

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 108  
5306853

BETWEEN KYLIE KENNEDY  
Applicant

AND PORSE-IN-HOME  
CHILDCARE (NZ) LIMITED  
Respondent

Member of Authority: M B Loftus

Representatives: Phil Butler, Advocate for the Applicant  
Lybby Inger, Counsel for the Respondent

Investigation Meeting: 7 and 8 December 2010 at Christchurch

Submissions Received: 16 December 2010 and 20 January 2011 from Applicant  
24 December 2010 from the Respondent

Determination: 31 May 2012

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] Though later amended (see 41 below), the problems Ms Kennedy initially put before the Authority were:

- (a) An alleged breach of contract by the respondent, Porse-In-Home Childcare (NZ) Limited (Porse) in that it failed to provide a safe working environment.
- (b) A claim that the above breach also amounted to an unjustified disadvantage; and
- (c) A claim that Porse has acted in breach of both ss.56(1)(b) and (c) of the Parental Leave in Employment Protection Act 1987 (PLEPA) or, in the alternative, acted in a way that gave rise to both an unjustified dismissal and unjustified action personal grievance.

[2] Porse denies the claims and adds, as an aside, that the parental leave complaints have not been raised in an appropriate manner.

### **Acknowledgement**

[3] Unfortunately a considerable period of time has passed since the investigation meeting. The situation has arisen as a result of the file being inaccessible for a considerable time due to Christchurch's earthquakes. I appreciate the parties patience and regret any inconvenience suffered.

### **Background**

[4] Porse is in the business of providing early childhood care and education in the homes of its clients. The service is generally provided by contractors but the administration is performed by employees of Porse. Ms Kennedy was one of those employees. She occupied the position of Client Service Administrator (CSA) in Porse's Addington office. She also became responsible for the Nelson office when that opened in September 2008.

[5] The primary role of a CSA is, according to Porse's Managing Director, Ms Jenny Yule, to deal with customer queries about contracts, insufficient funds and contract changes. Ms Yule also notes that Porse operates a unique management style based on staff being employed to learn self responsibility with the support of a series of coaches.

[6] Ms Kennedy claims there were considerable problems with Nelson's adherence to procedures and processes from the beginning. A number of these involved fees and subsidies and the task of raising and discussing these with the clients fell upon Ms Kennedy. She claims these issues impacted adversely on her other work as Nelson tasks were taking a disproportionate amount of her time and created stress in that she bore the brunt of adverse client responses.

[7] These issues were discussed in a significant number of e-mails which passed between various Porse personnel including Ms Kennedy, her immediate managers, coaches and Ms Yule.

[8] As already said, Ms Kennedy found the problems stressful and this was noted by others. For example, Ms Marg McLachlan (a Coach in the Addington office) sent

an email dated 27 February 2009 to various managers describing how she had witnessed Ms Kennedy *slowly disintegrate*. The email closes with advice that *Kylie is a wonderful, sunny natured person who does a great job with Addington and so I am sure she is more than capable of carrying the Nelson responsibilities also*.

[9] While Ms Kennedy was not a recipient of that email, she claims the paragraph quoted above was typical of the feedback she received – she was doing a good job and should simply continue trying to do her best.

[10] Notwithstanding knowledge of the issues and attempts to address them, problems with Nelson’s administration continued. Ms Kennedy says:

*Late 2009 the Nelson problems had snowballed to a point that they affected me quite badly; I became very stressed and frustrated. I had been voicing these problems from the beginning of the year and nothing effective had been done to stem the flow of work. I was often working late in the office or from home in order to keep the work moving.*

[11] She goes on to say:

*All of the concerns had been raised with five different Coaches that were responsible for Nelson at various times. There had been numerous meetings about the problems, the additional workload and the stress this created for me.*

[12] Porse’s knowledge of the issues can, for example, be seen in another email of Marg McLachlan’s. It contains advice that:

*Kylie’s role as D.CSA has been very difficult with the extra work that [a Nelson manager] has generated with her lack of understanding of her own role, the contracts she has set up that are completely wrong, repeated phone calls about the same thing, giving incorrect information to families that Kylie then has to ring to explain and correct. [the Manager] has constantly added WINZ to contracts without any verification from WINZ meaning Kylie then spends unnecessary time on the phone to WINZ trying to sort out and then having to liaise with the family.*

*As I said earlier, Jodine, I have been sitting at Marilyn’s PC this week and have been amazed at how often [the Manager] calls or causes extra work by setting up contracts that are unworkable...*

[13] By the end of the year things had, from Ms Kennedy’s perspective, reached crisis point. Subsequent discussions resulted in the establishment of various action

plans but Ms Kennedy is of the view Nelson staff did not apply the agreed remedies and the problems continued. In support, she references another of Ms McLachlan's emails (this one dated 6 April 2010) which observes Nelson's *seemingly total disregard for the procedures and possibly the rules is getting ridiculous*.

[14] It should also be noted Ms Kennedy was now pregnant.

[15] On 15 April Ms Kennedy commenced a period of annual leave scheduled to continue until 6 May. The purpose was to spend time with a terminally ill relative, but as events transpired he passed away on 19 April. On 4 May, and having dealt with issues that stemmed from the bereavement, Ms Kennedy telephoned to see if she could return from leave a day early. She was told no, come back on the arranged day. When she asked why, she was told it was because Ms Yule had arranged to come and talk to her upon her return on 6 May. Ms Kennedy says that she then asked whether anything was wrong and was told that no, there was nothing to worry about.

[16] Ms Yule says she wished to speak to Ms Kennedy as Ms Melissa Watts, a senior coach, had drawn her attention to the fact that she thought she had uncovered a number of deficiencies that Ms Kennedy had been hiding.

[17] Ms Kennedy states that upon her return she saw Ms Yule (who was primarily in Christchurch for another matter that day), albeit informally at first. The two discussed the bereavement and Ms Kennedy's pregnancy before Ms Yule advised that she was going to make a cup of tea and that they would meet properly in five minutes. The meeting was also attended by Ms Watts.

[18] Ms Kennedy, referring to notes she made soon after the discussion, says Ms Yule opened by saying *don't look so nervous* before they discussed her intentions with regard to maternity leave. She advised Ms Yule she intended working till September, taking 14 weeks maternity leave and then returning.

[19] Ms Kennedy says Ms Yule then said *While you were on leave there were a few problems that have come to the surface with the Nelson area in regards to families and contracts*. Ms Kennedy says she responded *I'm not surprised as there were these problems before I left also*.

[20] Ms Kennedy says Ms Yule advised that another employee was now dealing with the issues before saying *so there is the bad news, but with bad news always comes*

*good news... the good news is that you will be able to take on a new challenge, with taking on a role that has not yet been created but I was thinking along the lines of project work between both Christchurch offices.*

[21] Ms Kennedy says Ms Yule then asked if she liked children and when she responded positively Ms Yule suggested adding some marketing functions along with nanny work to the new proposed role.

[22] Ms Kennedy states that she queried this given that nannies were contractors paid by the families and was then told the role would be a fixed term until she commenced her maternity leave in September. Ms Kennedy says Ms Yule then advised they could work together on arranging another role for her upon return. They then discussed the use of a company car and laptop along with levels of payment. Ms Yule suggested Ms Kennedy could retain her current salary and Porse would collect nanny payment from the families Ms Kennedy worked for.

[23] Ms Kennedy states Ms Yule then advised *have a chat to your family, but your CSA position is no longer an option for you due to the problems with the Nelson area.*

[24] Ms Kennedy says they then discussed another couple of issues before arranging for her to switch desks and discussing a replacement as CSA for Nelson and Addington.

[25] While Ms Yule's evidence about the conversation differs on matters of detail and nuance, the gist is similar. By way of overview, she states that she was of the view the discussion was not disciplinary and she emphasised that to Ms Kennedy, along with advice there was no jeopardy to her job. She says that the idea of an alternate came to her as they *brainstormed* issues and possibilities.

[26] The next day, Friday 7 May, Ms Watts announced one of the Papanui staff (Porse's other Christchurch office) would commence on the Monday as a replacement for Ms Kennedy. That was followed by a phone call at approximately 9.30 from Ms Yule asking if she had thought about the previous days discussion. She says she expressed an interest but not at the expense of job and income security.

[27] In the interim Ms Yule had sent an e-mail at 8.58am. It contains the following:

*Thanks for our meeting today, to discuss the issues that have arisen regarding short falls in the CSA function carried out by you for Addington and Nelson teams.*

*As shared it is untenable for us to continue to offer a sub-standard service to our families and educators when so much is at stake concerning contracts, WINZ, funding claims and automatic payments.*

*Hence our urgent need to review your employment and explore where to next between now and your expected maternity leave at the end of September, as the CSA role is no longer an option.*

*Rather than follow a performance management process towards dismissal I would like to offer you the opportunity (as discussed) to work through the backlog of CSA tasks in the Addington office, however our goal is to have the backlog tidied up in the shortest time possible, so the fact is this work will also come to an end.*

*Therefore over the next few days please discuss with your family your long term employment needs once baby is born and the options of work that you will ideally be more suited to, eg nanny/educator with PORSE or work elsewhere.*

[28] The email goes on to advise:

*Regretfully we cannot offer you a salaried role after this date [September], although hope that other opportunities to work as a nanny/contractor will develop over the next few months if you choose to stay. ...*

*So again, our position as it stands now, in light of the serious performance issues that have been accumulating over the past 12 months is to offer you work as required (Nanny/Educator and or office tasks) up to 40 hours per week as an employee until your maternity leave commences in September.*

*If this offer meets your approval then the next step will be to update your employment schedule and job description to a fixed term contract, based on work as required.*

*I do appreciate how challenging this must be for you. However, based on the serious shortfalls in your performance, action plans and coaching support that has been ongoing, without success, we cannot allow service to our educators and family to fall below standard.*

[29] Ms Kennedy responded by advising Ms Watts that she would not accept a fixed term contract. She added that if Ms Yule was trying to push her from her job, the replacement would have to be permanent. That was followed by an evening phone call from Ms Yule during which Ms Kennedy repeated her advice that she would not accept a fixed term role. Ms Yule responded by reiterating that Ms Kennedy could no longer remain a CSA before Ms Kennedy said *i have been*

*voicing these problems for a long time and i have never been supported to make any of it better. Why has nothing been done about this before now?*

[30] The response was *your coaches felt you were coping well with the role of Distant CSA and things were running fine.*

[31] The call ended with Ms Yule suggesting she might consider extending the fixed term to a year.

[32] The following Monday Ms Watts called Ms Kennedy to a meeting. Ms Kennedy confirmed that she would not relinquish her CSA role voluntarily. This was reiterated in an e-mail to Ms Yule. There was then a discussion (also canvassed in e-mails) about which desk Ms Kennedy would occupy before Ms Watts suggested Ms Kennedy take annual leave and go home for the day. Ms Kennedy rejected that suggestion.

[33] Around lunchtime Ms Watts repeated her suggestion that Ms Kennedy take annual leave for the remainder of the day. Ms Kennedy again said no.

[34] Ms Kennedy was later advised by a colleague she had been organising a leaving party as they had been told Ms Kennedy would be transferred to the Papanui office the previous Friday. There was also a discussion about arranging appointments with Ms Watts and a further e-mail from Ms Yule. It was sent at 2.54pm and contains the following:

*As shared by you on Friday I understand that you are keen to have certainty of a job for at least another 12 months (after baby is born) so that you are still entitled to your three months maternity leave entitlements. We also want to ensure that this can be done.*

*So in short we are trying to support you find other work (PORSE or other) that is best suited to you and seek your resignation at a time that will not compromise your maternity leave entitlement.*

*I am still waiting to see how we can arrange this.*

*In the meantime, it is work as usual, and I hope that you can give your best to what work we do have available for you and also look (given time) to explore other opportunities.*

[35] Ms Kennedy responded the following morning by advising Ms Watts that she expected to resume her full CSA role forthwith. She also sat at her old desk which led to discussions involving Mesdames Kennedy, Yule and Watts. The discussions ended

with Ms Yule telling Ms Kennedy to go home. There was also e-mail traffic which culminated with one sent on Ms Yule's behalf at 3.17pm. It refers to Ms Kennedy's unacceptable and disruptive resistance to her removal from the CSA role before advising that she was now suspended on full pay pending arrangement of a mediation meeting. Ms Kennedy was instructed to arrange the mediation.

[36] Ms Kennedy returned to work on Tuesday 25 May and that day was, from her perspective, largely uneventful. The following day Ms Watts made various announcements about changes that were occurring within the Papanui and Addington offices. Ms Kennedy says *I was very embarrassed and upset with these announcements because I was not part of them and it again confirmed to me that I was not going to be a CSA within the company.*

[37] Ms Kennedy and Ms Watts then discussed tasks for the day and whilst Ms Kennedy felt they were demeaning, she chose to do as instructed. There was also a discussion over how Ms Kennedy would address time attending appointments with her midwife.

[38] Before lunch there was a further discussion between Ms Watts and Ms Kennedy over the use of email which, according to Ms Kennedy, led to an accusation that she was not showing the right attitude. They also discussed a stationery order. There was then a disagreement over the notice requirements for leave that left Ms Kennedy feeling angry and upset. She says that she went into the toilet and broke down. She then ... *went back to my desk and collected my handbag and put my head in the office and said I'm going home now I am not feeling good at all and I don't think its best that I am here.* She says Ms Watts just stared at her and she departed.

[39] That was effectively the end. Ms Kennedy never returned, feeling it was unsafe for both her and her baby. She says *I had been subjected to so much crap first from Jenny [Yule] and then from Melissa [Watts] that I could no longer trust them to provide me with a safe work environment. I could not trust them and was not going to put the life of my baby in their hands.*

[40] Mediation occurred on 1 June. It was clearly unsuccessful as it was immediately followed by a letter from Mr Butler to Ms Yule. In it Mr Butler advises:

1. *I am writing to confirm my earlier advise that my client is submitting her resignation and raising a personal grievance/parental leave complaint.*

2. *Her resignation takes effect immediately.*
3. *My client's position to resign is in response to conduct by representatives of the company that is in breach of trust and confidence and the duties arising out of the parental leave in Employment Protection Act, in particular –*
  - 3.1 *The company's decision to remove her from frontline CSA role;*
  - ...
4. *The company's conduct overall involves such a serious breach that my client had no option but to resign and accordingly she claims she was unjustifiably constructively dismissed.*

### **Determination**

[41] The investigation process led to the claim being amended. Those brought under the PLEPA were withdrawn, though Mr Butler did emphasize that Act and its requirements remained relevant. In essence the remaining claims, and those to be determined, are:

- a. Was Ms Kennedy unjustifiably dismissed, albeit constructively; and
- b. Was Ms Kennedy unjustifiably disadvantaged by Porse's failure to address the problems in the Nelson office.

### ***Constructive dismissal***

[42] In *Wellington etc Clerical Workers etc IUOW v Greenwich* (1983) ERNZ Sel Cas 95; [1983] ACJ 965 the Court stated that for a dismissal to be constructive:

*It is not enough that the employer's conduct is inconsiderate and causes some unhappiness to the employee. It must be dismissive or repudiatory conduct.*

[43] In *Auckland etc. Shop Employees etc IUOW v Woolworths (NZ) Ltd* (1985) ERNZ Sel Cas 136; 2 NZLR 372 (CA) the Court of Appeal held that constructive dismissal includes, but is not limited to, cases where:

- a. An employer gives an employee a choice between 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.

[44] Given the events, I find that Ms Kennedy was constructively dismissed.

[45] Whilst a very simplistic summary of Ms Yule's considerable evidence, it was her position that the meeting of 6 May was a crucial reference point for what eventuated (para 18 of Ms Inger's closing submission). She says her approach to the meeting was that:

- a. It was not disciplinary and Ms Kennedy's job was not jeopardised (para 80 of Ms Yule's evidence);
- b. She just wanted to get to the bottom of things so both Porse and Ms Kennedy could move on (also para 80);
- c. The idea that Ms Kennedy cease being a CSA evolved during the meeting with Ms Kennedy stating she was bored and that she did not see herself staying in the role for too long (para 85);
- d. Discussion of alternatives came from a brainstorming session that was initiated by the revelations in (c) above (para 88); and
- e. Nothing they discussed amounted to either a formal job offer or a variation to Ms Kennedy's employment agreement (para 99).

[46] Unfortunately for Porse these fundamental points, which underpin its defence, are not supported by the evidence and, in particular, the contemporaneous documentary evidence.

[47] The e-mail Ms Yule prepared as a summary of the meeting clearly states the CSA role is no longer an option for Ms Kennedy. That is a long way removed from an attempt to understand the situation in a non disciplinary environment where Ms Kennedy's job is not in jeopardy. The e-mail then goes on to say that Ms Kennedy is to be reassigned to a fixed term role and even that will come to an end in September. This is clear reduction in the terms and benefits previously enjoyed by Ms Kennedy in that it removes the continuity of income protection she previously

enjoyed as a permanent employee and replaces that with the spectre, indeed probability, of cessation in September.

[48] This is not an e-mail that discusses the exploration of options – its content is, I conclude, indicative of dismissive or repudiatory intent. That that was Porse’s intent is, in my view, confirmed by the e-mail Ms McLachlan wrote to four recipients, including Ms Yule, over a week earlier (27 April). It advises the identity of a replacement for Ms Kennedy who is to start on 10 May, that Ms Kennedy will start in Papanui that day and *Kylie’s role as a CSA to finish*. That is clearly indicative of predetermination.

[49] Having embarked on a course of action designed to procure a resignation, Porse subsequently reinforced the approach. They confirmed the appointment of a replacement on 7 May (26 above) and, despite expressing in evidence the view that Ms Kennedy remained a CSA, reiterated in writing that as not the case. On 10 May they reiterated the fact they were seeking an alternate role for Ms Kennedy and went so far as to state they would seek her resignation, albeit at a time that would not compromise her maternity leave entitlements, (34 above) and then unjustifiably suspended her when she reiterated a desire to remain a CSA on 11 May. I say unjustified given the lack of any discussion or process prior to the suspension being imposed (see *B & D Doors Ltd v Hamilton* (2008) 8 NZELC 99,258 (EmpC) at [80]).

[50] That was followed by differences when Ms Kennedy returned on 25 and 26 May. While Porse portrays those events as an attempt to assist Ms Kennedy reintegrate herself into the CSA role I can understand cynicism on her part. First, the tasks being given were not those she had previously performed. Second, Ms Watts accepted when answering questions that she was frustrated by the situation and Ms Kennedy’s response to the specified task list. That must have been evident in her interaction with Ms Kennedy and would, in Ms Kennedy’s mind, have reaffirmed Porse’s earlier written advise they wanted her gone.

[51] There was, I conclude, a concerted and on-going course of action designed to remove Ms Kennedy from the role as a CSA. The return was simply an agreement to continue in employ while issues were resolved. The threat to Ms Kennedy’s permanency of employment remained, as did possible the removal of terms and conditions. In my view, those continuing threats when combined with the situation she found upon return on 25 May, could easily be construed by Ms Kennedy as

confirmation that Porse had adopted, and remained intent on, a course of conduct designed to obtain, or otherwise coerce the giving of, a resignation.

[52] Even if the above conclusion is wrong, and notwithstanding the withdrawal of the breach claims, Porse attempted to unilaterally vary Ms Kennedy's terms and condition of employment and unilaterally suspended her. When considered in unison, those may well be breaches capable of causing an employee to resign (refer *Woolworths* – 43 above), especially as there was a proper option available – namely the initiation of a formal disciplinary process. A reasonable employer acting fairly would not have taken the approach Porse did.

[53] Finally there is the question of whether or not her resignation was foreseeable. Resignation was clearly a possibility given that is what Porse actively sought. Indeed they went so far as to identify it as an inevitable outcome in the e-mail of 10 May. Add to that the breaches (52 above) and resignation became almost inevitable. Even if that were not the case, Mr Butler signalled the possibility in correspondence that passed while Ms Kennedy was suspended. Any concern I may have had that that signalled the resignation was Mr Butler's, and not Ms Kennedy's, idea was allayed by answer she gave when I raised the issue.

[54] For the reasons above I conclude that, as claimed, Ms Kennedy was constructively dismissed.

[55] That the dismissal is unjustified goes without saying. E-mails from various sources, including those of Ms McLachlan referred to in 8 and 12 above, raise questions about the substantive validity of the concerns Porse had about Ms Kennedy's performance. Even if Porse's concerns were valid, they would be unable to confirm that and justify a decision to dismiss given the total lack of process.

### ***Disadvantage***

[56] I will not discuss the disadvantage claim in depth. My approach is holistic given Ms Kennedy has established her prime claim, namely that she has been unjustifiably dismissed. That a holistic approach is appropriate is, in my view, confirmed by the amended remedies now sought by Ms Kennedy. They too, seek a holistic approach.

[57] Suffice to say I conclude that Ms Kennedy had concerns and raised them. Her managers / coaches did not respond adequately. Instead they appear to have sought refuge in Porse's 'unique management style' which emphasised a requirement that staff learn self responsibility, take ownership of issues and initiate solutions (refer Ms Kennedy's job description).

[58] In other words 'its over to you' with that approach being, in my view, emphasised by the consultant who gave evidence and who designed Porse's 'Living Learning Organisation' approach.

[59] I conclude that while Ms Kennedy voiced her concerns, Porse's adherence to the 'Living Learning Organisation' meant that concerted remedial action was never taken. The situation was not assisted by the fact at least five coaches appear to have been involved with her over the period of her employment. This must have impeded information flows and consistency of coaching and therefore Ms Kennedy's learning. Porse considered remedial action to be Ms Kennedy's responsibility. When the proverbial straw broke the camels back Porse responded with what was in reality a dismissal on unspecified notice actioned by advice that a resignation would ultimately be sought.

[60] These are not, I conclude, the actions of an employer acting reasonably.

### **Remedies**

[61] The conclusion Ms Kennedy was unjustifiably dismissed, means the issue of remedies must be addressed.

[62] Ms Kennedy seeks:

- a. \$12,666.67 as reimbursement of wages lost for the period she would have worked prior to her departure on parental leave;
- b. Compensation of \$4,260 for the loss of the parental leave benefit of \$5,460 less a tax benefit already received;
- c. \$6,333.34 as recompense of loss of future earnings
- d. \$20,000 as compensation for hurt and humiliation pursuant to s.123(1)(c)(i) of the Act.

[63] I have absolutely no doubt that Ms Kennedy would, but for her resignation, have continued in Porse's employ until the commencement of her maternity leave. In the circumstances I see no reason why the claim for lost wages should not be granted in full.

[64] Ms Kennedy also seeks recompense of the benefit she would have received from the government by way of paid parental leave. Again, and without the intervention of Porse's inappropriate actions which procured her resignation, Ms Kennedy would have stayed in employ until the commencement of her maternity leave. She would then have received the benefit sought.

[65] That Porse is responsible for recompense of that amount is now clear as result of the Court's decision in *McKendry v Jansen* [2010] ERNZ 453.

[66] I am not satisfied that the claim for loss of future earnings is made out. At the time of the investigation meeting it was unclear what Ms Kennedy may have done upon what was then a future date. There was definitely no evidence of attempts to mitigate against this loss. There shall not, therefore, be an order in this respect.

[67] That leaves the claim for compensation. Ms Kennedy proffered convincing, and significant, evidence in support of her claim for compensation. That evidence went largely unchallenged under cross examination and was supported by that of her husband.

[68] Further support came via the evidence of Ms Kennedy's midwife who reported a significant level of stress. She notes the situation was aggravated by the fact that Ms Kennedy's pregnancy was IVF and that, combined with the stress, could (and did) affect the baby's health. That in turn aggravated the stress, and hurt, felt by Ms Kennedy. That said, the midwife also noted that the negative impact was amplified by Ms Kennedy's smoking. That is not something that can be visited upon Porse.

[69] When I consider the evidence I conclude that this is an occurrence warranting a significant award. I consider \$10,000 to be appropriate.

[70] Finally I must, in accordance with the provisions of s.124, address whether not Ms Kennedy contributed to the situation. The answer is, in my view, no. The only possible argument Porse could proffer is that Ms Kennedy contributed by way of

deficient performance justifying its pursuit of remedial action. I have essentially addressed that issue when discussing the disadvantage claim. The evidence indicates that Ms Kennedy had ongoing concerns and raised them. The evidence is that Porse's response was inadequate – they definitely did little to express the view that Ms Kennedy was reacting inappropriately or deficiently. There was no suggestion of disciplinary action which might have put Ms Kennedy on formal notice that improvement was required which, in my view, deprives Porse of an ability to now claim she contributed to the situation.

### **Orders**

[71] For the forgoing reasons it is concluded Ms Kennedy has a personal grievance. She has been unjustifiably dismissal and the following orders are made;

- i. That Porse-In-Home Childcare (NZ) Limited is to pay the applicant, Ms Kylie Kennedy, \$12,667.67 (twelve thousand, six hundred and sixty seven dollars and sixty seven cents) as recompense for wages lost as a result of the dismissal; and
- ii. That Porse-In-Home Childcare (NZ) Limited is to pay Ms Kennedy a further \$4,620.00 (four thousand, six hundred and twenty dollars) as compensation for the loss if the parental leave benefit she would have received from the crown; and
- iii. That Porse-In-Home Childcare (NZ) Limited is to pay Ms Kennedy a further \$10,000.00 (ten thousand dollars) as compensation for humiliation, loss of dignity and injury to feelings pursuant to section 123(1)(c)(i) of the Act.

[72] Costs are reserved.