



Employment Court of New Zealand

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MacKenzie v Huntington's Disease Association (Auckland) Inc [2020] NZEmpC 177 (3 November 2020)

Last Updated: 9 November 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 177](#)

EMPC 266/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	DIPIKA MACKENZIE Plaintiff
AND	HUNTINGTON'S DISEASE ASSOCIATION (AUCKLAND) INC Defendant

Hearing: 20 and 21 July 2020 (Heard at Auckland)

Appearances: A Mapu, advocate for plaintiff
M Headifen, counsel for defendant

Judgment: 3 November 2020

JUDGMENT OF JUDGE M E PERKINS

Introduction

[1] In a determination of the Employment Relations Authority (the Authority) dated 17 July 2019,¹ Dipika Mackenzie's claim against the defendant that she been constructively dismissed was not upheld. She was deemed to have voluntarily abandoned her employment. A claim that she was unjustifiably disadvantaged was upheld. The Authority awarded Ms Mackenzie compensation of \$1,500 but reduced this by 25 per cent to recognise Ms Mackenzie's contributing behaviour.

1. *Mackenzie v Huntington's Disease Association (Auckland) Inc* [\[2019\] NZERA 421 \(Member](#) Robinson).

DIPIKA MACKENZIE v HUNTINGTON'S DISEASE ASSOCIATION (AUCKLAND) INC [2020] NZEmpC 177 [3 November 2020]

[2] On the basis that both parties had achieved some degree of success in the proceedings, no order for costs was made.

[3] Ms Mackenzie has challenged the determination on a de novo basis. While it is not specifically pleaded, it is clear she seeks a reversal of the determination that she was not constructively dismissed. The remedies she seeks are as follows:

- compensation for humiliation, loss of dignity and injury to feelings;
- reimbursement of lost wages, plus interest calculated as per the [Interest on Money Claims Act 2016](#);
- reimbursement of advocate's fees;
- reimbursement of the Authority application fee;

- (e) reimbursement of court fees; and
- (f) any other costs incidental to the claim.

[4] In addition to the challenge, Ms Mackenzie also applied to the Authority to reopen its investigation. In subsequent determinations the Authority dismissed that application and awarded costs against Ms Mackenzie.² No challenges have been filed to those subsequent determinations.

Factual background

[5] The defendant, Huntington's Disease Association Auckland Inc (HDA) is one of two such associations in New Zealand. It is a registered charitable trust. The association provides support and advocacy for those suffering from the disease. It also provides information and support to family members and associates of the sufferers. It is also involved with research into the disease and with sufferers who wish to donate their brain for organ research following their death.

2. *Mackenzie v Huntington's Disease Association (Auckland) Inc* [2020] NZERA 96; *Mackenzie Huntington's Disease Association (Auckland) Inc* [2020] NZERA 159.

[6] Ms Mackenzie commenced employment with HDA as a part-time community support worker. She commenced employment on 3 February 2016 and was one of three employees of HDA. In her position she provided care to sufferers of the disease, was involved in activities to increase public awareness of the disease including distributing pamphlets on what are called Brain Days and assisted at conferences. She became a full-time employee in May 2017 and took on some administrative duties within HDA at that time. She had experience in previous employment with such administrative duties.

[7] During the period when Ms Mackenzie was employed by HDA, the General Manager was Jo Dysart. Ms Dysart remains in that role. The third employee was Ms Dysart's daughter, an administrator. HDA appears to be controlled by a Board of Trustees who are volunteers and who refer to themselves as a committee. It is generally funded by grants and some government funding and operates on a shoestring budget.

[8] From the commencement of employment, Ms Mackenzie was on good terms with Ms Dysart until several incidents occurred in late 2017 and 2018. Ms Mackenzie became the subject of a complaint by a family member of an HDA client in late 2017. This was resolved with Ms Mackenzie by the Board members adopting a type of mediation process with her. Ms Mackenzie acknowledged her behaviour as inappropriate.

[9] In May 2018 Ms Mackenzie raised serious allegations about financial mismanagement of HDA by Ms Dysart. Ms Mackenzie had no personal knowledge of the matters alleged and appears to have been repeating the allegations made previously by two disaffected former employees. These allegations had been investigated by a sub-committee of the Board at the time that they were made by the former employees and were found to be unfounded. Ms Dysart was vindicated by the investigation on the earlier occasion and Ms Mackenzie's repetition of the same complaints was not taken further. In the determination the Authority Member records that Ms Mackenzie confirmed she had no evidence to support her allegations. Ms Mackenzie, however, chose to repeat some of the allegations in her evidence.

[10] Ms Mackenzie also made an allegation about bullying behaviour towards her by Ms Dysart. Ms Dysart denied this allegation. The allegation related to events which occurred earlier in the employment relationship. Ms Mackenzie did not make any formal complaint about it at the time. In evidence at the hearing Ms Mackenzie called as witnesses the two former employees referred to earlier in order to provide propensity evidence supporting the allegations of Ms Dysart's bullying. This evidence was not called in the Authority. While the allegations had been made to HDA in the exit interviews of the employees concerned, HDA and Ms Dysart were first faced with the allegations in the proceedings only after the challenge was filed. The two former employees did not raise any allegations during their employment. Both resigned on what were stated to be amicable terms. It was only after their employment ended that they raised retrospectively allegations of bullying and the unfounded financial mismanagement of HDA's finances by Ms Dysart. In all of the circumstances I give no weight to their evidence as I regard it as unreliable and regard Ms Mackenzie's brief assertion of bullying as not substantiated. The allegations have been raised belatedly and were not backed by formal complaints during employment when they were alleged to have occurred. HDA, and Ms Dysart in particular, were, accordingly, in difficulties being able to respond. Ms Dysart categorically denied the evidence of the two former employees as well as Ms Mackenzie's assertion.

[11] During the investigation meeting before the Authority, Ms Mackenzie raised an allegation that her home landline was subject to a tracking device installed by HDA. This allegation was not repeated by her in the challenge. It was mentioned however, in the evidence of HDA, presumably out of an abundance of caution, but it was not necessary for the witnesses for HDA to respond to this issue. I accept their evidence that no tracking devices were installed and that in any event they would have not had sufficient funds to carry out such a clandestine operation even if they had been so inclined.

The conference in May 2018

[12] Matters came to a head for Ms Mackenzie's employment situation in May and June 2018. There were two circumstances

raised. The events comprising the first of these circumstances, and the part they played leading to Ms Mackenzie leaving the employment, were not dealt with well by Ms Mackenzie in her evidence or in her pleadings. Again, the witnesses for HDA dealt with the matters more fully than Ms Mackenzie did at the hearing and I was assisted by their evidence. HDA had organised a conference, commencing with a dinner on the evening of Thursday 3 May 2018. Guests from around New Zealand were invited. An arrangement was made for Ms Mackenzie to collect an important guest and transport her to the venue. When Ms Mackenzie did not arrive to collect the guest, a family member of the guest contacted Ms Dysart. Ms Dysart made arrangements for someone else to collect the guest and transport her to the dinner. However, out of concern for Ms Mackenzie, Ms Dysart tried to locate her. Ms Dysart became concerned as to whether Ms Mackenzie may have been involved in an accident. She contacted Ms Mackenzie's husband more than once. He was not aware of Ms Mackenzie's whereabouts. She also contacted hospitals and the Police. Ms Mackenzie subsequently called Ms Dysart later in the evening and informed her that she had become lost and returned home.

[13] At the conference there had been a dinner on the Saturday evening. Ms Mackenzie claimed that when she arrived for the dinner there was no seat available for her in the dining room and she had to sit in the foyer to eat her meal. This, however, is not correct. The Treasurer of the Board had noticed Ms Mackenzie sitting having her meal in the conference foyer and as there were seats available, he had invited Ms Mackenzie to come into the dining room to eat her meal. Ms Mackenzie declined to do so.

The café meeting

[14] The second set of circumstances followed soon after the conference. Ms Mackenzie had not attended for work on Monday 7 or Tuesday 8 May 2018 as she was apparently stressed after the conference. There was then an incident on Wednesday 9 May 2018 when Ms Mackenzie returned to work. There is a major conflict of evidence between Ms Mackenzie and Ms Dysart, supported by a corroborating witness, as to what occurred.

[15] Ms Mackenzie's version of what occurred on 9 May 2018 is that she had been sent a text from Ms Dysart asking her to meet at a café near their place of work. When

Ms Mackenzie arrived, she said that Ms Dysart was sitting in the café with Beverley Rakich who was a service co-ordination manager for Parkinson's Auckland, an association similar to HDA for sufferers of Parkinson's Disease, which had its offices in the same building as HDA. Ms Mackenzie alleged that Ms Dysart told her that she should hand in her notice, "or otherwise would be taken down the disciplinary [track]". She alleged that Ms Dysart told her that if she handed in her notice she would be given an "awesome" reference, but if she was taken down the disciplinary route, she would be unemployable. Ms Mackenzie alleged that when she asked Ms Dysart what she meant by the disciplinary track she was told that Ms Rakich would explain it to her and Ms Dysart then got up and left the café. She said that a couple of minutes later Ms Rakich received a call from Ms Dysart asking her to help Ms Mackenzie with the resignation letter and that she wanted a copy on her desk before 2 pm the same day. She said that she went back to the office with Ms Rakich and felt pressured to write a resignation letter, which she did. She said Ms Dysart then asked her to attend a meeting at 3.30 pm that day. Ms Mackenzie alleged she showed the resignation letter to Ms Rakich.

[16] This alleged sequence of events by Ms Mackenzie is denied by Ms Dysart who stated that the reason she wished to have the meeting at the café with Ms Mackenzie was out of concern for what had occurred at the conference. Ms Dysart was concerned about the fact that the person had not been picked up and she was also concerned that Ms Mackenzie did not come to work on the following Monday or Tuesday. The purpose of the meeting at the café was to ensure her wellbeing. She said that during the meeting there was no discussion regarding work in terms of disciplinary action. She said that when she asked Ms Mackenzie whether she was okay, Ms Mackenzie burst into tears. Ms Mackenzie stated that she felt that she had let Ms Dysart down and was not able to manage the job. Ms Dysart then said she suggested that Ms Mackenzie meet her at 3.30 pm that afternoon. She denied categorically that there was any discussion regarding her resigning. Ms Dysart stated that in the afternoon she received a text from Ms Mackenzie's work phone informing her that she was not well enough to return to work that day.

[17] There was also disputed evidence between Ms Mackenzie and Ms Dysart as to whether Ms Dysart was on sick leave the following day, 10 May 2018. Ms Mackenzie

alleged that when she came in to work on that day Ms Dysart was on sick leave. Ms Dysart said she was not on sick leave that day. Ms Mackenzie said that she called the Chairman of the Board to report the conversation which she alleged had taken place in the café and the Chairman of the Board told her to continue working. This part of her evidence is not disputed.

[18] Ms Dysart's version of events is totally corroborated by Ms Rakich who was present at the café meeting. Ms Rakich, in her evidence, confirmed that at the café Ms Mackenzie burst into tears and indicated that she felt that she had let Ms Dysart down. Ms Mackenzie also added that the job was too much for her. Ms Rakich confirmed that there was no discussion about resignation or disciplining along the lines alleged by Ms Mackenzie. She stated that approximately 20 minutes after the meeting started, Ms Dysart left to keep an appointment and Ms Rakich then returned with Ms Mackenzie to the office. She

stated that Ms Mackenzie asked her advice as to how to write a resignation letter. She gave her some template examples and sometime later Ms Mackenzie came into her office to show her the handwritten resignation letter. Ms Rakich said she offered to type it up as she could see that there were some errors in the letter. Ms Mackenzie simply indicated that she would re-write it by hand. Ms Rakich said that she was aware that Ms Mackenzie was meeting with Ms Dysart at

3.30 pm. Ms Mackenzie then left Ms Rakich's office and Ms Rakich said that she never saw her again.

[19] I regard Ms Mackenzie's version of those events as unlikely and prefer the evidence of Ms Dysart and Ms Rakich as being reliable.

Termination of employment

[20] From 10 May 2018 Ms Mackenzie remained away from work. The Board had become concerned about her state of wellbeing and she was given paid leave until 24 May 2018. She provided medical certificates, one dated 8 May 2018, which covered a period 4 May–9 May 2018. The second medical certificate was issued on 14 May 2018 and covered Ms Mackenzie's sick leave until 28 May 2018. There was a further medical certificate covering the period from 28 May 2018 until 5 June 2018, but HDA did not receive this and only became aware of it when it was produced after

proceedings were commenced in the Authority. It is referred to in the Authority's determination.

[21] Ms Mackenzie's period of leave agreed to by the Board and the terms under which she would receive payment of income during such leave, were confirmed in a letter prepared on 25 May 2018 from the then Chairman of the Board of HDA. Ms Mackenzie was to receive paid annual leave in advance until 28 May 2018 and would be on leave without pay from that date for any further leave taken. The proposal was that when she returned to work, sick leave and annual leave would be reinstated as they accrued due and returned to positive balances. As Ms Mackenzie was not working during the agreed leave, HDA requested return of the motor car she used as well as the work mobile phone and work credit card. Ms Mackenzie endeavoured to make some point about this in evidence but I regard the request as reasonable in the circumstances.

[22] After the expiry of the agreed leave period on 28 May 2018, Ms Dysart and the then Acting Board Chairman endeavoured to contact Ms Mackenzie. While it is apparent that Ms Mackenzie had procured the medical certificate covering sick leave until 5 June 2018, the onus would have been on Ms Mackenzie to ensure HDA received the certificate, particularly as it was to cover further leave after 28 May 2018.

[23] As HDA was not aware of the last medical certificate and as the period of agreed sick leave had expired on 28 May 2018, both Ms Dysart and the then Chairman of the Board attempted to contact Ms Mackenzie by telephone to ascertain why she had not returned to work. All the attempts to contact Ms Mackenzie failed. Contact was made with Ms Mackenzie's husband, who informed Ms Dysart that Ms Mackenzie had gone to stay in Northland. No contact details were provided.

[24] On 2 June 2018 Ms Dysart wrote on behalf of HDA to Ms Mackenzie. The letter stated as follows:

Dear Dipika,

Unfortunately, I have not heard from you since the expiry of your sick note on the 27th May 2018 and you have not returned to work following your sickness

on the 28th May. You have not provided a further medical certificate to explain your continued absence from work.

I have tried to call you unsuccessfully several times however I have managed to contact your husband Ian, who informed me you had gone to stay in Northland.

I need you to make contact with me as soon as possible to discuss your employment with the Huntington's Disease Association. You can contact me on [mobile number] during office hours or via email at [email address] at any time.

If I do not have any communication from you by Friday 8th June, I will have no choice other than to terminate your employment on the basis of abandonment of employment.

I hope to hear from you soon Jo

[25] While this letter is dated 2 June 2018 it was sent to Ms Mackenzie's address by courier on 6 June 2018. There is some dispute in the evidence as to whether in fact the letter was delivered by the courier, since the receipt signature is alleged not to belong to anyone residing in Ms Mackenzie's address. However, I am satisfied from the courier documents which have been produced as exhibits that the letter was delivered.

[26] No response was received to the letter and accordingly HDA considered that Ms Mackenzie had abandoned her

employment. A letter was sent to her on 27 June 2018 which she acknowledged receiving. This letter stated as follows:

Dear Dipika,

You have now been absent [from] work since 27th May 2018 without explanation. I have not heard from you either by phone or in writing despite several efforts made to call you by myself on 28th May 2018, 31st May 2018 and by Matt Hobbs on 11th June 2018 and also a letter sent to your home address via courier on 6th June 2018.

As indicated in this letter; the fact that I have not heard from you since 27th May 2018 and you have not supplied a medical certificate to explain your continued absence from work, I regretfully have to inform you that your employment with the Huntington's Disease [Association] has been terminated due to an abandonment of employment effective immediately from 27th June 2018.

Although this circumstance deeply saddens me, I hope everything is well with you and I wish you all the best for the future.

Regards Jo Dysart

[27] Ms Mackenzie's response to this letter was the submission of her personal grievance by her advocate by way of a letter dated 13 September 2018. Ms Mackenzie appears to be claiming that the onus had been on HDA to respond to complaints she alleges to have made against Ms Dysart and until they were dealt with, she remained employed and there was no obligation upon her to return to work. This allegation would of course be inconsistent with the allegation now made that her employment ended in circumstances constituting a constructive dismissal.

Principles applying – constructive dismissal

[28] The principles relating to constructive dismissal were considered at length in *Wellington, Taranaki and Marlborough Clerical IUOW v Greenwich (t/a Greenwich and Associates Employment Agency and Complete Fitness Centre)*. In the decision, Williamson J, and the members of the Court sitting with him at that time, considered the cause at length. The ratio of the decision is summarised from the following brief statements:³

A constructive dismissal is one in which the employer's actions are equivalent to a dismissal, or the employer's conduct tantamount to a dismissal.

...

There is no substantial difference between the case of an employer who, intending to terminate the employment relationship, dismisses the employee and the case of the employer who, by conduct, compels the employee to leave the employment. This is the doctrine of constructive dismissal.

[29] Issues of causation and foreseeability are part of the consideration as to whether the employee can rely upon a constructive dismissal.

[30] In *Greenwich* the Court stated:⁴

In identifying cases of constructive dismissal, and in separating them from cases of employee resignation, we suggest there is a useful insight to be gained from a consideration of the real or true source of the initiative for termination. If the real source of the initiative for termination is the employer, or the basic causation comes from the employer, then the case is one of constructive dismissal. We appreciate that the concept of causation has caused difficulties in some branches of the law. However, we think it has some utility here, ...

3. *Wellington, Taranaki and Marlborough Clerical IUOW v Greenwich (t/a Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 at 104.

4 At 104.

[31] In *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc*, the Court of Appeal outlined the correct approach to constructive dismissals as follows:⁵

In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing; in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

[32] In the first Court of Appeal decision considering constructive dismissal, *Auckland Shop Employees Union v Woolworths*

(NZ) Ltd the Court had earlier enunciated three situations where a constructive dismissal may occur:6

- (a) Where the employee is given a choice of resignation or dismissal;
- (b) where the employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; and
- (c) where a breach of duty by the employer leads a worker to resign.

Conclusions

[33] Ms Mackenzie never tendered a resignation from employment. Her advocate, Mr Mapu, in his closing submissions, relied primarily on the conversation Ms Mackenzie alleges took place at the café on 9 May 2018. She alleges, therefore, that she was given the option of resigning or being dismissed. I do not accept that the statements Ms Mackenzie alleges were made by Ms Dysart on that occasion. Nor do I accept that a course of conduct with the deliberate and dominant purpose of coercing

- 5. *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers Industrial Union of Workers (Inc)* [1994] NZCA 250; [1994] 1 ERNZ 168 (CA) at 172.
- 6. *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA) at 374 and 375.

Ms Mackenzie to resign was followed. Finally, in respect of the three situations mentioned in *Woolworths*, in this case there was no breach of a duty leading Ms Mackenzie to resign.

[34] As indicated, Ms Mackenzie did not in fact resign. The stand she has taken is that she remained in employment on the basis that she would only return when her alleged grievances against Ms Dysart were dealt with. I agree with the findings of the Authority that HDA was entitled in the circumstances to claim that Ms Mackenzie had abandoned her employment by virtue of cl 14 of the employment agreement. This clause reads as follows:

Where the employee is absent from work for a continuous period of three days without the consent of or notification to the employer, the employee shall be deemed to have terminated his employment.

[35] Following the failure of Ms Mackenzie to return to work following what HDA thought was the sick leave period certified by her doctor, both Ms Dysart and the Board member then endeavoured to ascertain where Ms Mackenzie was and when she would be returning to work. It was not a situation where the employer simply waited for an appropriate period to expire before notifying abandonment of employment. The letter dated 2 June 2018 was not in fact sent to Ms Mackenzie until 6 June 2018, and even though the letter indicated that failure to return to work by Friday 8 June 2018 would lead to termination of employment on the basis of abandonment, HDA did not act on that indication but continued to endeavour to contact Ms Mackenzie. It was not until the letter of 27 June 2018 that notification of termination of employment on the grounds of abandonment was finally given.

[36] These circumstances do not establish a situation where there was a breach of duty on the part of the employer such that it was reasonably foreseeable that Ms Mackenzie would not be prepared to work under the conditions prevailing. It is not reasonable to expect that HDA would have had in contemplation that Ms Mackenzie would resign. Quite the contrary is the case. Efforts were made to contact Ms Mackenzie and the final letter expressed regret at the conclusion which had been reached.

[37] Even if Ms Mackenzie had in contemplation that she was not required to return to work pending an investigation into her complaints, the period which elapsed, certainly following the last medical certificate, placed upon her an obligation to be communicative and responsive with HDA. [Section 4\(1A\)\(b\)](#) of the [Employment Relations Act 2000](#) provides:

(1A) The duty of good faith in subsection (1)—

...

(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; ...

[38] This obligation, which is imposed equally upon an employee as an employer, meant that Ms Mackenzie had to ensure at the very least, if she was away from her normal residence, that some address was available so that HDA could contact her. She was under an obligation at the very least to communicate directly by telephone when the medical certificate had expired and during a period when she was taking leave without pay. There is no basis in fact in any event for Ms Mackenzie to state that she was expecting HDA to deal with her complaints before she would return. That was certainly not the position at the time she commenced sick leave which was agreed to by HDA. It was concerned for her wellbeing and gave her leave for that reason. As she appears to have gone to Northland, there was a further obligation upon her to provide a method by

which HDA could contact her. She knew that there was no mobile phone HDA could use because it had been returned to HDA.

[39] In the determination, while the allegation of constructive dismissal is not upheld, consideration is given to circumstances which may give rise to a disadvantage grievance. While there may have been some obligation upon HDA to interview Ms Radich as part of its investigation to get to the bottom of what had occurred at the café, HDA was entitled to rely upon the explanation of Ms Dysart. Accordingly, I agree with the Authority's finding that there could be no disadvantage to Ms Mackenzie on that ground and, in fact, to continue with any investigation further into that incident, it would have been necessary for Ms Mackenzie to have returned to work.

[40] The determination has upheld a disadvantage grievance on the ground that Ms Dysart had contacted Ms Mackenzie on behalf of HDA during Ms Mackenzie's absence and this may have given her the impression that HDA had rejected her complaint against Ms Dysart. This, in turn, may have prevented Ms Mackenzie from contacting HDA during her absence in May and June 2018. It is somewhat of a stretch to find that this would amount to an unjustifiable disadvantage. In any event there is no evidence that this contact by Ms Dysart led Ms Mackenzie to that belief.

[41] For these reasons, the challenge fails and is dismissed. As it was a de novo challenge, all the findings of the Authority were put in issue. I uphold the finding of the determination that Ms Mackenzie was justifiably dismissed for abandonment of employment and was not constructively dismissed. I do not regard HDA as having acted in such a way as to have unjustifiably affected Ms Mackenzie's employment to her disadvantage. I consider that the way HDA acted in this matter was what a fair and reasonable employer could have done in all of the circumstances at the time the dismissal or any other action alleged occurred. Accordingly, I set aside the finding of the determination in Ms Mackenzie's favour that she was unjustifiably disadvantaged, and that compensation should be awarded.

[42] I do note that while this was a de novo challenge, concentration of the evidence and submissions on Ms Mackenzie's behalf was on the allegation of constructive dismissal. The finding of the determination as to unjustifiable disadvantage and the award of compensation were put in issue by the pleadings but were not re-traversed during evidence. I further note that in the remedies claimed is a claim for reimbursement of wages and interest. This remedy was not covered at all in the evidence or in submissions. The other remedies sought relate to costs.

Costs

[43] In the Authority no costs were awarded. This issue was not re-traversed by either party in the challenge. There is no need to revisit that issue. So far as costs in the challenge are concerned, costs should follow the event and HDA is entitled to an award of costs. This is a matter which may be capable of being amicably settled between the parties. If the matter cannot be resolved, and HDA wishes to make an

application for costs, it will need to file a memorandum of submissions. This is to be filed and served on or before 4 pm on 18 November 2020. Ms Mackenzie will then have 14 days following such service to file any submissions in reply. The Court will then consider the issue of costs on these submissions.

M E Perkins Judge

Judgment signed at 4.30 pm on 3 November 2020