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Kruthoffer v DRK Chartered Accountants Limited [2011] NZERA 151; [2011] NZERA Auckland 108 (22 March 2011)

New Zealand Employment Relations Authority

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Kruthoffer v DRK Chartered Accountants Limited [2011] NZERA 151 (22 March 2011); [2011] NZERA Auckland 108

Last Updated: 3 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 108 5311941

BETWEEN GERDA KRUTHOFFER

Applicant

AND DRK CHARTERED

ACCOUNTANTS LTD Respondent

Member of Authority: Representatives:

Investigation Meeting: Submissions received:

Eleanor Robinson

Warren Simpson, Counsel for Applicant Peter Tatham, Counsel for Respondent

2 February 2011 at Auckland

9 February 2011 from Applicant

23 February 2011 from Respondent

Determination:

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mrs Gerda Kruthoffer, claims that she has been unjustifiably disadvantaged by the Respondent, DRK Chartered Accountants Limited ("DRK"). Specifically, Mrs Kruthoffer claims that her weekly working hours have been unjustifiably reduced from 40 hours per week to 25 hours per week.

[2] Mrs Kruthoffer claims that she has been unjustifiably denied the option to work 'glide time', an option which had previously been available to her.

[3] Mrs Kruthoffer claims that she was unjustifiably disadvantaged in her employment through the non-provision by DRK of an Individual Employment Agreement.

[4] DRK denies that Mrs Kruthoffer has been unjustifiably disadvantaged in any way in her employment.

Issues

[5] The issues for determination are:

- Whether Mrs Kruthoffer was unjustifiably disadvantaged by the reduction of her weekly working hours
- Whether Mrs Kruthoffer was unjustifiably disadvantaged by the removal of an option to work glide time
- Whether the failure to provide Mrs Kruthoffer with an employment agreement constituted a disadvantage in employment to Mrs Kruthoffer

Background Facts

[6] Mrs Kruthoffer commenced employment with DRK on 23 June 2008. DRK is a company which provides general accounting services to various clients. Mrs Kruthoffer was initially employed to provide administrative services to two businesses, Livestock New Zealand Limited ("LNZL") and Na Rewa Limited ("Na Rewa"), owned by a client of DRK, Mr Brad Devlin.

[7] The advertisement to which Mrs Kruthoffer responded in respect of the administrative services to be provided to LNZL and Na Rewa stated that: *"The hours of the job would be approx 25 hours a week with some flexibility but can also be up to 40 during peak times."*

[8] In her letter of application Mrs Kruthoffer stated: *"A 25 hour job appeals to me and with the children all in school from 7.30 am till 4.30 p.m. to work 40 hours in peak times should not be a problem."*

[9] Mrs Kruthoffer was appointed to the position by DRK on 23 June 2008, working exclusively for LNZL and Na Rewa initially. Mrs Kruthoffer said that from the commencement of her employment until April 2010, the hours she worked varied and were frequently below 25 hours per week.

[10] In April 2009 Mrs Kruthoffer raised the issue of additional work with Mr Craig Duthie, one of the three Directors of DRK. Mr Duthie explained that DRK's general accounting business experienced seasonal variations and was usually very busy over the winter period. Due to the increase in general accounting work in April 2009, Mr Duthie agreed that Mrs Kruthoffer could

work additional hours, arranged some training for Mrs Kruthoffer, and then provided her with general accounting work involving coding of bank statements and data entry. This work was additional to the work Mrs Kruthoffer undertook for LNZN and Na Rewa and increased the total weekly hours Mrs Kruthoffer was working significantly. Mr Duthie stated that this arrangement ceased in early November 2009 after the level of general accounting work reduced in late October 2009.

[11] Mrs Kruthoffer stated that on 12 May 2010, being aware that two full time staff members had left DRK's employment, and that a third employee had transferred from general accounting work to administration work, she applied verbally to Mr Duthie for appointment to one of these now vacant full-time positions, and Mr Duthie had agreed with her appointment to one of the three positions. Mrs Kruthoffer said that training was provided to her in order that she could fulfil the requirements of the new role, and her weekly hours increased to 40 hours per week at this time.

[12] Mr Duthie agreed that Mrs Kruthoffer had spoken to him in May 2010, but stated that his understanding of their brief conversation was that she had been requesting additional hours on the same basis as she had in 2009. Mr Duthie stated that he did not propose to Mrs Kruthoffer that there should be any change in her employment status, nor did he confirm that there had been a permanent change in her employment status from a part-time administrative position to a full-time administrative position with general accounting duties. Further, that such training as was provided to Mrs Kruthoffer was refresher training for the general accounting work.

[13] On or about two or three weeks after the conversation with Mrs Kruthoffer, Mr Duthie said there was a meeting between himself and Mr Devlin. Mr Devlin told Mr Duthie that as a result of a substantial decline of business in LNZN and Na Rewa, and the consequent reduction in profitability, he was no longer in a position to require administration services for the number of hours previously provided by Mrs Kruthoffer.

[14] On or about the end of June 2010 after Mrs Kruthoffer's monthly pay for June had been processed, Mr Kingham stated that "it was noted that Mrs Kruthoffer worked hours were unusually high". As a result, DRK decided on the basis of the time and cost records that the general accounting work being performed by Mrs Kruthoffer was no longer required.

[15] On 5 July 2010, by which time Mrs Kruthoffer had been working 40 hours per week during the 7 week period, she was asked to attend a meeting with the two other Directors of

DRK, Mr Wayne Kingham and Ms Kirsten Taylor-Ruiterman. Mr Kingham explained to the Authority that he and Ms Taylor-Ruiterman were responsible for human resources matters in

DRK.

[16] Mr Kingham and Ms Taylor-Ruiterman told Mrs Kruthoffer at the meeting that she was no longer authorised to perform the general accounting work, and further that her work for LNZN and Na Rewa was to be reduced to 15 hours per week. Mr Kingham and Ms Ruiterman said that whilst they had advised Mrs Kruthoffer that the additional general accounting work was no longer required with immediate effect, they had provided Mrs Kruthoffer with one month's notice of the reduction of her hours in connection with LNZN and Na Rewa. Mrs Kruthoffer denies that any notice was provided to her.

[17] On 5 July 2010 Mrs Kruthoffer wrote to Mr Duthie, with a copy to Mrs Ruiterman-Taylor and Mr Kingham, explaining that at the meeting with Mr Kingham and Ms Taylor-Ruiterman her working hours had been reduced. The letter also stated that Mr Duthie had two months previously told her that she could work full-time, and concluded with the expressed wish that: "*something could be done to satisfy both parties*".

[18] Mr Duthie did not respond to this letter. As she had received no acknowledgement of her letter, Mrs Kruthoffer contacted the Department of Labour for advice. Acting upon the advice received, Mrs Kruthoffer sent an email to DRK requesting mediation.

[19] On 12 August 2010 Mrs Kruthoffer said that she discovered a letter dated 5 August 2010 which had been placed on her desk. The letter was on DRK letterhead and contained the printed names of the three Directors of DRK, but had not been signed by any of the Directors.

[20] The letter stated that it was a follow-up to the meeting held on 5 July 2010 when Mrs Kruthoffer had been given one month's notice of the impending reduction of her hours with LNZN and Na Rewa. The letter confirmed that, as the month had expired, Mrs Kruthoffer's hours for LNZN and Na Rewa should average 15 hours per week with immediate effect. The letter further stated that these hours should be spread "*as evenly as possible from Monday to Friday between 9 am and 5pm.*"

[21] The letter further reminded Mrs Kruthoffer of the cessation of the additional general accounting work she had been undertaking and confirmed that the Directors were prepared to attend mediation as requested.

[22] The parties did attend mediation on 25 August 2010 but the issues between the parties were not resolved.

Determination

[23] There are two requirements which must be met to establish an unjustifiable disadvantage. The first is that there must be a 'disadvantage' and the second is that the disadvantage must be 'unjustifiable'. The test to be applied is that contained in [s103A](#) of the [Employment Relations Act 2000](#) ("the [Act](#)"), which states:

For the purposes of [section 103\(1\)](#) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred"

[24] As was stated by the Employment Court in *Air New Zealand v V[1]*: "*...the Section requires the Court to determine the question of justification on an objective basis and in all the circumstances at the relevant time.*"

[25] The requirement that such a determination be made on an objective basis is to be made by reference to "*a fair and reasonable employer*". In *Fuiava v Air New Zealand Limited*[\[2\]](#) Judge Travis stated:[\[3\]](#)

The Court in [Hudson](#) found that the new [s103A](#) did not give the Employment Institutions the unbridled licence to substitute their views for that of the employer. Their role was instead to ask if the actions of the employer amounted to what a fair and reasonable employer would have done and to evaluate this objectively.

[26] Additionally there is a requirement to assess the action taken by the employer by taking into consideration "*all the circumstances at the time the action occurred*".

Was Mrs Kruthoffer unjustifiably disadvantaged by the reduction of her weekly working hours?

[27] Mrs Kruthoffer responded to an advertisement. There was no documentation produced in evidence to establish what may have been agreed subsequently, and therefore the details of the advertisement, the hours performed by Mrs Kruthoffer during her employment with DRK, and the subsequent events in May 2010, are the primary sources for the establishment of the basis of the employment relationship.

The advertisement

[28] The advertisement established the following

- The position was a 'Sole Charge Position';
- The appointee was required to have accounts payable and accounts receivables systems experience;
- The hours of work would be approximately 25 per week with some flexibility, and could be up to 40 hours per week during peak times.

[29] Mr Duthie explained, and Mrs Kruthoffer concurred, that initially the appointment had been to provide services exclusively for LNZL and Na Rewa. The hours referred to in the advertisement pertained to that position only.

[30] The advertisement did not guarantee the hours to be worked either at 25 hours per week, nor at the increased level of 40 hours per week. The advertisement did not encourage or offer an expectation of promotion, or that a full-time position might evolve at some future date.

[31] On the basis of the advertisement and the evidence given, Mrs Kruthoffer's hours were not unjustifiably reduced from 40 hours per week to 15 hours per week working for LNZL and Na Rewa since there had been no guarantee of the actual hours to be worked

The hours performed by Mrs Kruthoffer

[32] Mrs Kruthoffer stated that the hours she had worked providing services to LNZL and Na Rewa had from the commencement of her employment consistently been less than the 25 hours per week referred to in the advertisement. Mrs Kruthoffer also said that she had: "...all along expected to be topped up to a full 40 hours a week once I had proved my worth".

[33] The wording of the advertisement did not provide any reason for this expectation on the part of Mrs Kruthoffer, and Mr Duthie denied that he had discussed permanent full-time hours with Mrs Kruthoffer at the commencement of her employment with DRK or that there might be additional hours available for Mrs Kruthoffer in the general accounting work of DRK.

[34] I find that at the initial stages of Mrs Kruthoffer's employment, there were no grounds for Mrs Kruthoffer's expectation that a full-time 40 hours per week role was intended, advertised, or discussed with Mrs Kruthoffer by DRK.

Events in May 2010

[35] On 12 May 2010, following the departure of two employees from DRK and the transfer of a third employee from accounting work to administration, Mrs Kruthoffer said that she applied verbally to Mr Duthie for appointment to one of those positions. Mrs Kruthoffer stated that Mr Duthie had immediately agreed to the appointment, assured her that there was "... plenty of full time work available" and that she could thereafter work full-time doing general accounting work in addition to the LNZL and Na Rewa work. Mrs Kruthoffer said Mr Duthie had informed her that he would arrange additional training for her in order that she could undertake a greater range of work.

[36] Mrs Kruthoffer said that the training duly took place on 19 May, 20 May, 24 May and 1 June 2010. Mrs Kruthoffer stated that she was entered into the 'workflow' schedule on the DRK computer system, not having previously been included, and that on 19 May 2010 she worked for 8 hours for the first time in one day for the first time, and completed 40 hours for the first time the following week. Mrs Kruthoffer said, and it was agreed by DRK, that she worked weekly hours in excess of 40 until she was informed at the meeting on 5 July 2010 that she was no longer to work the additional general accounting hours.

[37] Mr Duthie stated that he had not offered a full-time permanent position to Mrs Kruthoffer, and that there was no documentation given to Mrs Kruthoffer confirming the alleged appointment, nor was there any communication announcing the change in Mrs Kruthoffer's employment status made to the other employees of DRK.

[38] Mr Duthie further explained that he had no authority to make such an appointment, but that his authority was limited to temporarily increasing staff hours only. Mr Kingham and Mrs Taylor-Ruiterman agreed that employment decisions were only made on the joint agreement of all three Directors.

[39] Mrs Kruthoffer said that she believed Mr Duthie had the authority to offer her one of the positions she believed to be vacant. Mrs Kruthoffer said in support of this belief that at the time of requesting the appointment she had already been a permanent employee of two years service and that Mr Duthie, during that period, had been the Director who directed her work and who had authorised her working additional hours during 2009. During the seven week period following the conversation with Mr Duthie, Mrs Kruthoffer worked on a fulltime basis in accordance with this belief.

[40] In *Nelson v Porirua Community Law Resource Centre Incorporated* [4] the then Chief Judge Goddard set down the test to be applied in a situation in which there is an issue regarding ostensible authority:[5]

"Ostensible means overt. The test is how did it look to the applicant? How would it have looked to any reasonable person in the same situation? ... The fact that as between them and the respondent there is a limitation of authority unknown to the applicant cannot be allowed to affect his position. It was up to the respondent to notify him of the existence of the limit."

[41] Mrs Kruthoffer said that she had no knowledge that, as claimed by the Directors of DRK, Mr Duthie acting alone had no authority to make the decision to appoint her to a permanent full-time position. I find that the responsibility of making this fact known to Mrs Kruthoffer lay with Mr Duthie, who had failed to do so.

[42] I consider that any reasonable person in the position of Mrs Kruthoffer would have believed that Mr Duthie as a Director of DRK, had the authority to offer her a permanent fulltime position. Mrs Kruthoffer believed:

- that there were at least two permanent full-time vacancies;
 - that she had previously undertaken the work she believed to be involved for these positions;
 - that, having been given no reason to think otherwise, her standard of work on the previous occasion when she had undertaken work of this nature was satisfactory; and
 - that Mr Duthie, a Director of DRK who had previously authorised her working additional hours without reference to the other two Directors, had the authority to make such an appointment without seeking the consent of the other two Directors.

[43] I do not find that the lack of any formal documentation confirming Mrs Kruthoffer's appointment to be supportive of DRK's contention that no appointment took place as, during her two years of employment with DRK, Mrs Kruthoffer had received little or no formal documentation in connection with her role with LNZZ and Na Rewa and she had not been provided with an employment agreement or job description.

[44] I also find it significant that in the letter Mrs Kruthoffer wrote to Mr Duthie on 5 July 2010 following her meeting with Mr Kingham and Mrs Taylor-Ruiterman, she stated: "Two months ago I asked you before you hired any more new staff, if I could work fulltime and you told me not to worry as there was plenty of work." This was a clear statement of Mrs Kruthoffer's understanding and Mr Duthie made no response to this letter in order to correct Mrs Kruthoffer's alleged misunderstanding of the situation.

[45] There is no doubt that Mr Duthie received this letter and passed it to the other Directors. Ms Taylor-Ruiterman stated that the letter "was not responded to within a week due to an oversight by the Directors." Mr Kingham claimed that it was not acknowledged because Ms Taylor-Ruiterman was on holiday and it was appropriate to wait for her input. However I find it significant that when Mrs Kruthoffer sent an email some 4 days later asking for a reply to her letter and for mediation, Mr Kingham replied agreeing to attend mediation, it would appear without consulting Ms Taylor-Ruiterman who was on still on holiday.

[46] In fact there was no formal communication sent to Mrs Kruthoffer until she received the letter dated 5 August 2010, a month after she had written the letter to Mr Duthie.

[47] Following the, albeit reportedly brief, discussion with Mr Duthie on 12 May 2010, Mrs Kruthoffer's employment consisted of two elements: the administrative duties she performed for LNZN and Na Rewa, and general accounting work for other clients, which is supported by the evidence submitted.

[48] At the meeting on 5 July 2010 Mrs Kruthoffer was informed:

- that the general accounting work for other clients would cease with immediate effect; and

- that the administrative work for LNZN and Na Rewa would reduce to 15 hours

[49] I find that at the meeting on 5 July 2010 Mrs Kruthoffer had her hours unilaterally reduced in respect of the general accounting work. The reason given by DRK for the decision to remove this work from Mrs Kruthoffer was that if it continued there would be an adverse impact on the projected general accounting work available for the other DRK employees engaged on the same work.

[50] Irrespective of the fact that I do not accept this explanation as providing a satisfactory basis on which to unilaterally reduce Mrs Kruthoffer's hours with immediate effect; I do not accept this explanation on the basis that in June 2010 DRK recruited two school leavers. Mr Duthie said that the school leavers were unable to undertake the administrative work Mrs Kruthoffer performed for LNZN and Na Rewa, in which scenario the conclusion to be reached is that they were engaged to perform general accounting work. This conclusion is underpinned by Mrs Kruthoffer's statement that she was informed at the meeting on 5 July 2010 with Mr Kingham and Ms Taylor-Ruiterman that DRK had recruited the two school leavers to take "*...over the work I was doing, apart from the Livestock NZ work*"

[51] I determine that Mrs Kruthoffer was unjustifiably disadvantaged in respect of the removal of the general accounting work aspect of her employment at DRK.

[52] I determine that in respect of the LNZN and Na Rewa work there was a unilateral reduction. However in respect of this work there was a reasonable explanation for the reduction in hours. Whilst this constituted a disadvantage, it was not per se unjustifiable and it is also relevant that the advertisement offered "*approx 25 hours per week*", and on her own admission Mrs Kruthoffer had consistently worked weekly hours below this level for LNZN and Na Rewa, although a reasonable person might consider that 'approximately 25 hours' means considerably closer to 25 hours than the 15 hours mentioned by Mrs Kruthoffer.

[53] However the manner of implementing this reduction in Mrs Kruthoffer's LNZN and Na Rewa hours fell far short of the standards to be expected of the fair and reasonable employer.

- Mrs Kruthoffer was not advised in advance of the purpose of the meeting on 5 July 2010, nor offered the option of having a support person;

- Mrs Kruthoffer was not given the opportunity to be consulted and provide feedback;

- Mrs Kruthoffer was provided with no formal documentation in respect of the meeting until one month later; and

- Despite Mr Kingham and Ms Taylor-Ruiterman's statements that one month's notice had been provided to Mrs Kruthoffer in respect of the LNZN and Na Rewa reduction in work, Mrs Kruthoffer had been left with the impression that this reduction was also to take immediate effect, and had reduced her hours for LNZN and Na Rewa immediately. Neither Mr Kingham nor Ms Taylor-Ruiterman had corrected this misunderstanding on Ms Kruthoffer's part.

[54] I determine that Mrs Kruthoffer was unjustifiably disadvantaged by the reduction in her weekly working hours and that the manner in which she was advised of the reduction caused her distress, humiliation and injury to feelings.

[55] I do not however find that sufficient evidence was made available to the Authority to establish that DRK have since that time sought to encourage Mrs Kruthoffer to leave by deliberately excluding her from staff social events.

Was Mrs Kruthoffer unjustifiably disadvantaged by the removal of an option to work glide time?

[56] Mrs Kruthoffer said that during the two year period prior to 5 July 2010, she had been allowed to work flexible hours which enabled her to accommodate the needs of her family, and that frequently she had commenced her working day much earlier than 9 a.m., leaving at such time that she considered appropriate to her workload. Mrs Kruthoffer agreed that nothing had been said to her by the Directors on the subject of being able to work glide time, but stated that such flexibility in the working hours was commonplace in the DRK office

[57] However Mrs Kruthoffer stated that the letter dated 5 July 2010 removed this flexibility with the requirement that she work 3 hours per day, 5 days per week, during the normal office hours of 9 a.m. to 5 p.m.. This had a significant implication for her in terms of travelling time and expenses.

[58] Ms Taylor-Ruiterman denied that this was DRK's expectation, but I find the statement in the letter of 5 July 2010 that: "*These 15 hours should be worked during normal office hours (i.e. spread as evenly as possible from Monday to Friday between 9am and 5pm)*" quite unequivocal in conveying an expectation to Mrs Kruthoffer that she would be present in the office for 3 hours daily Monday to Friday.

[59] It is unfortunate that there is no documentary evidence to establish the previous working arrangements, but I accept Mrs Kruthoffer's statement that she previously had flexibility in her working hours as credible.

[60] The letter from DRK dated 5 July 2010 consequently constituted a change to Mrs Kruthoffer's terms and conditions of employment, and by imposing an expectation that Mrs Kruthoffer be present in the DRK offices for 3 hours, 5 days per week, obliged Mrs Kruthoffer to incur additional travelling costs. I find that this constituted a disadvantage in employment to Mrs Kruthoffer

[61] Mrs Kruthoffer said she believed that the removal of the glide time option was a deliberate ploy on the part of DRK with the intention of encouraging her to resign her employment.

[62] I do not accept that there was a deliberate intention to force the resignation of Mrs Kruthoffer, but I do, in assessing whether the disadvantage is unjustifiable, find that DRK fell short of the standard expected of a fair and reasonable employer. A fair and reasonable employer imposing this variation to Mrs Kruthoffer's previously enjoyed flexibility of working hours in her employment would have acted in good faith and consulted with Mrs Kruthoffer in order to reach a consensus on when the hours would be worked.

[63] I determine that Mrs Kruthoffer was unjustifiably disadvantaged by the removal of an option to work glide time in her employment and that this caused her distress and injury to feelings.

Did the failure to provide Mrs Kruthoffer with an employment agreement constitute a disadvantage in employment to Mrs Kruthoffer

[64] Employers are under an obligation to provide employees with an employment agreement pursuant to [s 63A](#) of the [Employment Relations Act 2000](#) ("the [Act](#)"), which states: *63A Bargaining for individual employment agreement or individual terms and conditions in employment agreement*

(2) The employer must do at least the following things:

- (a) provide to the employee a copy of the intended agreement, or part of the intended agreement, under discussion; and
- (d) consider any issues that the employee raises and respond to them [65] [Section 65](#) is also relevant:

65 Terms and conditions of employment where no collective agreement applies

- i. The individual employment agreement of an employee whose work is not covered by a collective agreement that binds his or her employer-
 - 1. must be in writing; and or her employer -
 - 2. May contain such terms and conditions as the employee and employer think fit
- ii. However, the individual employment agreement-
 - 1. must include-

i. The names of the employee and employer concerned; and

1. A plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in [section 114](#) within which a personal grievance must be raised

[66] Further the Employer has a duty of good faith pursuant to [s 4](#) (1A) (b) of the [Act](#), which states at [s4](#) (1A)(b):

4Parties to employment relationship to deal with each other in good faith

(1A)

(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative (emphasis mine) [67] Mr Duthie agreed that DRK had: "... been remiss in not having an employment agreement for Mrs Kruthoffer". Ms Taylor-Ruiterman, one of the Directors with responsibility for human resources, explained to the Authority that, as the nature of Mrs Kruthoffer's initial employment with DRK differed from that of the other employees of DRK, the employment agreement in relation to her employment was: "... assigned to the "too-hard" basket".

[68] I find that DRK acted in breach of the good faith requirement by not providing an employment agreement pursuant to [ss 63A](#) and [65](#) of the [Act](#), and that the confusion about Mrs Kruthoffer's hours of work and position could have been avoided had these been covered in an employment agreement and associated documentation.

[69] I consider that the lack of documentation confirming Mrs Kruthoffer's employment terms and conditions, including her hours of work, contributed to the stress felt by Mrs Kruthoffer at the time of the reduction of her hours and subsequently, and determine that this constituted an unjustifiable disadvantage in employment.

Remedies

Unjustifiable Disadvantage: reduction of weekly working hours

(i) Reinstatement

[70] Mrs Kruthoffer is seeking reinstatement to full-time 40 hours per week employment. The primary remedy is reinstatement. [Section 125](#) of the [Act](#) provides for reinstatement to be ordered, wherever practicable.

[71] DRK has not directly addressed the issue of practicability of reinstatement, instead relying on the proposition that Mrs Kruthoffer was never employed in, nor offered a full-time position. I have not accepted that proposition as being a valid one.

[72] Mrs Kruthoffer is to be reinstated to a full-time 40 hour working week at her current hourly rate of \$20.00 per hour. This is to take effect from the date of this determination.

(ii) Lost wages

[73] I order that Mrs Kruthoffer be reimbursed for lost earnings at the rate of \$20.00 gross per hour, less the actual hours worked by Mrs Kruthoffer, less any unauthorised absence hours due to sickness or holiday leave, per week from 12 July 2010 to the date of this determination.

[74] I would anticipate that the parties can resolve the calculation without further assistance from the Authority. If not, leave is reserved to return to the Authority

(iii) Statutory Holiday entitlement

[75] I order that DRK reinstate Mrs Kruthoffer's statutory entitlements to the position they should currently occupy had there been no reduction in her hours from 12 July 2010.

Compensation for Hurt and Humiliation under [s 123 \(1\) \(c\) \(i\)](#). Unjustifiable Disadvantage: reduction in hours

[76] Mrs Kruthoffer is also entitled to compensation for hurt and humiliation for the stress and distress caused by the reduction in her hours. DRK is ordered to pay compensation of \$6,000.00 to Mrs Kruthoffer.

. Unjustifiable Disadvantage: removal of option to work glide time

[77] I have found Mrs Kruthoffer to have suffered an unjustifiable disadvantage in employment in respect of the removal of the option to work glide time. DRK is ordered to pay compensation of \$1,000.00 to Mrs Kruthoffer.

Unjustifiable Disadvantage: failure to provide an employment agreement [78] I have found Mrs Kruthoffer to have suffered an unjustifiable disadvantage in employment resulting from the non-provision of an employment agreement. DRK is ordered to pay compensation of \$3,000.00 to Mrs Kruthoffer.

[79] For the sake of clarity, the total amount of compensation to be paid by DRK to Mrs Kruthoffer pursuant to [s 123 \(1\)\(c\)](#) is \$10,000.00.

Recommendation

[80] Given the difficulties which have arisen in this case due to the non-adherence to the legislation requirements under [Part 6](#) of the [Act](#), I recommend that DRK comply with the legislative requirements and issue Mrs Kruthoffer with an employment agreement which accurately reflects her terms and conditions of employment.

Costs

[80] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the

Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the

date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

Eleanor Robinson

Member of the Employment Relations Authority

[1] [2009] ERNZ 185 at para [29]

[2] [2006] ERNZ 806; (2006) 4 NZELR 103 (EMC)

[3] At para [50]

[4] [1993] NZEmpC 208; [1993] 2 ERNZ 1109 (WEC39/93)

[5] Ibid at page 17

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