and there is no evidence to suggest that was actually said.

[45] Ms Johnson also talked to a Board member from Badminton NZ, John, about her situation with Z from time to time. Mr Dunne accepted that John may have raised a concern at a Board meeting in or about April 2004 that things were not good with Ms Johnson's situation and that Badminton NZ may lose a staff member out of it. Mr Dunne said and I have no reason not to accept his evidence that he told John that he was aware of the issues and that they were looking to relocate Ms Johnson. He said he would also have stressed to the Board that Ms Johnson's position was independently funded.

[46] The next series of emails between Mr Dunne and Ms Johnson concerned possible office space. On 28 April 2004 Ms Johnson emailed Mr Dunne about some new office space which was to be built that would be suitable. She indicated in her email that this was good news. Mr Dunne responded on 29 April with *Tania When?????* Ms Johnson responded on 4 May 2004 and said *Later in the year!But that is alright-I can wait*.

[47] Ms Johnson was able to find another suitable venue in or about June 2004. Ms Johnson was asked by Mr Dunne to see if she could negotiate a reduction in the rental. Ms Johnson saw the request to attempt to negotiate the rental as unsupportive. I do not think that request was unreasonable when the matter is considered in the round. Ms Johnson did successfully negotiate a reduced rental. That reduced rental was still more than double the weekly rental cost at the shared office space with Z but quite properly Badminton NZ made no complaint about that and the move was approved to take place in mid June.

[48] Ms Johnson shifted from the office space she shared with Z on 22 June 2004. There was an exchange with Z that she felt was upsetting that day. She advised Mr Dunne and he asked her to put it down in writing. Ms Johnson says that she again requested mediation. Mr Dunne said that he could not recall that being requested. In any event he said he would have seen less reason for mediation than he had the previous year because Ms Johnson was relocating away from the shared space. The following is the email Ms Johnson sent to Mr Dunne about the incident as he requested on 23 June 2004:

*Hi there Peter*

*Just to put it on paper as you asked – re: Z. Went into see her and say (well I don't what – I guess to say I was moving etc). She accused me of smiling and then said to me*

*“You’re a bitch” and told me “to get out, just get out” I explained to her that I have been looking for a long time for a place where I was around other sporting people. I did say that she was nasty for calling me a bitch and I did say her behaviour was unprofessional-so she may get some mileage out of that. She also mentioned the letter and that she was really offended, but as I said to her all associations got the same letter and you could pick and choose what you needed assistance with. She was offended about the funding, but as it turns out I am going to get funding for them anyway. She said as she has before “what could we do for them” and I said like implementing their strategic plan – but it falling on deaf ears. She just rolled her eyes. I don’t think she believes that we could help or rather does not want us to help them. I said I would come back tomorrow and clean up. But as it turns out she has cancelled my card-I can’t get access to the building. Someone let me (badminton player) in last night to get the rest of my stuff. Still got a bit in there!*

*I will try and get in today. Imagine if you had told them weeks ago-my life would have been hell!*

[49] Mr Dunne said that this was the first time that he saw evidence of aggressive behaviour from Z.

***Relocation in June 2004 to Ms Johnson’s last day of employment on 11 November 2004***

[50] Ms Johnson found the atmosphere in the new environment very good. Z’s behaviour toward Ms Johnson also improved for about two weeks. I find that improvement was probably conveyed to Mr Dunne.

[51] There was an incident in August 2004 when Ms Johnson invited both Z and the President of the Association to a talk about volunteer recruitment. The President came to the talk and afterwards suggested to Ms Johnson that she may need to be more proactive. Ms Johnson was clearly shocked by this and suspected that some of the mail she had sent to Z had not been tabled at the Association committee meetings. Whilst working out her notice period Ms Johnson saw the Association minutes and confirmed that only one of her letters had been tabled and several other important letters or emails had not.

[52] There is no evidence that this matter was discussed with Mr Dunne before Ms Johnson resigned.

[53] On 30 August Ms Johnson emailed Mr Dunne and noted that she was meant to have had a performance review on 30 May 2004. Mr Dunne responded and suggested scheduling the review when he was down in October unless he was down earlier.

[54] Ms Johnson could not recall contacting Mr Dunne about anything to do with Z before putting in her letter of resignation on 31 August 2004. There may have been some discussion about Ms Johnson’s use of a vehicle but there was nothing else specifically that either Mr Dunne or Ms Johnson could recall.

[55] After the letter of resignation Ms Johnson met about a week later with Mr Dunne in early September 2004. Ms Johnson told Mr Dunne that the reasons for her resignation were that she was bullied by Z and also because of Mr Dunne’s and the Board’s lack of support. Mr Dunne was disappointed that Ms Johnson was resigning and told her not to tell anyone she was leaving.

[56] Mr Dunne said that they should work through the issues although Ms Johnson could not recall Mr Dunne saying that. I do find though that Mr Dunne did not expect Ms Johnson to follow through with her resignation and he expected to talk about the issues at a later date. Ms Johnson accepted that it was probably not until this meeting or perhaps even the next meeting that she used the word bullying.

[57] There was then an arranged meeting on 6 October in Invercargill between Mr Dunne, the President of Badminton NZ Nigel Skelts and Ms Johnson. I do not consider it material how it came to be arranged. Mr Dunne and Mr Skelts viewed the meeting as a performance review. Ms Johnson did not share that view. In any event the conversation quickly turned to Ms Johnson's issues. She was asked to put the concerns about Z in writing and they could then be investigated. Ms Johnson said that when Mr Skelts got involved there was some action. She said that it made her realise that Mr Dunne's words were empty and he had taken no action to that point in time to support her.

[58] Ms Johnson said that she thought about how unhappy she had been in the work environment with Z and although she started her report about Z after the meeting she confirmed with Mr Dunne on 8 October 2004 that her resignation stood. She continued at work until her final day on 12 November 2004.

[59] Ms Johnson completed a written report headed *The Bullying behaviour of Z* and gave that to Mr Dunne. The contents were put to Z and the President of her Association shortly before Ms Johnson's employment ended. The allegations were refuted

[60] Ms Johnson said that because Mr Dunne viewed the situation as *a bitchy women matter* he left things alone and trivialised her complaints because he viewed them in this way.

[61] Mr Dunne accepted that his early assessment of the situation was a couple of woman being bitchy. He said that that was how he viewed Z's complaint when she telephoned him that Ms Johnson had telephoned her across the hall way instead of going to her office and a couple of other matters.

[62] Ms Johnson says that after she left her employment with Badminton NZ she had counselling sessions and felt that her name had been tarnished by the experience. She said that she has not worked in the field again because of this.

### ***Determination***

[63] Badminton NZ accepted that it was required to take reasonable steps to protect Ms Johnson from physical or mental harm and that it had a duty not to conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between an employer and employee. There was also acceptance that failure to deal with complaints of workplace bullying could leave it open to allegations that it had breached one of the implied terms.

[64] Badminton NZ says in its defence that it did not know from the reported incidents that Ms Johnson was subjected to bullying from Z. It says that in the circumstances where Z was not an employee and it had been made clear to Ms Johnson that it was all right if the Association Z worked for did not avail itself of Ms Johnson's services that it was reasonable for it to conclude that relocation was an adequate and reasonable response.

[65] My assessment of the behaviour alleged and documented by Ms Johnson in her final written report was that it was unpleasant and unprofessional and could be regarded as bullying behaviour.

There is an issue though about the level of knowledge that Badminton NZ had about all of the matters which are now documented.

[66] The Court of Appeal in *Gilbert* made the following statement about an employer providing a safe work place:

*These are formidable obstacles which a potential plaintiff must overcome in establishing breach of the contractual obligation. Foreseeability of harm and its risk will be important in considering whether an employer has failed to take all practicable steps to overcome it. These assessments must take account of the current state of knowledge and not be made with the benefit of hindsight. An employer does not guarantee to cocoon employees from stress and upset, nor is the employer a guarantor of the safety or health of the employee. Whether workplace stress is unreasonable is a matter of judgment on the facts. It may turn upon the nature of the job being performed as well as the workplace conditions. The employer's obligation will vary according to the particular circumstances. The contractual obligation requires reasonable steps which are proportionate to known and avoidable risks.*

[67] The evidence supports that Ms Johnson became unhappy at work because of the relationship with Z in which she says she was bullied whilst they shared office space. Ms Johnson says that she resigned because of that unhappiness, her belief that the bullying would continue and what she saw as a lack of support from Badminton NZ, and in particular Mr Dunne, in doing anything about the situation.

[68] I now turn to consider whether there were breaches of implied obligations by the respondent.

[69] Ms Johnson did make some of her concerns known to Mr Dunne but I have to be satisfied that she did so in such a way that Badminton NZ can be held liable for failing to take all reasonable steps to overcome the concerns. I have to assess what Mr Dunne actually knew at the relevant time rather than considering the matter with the benefit of hindsight.

[70] I find Mr Dunne's initial focus in 2003 after the café meeting was to reassure Ms Johnson that she had done enough by offering to talk through issues and boundaries in a professional way with Z. He made it clear that if the Association did not want to avail itself of her services then that was all right.

[71] The evidence does not support that Mr Dunne was aware at that time of the telephone call following the café visit of any issue of bullying. I find that he saw mediation suggested by Ms Johnson in terms of improving her working relationship with Z and the Association. Given his view that it was up to the Association if they wanted to avail themselves of Ms Johnson's assistance I do not find it was unreasonable for him to view mediation as not a good way forward. There was the additional difficulty that he could not insist that Z attend mediation as she was not employed by Badminton NZ and he could not take any disciplinary action against her.

[72] Ms Johnson proposed relocation toward the end of 2003/start of 2004 as a way of dealing with the difficulties of working with Z. Mr Dunne agreed to that and Ms Johnson took steps to find alternative accommodation.

[73] Mr Dunne knew that the relationship at that time was not positive and he thought Ms Johnson felt isolated in the office. I find that there was a sense that the sooner the move took place the better. In this case I have had careful regard to the emails written at the time because Ms Johnson says that Mr Dunne's words of support were empty and he took no action. Ms Johnson's emails in

April and early May do not support that was how she viewed her discussions with Mr Dunne at the time.

[74] It was reasonable for Mr Dunne to conclude that Ms Johnson felt supported by him in light of those comments.

[75] There is no evidence that Ms Johnson told Mr Dunne the office situation was so intolerable that she could not continue to work there. To the contrary she indicated that a delay in shifting toward the end of the year was all right and she could wait. Ms Johnson has explained that Mr Dunne has taken that out of context and that it meant there was some light at the end of the tunnel and she could wait as it was not hopeless. I am not satisfied that Mr Dunne would have considered the email in the context Ms Johnson now puts forward. The email did not alert Mr Dunne to the need for urgency and the need to take other steps in the interim. Some of the issues that Ms Johnson complains of concern how Mr Dunne failed to respond to complaints in a letter and a failure to meet with the Association President and Z. In the circumstances I do not find those matters viewed indirectly or cumulatively amount to a breach of his obligations.

[76] Mr Dunne's view of some of the behaviour as *bitchy* was not helpful. Ms Johnson appeared to me to be very pleasant and open. It would be difficult to imagine her acting in other than a professional manner.

[77] I do not find though that categorisation of some incidents in this way changed the approach Mr Dunne took. Mr Dunne was consistent in his approach that relocation would resolve the situation. There was a real prospect of relocation. Ms Johnson was of the view it would assist as well.

[78] I am not satisfied that Ms Johnson took unequivocal steps to let Mr Dunne know the full extent of her concerns. Mr Dunne had, I find, an incomplete picture about the extent of the difficulties in the relationship between Z and Ms Johnson. I do not find Badminton NZ on the balance of probabilities was aware or could reasonably have been aware that Ms Johnson was at risk of psychological injury from bullying during the period before relocation.

[79] In the circumstances I find that relocation to another office was a reasonable step for the respondent to take to deal with Ms Johnson's known unhappiness in her current situation with Z.

[80] There was an unpleasant exchange on 22 June 2004, when Ms Johnson shifted, with Z. Mr Dunne asked for that exchange to be recorded in writing and sent to him. He took no action on the basis that relocation would hopefully resolve any issues. Ms Johnson could not recall advising Mr Dunne of any further difficulties with Z until she resigned on 31 August 2004. She considered the new environment to be very good. Z was pleasant toward her for a period of about two weeks after relocation.

[81] I am not satisfied that it could have been reasonably foreseeable to Badminton NZ, after Ms Johnson had relocated, that she would resign because of its actions or omissions.

[82] After the resignation letter was sent on 31 August there was a meeting at which a process was agreed to deal with the concerns. Ms Johnson was to put in a written report. Ms Johnson then two days after that meeting confirmed her resignation before the matters were investigated. Ms Johnson confirmed that she thought that there would be some action. On that basis I do not find that she was able to conclude that any bullying would continue.

[83] I do not find that there were breaches of the implied duties in this case owed by the respondent to provide a safe workplace or that Badminton NZ conducted itself in a manner that was likely to destroy the relationship of trust, confidence and fair dealing. There was no breach of duty by Badminton NZ that was of sufficient seriousness to make it reasonably foreseeable that Ms Johnson would not be prepared to work under the conditions prevailing at the time of her resignation. In all the circumstances I find given the knowledge Badminton NZ had at the time that it acted reasonably.

[84] Ms Johnson does not have a claim against Badminton NZ and there is nothing further I can do to assist her.

***Costs***

[85] I reserve the issue of costs.

Helen Doyle  
Member of Employment Relations Authority