

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 133
3020872

BETWEEN JOANNE MCKINLAY
 Applicant

AND WELLINGTON COSMETIC
 CLINIC LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Peter McKenzie-Bridle, counsel for applicant
 Ben Sheehan and Joshua Pietras, counsel for respondent

Investigation Meeting: 28-29 June and 2 July 2018 at Wellington

Submissions Received: 23 July and 10 August 2018 from Applicant
 3 August 2018 from Respondent

Date of Determination: 7 March 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Joanne McKinlay, raised a multiplicity of claims alleging various infractions by the respondent, Wellington Cosmetic Clinic Limited (WCCL).

[2] The prime allegation is that Ms McKinlay was unjustifiably dismissed, albeit constructively, on or about 7 July 2017. There is also a claim Ms McKinlay was unjustifiably disadvantaged as a result of being suspended between 11 May 2017 and her cessation. There is then a claim WCCL has breached the Minimum Wage Act and Ms McKinlay is owed various sums along with an allegation WCCL failed to provide a written employment agreement and should be penalised accordingly.

[3] The above claims relate to a second period of employment said to have commenced on 28 July 2016. The statement of problem contained further claims relating to an earlier period (January to June 2015) but these were withdrawn.

[4] WCCL denies any wrongdoing. It says it had good cause to suspend Ms McKinlay but subsequently made it clear she could return but she then chose to leave of her own volition. WCCL says it provided an employment agreement on 4 August 2016 and while it accepts the agreement cited an hourly rate of \$15 WCCL claims it actually paid a higher amount.

[5] WCCL accepts deductions were made but claims they were authorised by Ms McKinlay. WCCL also says the payments failed to cover all Ms McKinlay's debts and this is reflected in a counterclaim. It seeks \$714 being an overpayment of holiday pay and initially sought \$371.96 in respect to an alleged wages but that claim was later withdrawn. It also seeks payment of outstanding amounts relating to product and services (treatments) provided to Ms McKinlay.

Background

[6] The following is well short of a complete portrayal of the facts canvassed in the investigation meeting but instead a summary of those I consider pertinent to resolution of the dismissal and disadvantage claims.

[7] WCCL operates a Wellington business which commenced trading in January 2015. Ms McKinlay was in what she describes as an unstable relationship with Robert Jones, WCCL's sole shareholder and one of its two directors, between March 2014 and July 2017. The relationship saw the pair living together at various times.

[8] While nothing turns on it and it need not be resolved Dr Jones is of the view the relationship ran for a shorter period - June 2014 to December 2016. He accepts it was unstable. Ms McKinlay also observed in her statement of problem that the personal relationship blurred boundaries and led to confusion regarding what constituted the employment relationship and what related to the personal one.

[9] As already said there was an initial period over which Ms McKinlay was present in the workplace. The evidence suggests this started with various tasks related to the establishment and operation of the business and commenced late 2014. While it appears this was initially on a voluntary basis stemming from the personal

relationship there is an argument the arrangement morphed into one of employment. No more, however, need be said given the withdrawal of claims relating to this period.

[10] Ms McKinlay claims that on 17 July 2016 Dr Jones asked she return which she did with effect 28 July. Dr Jones denies he asked Ms McKinlay return but accepts she did so, albeit in August. Again the actual date is irrelevant, at least with respect to the issues I must determine. It is undisputed that Ms McKinlay was considered an employee though it appears the arrangement could be described as fairly informal with Ms McKinlay performing variable tasks and altering her hours to suit her needs.

[11] The evidence makes it clear the relationship between Ms McKinlay and DR JONES deteriorated in the period leading up to Ms McKinlay's cessation. She says it was particularly tense between 5 and 11 May 2017 with additional issues arising from discomfort caused by one of the treatments she received from Dr Jones and her questioning the practices of some of her colleagues.

[12] Dr Jones is of the view that by May 2017 the relationship was well over and that view is reflected in a text from Ms McKinlay dated 29 December 2016, an affidavit lodged by Dr Jones with the Family Court and a letter on WCCL letterhead dated 29 April 2017. The letter notes the personal relationship ended late January (a date which conflicts with the affidavits assertion the relationship ended a month earlier) and states the employment relationship had been formalised around that time with pay now being determined by actual time sheets. This replaced the earlier informality. The letter also advised that as three months had passed since the new arrangement had come into being a permanent employment agreement would follow notwithstanding what was said to be an earlier agreement Ms McKinlay would seek other employment. Notwithstanding that Ms McKinlay remained at Dr Jones's Wellington home though he did have another elsewhere he now frequented.

[13] Dr Jones agrees tensions escalated over the period 5 to 11 May. He says an issue arose on 5 May when he was told the owner of a business with which he was trying to develop an ongoing relationship had been approached by Ms McKinlay who made allegations about the conduct of other employees. He say he then advised Ms McKinlay she would be required to attend a meeting to address this on 11 May with the delay attributable to his absence in the interim.

[14] Dr Jones says Ms McKinlay's behaviour on 11 May was unacceptable with various tensions arising between her and others including himself. He says she then departed without attending the meeting he had ordered so he sent a text some 40 minutes later. It read:

In view of your unacceptable behaviour ... today, I wish to inform you that I now intend to pursue a formal disciplinary action. I will not have my staff threatened or attempts to intimidate. Until I can properly serve you with details of my grievances, and naturally yours, I am suspending your employment until further notice...

[15] Confirmation Ms McKinlay was not to attend work followed by text the next day. That text also contained advice the absence would be on pay.

[16] A couple of days later Ms McKinlay met a friend who, she says, asked why she was no longer working at WCCL. Ms McKinlay says this caused her to question her status – suspended or dismissed. Questions about Ms McKinlay's status were not assisted by the fact she was still having problems as a result of a prior treatment and Dr Jones provided remedial treatment on WCCL's premises.

[17] There was further text traffic between the two including some that could be interpreted as intimate. Also included was correspondence about the suspension and Dr Jones's allegations with Ms McKinlay seeking details.

[18] Ms McKinlay says that on 23 May she asked another friend to ring WCCL's premises and ask to speak to her. She says the response was advice Ms McKinlay was *not working here anymore*. Dr Jones says he has no direct knowledge of this and such a comment was not in accordance with any instruction he had given.

[19] In any event Ms McKinlay remained on the payroll and met with DR JONES to discuss the situation on 14 June. Ms McKinlay says the meeting did not resolve the issues while Dr Jones says she was told she could return but then chose not to.

[20] Following that Dr Jones made a decision to stop paying Ms McKinlay with effect 7 July. That said Ms McKinlay was not yet aware of that when she initiated her grievance and claimed she had been constructively dismissed on 12 July. In the interim (10 July) Ms McKinlay had filed an application in the Family Court seeking both a protection order and an occupation order relating to Dr Jones's Wellington

home. The application was initially made on an ex-parte basis and DR JONES was unaware of it until the 12th.

[21] The Family Court action did however have further consequences with DR JONES returning to his Wellington residence on 14 July. Having found Ms McKinlay had left and taken most of her possessions Dr Jones affixed a notice advising her she would be trespassing should she return. Ms McKinlay originally claimed this occurred on 7 July and it was that which led to her concluding the employment was no longer tenable but the evidence would suggest otherwise.

[22] Dr Jones also says it was these events which confirmed in his mind that Ms McKinlay was no longer returning to work and prompted her removal from the payroll. He says he did that on 19 July which meant that she would not be paid in the run scheduled for 21 July and, as Ms McKinlay claims, the last day for which she was paid was 7 July.

Discussion

[23] This determination has not been issued within the three month period required by s 174C(3) of the Act. As permitted by s 174C(4) the Chief of the Authority decided exceptional circumstances, or more correctly a series thereof, existed to allow a written determination of findings at a later date.

[24] Ms McKinlay's prime claim is that she was constructively dismissed.

[25] In *Wellington etc Clerical Workers etc IUOW v Greenwich*¹ the Court stated that for a dismissal to be constructive:

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

[26] While a simplistic summary of more complex law, the underlying assumption is actions or words of the employer amount to a breach which induced a subsequently proffered resignation. The last point raises a significant difficulty for Ms McKinlay. A constructive dismissal requires a cause of action – it needs an act of cessation by the applicant, normally confirmed in an advised resignation, which can then be attributed to the improper actions of the respondent.

[27] Here there is no such advice or act of cessation. Notwithstanding continuing correspondence between Ms McKinlay and Dr Jones there was no statement clearly indicating Ms McKinlay considered the employment over until she sent her letter of grievance alleging a constructive dismissal on 12 July. Even then there was no precise of the facts Ms McKinlay relied on in making her claim.

[28] Given this I advised the parties during the investigation I was forming a view Ms McKinlay would likely fail with her claim of constructive dismissal but the evidence suggested there might have been an actual dismissal and s 122 would allow a consideration of that possibility.

[29] I said that as at its simplest employment can be considered an exchange of labour for remuneration and while the events were the subject of some factual dispute it appeared both Ms McKinlay's supply of labour and her receipt of payment ceased as a result of the employers' decisions. In this respect the crucial factual debate is whether or not DR JONES made it clear Ms McKinlay could return during the 14 June meeting but clearly her inability to provide labour prior to that was wholly attributable to DR JONES's decision to suspend her. Similarly, and while he claims he did not act to do so until 19 July, the decision to cease payment was made by DR JONES acting as agent for EPB.

[30] Turning then to the claim the suspension was lifted. In his brief, and as already said, DR JONES claims that occurred on 14 June 2017.² Ms McKinlay denies that was so.

[31] On this I prefer Ms McKinlay's version if for no other reason than the first question Dr Jones was asked about this was whether or not he agreed with Ms McKinlay's portrayal of events. The answer was yes. Ms McKinlay had said a possible return was raised in that she was told the job remained but not that the suspension was lifted. She says she responded by asking how that could work given all that had passed and placed emphasis on her lack of understanding as to why she had been suspended. Here it should be noted one of the areas of contention was Ms McKinlay's demand this be explained and her view that was yet to happen. She accepts she simply did not believe the offer was genuine though did not say so. She

¹ (1983) ERNZ Sel Cas 95; [1983] ACJ 965

² Brief of evidence at 113.

says the meeting ended with her again asking how could she return before advising she was not feeling well and leaving.

[32] Aside from agreeing Ms McKinlay portrayal was close to correct (there are some disagreements such as Dr Jones claiming Ms McKinlay stormed out) both parties agree her parting comment, made to two other staff, was *see you in court girls*. That in itself should have confirmed the issue was not resolved. Dr Jones also says Ms McKinlay repeatedly commented she had lost her job, home and relationship to which he replied relationship yes, but not job and home. It also apparent he did say return tomorrow but equally apparent Ms McKinlay considered issues remained which prevented her doing so. The real issue though is that when she did not return DR JONES accepts he did nothing about it. Instead he opted to continue the status quo by paying Ms McKinlay while accepting her no attendance at work. Further confusion then arises from the fact Dr Jones had already advised Ms McKinlay, by e-mail, that all further discussion would be conducted via the party's legal representatives.³

[33] There as an obligation upon Dr Jones to clarify the situation yet he did not do so. I finally note paragraph 135 of Dr Jones's brief where he states he was surprised by the allegation of constructive dismissal given Ms McKinlay *was clearly still on paid suspension* and had confirmed this was her understanding in her affidavit to the Family Court. I conclude the suspension continued until the employment was brought to an end by Dr Jones on WCCL's behalf.

[34] It is Dr Jones's oral evidence he concluded the employment had ended when he received advice of the personal grievance and his decision to stop paying was attributable to that. That faces a significant problem. Notwithstanding the claim the pay stop was not actioned till 19 July, it was applied retrospectively and therefore 7 July becomes the date upon which I conclude the employment effectively ended – no work, no pay. As of that date the factors relied upon as justifying that decision had not yet occurred and there was certainly no compliance with the procedural requirements of s102A(1)(b) to (d) which in this case should at least have been applied as it is in abandonment cases with Dr Jones reiterating the job remained and seeking clarification of Ms McKinlay's intentions.

³ iPhone message DR JONES to MS MCKINLAY of 19 May 2017 at 1:52am

[35] DR JONES also mentioned Ms McKinlay's initiation of the Family Court action as confirming her departure and influencing his decision to cease paying her wages. The problem here is the personal relationship is separate from the work one and this highlights the potential dangers of combining the two especially given considerable evidence supporting a conclusion both parties had difficulty delineating between the two. Here I note various texts and iPhone messages over the employments final days and Dr Jones's acceptance he felt residual warmth toward Ms McKinlay which affected his business judgement.

[36] Having concluded there was an actual dismissal effective 7 July along with the requirements of s 103A of the Act I find the dismissal unjustified.

[37] Turning to the suspension. It has long been held suspension can be disadvantageous and a *...drastic measure which if more than momentary must have a devastating effect on the [employee] concerned. The prejudice occasioned the [employee] can never be assuaged...*⁴ Ms McKinlay's suspension was more than momentary and the evidence easily supports a conclusion she was disadvantaged as a result of both its length and the parties circuitous and unsuccessful attempts to bring it to an end. This is especially so given Dr Jones conceded, when questioned, that a short cooling off period could have addressed the issues at the time.

[38] While it has been previously held the employees right to be heard on a possible suspension prior to its imposition is not absolute there appears to be a consistent thread in such cases that suggest the decision should at least be informed. This, I conclude, is even more important since the inclusion of the statutory procedural minima in s 103A which apply when an employer is considering either *dismissing or taking action* against an employee. It is, in my view, clear suspension should not be a kneejerk reaction to a perceived wrong as occurred here and for that reason I find Ms McKinlay's suspension also unjustified.

[39] The conclusion Ms McKinlay has personal grievances in that she was both unjustifiably dismissed and unjustifiably disadvantaged raises the question of remedies. She seeks lost wages and compensation pursuant to s 123(1)(c)(i) of the Act.

⁴ *Birss v Secretary for Justice* [1984] 1 NZLR 513 (CA) at 521

[40] Section 128(2) provides the Authority must order the payment of a sum equal to the lesser of the sum actually lost or 3 months ordinary time remuneration though there is a discretion to award a greater sum if warranted. In this instance I need not consider the discretion as Ms McKinlay limited her claim to three months though she originally sought that with effect 14 June 2017 being the last day she went to WCCL's premises.⁵ She conceded, when questioned, the period to 7 July had been paid and should no longer be considered. Notwithstanding that the Act says I must order 3 months so that period should, given Ms McKinlay's concession and my finding of actual dismissal on that day, now be considered to commence with effect 7 July.

[41] The only impediment to making such an order is a failure to mitigate but there is no evidence of that here. The evidence is Ms McKinlay was seeking work though her success was limited to less than full time work with a charitable trust. Here I also note WCCL submits I should also take into account earnings from benefit payments. That is not so.⁶

[42] The parties appear to agree Ms McKinlay's weekly pay from WCCL amounted to \$637.50. That totals \$8,287.50 over a three months period. The evidence suggests Ms McKinlay earned \$4,387.37 from her part time work over that period which leaves a residual amount of \$3,900.13. That is payable.

[43] Turning to the compensatory claim. This comes in two parts with MS MCKINLAY seeking \$5,000 for the unjustified suspension and \$15,000 for the dismissal. I struggle to consider it this way given Ms McKinlay's evidence, at least as it went to hurt and humiliation, did not distinguish between the two. I will therefore consider the claim as a totality.

[44] The evidence presented in support of Ms McKinlay's compensatory claim illustrated a strong sense of grievance and hurt. It also illustrated on-going angst and further issues occasioned by unhealthy living conditions which were a result Ms McKinlay's reduced circumstances caused by the dismissal.

[45] While strong the evidence does, however, raise a significant concern. In [32] above I commented on Dr Jones's evidence Ms McKinlay repeatedly observed she had lost her job, home and relationship. That was a sentiment she echoed during the

⁵ Paragraph 84.6 of MS MCKINLAY's brief of evidence

⁶ *James and Company Ltd v Hughes* [1995] 2 ERNZ 432 at 444

investigation and which raises concerns about the level of hurt attributable to her treatment as an employee and that attributable to the demise of the personal relationship. As with many facets of this dispute the two relationships are intertwined but this raises an issue as I am limited to considering compensation emanating from a wrong suffered as an employee. Damage attributable to the end of the personal relationship is beyond my jurisdiction.

[46] Having considered this issue, the evidence, the submissions and current levels of compensation generally I conclude \$16,000 to be appropriate.

[47] The conclusion remedies accrue mean I must, in accordance with s 124 of the Act, address whether or not Ms McKinlay contributed to her dismissal in a way that warrants a reduction in remedies. WCCL strongly argues that is the case and in doing so refers to evidence about Ms McKinlay's conduct in the period leading up to cessation and in particular her alleged failure to answer questions or communicate. Having considered the submissions and the evidence I find myself disagreeing.

[48] I do so given my finding this was an actual dismissal as opposed to constructive as claimed. When explaining why he brought the employment to an end DR JONES cited two factors – the personal grievance claim and the Family Court action. Neither can be considered contributory conduct, at least in the way envisaged by s 124. Ms McKinlay has a right to initiate a personal grievance and the matters before the Family Court are, in my view, related to the personal relationship and not the employment one. To that I add Dr Jones's admission a short cooling off period could have addressed the issues at the time but that he allowed things to drift as opposed to actively addressing the impasse due to reluctance attributable to the personal relationship. Ms McKinlay cannot be held to have contributed to those factors, at least in an employment setting as required by s 124.

Ms McKinlay's other claims

[49] Ms McKinlay claims WCCL failed to provide a written employment agreement and seeks a penalty payable to her.

[50] The response is that an agreement, signed by Dr Jones, was provided on 4 August 2016. Ms McKinlay claims to have never received it. There is also a second document which Ms McKinlay did receive but it can only be described as odd. It purports to contain terms of an employment offer though its content bears no

resemblance to a normal employment agreement. It is instead indicative of a casual arrangement emanating from a personal relationship which is what this employment was.

[51] It is that last point, as opposed to a decision as to whether or not an agreement was actually furnished, that will determine this matter. That is because the remedy sought is a penalty. A penalty is a punitive measure imposed for deliberate wrongdoing.

[52] Here there is no evidence of such wrongdoing and I again emphasize the casual nature of an arrangement which the evidence suggests the parties saw as an extension of their personal relationship. There is then the fact that when asked if she sought an employment agreement Ms McKinlay said yes but in the context of joking about money. A failure to provide, if indeed that is what occurred, cannot in such circumstances be considered misconduct warranting a penalty and for that reason the claim will be considered no further.

[53] Ms McKinlay also claims she was underpaid and unauthorised amounts were taken from her wages.

[54] The underpayment claim is for \$253.13 and relates to the fact Ms McKinlay was, for a period, paid \$15.00 per hour as opposed to the then applicable minimum wage of \$15.25.

[55] The amounts are not disputed but WCCL contends that once the provision of board and lodging at Dr Jones's house is taken into account the shortfall is more than addressed. Similarly it is argued Ms McKinlay was paid for 37.5 hours a week but rarely required to work it which again means there is no breach.

[56] Neither argument persuades. There is no evidence of any agreement Ms McKinlay be provided board and lodging under the employment agreement. The evidence is that was part and parcel of the personal arrangement. There are also no time and wage records which means, given there are disputes as to what hours were or were not worked, the claim should be accepted.⁷ This amount is payable.

⁷ Section 132 of the Employment Relations Act 2000

[57] Ms McKinlay also seeks further \$533.90 being recompense for unauthorised deductions from her wages even though she did not realise this was occurring at the time. For this breach a penalty is sought.

[58] The response is the deductions related to a loan Ms McKinlay received from DR JONES and it was authorised both orally and in writing.

[59] Again the relevant evidence was confusing as a result of the party's inability to distinguish the form of their various relationships. In the end I consider Ms McKinlay ultimately accepted the money related to the loan which while a private gesture and not work related was one she agreed be repayable from wages. In respect to the requirement authorisation be in writing I note the text exchange referred to by the respondent in submissions. Ms McKinlay noted a deduction and queried it. She was told the purpose and that the deduction was in accordance with her request. She subsequently responded *Great I'm paying my debts, thank you.*

[60] I conclude that meets the requirement authorisation be properly evidenced and this claim therefore fails. The penalty action need not therefore be considered but again I note such an imposition would have been unlikely for reasons already explained in [51] above and the failure of the parties to delineate their relationships.

EPB's Counterclaims

[61] WCCL seeks a payment of \$5,419 for products and services Ms McKinlay received and \$714 being an overpayment of holiday pay.

[62] The claim for reimbursement for product and services faces no prospect of success. Ms McKinlay gave evidence these were originally provided as Dr Jones considered it may assist the business by having Ms McKinlay effectively act as a live advert and to assist in the training of staff in respect to various products and their application. She also said there was no expectation she would pay and this was not discussed.

[63] Ms McKinlay's claims were not disputed at the time they were given and Dr Jones's later evidence in support of the claim was far from satisfactory. It was confused and contradictory but the key admission was the decision money owed for treatments and product was made no earlier than June 2017. This was well after the expenditure had been incurred and there is also evidence relevant documents were

subsequently altered to *correct a fault*. That is again far from acceptable and does not provide sufficient support for the claim.

[64] Again there is acceptance some of these services were provided as a result of the relationship. WCCL is unable to establish what proportion that might be and I do not accept its assertion all it need do is evidence the essence of the claim and that some of it emanated from the employment relationship.

[65] The final relevant point is Ms McKinlay did sign a patient declaration in April 2016 which acknowledged interest would apply to debts not paid in full. It is submitted that constitutes full and unequivocal acceptance of the debts notwithstanding the fact invoices were not sent. It is argued that is because it is common practice to maintain staff accounts. This submission has one fundamental flaw. In April 2016 Ms McKinlay was not in the employment relationship. Indeed the evidence would suggest that was one of the periods over which the personal relationship was also in abeyance and I conclude any relevance that document may have had at the time was nullified by subsequent events, agreement and practice. The claim fails.

[66] Finally there is the claim regarding repayment for holidays taken in advance. The amount is supported by a leave record produced at the investigation. It is argued that may be recovered where the employee agreed to leave in advance and to which s/he was not entitled. Finally it is noted the debt's existence was acknowledged in a text Ms McKinlay sent on 23 June 2017.

[67] The acknowledgement of the debt leads to a conclusion this amount owes. It is a gross one so should, in my view, be deducted from the wages awarded for the unjustified dismissal.

Suppression

[68] During the investigation Ms McKinlay asked the identity of the parties be suppressed and in doing so cited the Family Court Act 1980.

[69] Suppression is granted where the circumstances of a case outweigh the principle of open justice. Such circumstances exist where there is a real risk the administration of justice would be frustrated or rendered impractical.⁸

[70] The Family Court Act precludes the reporting of information which might identify a vulnerable person.⁹ Ms McKinlay falls within the definition of a vulnerable person.¹⁰

[71] To identify Ms McKinlay would also identify Dr Jones and WCCL to anyone with knowledge of their affairs so identification of any of the above would, I conclude, undermine the administration of justice by potentially breaching the Family Court Act. As a result I order a prohibition on the publication of anything which might identify the parties.¹¹

Conclusion and Costs

[72] For the above reasons I accept Ms McKinlay has a personal grievance having been both unjustifiably dismissed and unjustifiably disadvantaged.

[73] As a result I orders the respondent, Wellington Cosmetic Clinic Limited, is to pay Ms McKinlay:

- a. \$3,900.13 (three thousand, nine hundred dollars and thirteen cents) gross as recompense for wages lost as a result of the dismissal; and
- b. A further \$16,000.00 (sixteen thousand dollars) as compensation for humiliation, loss of dignity and injury to feelings pursuant to section 123(1)(c)(i).

[74] In addition Ms McKinlay is successful with further claims regarding a failure to pay the minimum wage and deductions from her pay. As a result Wellington Cosmetic Clinic Limited is to pay Ms McKinlay a further \$253.13 (two hundred and fifty three dollars and thirteen cents) being wages due under the Minimum Wages Act 1983.

⁸ *R v Patterson* [1992] 1 NZLR 45 (HC) at p50

⁹ Section 11B(3)(b) of the Family Court Act 1980

¹⁰ Section 11D(h) of the Family Court Act 1980

¹¹ Section 10 of Schedule 2 of the Employment Relations Act 2000

[75] Wellington Cosmetic Clinic Limited is successful with respect to its counterclaim concerning overpayment of holiday pay. As a result it may retain \$714 (seven hundred and fourteen dollars) of the monies owing under [72](a) above.

[76] Ms McKinlay's other claims regarding the non-provision of an employment agreement and deductions from her wages fail as does WCCL's counterclaim regarding payment for product and services.

[77] Costs are reserved.

M B Loftus
Member of the Employment Relations Authority