

**Attention is drawn to the order
prohibiting publication of certain
information in this determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 8
5408583

BETWEEN P
 Applicant

A N D Q and R
 Respondents

Member of Authority: James Crichton

Representatives: Ken Usmar, Advocate for Applicant
 Mark Beech, Counsel for Respondents

Investigation Meeting: 22 October 2013 at Tauranga

Date of Determination: 10 January 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Pursuant to Clause 10 (1) of Schedule 2 to the Employment Relations Act 2000 (the Act), the Authority orders that the names of the parties, the names of the witnesses and the names of other persons involved, not be published. Although no request for this order was made by either party, the Authority considers it is in the interests of justice for such an order to be made and the order is now made of the Authority's own motion.

[2] The applicant (P) alleges that he was constructively unjustifiably dismissed from his employment by the respondents (Q and/or R or the employer). In addition, P claims he has a personal grievance in that he was sexually harassed by Q only.

[3] Those claims are all resisted by the employer.

[4] Q and R have a son (S) now 15 years old who suffers from a rare chromosome disorder as a consequence of which S has high and complex needs. His parents, of necessity, need to engage caregivers.

[5] P answered an advertisement in the newspaper for a caregiver for S and after an initial discussion between P and the employer, it was agreed that P would work a four hour span on 7 December 2012 for each party to assess suitability. At the time P responded to the employer's advertisement, he was employed elsewhere. In responding to the advertisement, P told the employer he intended to resign his current employment.

[6] The employer suggested that P should work the half day to ensure that he really wanted to work for them and that he should do that before he resigned his current role.

[7] In the result, P told the employer when confirming the arrangements for the half day's work on 7 December, that he had already resigned from his existing role. P was paid for the half day's work on 7 December 2012 but it is common ground that the permanent employment did not commence on that day.

[8] The employer was keen for P to do some more casual hours so that the parties could get to know each other better and in particular P could bond with S. However, that strategy was difficult to implement because P had already resigned his former role and needed to obtain full time employment in replacement.

[9] Accordingly, the parties agreed that the full time engagement would commence on and from 19 December 2012. Once the full time employment started, Q provided to P a package of documents from an organisation called Manawanui In Charge. Manawanui In Charge manages the government funding which the employer is entitled to because of S's high and complex needs. The funding enables the employer to engage workers such as P to help with S's care.

[10] The Manawanui In Charge documents included a raft of material including such things as a generic employment agreement, a generic job description, various relevant documents such as a hazard register (in blank), various relevant blank forms such as Inland Revenue Department forms, a comprehensive health and safety handbook, and a human resources handbook.

[11] It is common ground that none of the relevant documentation pertaining to P's employment was completed by either party. One of the key drivers of the dispute between these parties was the confusion about precisely what P's duties actually were. That problem was exacerbated by the fact that the parties to the employment relationship only worked together between 19 December and Christmas 2012 when Q and R and their two children (including S), left for a short holiday. It is what happened while they were away that brought the employment relationship to an end.

[12] While Q and R were still at their farm (before their departure on holiday) it is common ground that P spent the bulk of his time caring directly for S including working with him outside on the farm. The employer's evidence is that S enjoyed being outside and responded well to being outside. It seems R in particular assisted P by showing him not only how to engage with S but also how to encourage S to learn skills of a basic nature relating to the operation of the farm.

[13] It is common ground that when the employer left for their holiday, P was to continue working and that a list of tasks was to be provided for him to attend to during that period. P says he obtained such a list from a third party (T) and that while the employer was away, he (P) commenced working through that list. The question of what tasks P was to undertake while the employer was on holiday, is in dispute.

[14] The date that Q and R were to return from their holiday is also in dispute. P understood that the employer was due to return on Thursday, 3 January and because the parties had previously agreed that P would not work either New Year's Day or 2 January, because of his entitlement to penal payments on those days, P was away from the workplace on those days but returned to continue with his tasks on the late afternoon of Wednesday, 2 January. In fact, P followed Q and R back to the property, there was a brief discussion, and an agreement to meet again the following morning.

[15] There was a conversation between the parties on the morning of 3 January 2013 which rapidly deteriorated in tone. Q and R challenged P about what he had been doing while they were away and raised questions about some of the tasks he claims to have been instructed to do.

[16] Eventually, after confronting allegations from the employer that P was living in the property while they were away, and the employer being dissatisfied with P's response, R proposed that P pay back the wages that had been paid to him in advance.

[17] P purported to seek to arrange the transfer of funds to achieve that but in fact rang the Police who attended in due course. P was then escorted from the property by Police to the local Police station, being followed by R.

[18] Whether P resigned the employment at the meeting on 3 January 2013 or later is in dispute.

[19] It is also contended by P that during the course of that final discussion on 3 January 2013 and immediately thereafter, before P left the property with Police, Q sexually harassed him by mocking his sexual orientation and subsequently abusing him as a consequence of that sexual orientation.

Issues

[20] The Authority needs to determine the following questions:

- (a) Is there relevant documentation of the employment;
- (b) What were P's duties;
- (c) What happened at the meeting on 3 January 2013;
- (d) Was P sexually harassed;
- (e) Was P unjustifiably dismissed?

[21] While nothing turns on the date that Q and R left on their holiday, it is the case that there is no agreement as to which date that event happened. Both parties seem to think that the employer left on either 26 December or 27 December. The only importance of that date is its relationship to the period P was actually working for the employer while they were on holiday.

[22] On the evidence the Authority heard, P himself claims to have worked only three days in the period from the departure of the employer to the end of the employment relationship and that is consistent with the timesheet filed in the Authority.

[23] If the employer left for their holidays on 27 December 2012, then the first day that P would have worked in their absence was 28 December 2012 but that is not

consistent with the end of the work period which both parties accept was 31 December 2012.

[24] Either P worked another day that he has not given evidence about (which seems highly unlikely) or he did not work the first day after the departure of the employer on holiday, or the employer actually left on holiday on 28 December 2012.

[25] As nothing turns on the question and both parties accept that only three days work were provided by P, the Authority, for the avoidance of doubt, has chosen to regard the three working days in question as 29 December 2012, 30 December 2012 and 31 December 2012. That decision is consistent with the other evidence which is that both parties accept that P was not to work on 1 and 2 January 2013.

Was there relevant employment documentation?

[26] It is apparent on the evidence that shortly after the full time employment commenced on 19 December 2012, Q provided P with a package of template documents from Manawanui In Charge.

[27] As the Authority has already noted, that material included a generic employment agreement and a generic job description. Neither of those documents were executed by either party nor is there even any evidence that they were ever discussed by the parties.

[28] What is more, the nature of the tasks set out in the generic job description bear little relationship to the evidence the Authority heard about the tasks that P actually undertook prior to the employer departing on holiday, or indeed after the employer left on holiday.

[29] When the employer departed on their holiday after Christmas, S of course went with the employer. That left P continuing on in the employment but with the principal reason for his employment not physically present. Despite that fact, the employer committed themselves to having P on pay to assist him. In fact, the employer paid P in advance before their departure on holiday.

[30] It seems to follow from the foregoing that, while the employer was still at the workplace, P was able to engage in his primary obligation of working with and caring

for S, but that once the employer, as a family, left for their holiday, the nature of the duties that P was to perform, of necessity, changed fundamentally.

[31] The Authority is satisfied then the documentation provided by Q to P after the commencement of the full time employment relationship does not bear at all on the nature of the understandings reached between the parties and does not assist the Authority in resolving the employment relationship problem.

What were P's duties?

[32] As the Authority has already noted, when the employer left for their holiday, they took S with them of course. That meant that the principal purpose for P's employment was no longer physically present and so the tasks P was to perform during the period that the employer was away have, of necessity, a manufactured look about them.

[33] Each of the protagonists refers to the tasks in their evidence to the Authority. For instance, Q said in relation to his duties:

... we agreed that he would do some jobs around the house, such as washing the outside of the windows, mowing the lawns. The only farm job we mentioned involved the run off, because this was a job we eventually wanted him to do with S.

[34] In her oral evidence to the Authority, Q elaborated that: *"there was nothing for him to do inside the house"* and again *"we did not expect him to do jobs inside the house"*.

[35] R, in his written brief, simply referred to jobs *"such as washing windows (outside) and mowing lawns"*. But in his oral evidence, R agreed that he had given T a verbal instruction to create a list of jobs for P to do. T was a co- manager of another farm property belonging to R. T did not give evidence to the Authority. R emphasised that the jobs would have been things like *"chipping thistles, picking up firewood, mowing the lawns, cleaning the swimming pool, keeping an eye on the house, watering the pot plants outside on the deck and whatever else T came up with"*. R emphasised, as the Authority has already noted, that it was inconceivable that T would have given P instructions to do anything inside the house.

[36] P's evidence is that the employer said they would leave a list of chores for him to attend to while they were on their holiday and when he turned up for work after

they had left, he could find no such list. He used his initiative he says and contacted T who he says read out the list to him over the telephone. It is a feature of P's contention that T gave him both inside jobs and outside jobs and that because the weather was inclement for most of the three days in question, her instructions were that he was to work inside.

[37] That is the nub of the difficulty because both Q and R were adamant in their evidence to the Authority that it was never in their contemplation that P would be inside their home at all, whether for the purposes of working or otherwise. Their expectation was that P would attend to outside tasks like mowing lawns around the farmhouse, cleaning the swimming pool and working on the land as directed.

[38] But because the weather was inclement for two of the three days in question, the outside tasks were really called into question and, according to P, T told him to work inside. Even if that is not what happened, it is difficult to know what else P would have done if it was raining.

[39] No doubt it might be contended that P should have contacted the employer. It is apparent on the evidence that there were a number of text message exchanges between the parties while the employer was on holiday and at least one telephone discussion. So, contact was no problem.

[40] But P is adamant that he was told by T to work inside because the weather was bad.

[41] It seems difficult to understand why P would have manufactured that claim (to work inside) if it had not happened. Despite R's and Q's adamant claim that it was not in their contemplation that P would work inside, they did not bring evidence from T to counteract P's claim that he was instructed by her (as the agent of the employer) to work inside when the weather was inclement.

[42] Accordingly, on the balance of probabilities, the Authority is impelled to the conclusion that P was instructed to work inside, not by the employer directly, but by the employer's agent, T. But that course of action was clearly not within the contemplation of either R or Q; if the employer has any quarrel with that conclusion, that is a matter between them and T.

[43] Having established what P was instructed to do, the next question the Authority must consider is what he actually did. Here the evidence is even less helpful. Put shortly, on their return from holiday, the employer formed the view that P had been living in their home while they were away, that he had entertained persons at their home and that he may even have slept in their bed. Suggestions were also made that P had used the house to consume drugs, that he had been seen in the house and in the vicinity with another man, and that there was no evidence whatever that the house had been subjected to any cleaning regime as P maintained.

[44] Some of those contentions are frankly fanciful, but they all emanate, in the Authority's opinion, from the employer's conviction that P was not supposed to be in their home for any purpose while they were away whereas his understanding (from T) was that he was supposed to be working in the house given the weather was unsatisfactory for working outside.

[45] In particular, the Authority is satisfied that the employer (and Q in particular) felt violated by the clear evidence that P had been in the couple's bedroom because he had stripped the bed. She was adamant that the bed did not need stripping, that it had been left made up when she and her partner left for their holiday, and that there was no need at all for him to be in their room.

[46] P says he was there to do the vacuuming and when he went in there he claimed that the bed needed changing because it had what he said looked like "*cow poo on the sheets and duvet cover*". He also claimed that the bed was unmade.

[47] In addition, P contended that there were "*a few loads of washing from the full dirty washing basket left in the bathroom*" and that he washed, dried and folded that washing.

[48] But again, Q says that is simply not right and that she would not have left a whole lot of washing to be done. The difficulty with the washing issue anyway is that the Authority cannot imagine how washing could be manufactured. It seems inconceivable that P would have washed, dried and folded washing that did not need to be washed. Q must be mistaken about the washing.

[49] But it seems less likely to the Authority that she would be mistaken about the bed that she and her partner slept in. She says she left the bed made up and not

surprisingly, she was simply incredulous at P's evidence of "*what looked like cow poo*" on the sheets and duvet cover.

[50] P ought to have contacted the employer before taking any steps in relation to the couple's bed. Commonsense would dictate that, in the absence of a specific instruction, a prudent person would not enter another couple's bedroom, not being a family member, without the clearest explicit instructions.

[51] In all the circumstances, it seems to the Authority inevitable that because P did not take that step (of contacting the employer) they would inevitably feel their privacy had been violated by his having been in their bedroom, even if, as he maintains, his motives were pure.

[52] The short point is that when R and Q and the family returned from their holiday, their bed was not made up, and while it appears that the washing that had been done was all folded, as P contented, photographs that the employer took inside their home on the night of their return bore little evidence of P's alleged cleaning. Indeed, quite the reverse is the case. The detritus from a visit of his father and stepmother was not cleaned up, and there are photographs of dead flies in more than one location inside the home.

[53] In addition to the unsatisfactory evidence inside, it is common ground that P did not mow the lawns outside, which both parties agree was one of the tasks that he was allocated, and the employer also maintained, contrary to P's evidence, that the windows were not washed either.

What happened at the meeting on 3 January 2013?

[54] The foregoing section of this determination really sets the scene for the meeting between the parties commencing at 7am on 3 January 2013. Again, the parties have an entirely different view of this meeting. P says that it was conducted in an aggressive and vindictive fashion by the employer and that the first observation made by anyone was R's question, "*what the hell's been going on here?*". Then, P says that Q said something to the effect "*you're disgusting; I can't even look at you! What the fuck have you been doing in my house?*".

[55] P says that he was "*scared*" at that point and that the haranguing went on for 20 minutes thereafter. He alleges that the employer said, amongst other things, "*how*

dare I have a party in their house, bring men into their bedroom” and that the employer accused him of smoking drugs in their house.

[56] P claims to have become tearful at this point and P’s evidence is that Q then said *“oh poor P”* and talking in a baby voice *“are we hurting your feelings?”*, while dropping her wrist up and down *“trying to emphasise a limp wrist of a gay man”*.

[57] Later on, when P was trying to leave the property, P claims that Q called him *“a fucking faggot”*. Q, in her evidence to the Authority, while acknowledging that she did not have a complete recollection of the events, thought it more likely than not that the limp wristed episode did happen and she certainly remembered calling P a *“fucking faggot”* in the heat of the moment. Notwithstanding those concessions, Q maintained that the discussion with P was not *“a threatening”* one. She said that the employer’s purpose in having the discussion with P was to try to find out what he had been doing in their home and that, put broadly, they were dissatisfied with the explanations that he gave. Certainly, the employer returned to their home and found things effectively in a state of flux with jobs only partially completed, some jobs not attempted at all, and the house displaying the evidence of having been lived in while they were away, something which they certainly never had in their contemplation.

[58] The events of 3 January 2013 continued to deteriorate when R demanded that the wages paid to P in advance must now be paid back to the employer. R’s evidence is that he said something to P to the effect that P had been paid in advance for a fair day’s work for a fair day’s pay and that it did not look as if P had done anything while they had been away. Accordingly R said he wanted his money back and that the way that he saw it, P had stolen \$700 from the employer.

[59] According to P, R wanted the two of them to go into an ATM machine in town so that P could extract the money. But P did not have all the money in his account. He says he only had \$400 in his account and that he would need to transfer money into his account.

[60] Somewhere at about this point, R boxed in P’s car with the farm tractor so that P could not leave the property. R says he did this because the employer did not know how to get hold of P (they had neither a home address nor a home telephone number and only a cellphone number for contact) and they were afraid that once P left the property they would never see the money again.

[61] P then asked permission to go outside to make a call to the bank to arrange further funds to be transferred. That was agreed to. He went outside and rang the Police on the 111 line. He was told by the Police operator to get as far away from the house as possible and so he walked down the long drive and was eventually met by attending Police cars.

[62] Eventually, after Police had spoken to the employer, P was instructed to get in his car and drive to the local Police station with Police following. R followed in his vehicle and according to Police, remained outside the Police station while P was inside and, put shortly, Police had to exercise something of a subterfuge to get P out of the station without a confrontation with R.

[63] P maintained that the reason that the employer was cross with him was because he had not finished the tasks that they had given him and that that circumstance was exacerbated by the fact that Q had told him that the employer was returning from their holiday on Thursday, 3 January rather than Wednesday, 2 January, which was what happened.

[64] Q denies that confusion but the evidence is plain enough; there was a text message exchange between P and Q commencing with an initiating text from P on Sunday, 30 December 2012 at 12.27pm and a responding text message from Q the following day at 8.37am in which she says: "*we will be back Thursday*". Thursday was 3 January 2013, not 2 January when in fact they returned.

[65] P's evidence is that he was working on the assumption that what Q told him in that text message could be relied upon and on that footing, that he had another day to complete his duties before the employer returned, and had that happened, there would have been no altercation.

[66] The Authority does not accept that conclusion necessarily follows. In the Authority's judgment, the reason that the employer was angry was not because jobs were not completed but rather because the jobs that P had been doing were not within the employer's contemplation when they left and in particular that the evidence all suggested that P had been living in their house while they were away, or at least treating it as if it were his own for substantial periods of time. While P denies sleeping at the property for instance, it seems that he was there for the bulk of the three twelve hour days he was paid for.

[67] It is also clear on the evidence that P entertained his father and stepmother during that period which, while innocent in itself, was not something that the employer had within their contemplation when they left on their holiday.

[68] The employer witnesses say that P resigned his employment during the 3 January 2013 meeting. Q for instance recalls P saying something to the effect that it was plain the employer could not trust him, that he had invaded their privacy and would feel uncomfortable working there any more. On that footing, the employer says P effectively resigned his employment there and then.

[69] Conversely, P says that he does not recall exactly what he said in that highly charged environment but that he did not resign then but a day later when he asked his father to intercede on his behalf and convey to the employer that he no longer felt able to continue with his duties. Either way, the evidence for P is that his resignation was not a voluntary one but was a resignation forced on him by the circumstances of that meeting on 3 January 2013.

[70] The Authority is not attracted by the contention advanced by P that he resigned his employment after the 3 January 2013 meeting. It seems more likely than not that P's resignation was effected contemporaneously with the demand from R that the moneys paid to P be returned. If the parties had it in their contemplation that the employment relationship was going to continue after that meeting, then it would seem unnecessary for R to make demand for the repayment of the wages already paid.

Was P sexually harassed?

[71] The law identifies sexual harassment as a ground of personal grievance. Section 103(1)(d) of the Employment Relations Act 2000 (the Act) creates that ground.

[72] By s.108 of the Act, sexual harassment is defined. The first ground of making a request for sexual contact does not apply.

[73] The third ground identified also does not apply. That third ground is detailed in s.117 of the Act and covers the situation where the harassment is by a person other than the employer.

[74] That leaves the only remaining ground for consideration which is in the following terms:

... an employee is sexually harassed in that employee's employment if that employee's employer ... by –

(i) *The use of language (whether written or spoken) of a sexual nature; or*

...

(iii) *Physical behaviour of a sexual nature, directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer ...) and that, ... by its nature ... has a detrimental effect on that employee's employment, job performance, or job satisfaction.*

[75] Based on the evidence before the Authority, it seems more likely than not that Q referred to P as “*a fucking faggot*” and that she mocked P by mimicking a limp wrist gesture.

[76] The Authority is satisfied that the law requires only that the effect of the complained of behaviour creates what Mazengarb's Employment Law at para.[ERA108.2] refers to as:

... a hostile atmosphere for the employee. The standard for offensiveness is that of the individual employee and the crucial point is whether the conduct has a detrimental effect.

[77] It is apparent from the cases that it is the effect on the complainant of the behaviour that is the tipping point. Once it has been established objectively that the words or behaviour complained of happened and were of a sexual nature, the question is whether, viewed subjectively rather than objectively, the words or conduct were unwelcome or offensive to the employee and were either repeated or were of such a significant nature that it had a detrimental effect on the employee.

[78] In the present case, it seems to be conceded for the respondent employer that Q both referred to P as a “*fucking faggot*” and mimed a limp wrist in the meeting that she and R had with P on 3 January 2013. For the avoidance of doubt, the Authority is satisfied that that language, and that behaviour, when exhibited to a gay man, is language or behaviour “*of a sexual nature*” in terms of that expression in the statute. The Authority finds it difficult to come to any other objective conclusion given P's frank evidence that he was gay, the fact that he made no secret of that to the employer and that both the epithet used by Q and her physical behaviour are common (and offensive) terms or behaviours relating to homosexual men.

[79] The question whether P found the behaviour or language unwelcome or offensive needs now to be addressed. As the cases make clear, that test must be a subjective one. It is apparent on the evidence that P was “*scared*”, became tearful, and subsequently sought to escape the house property to get some respite. What the Authority must assess is how much of P’s distress was occasioned by the sexual harassment and how much of it was occasioned by other pressures from the employer, like the demand that he repay the wages that he had been paid and his general and understandable anxiety about the demise of his employment relationship.

[80] It is difficult to make the assessment for a number of reasons of which perhaps the most obvious is that the two episodes of sexual harassment were separate in time. The “*limp wristed*” behaviour took place while the parties were still meeting inside the house whereas the epithet “*fucking faggot*” was apparently hurled at P at about the point at which he was leaving the property.

[81] Taking all of the evidence into account, and recognising the requirement that the words or behaviour must have a detrimental effect on employment, job performance or job satisfaction, it seems to the Authority axiomatic that an employee confronted with an employer so enraged as to behave in this way would be more likely than not to have suffered detrimentally in accordance with the Act.

[82] It seems to the Authority inconceivable that in the assessment P must have made about whether the employment relationship could continue, the remarks and behaviour of Q was not one of the material factors that he would have had to have regard to and that therefore, that behaviour and those remarks must have had a detrimental effect on the very continuation of the employee’s employment.

Was P constructively dismissed?

[83] It is difficult to reach any conclusion other than a finding that P was constructively dismissed from his employment. The Authority has already determined that the employment relationship came to an end not as a consequence of a resignation from P after 3 January 2013 via the third party agency of his father but at the time of the meeting between the principal protagonists on 3 January 2013. As the Authority has already opined, it seems unlikely that R would have insisted on repayment of the wages paid if the employment relationship was going to continue. Further, given the uncontested evidence about what happened on that day (the sexual

harassment, the attempts by R to prevent P from leaving the property, R's subsequent behaviour in following P, notwithstanding P's Police escort, the confirmation by Police of their engagement with R in their efforts to diffuse a volatile situation), it seems inconceivable that the employment relationship could have continued.

[84] Even if, as the employer contends, P's evidence about the 3 January 2013 meeting is somewhat overstated, even by their own admissions in relation to the events on that day (see the previous paragraph), it is difficult to imagine how anybody could contemplate a continuing relationship in those circumstances.

[85] Constructive dismissal claims are usually analysed on the basis of one or other of three factual matrixes. In this case, it might be contended that by insisting on the repayment of the wages already paid R was effectively bringing the employment relationship to an end on his motion. In effect, this might be seen as a situation analogous to those cases where the employer says to the employee, resign or be dismissed.

[86] In the alternative, the behaviour of the employer on this final day arguably constitutes a breach of duty to such an extent as to make it reasonably foreseeable that an employee would resign their employment on the spot. After all, the evidence supports the view that P was sexually harassed by Q and the behaviour of R in trying to extract the wages paid and then follow P to the Police station, both taken together, seem to the Authority to create a clear breach of duty by the employer which would make an affected employee's resignation reasonably foreseeable. Indeed, it is difficult to see how P could have continued in the employment given the behaviour of the employer.

Determination

[87] The Authority is satisfied that P has suffered two personal grievances. The first is a personal grievance by reason of having been subjected to sexual harassment within the meaning that term has in the Act. P has not contributed in any way to the circumstances giving rise to this grievance: s.124 of the Act applied. P is to be paid the sum of \$5,000 by Q and R jointly and severally in relation to this grievance.

[88] P has also been unjustifiably dismissed from his employment and in respect of that personal grievance, the Authority thinks that P has had a small part to play in the circumstances giving rise to the grievance. This is because the Authority considers

that the employer felt violated by P entering their bedroom, which he confirmed in evidence he had never done before, during the period that they were away on holiday. Not only did he enter their bedroom but he chose without checking with them to unmake their bed and to wash the bedding. Even if those steps were kindly meant, as they may have been, it is difficult not to see them as a violation of the privacy of the employer and as the Authority has already opined, P ought to have made absolutely sure by contacting the employer that he was supposed to be attending to the duties prescribed, including in their bedroom. The Authority determines that P's contribution to this personal grievance is 20%.

[89] On that footing then, the compensatory sum to be paid to P by the employer is commensurately reduced. The original figure of compensation would have been \$10,000; the employer is to pay to P the sum of \$8,000 as compensation under s.123(1)(c)(i) of the Act.

[90] The Authority heard ample evidence of the effect of the two personal grievances on P. After the employment relationship ended, P clearly went into a downward spiral with his health, drank too much alcohol and eventually sought medical advice. The Authority is satisfied that the evidence it heard of the results of the end of the employment justify the compensation ordered.

[91] P has also suffered lost wages. On the claim made on his behalf, that loss is modest and the Authority directs that a sum of \$500 net is to be paid to P as a contribution to the wages that he lost as a consequence of the dismissal.

[92] P is also to be reimbursed the Authority's filing fee of \$71.56.

[93] Finally, in terms of s.123 of the Act, the Authority has the power to make recommendations to the employer where the Authority finds that an employee has been sexually harassed in his employment. The relevant provision is s.123(1)(d) of the Act and it gives the Authority the power to make recommendations including about what to do about the harasser and steps that may be necessary to prevent further harassment either of this employee or of another.

[94] In respect of that last mentioned ground only, the Authority would observe that there is a fundamental disjunct between the admissions made by Q of what she said and did and her claim not to be, to put it broadly, "homophobic". If she truly

means what she says, she would be well advised to not use language or behaviour of the sort she seems to concede she used to P.

Costs

[95] Costs are reserved.

James Crichton
Member of the Employment Relations Authority