

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2015] NZERA Auckland 204
5538010**

BETWEEN MELISSA McBEAL
Applicant

AND CHRISTOPHER TWIGLEY t/a
EASTLAND LEGAL
Respondent

Member of Authority: Eleanor Robinson

Representatives: Ken Usmar, Advocate for Applicant
None for Respondent

Investigation Meeting: 3 July 2015 at Tauranga

Submissions received: 3 July 2015 from Applicant
None from Respondent

Determination: 9 July 2015

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Melissa McBeal, claims that she was unjustifiably disadvantaged by the late payment of her wages by the Respondent, Mr Christopher Twigley trading as Eastland Legal.

[2] Ms McBeal also claims that she was unjustifiably constructively dismissed by Mr Twigley as a result of his inappropriate behaviour during her employment, which made it untenable for her to continue in his employment, resulting in her resignation.

Issues

[3] The issues for determination are whether Ms McBeal was :

- Unjustifiably disadvantaged by the late payment of her salary

- Unjustifiably dismissed by Mr Twigley

Note

[4] Mr Twigley traded as an individual, under the trading names of Eastland Legal and Eastland Reality. Mr Twigley ceased trading in March 2015.

[5] Following the filing by Ms McBeal of the Statement of Problem with the Authority, Mr Twigley emailed the Authority stating that, due to ceasing practice in early February 2015, his email and telephones had been disconnected. He further advised that Eastland Legal and Eastland Realty had been wound up, and that he was personally insolvent and would be applying for bankruptcy. In consequence, Mr Twigley advised that he was not in a position to answer Ms McBeal's personal grievance claim.

[6] A case management telephone conference was subsequently organised to take place on 24 April 2015. Mr Twigley responded to the email from the Authority advising of the telephone conference, stating that: "*The date is fine.*", however stating that he would need to arrange a telephone number on which he could be contacted. No telephone number was subsequently received from Mr Twigley and he did not attend the case management telephone conference.

[7] In the absence of further communication from Mr Twigley, a time and date was arranged for an investigation meeting, and Mr Twigley was accordingly advised via an email dated 28 April 2015 to which was attached the Notice of Investigation which was to be held on 3 July 2015.

[8] Mr Twigley responded to the email dated from the Authority on 12 June 2015 advising that: "*... Due to the failure of my business I have lost everything. I do not own any property. I no longer hold a practising certificate. I am currently unemployed. I no longer reside in NZ and have no plans to return to NZ ... I am not in a position to reply to McBeal's claim.*"

[9] Mr Twigley was emailed by the Authority on the morning of the investigation meeting and replied by email alleging that he had not received the Notice of Investigation and refused to provide a physical contact address..

[10] In light of Mr Twigley's email dated 12 June 2015 which was a direct response to that of the Authority dated 28 April 2015, and which formed part of an email string, I am satisfied that Mr Twigley received the notification of the venue, time and date of the investigation meeting.

[11] I also note that Mr Twigley refused to provide a physical contact address to the Authority when requested to do so and that notifications sent to the last known registered office address listed on the NZ Companies Office website have not been acknowledged.

[12] Given the email communications received from Mr Twigley, and in light of his responses to the Statement of Problem, I was satisfied that no good cause had been shown for Mr Twigley's failure to attend and I consequently proceeded with the Investigation Meeting as I am entitled to do pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

Background Facts

[13] Ms McBeal commenced employment with Eastland Legal on Thursday 27 November 2014 and was provided with an individual employment agreement (the Employment Agreement). The Employment Agreement which was signed by Mr Twigley and Ms McBeal provided that:

- The employer was Christopher Manson Twigley trading as Eastland Legal
- The employee was Melissa McBeal
- Ms McBeal was employed as a Legal Assistant
- Her duties were legal secretarial work
- Hours were 8.30 a.m. to 5.00 p.m. Monday to Friday each week with work outside these hours being required at times: clause 3
- Gross annual salary was \$40,000.00 per annum paid weekly to Ms McBeal's bank account: clause 4, to be paid weekly: clause 4.1
- The Employment Agreement could be terminated by either party giving four weeks' notice: clause 11
- Clause 15.1 provided that in the event of an employment relationship problem developing the following process would apply:

15.1 *The parties will seek to resolve any employment relationship problem privately in the first instance. The employee should raise the problem with the employer as soon as possible and the parties should quickly*

meet to discuss the matter and resolve it. If the parties are unable to resolve the problem, either party may seek mediation from the Labour Department or refer the matter to Employment Relations Authority...

[14] Ms McBeal said that as she was paid weekly in accordance with clause 4.1 of the Employment Agreement, and she commenced employment on Thursday, 27 November 2014, she expected that she would receive her weekly wage payment each Thursday by direct payment into her bank account. However she experienced a delay in the payment of her salary from the outset, specifically:

- the first payment was received on Friday 5 December 2014 instead of Thursday 4 December 2014.
- The payment she had been advised would be made on Wednesday 24 December 2014 (Thursday 25 December 2014 being Christmas Day) was not made until Monday 29 December 2014
- The payment due on Thursday 1 January 2015 was also late, not being made until Monday 5 January 2015

[15] In addition the first two salary payments had Kiwisaver deductions made from them despite Ms McBeal having told Mr Twigley that she was on a Kiwisaver holiday and having completed the appropriate form advising Mr Twigley of this. The overpayments had not been refunded to her until week commencing 5 December 2014.

[16] Ms McBeal said that the delay that occurred during the Christmas period had caused her financial embarrassment and stress to her as she had difficulty paying her personal bills. It had also adversely affected the Christmas break she had been looking forward to having with her two teenage sons, causing her personal distress.

6 January 2015

[17] Ms McBeal said that when she had addressed the issue of the late payment which had been due on Wednesday 24 December 2014 with Mr Twigley, his attitude had been dismissive and unsympathetic, advising her to: “*get over it*”, and this had resulted in heated conversations between them.

[18] Ms McBeal said she had also been concerned that the duties she was being asked to undertake were not as she had understood them to be upon accepting the position of Legal Assistant, and she had been given little direction in carrying them out, which together had caused her stress.

[19] In addition, Mr Twigley had expected her to recruit employees for the estate agency aspect of the business. She had felt concerned about doing that, especially as the issues about her late wage payments, the fact that Mr Twigley had been placed on 'stop-credit' by an advertising agency, and contacts from creditors made her believe that Mr Twigley's business was not financially sound.

[20] Initially Ms McBeal said that she and Mr Twigley had a good working relationship, but after the post-Christmas conversations about the late payment of her wages, the relationship had been strained. During an email exchange on 6 January 2015, Ms McBeal had stated: "*I now see you and I obviously clash in opinions over everything so I think it is best I do not work for you*".

[21] In the letter dated 7 January 2015 Mr Twigley wrote, referring to a later telephone conversation in which Ms McBeal told him that she: "*had had enough too*". He told her that he would send someone to collect her key to the office and stated: "*as far as I was concerned you had resigned.*"

[22] Ms McBeal said that Mr Twigley had sent an agent to her home that day, but she had not given him the office key as, contrary to Mr Twigley's stated belief, she had not resigned.

7 January 2015 Letter

[23] In the letter dated 7 January 2015 Mr Twigley referred to Ms McBeal having retracted her resignation and outlined the concerns he had with her performance during the short time she had been employed by him. In particular Mr Twigley stated:

...

2. During that short period you have constantly argued with me and complained about all manner of things including, but not limited to how I am organising my business, the amount of time I spend talking to you, communication between me and you and other staff etc. You called my business a circus, sworn at the top of your voice during telephone conversations with me, and generally have a very negative attitude.

3. These issues have escalated over the short time you have worked for me to the point that on Monday 5 January 2015 you flatly refused to follow my direction to make enquiries ...

6... The remainder of your email was very negative and culminated in the statement "I now see you and I obviously clash in opinions over everything so I think it is best I do not work for you". ...

11. I record that irrespective of whether or not you have in fact resigned I wish to discuss your employment. The way you have spoken to me including swearing loudly is unacceptable. The way you have spoken to me including swearing loudly is unacceptable. Your refusal to follow simple instructions is also unacceptable. Your assertion that our opinions clash over everything is also unacceptable, particularly as I did not employ you to constantly give your opinion concerning my business. You calling my business a circus then recording in writing your opinion that this is my fault not yours is unacceptable.

[24] The letter concluded by advising Ms McBeal of a meeting to be held with her the following day, 8 January 2015, to discuss her employment. Mr Twigley also invited Ms McBeal to bring a support person with her to the meeting.

[25] Ms McBeal said she had been unwell on 7 January 2015, but was not able to obtain an appointment to see the doctor until the following day.

8 January 2015

[26] As she was unwell, she was not able to attend for work on 8 January 2015 or the meeting scheduled for that day. Ms McBeal emailed Mr Twigley, advising him of that fact and attaching a medical certificate which stated:

The person above named was seen by me today and the history I have obtained is that the disability has been sufficient that the patient has been unable to attend work since 7/01/2015 and should be able to return to work on 13/01/15.

[27] Mr Twigley sent Ms McBeal an email that same day, 8 January 2015, in which he advised a new date of 15 January 2015 for the meeting to have taken place that day. In the email Mr Twigley stated:

I have text'd you to leave your key in your letter box and to text me when you have done that. I will then drive over and pick it up. I note you have not replied. In the absence of a reply you are not to enter my office. I have informed the neighbouring tenants who will contact me if you do go into my office. ...

... on 7/01/15 you were at work and spoke to me and Warwick. There was nothing obviously wrong with you and you gave no indication whatsoever that you had a "disability". I note that you have removed from the office all of your personal items and you have deleted the history from your computer. Why?

[28] Ms McBeal said that she had attended the office for work on 7 January 2015 but had only taken with her spectacles when she had left that day, which was the only personal item she had at the office, nor had she deleted items from the computer.

[29] On 13 January 2015 Ms McBeal emailed Mr Twigley stating that she was still unwell and would not be at work the following day. In response Mr Twigley stated that he required a detailed medical certificate to establish why Ms McBeal was unfit for work.

[30] On 13 January 2015 Mr Usmar emailed Mr Twigley to advise that he would be representing Ms McBeal at the disciplinary meeting to be held on 15 January 2015.

[31] Ms McBeal replied that her doctor was not available until 14 January 2015, and that she would bring the medical certificate with her to the disciplinary meeting on 15 January 2015.

[32] Mr Twigley responded advising that the meeting to be held on 15 January 2015 was not a disciplinary meeting, and that whilst Mr Usmar was welcome to attend, he was to: *"remain quiet throughout the meeting"*.

[33] On 14 January 2015 Ms McBeal emailed Mr Twigley a medical certificate which stated that the 'disability' was in fact 'anxiety', and stated that Ms McBeal would be fit to return to work on 19 January 2015.

[34] That same day, 14 January 2015, Mr Usmar emailed Mr Twigley, stating that he refused to agree to remain silent throughout the proposed meeting. Mr Twigley responded that he had no intention of holding a disciplinary meeting, and that if Mr Usmar did not cooperate with the request to remain silent, he would be asked to leave the meeting.

Meeting 15 January 2015

[35] At the commencement of the meeting held on 15 January 2015 a request was made by Ms McBeal and Mr Usmar to record it but Mr Twigley refused. When Mr Usmar also refused to remain silent throughout the meeting, Mr Twigley terminated the meeting.

[36] By letter dated 16 January 2015, Mr Twigley stated that he had decided in light of the medical certificate that Ms McBeal was still unfit for work and therefore he did not wish to

have a meeting with her as: *“to hold a meeting with an unfit person may be perceived as unreasonable and/or unfair.”*

[37] Mr Twigley also outlined

- A concern with Ms McBeal’s ongoing conduct: specifically that the fact that ‘disability’, which the doctor had defined as Ms McBeal suffering from anxiety’, he believed to be defined as meaning a condition from which the patient had suffered for a prolonged time and was so severe that the person was not functioning properly. Accordingly, he stated that as Ms McBeal had not declared the condition when she applied for employment, he now required more information as to her fitness to perform her job;
- A meeting would not be held until Ms McBeal was fit for work;
- It would be an investigatory meeting, not a disciplinary meeting;
- Ms McBeal could be accompanied by a support person, but he/she would not have speaking rights; and
- He would require her feedback before making any decision.

[38] Ms McBeal said that she believed from his communications that Mr Twigley thought she had been lying about her illness, and trying to avoid a meeting with him. As a result, she began to feel bullied and more unwell. She responded to the letter dated 16 January 2015 on 18 January 2015 stating: *“I am still sick from you and will not be at the office and bullied by you!”,* and advised that she would be seeing her doctor the following day.

[39] Ms McBeal said that Mr Twigley had subsequently contacted her mother to ask for information about Ms McBeal’s health, which she had regarded as an invasion of her privacy.

[40] On 19 January 2015 Mr Twigley wrote to Ms McBeal noting that she had been employed by him for 23 working days and had been on sick leave for 9 working days which was 25% of her employment with him. He stated:

... However, this situation has now reached the point where I need some information from you. In reliance on section 68 Holidays Act 2003 I require you to produce proof of your disability including the “history” of your disability. Your doctor’s opinion as to why you are

not fit for work. And the prognosis for recovery and whether relapses are likely. ... I also request that you consent to a drug test

[41] Ms McBeal said she was upset and offended that Mr Twigley was asking her to undertake a drug test without just cause, and she considered that he was implying she was a drug user..

[42] Ms McBeal resigned by email dated 23 February 2015. In the email Ms McBeal stated:

It is with regret and under considerable duress that I am tendering my resignation from your employment.

As you know I have been under the care of my doctor ever since the events of 7 January. She has determined that the stress and bullying I have been subjected to in the workplace have made me extremely unwell. It is now her opinion that due to the continued nature of the stress with threats of dismissal and totally baseless allegations regarding the use of illegal drugs are hampering my chances of recovery.

Accordingly it has been her advice and that of my advocate that I need to resign for the sake of my health. Although I am giving the required four weeks' notice I will not be returning to the workplace as my doctor believes I am still not well enough to do that and in any event that would only further delay any chances of recovery.

[43] A letter from Dr Griessal confirming her support for the decision that Ms McBeal resign from her employment for the sake of her health was provided.

[44] On 25 February 2015 Ms McBeal filed a Statement of Problem with the Authority.

Determination

Was Ms McBeal unjustifiably disadvantaged by not receiving her wages on time during the period 30 October to 18 December 2012?

[45] Ms McBeal is claiming unjustifiable disadvantage. Section 103 (1)(b) of the Act is applicable to disadvantage grievances and states:

That the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer;

[46] The elements of s103 (1) (b) are twofold:

- a. An unjustifiable action by the employer, which
- b. Affected the employee's terms and conditions of employment, and this was to the employee's disadvantage.

[47] Ms McBeal must therefore establish that there was some unjustifiable action by Mr Twigley which affected her terms and conditions of employment to her disadvantage.

[48] In accordance with clause 4.1 the Employment Agreement, Ms McBeal was to be paid weekly into a bank account of her choosing. It is also a reasonable expectation of an employee that they will be paid accurately. In Ms McBeal's case Kiwisaver deductions were made despite her having completed the necessary documentation to advise Mr Twigley that she was on a Kiwisaver holiday.

[49] I find that the late payments of Ms McBeal's weekly wages and the unjustified deduction of Kiwisaver amounts constituted unjustifiable actions by Mr Twigley and affected Ms McBeal's terms and conditions of employment to her disadvantage.

[50] I determine that Ms McBeal was unjustifiably disadvantaged by the late and inaccurate payment of her salary by Mr Twigley.

Was Ms McBeal unjustifiably constructively dismissed by Mr Twigley?

[51] A constructive dismissal occurs where an employee appears to have resigned, but the situation is such that the resignation has been forced or initiated by an action or actions of the employer.

[52] In the Court of Appeal case *Auckland Shop Employees Union v Woolworths (NZ) Ltd*¹ Cooke J listed three situations in which a constructive dismissal might occur, although he noted that these were not exhaustive. The three situations were:

¹ [1985] 2 NZLR 372

1. Where the employees is given a choice of resignation or dismissal;
2. Where the employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; and
3. Where a breach of duty leads a worker to resign.

[53] Ms McBeal was not dismissed, she resigned. Mr Twigley does not appear to have followed a course of conduct with the deliberate and dominant purpose of coercing Ms McBeal to resign, rather Ms McBeal is claiming a breach of duty on the part of Mr Twigley.

[54] Ms McBeal claims that Mr Twigley breached the contractual requirement to pay her salary accurately and on time, that he had a duty to define her work duties correctly and that as a result of Mr Twigley's actions in not paying her correctly and in a timely manner, and by not having her duties clearly defined, she suffered financial difficulty and stress.

[55] This situation culminated in her becoming unwell and she claimed that Mr Twigley's actions during that period of illness, namely by questioning the diagnosis of her illness, refusing to allow her representative to speak at the meeting held with her on 15 January 2015, having her mother contacted for information relating to her illness, and asking her to undertake a drugs test, increased her level of anxiety and resulted directly in her resignation.

[56] In *Auckland Electric Power Board v Auckland Provincial Local Authorities Officers IUOW Inc*² the Court of Appeal said regarding the correct approach to constructive dismissal:³

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 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.

[57] Therefore in examining whether a constructive dismissal has occurred the two relevant questions are:

² [1994] 1 ERNZ 168

³ Ibid At p 172

- i. First, has there been a breach of duty on the part of the employer which has caused the resignation. To determine that question all the circumstances of the resignation have to be examined, not merely the terms of the notice or other communication whereby the employee has tendered the resignation.
- ii. and secondly if there was such a breach, was it sufficiently serious so as to make it reasonably foreseeable by the employer that the employee would be unable to continue working in the situation, that is, would there be a substantial risk of resignation.

[58] Williamson J in *Wellington Clerical Workers IUOW v Greenwich*⁴ observed in describing this type of constructive dismissal:⁵

It is essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the border line which separates inconsiderate conduct causing some unhappiness or resentment to the employee, from dismissive or repudiatory conduct reasonably sufficient to justify the termination of the employment relationship.

(i) *Was there a breach of the duty owed to Ms McBeal by Mr Twigley in respect of paying her wages accurately on time?*

[59] I have already found that Ms McBeal was unjustifiably disadvantaged by the late and inaccurate payment of her wages. However I note that she was subsequently paid within a reasonable timeframe and there was no resulting shortfall in the monies owed to her.

[60] Ms McBeal claims that she was unhappy at being told to undertake duties that had not been contemplated when she applied and was appointed to the position as Legal Assistant. This included the encompassing of real estate work and recruiting employees for the business.

[61] In an email sent to Mr Twigley on 23 December 2014 Ms McBeal states:

I know u pay me and you can fire me for saying all this but I actually want to work for you and see your business have succeed. If Bronwyn Kay can do property management we can set it up too and it generates good weekly income propping up the real estate most of the time....

⁴ [1983] ACJ 965

⁵ at [975]

[62] It is clear from the email that Ms McBeal was not adverse to her duties extending beyond legal assistant duties, or to helping Mr Twigley establish a successful business; however I accept that she had concerns about the financial security of the business.

[63] In early January 2015 Mr Twigley wrote to Ms McBeal setting out in the letter dated 7 January 2015 performance concerns he wished to discuss with her. It is not unreasonable for an employer to wish to discuss performance issues with an employee, provided that he or she follows a fair process in so doing.

[64] A fair process involves advising the employee of the nature of the concerns and allowing him/her to make a response and explanation. In this case it also accorded with clause 15.1 of the Employment Agreement which provided that parties should meet to discuss any employment relationship problems in the first instance.

[65] I find that Mr Twigley acted appropriately by advising Ms McBeal of a meeting to be held on 8 January 2015, and to which she was invited to bring a representative.

[66] I do not find that Mr Twigley breached the employer's duty to behave in a fair manner towards Ms McBeal in respect of the disciplinary meeting scheduled to be held on 8 January 2015.

[67] Once Ms McBeal advised him that she was unwell and unable to attend the meeting to be held on 8 January 2015, Mr Twigley proposed a new date for the disciplinary meeting of 15 January 2015, when Ms McBeal was certified as fit to return to the workplace.

[68] I find that the events that followed resulted in a breach of the duty to Ms McBeal to treat her in good faith, specifically:

- Although Mr Twigley stated that the meeting held on 15 January 2015 was not a disciplinary meeting, there was no basis for that statement given the nature of the issues which were to be discussed at such a meeting prior to the meeting being held;
- Mr Twigley unreasonably refused to allow McBeal's chosen representative the right to speak on her behalf during the meeting;
- Mr Twigley behaved inappropriately during Ms McBeal's period of sickness absenteeism by

- Inferring that she had deliberately withheld medical information from him during the employment process;
- Implying that the medical condition was different and more severe than that indicated on the face of the medical certificates;
- Having Ms McBeal's mother contacted for information in respect of her (Ms McBeal's) medical condition in breach of Ms McBeal's right to privacy; and
- Requesting that Ms McBeal undertake a drugs test without having a drug testing policy in place, or her evidencing of any behaviour which could justify requesting such a test.

[69] Whilst it was not unreasonable for Mr Twigley to want to have a medical basis on which to assess whether or not Ms McBeal was fit to carry out her duties in the workplace without putting herself at risk, Mr Twigley's manner of obtaining the information made Ms McBeal feel that he did not trust her doctor's medical diagnosis, inferred she was a drug user, and made her suffer increased stress. I find this to be a breach of the duty of the employer to behave in good faith to the employee pursuant to s 4 of the Act.

(ii) Was the breach of sufficient seriousness that resignation was reasonable foreseeable?

[70] In light of the fact that Ms McBeal had stated in the email dated 18 January 2015 that she was unwell and this was attributable to Mr Twigley's behaviour and that she considered she was being bullied by him, I consider it should have been reasonably foreseeable to Mr Twigley that the breaches of good faith duty that followed during her period of sickness absence would be sufficiently serious as to result in Ms McBeal's resignation.

[71] I determine that Ms McBeal was unjustifiably constructively dismissed by Mr Twigley.

Remedies

[72] Ms Mc Beal has been unjustifiably disadvantaged and she is entitled to remedies.

Unjustifiable disadvantage

[73] Ms McBeal was unjustifiably disadvantaged by the late and inaccurate payment of her wages and this caused her some financial embarrassment and associated upset and stress..

[74] In respect of the disadvantage grievance, Mr Twigley is to pay Ms McBeal the sum of \$400.00, pursuant to s 123(1) (c) (i) of the Act.

Reimbursement for Lost Wages

[75] Ms McBeal obtained alternative employment with effect from 11 May 2015.

[76] Ms McBeal gave her resignation on 23 February 2015, providing four weeks' notice as required by the Employment Agreement. Ms McBeal stated in her resignation letter that she would not be returning to the workplace to work during her notice period.

[77] Mr Twigley is to pay Ms McBeal lost wages for a period of 11 weeks in the sum of \$8,461.23 gross pursuant to s 128(2) of the Act. From this amount is to be deducted the sum of \$3,076.90 gross in respect of 4 weeks' notice provided by Ms McBeal which she chose not to work, and the sum of \$4113.00 (calculated as \$457.00 per week as WINZ benefit received), resulting in a total sum payable of \$1,271.33 to be paid pursuant to s. 128(2) of the Act.

[78] I order that Mr Twigley pay to Ms McBeal the sum of \$1,271.33 gross in respect of lost wages pursuant to s. 128(2) of the Act.

[79] Ms McBeal is also entitled to be paid for holiday pay earned but not paid during the period of her employment (calculated as 8% of Gross Earnings for the period 27 November 2014 to 7 January 2015).

[80] I order that that Mr Twigley pay to Ms McBeal the sum of \$369.23 gross in respect of unpaid holiday pay pursuant to s 23 of the Holidays Act 2003.

[81] Ms McBeal is also entitled to payment in respect of Waitangi Day which fell during the period of her employment on on Friday 6 February 2015.

[82] I order that Mr Twigley pay to Ms McBeal the sum of \$145.90 gross in respect of the statutory holiday Waitangi Day pursuant to s 61(2) of the Holidays Act 2003.

Compensation for Hurt and Humiliation under s 123 (1) (c) (i).

[83] Ms McBeal is also entitled to compensation for humiliation and distress.

[84] In assessing the amount to be paid to Ms McBeal I take into consideration the fact that she became stressed and unwell during her employment, her concern as to her right to

privacy being breached by the approach to her mother in respect of her sickness absence, and the short amount of time in which she was employed by Mr Twigley.

[85] I order Mr Twigley to pay Ms McBeal the sum of \$3000.00 in respect of compensation for hurt, humiliation and injury to feelings, pursuant to s 123(1) (c) (i) of the Act.

[86] I have considered the matter of contribution as I am required to do under s124. Ms McBeal did not contribute to the situation which gave rise to the grievances. There is to be no reduction in remedies.

[87] Ms McBeal is to be reimbursed the filing fee of \$71.56.

Costs

[1] Costs normally follow the event and Ms McBeal was the successful party in this matter. Costs are assessed in accordance with the notional daily tariff rate within the Authority of \$3,500.00 per day.

[2] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁶.

[3] The Investigation Meeting lasted less than a half day. On that basis I calculate costs proportionally to the length of the meeting.

[4] Mr Twigley is ordered to pay Ms McBeal the sum of \$1,500.00 as a contribution towards her costs.

**Eleanor Robinson
Member of the Employment Relations Authority**

⁶ [2005] 1 ERNZ 808