

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN	Gabrielle Strichen (applicant)
AND	the Ministry of Social Development (respondent)
REPRESENTATIVES	John Unsworth for Ms Strichen Aaron Martin for the Ministry
MEMBER OF THE AUTHORITY	Denis Asher
INVESTIGATION	Wanganui, 3, 4 & 5 July 2007
SUBMISSIONS RECEIVED BY	26 July 2007
DATE OF DETERMINATION	27 July 2007

DETERMINATION OF AUTHORITY

Employment Relationship Problem

1. In her statement of problem filed on 5 October 2006, Ms Strichen said she was unjustifiably disadvantaged by the Ministry on 5 separate occasions between 4 December 2003 and 22 August 2005 and that she was unjustifiably constructively dismissed on 27 April 2006. The remedies originally sought by Ms Strichen were payment of unspecified compensation and costs.
2. In its statement in reply filed on 31 October 2006 the Ministry denied the allegations. It also said that historical issues raised in respect of the first claim of unjustified

disadvantage were not raised within 90 days, and that the applicant's third claim was also brought outside of 90 days. The Ministry also sought costs.

3. The parties had undertaken mediation.
4. By email dated 17 November via Authority support staff I drew the applicant's attention to the need for a focused and specific statement of problem: less paper and greater clarity was sought. I also asked that the claimed grievances be more clearly particularised and, because of the 90-day issues, clearly placed in time. Agreement on a chronology of key events, statement of facts and bundle of documents was also sought.
5. Ms Strichen responded to the Authority's request by filing with it on 22 December an amended, and shorter, statement of problem.
6. By letter dated 12 January 2007, and in addition to filing other documentation, Ms Strichen set out for the first time the remedies she sought: they totalled \$344,080.00.
7. During a telephone conference on 29 January the parties agreed to a 3-day investigation in Wanganui commencing on 11 April. During a subsequent telephone conference the parties agreed to commence the 3-day investigation on 3 July. The parties also agreed to a timetable for providing witness statements and an agreed bundle of documents.
8. By letter dated 25 June Ms Strichen amended her claimed remedies to a total of \$396,405. This claim included: \$10,000 compensation for each of the 6 grievances; \$50,000 compensation for stress; lost wages of \$37,225; \$17,280.00 for loss of a MSD funded contract; \$20,100 for loss of a salary increase; \$164,500 for loss of earnings through to retirement (7-years @ \$20,000 p.a.); \$30,000 for loss on sale of property; \$3,800 for costs of study and \$13,500 legal costs.
9. A chronology of key events was provided by the respondent; it is largely accepted by the applicant. In respect of the bundle of documents compiled by the applicant, the Ministry objected to some of the documents saying the disputed material was provided only for the purposes of mediation and was therefore covered by the confidentiality provisions of s. 148 of the Act. As acknowledged by counsel for Ms Strichen, Mr John Unsworth, but with some exceptions, this is a legitimate complaint: the outcome is that I have ignored the documents accepted by the applicant as subject to confidentiality.

10. By the time the Authority's investigation commenced, the material from the parties took up 3 East-Light A4 folders: much of it can only be described as of background value, tenuously connected to the allegations advanced by Ms Strichen. There is a large amount of repetition. The volumes of documentation reflect the absence of focused preparation by the applicant, as well as the generalised nature of her claims.
11. One result of the lack of focus was that many hours were occupied preparing for the investigation, and three days of investigation were fully taken up in obtaining a clear appreciation of Ms Strichen's various, and often duplicating, claims. This problem was worsened by the fact that, despite their number, the documents advanced in Ms Strichen's bundle are not paginated or otherwise marked, nor are they indexed: locating documents proved time consuming. Cross-referencing remains uncertain and it is still not possible – in the context of this determination – to refer to the documents other than by date or some other non-numerical identifier.
12. At the commencement of the investigation on 3 July, and following inquiry from me (and subsequently confirmed by way of email dated 11 July), Mr Unsworth confirmed his client was amending her claims by way of the following: \$10,000 compensation for humiliation, etc was sought for each of the claimed unjustified disadvantages, including the alleged constructive dismissal; lost wages from 30 April 2006 until reemployed on 1 February 2007, less sickness benefit and contract work, totalling \$13,500; and costs (actual solicitor/client costs totalling \$28,207.74). The other remedies (see par 8 above) were abandoned.

Background

13. I am satisfied that the following key background details are either not in dispute or, from the evidence produced during the Authority's investigation, can be summarised as follows.
14. Ms Strichen has worked intermittently with the Ministry and its predecessor since 1976 as a social worker.
15. In May 2000 the applicant was appointed to a community liaison social worker (CLSW) position in Wanganui, in a 0.6 capacity.
16. During a supervision meeting on 1 December 2003 Ms Strichen gave verbal notice of a personal grievance that was subsequently set out in a letter dated 4 December 2003. The grievance related to the delay in resolving her 2001/2002 performance assessment and

other issues, including claims that she had not been treated with fairness, honesty, integrity or respect, that there was no consultation around management of her role and it had not been properly supported. Ms Strichen alleged that these failures had placed her in an invidious position with her peers, supervisors and management.

17. The applicant accepts that the first part of her first grievance, the finalising of her 2001/2002 performance assessment, was subsequently resolved (at a meeting held on 5 March 2004).
18. On 3 February 2004 Ms Strichen filed another notice of grievance, this time regarding comments set out in her 2002/2003 performance assessment and in respect of other written communications relied on by the Ministry in making its assessments of the applicant's performance.
19. Mediation took place on 27 May 2004: settlement was not reached.
20. On 6 December 2004 Ms Strichen filed her third grievance. The applicant's concern was that letters critical of her, and requested earlier, were withheld from her at the time of the recent mediation, by the respondent. Ms Strichen was concerned as to the letters' contents and the reliance on secret informants who – the applicant believed – had maligned her professionally and personally.
21. From early 2005 Mr Unsworth was instructed to represent Ms Strichen's concerns.
22. On 4 March 2005 the applicant, through her legal representative, put a departure package proposal to the Ministry. By letter dated 17 March the Ministry declined Ms Strichen's proposal.
23. On 31 March Ms Strichen advised she was not prepared to undertake presentations on behalf of the respondent.
24. By email dated 22 April the applicant filed her fourth grievance, in respect of her 2003/2004 performance assessment: she claimed it had not been prepared per the requirements of her collective employment agreement and that it amounted to a *fait accompli*.

25. On the same date the Ministry advised the applicant her refusal to perform certain duties was becoming operationally untenable: she was warned that non compliance could result in disciplinary consequences.
26. On 13 July the applicant was given an oral warning in respect of an email she had sent on 31 March. Ms Strichen responded by filing, on 22 August, a fifth grievance. Amongst other claims, she alleged the warning was in breach of the respondent's code of conduct. In Ms Strichen's letter she also advised the Ministry of her intention to resign, but that her intention was on hold because of constraints deriving from her lack of qualifications and financial and family commitments.
27. From 2002 onward Ms Strichen took varying periods of sick and stress leave. She also obtained counselling by way of the respondent's employee assistance programme. A letter dated 12 January 2005 from her general practitioner advised the applicant had complained of medical problems possibly aggravated by work stress.
28. During the period described above the parties met and communicated with each other on a number of occasions; Ms Strichen was represented throughout most if not all of this period. The respondent was represented at senior levels.
29. On 1 March 2006 the applicant tendered her resignation, effective 26 April. On the 27th of April Ms Strichen filed her sixth grievance, i.e. notice of a constructive dismissal claim. Shortly afterward Ms Strichen applied for and was granted a sickness benefit. In the sickness benefit medical assessment, and, in response to the question, "*how does the person's medical condition restrict their ability to be employed?*" the answer given was "*post traumatic stress*". The nature of Ms Strichen's incapacity was given as "*stress*" (document forwarded by Mr Unsworth on 11 July 2007). The assessment confirmed that Ms Strichen was likely to be able to undertake full time employment in the foreseeable future but described that date as unknown.
30. During this period Ms Strichen says she gave up her union and declined an offer by the respondent that it, the union, review her claims because of its "*appalling representation*" of her. Ms Strichen says she had no confidence in other review proposals advanced by the Ministry because the reviewers proposed by the respondent were its employees. Mediation with a Department of Labour mediator was undertaken on two occasions.
31. In an undated attachment to her statement of problem (a document previously attached to open correspondence from her counsel to the Ministry), and prior to her resignation, Ms

Strichen reiterated her then personal grievances. Amongst other things, she said her grievances were in relation to lack of fair and honest treatment in the Wanganui office, no consultation or transparency in respect of her role, lack of support and comments made by her managers in respect of performance assessments (undated attachment 2.2. to statement of problem). She also believed the 2002/2003 performance assessment letters were out of time, relied on unsubstantiated information, were contrary to her employment agreement provisions and various Ministry guidelines including its code of conduct, and were intended – by way of a collaborative effort by management and other staff – to present her in the worst possible manner. She believed the respondent's representatives withheld crucial information from mediation such that it was in breach of the code of conduct. Ms Strichen said various employees had made untrue, mischievous and malicious statements about her. Ms Strichen said the quality of the work she performed was not granted the recognition or support it deserved. The applicant believed she was subjected to negative attitudes. The applicant alleged the personal grievance process was abused by her regional manager and H.R. consultant in that they failed to act impartially.

32. Ms Strichen also alleged she was subject to racism, sexism, discrimination, workplace bullying and that her ill-treatment compromised her normal healthy and outgoing personality.

Applicant's & Ministry's Positions

33. It is unnecessary for me to summarise the parties' positions as my findings as to the allegations and evidence are set out fully below.

Discussion and Findings

34. This is a particularly distressing employment relationship problem, not least of all because Ms Strichen enjoyed very good working relations with a number of her co-workers and other members of her professional community (refer to the many positive statements and references contained in the applicant's bundle of documents).
35. It is also distressing because Ms Strichen was widowed in 1994 when her husband died suddenly of a brain aneurysm. Her three children were aged 14, 12 and 8 at the time. Ms Strichen continues to support her youngest child, who is currently a student.

36. Finally, the distress experienced by the applicant in the workplace since before 2000 is clearly profound. The self-attributed reasons for her distress are many and varied. They extend beyond Ms Strichen's specific grievances and include claims that: she was subjected to racism, sexism and bullying; she was not treated with fairness, honesty, integrity or respect; management and some staff collaborated to present her in the worst possible light; she was the victim of professional jealousy and others conspired to take her role; her role as a community liaison social worker was not properly supported or appreciated by her co-workers and local management; her reputation and credibility were undermined within and outside of the Wanganui office and the Ministry; that she has been undermined by an excessive number of supervisors; that Maori received preferential treatment; that a direction to spell "Wanganui" with an h was inappropriate, unilateral (whereas the office roopu had been consulted Pakeha staff had not and it was contrary to a majority community view) and a political move.
37. She also alleges that she was disadvantaged for fairly and reasonably expressing her concerns about the presence in the workplace of another employee's baby, and a dog; the impact of excessive workloads and low morale; that her name was blacked out from certain documents; there were inappropriate staff appointments including friends and de facto relatives; arbitrary reductions were effected to her job description; her highly successful community programme was abruptly, unilaterally and unfairly pulled; she had to fight to get a legitimate pay increase; she was subjected to unfair performance assessments; and her working environment was hostile because of the actions and behaviour of various named employees including her manager.
38. Ms Strichen admitted to feeling "*somewhat paranoid working in my current environment, given the aforementioned*" (document 12 in the applicant's bundle).
39. Ms Strichen also took issue with references she sought and obtained from managers (some of whom the applicant had identified as contributing to her grievances) in an effort to obtain social worker registration, so as to enhance her qualifications and career prospects: she believes the qualifications are inadequate and fail to fully reflect her skills and experience.
40. This determination will not address every issue raised by the applicant or repeat the duplication of the same or similar claims made in support of separate grievances: it is not necessary to do so as a proper decision can be made according to the substantial merits of the case, without regard to technicalities: s. 157(1) of the Act.

Applicant's Specific Grievances

Grievance 1: 4 December 2003

41. This is a broadly stated grievance: Ms Strichen alleges she was, amongst other things,

- *Currently (and historically) ... not ... treated with fairness, honesty, integrity or respect.*
- *There is no consultation or transparency around management of my CLSW role. ...*
- *Over an extended period ... the CLSW position has not been properly supported or managed at the National Office level and this placed me in an invidious position ... with my social work peers, supervisors and management.*

(document 11)

42. There is no evidence to support any of these claims. They are any way lacking in sufficient specificity (i.e. the who, what, where and when) such that the Ministry could reasonably have been on notice as to Ms Strichen's concerns and what it was that she wanted the respondent to address: ss. 114 (2) of the Act.

43. There is also a grave risk that many of the issues underlying these claims were not raised within the required 90-day period. The strength of Ms Strichen's conviction as to the truth of these allegations is only equalled by the absence of any evidence to support these serious allegations. There is no evidence of Ms Strichen being resourced differently from her co-workers, or of her being disadvantaged in respect of those employees, supervisors or management as alleged..

44. In particular, the evidence of Ms Marlane Welsh-Morris (called by the applicant and her then national office based manager) and Mr Tuakeu Pilato, her Wanganui manager, makes it clear that the decision to cease Ms Strichen's community based programme (a programme all agreed was particularly successful, and a programme with which Ms Strichen clearly and strongly identified with and wanted to see continue) was legitimately arrived at on the basis that resources with which to continue it were simply no longer available.

45. Disappointing as that decision must have been to the applicant, it cannot be said to be objectively unfair or unreasonable. It was a legitimate expression of her employer's right to manage, in this case to allocate finite resources as it saw best by taking Ms Strichen from the programme and applying her skills and abilities elsewhere. The decision did not change the applicant's ongoing employment as a community liaison social worker or her

status: the decision was not a reflection on her professional skills (which Ms Welsh-Morris strongly affirmed, and which were testified to in the applicant's performance assessment for 2002/2003) but it did legitimately result in the refocusing of her activities. I do not doubt that, were she the manager, Ms Strichen's priorities and resource allocation would have been different, but she had no contractual entitlement to countermand her employer's legitimate decision.

Grievance 2: 3 February 2004

46. As is set out in Ms Strichen's grievance notice, this claim was in respect of comments set out in her 2002/2003 performance assessment, comments that in turn arose out of other, separate, statements from her supervisors. Ms Strichen disputes all of these comments including the claims that she had *"... had some internal relationship difficulties during this period. She has had a succession of supervisors however this is not unusual in this organisation and someone who is operating at 100% would be expected to cope well in these circumstances"*, and that, *"Internal relationships within the (office) ... had not been particularly positive over this time. There has been a lack of understanding over Gabrielle's role and Gabrielle acknowledges that she has had relationship difficulties with (various managers), supervisor and social worker. However she does not accept responsibility for these problems"* (document 20).
47. Other than the recommended performance assessment level of 95% for internal and external relationships, it is difficult to understand Ms Strichen's grievance, particularly in light of her complaints as set out above in respect of grievance 1 (which clearly reflect internal relationship difficulties, regardless of who – if anyone – was to blame) and when the same assessment elsewhere rates her performance information and results at 106% (noting as it does how the communications team at national office were *"extremely positive"* regarding the applicant's performance) and her self management at 100%. In other words, the draft assessment has the appearance and content of a genuine attempt by the Ministry to objectively assess the applicant's performance.
48. The assessment scale is limited to 110%: an assessment at that level was, as the respondent observed, reserved for an elite few who 'danced with the stars'. Ms Strichen insisted on a rating at that level.
49. Discussions between the parties broke down over the performance assessment level: the Ministry said that, while the applicant remained insistent on a 110% rating, it was not prepared to negotiate its starting position of 95%. Any opportunity to find a compromise was thereby lost.

50. The applicant also took issue with comments from two managers: one of whom referred to the views and perceptions of some unnamed staff of Ms Strichen. In particular, they said of the applicant that she was abrupt, made cutting remarks and was seemingly unwilling to take responsibility for her behaviour. When invited to raise these matters directly with Ms Strichen, the staff concerned declined as they considered it to be an exercise in futility. They similarly declined an offer by that manager to facilitate a meeting with the applicant. The same report also acknowledged that, as Ms Strichen had been working in isolation, staff were not always clear about her role.
51. I find that the only possible disadvantage occasioned the applicant was her manager's partial reliance (in addition to his own, separate assessment) on the comments and claims of anonymous informants and of passing on those views to the supervisor who was drafting Ms Strichen's performance assessment: his actions could have resulted in mischief making. However there is no evidence of deliberately negative comment intended to injure the applicant, and the applicant was always going to have an opportunity to test the comments through the performance assessment process if she disagreed with them.
52. I find that the applicant has failed to establish, on an objective basis, how the employer's actions were not what a fair and reasonable employer would have done in all the circumstances at the time these actions occurred. This is particularly so because of Ms Strichen's own views about her difficult relationships with other staff, that they did not understand her role, but some aspired to take it from her, etc. Clearly, there were tensions within the office, because of differing views about the presence of a baby and a dog in the workplace, the spelling of 'W(h)anganui', the allocation of resources, etc.
53. Just as Ms Strichen was entitled to her views, so also were other staff: all parties were entitled to hold to their differing views while, at the same time and in good faith, co-operating fully with each other so as to fully perform their duties. The respondent therefore can justify its comments as to internal relationship difficulties and that – as her overall stance amply demonstrates (that fault lay with others, not herself) – Ms Strichen would not accept responsibility for these problems. Ms Strichen's refusal to countenance less than 110% meant she had no realistic process of obtaining a percentage better than 95%.
54. I am not prepared to find that the respondent's actions amounted to an unjustified disadvantage. As it happens, the parties never resolved their differences and Ms Strichen's 2002/2003 performance assessment remains uncompleted.

Grievance 3: 6 December 2004

55. I understand this grievance claims that Ms Strichen was unjustifiably disadvantaged by the "... *gathering together of information about Gabrielle from other staff members which was not disclosed to her (before mediation)*" (document 11 c).
56. The Ministry says that, acting in response to a request from the applicant, it sought and obtained information about Ms Strichen and her workplace performance by way of statements from other staff. The Ministry explained that the material was either incomplete or it had insufficient time to communicate it to Ms Strichen before their mediation. There is no evidence of a conspiracy by the Ministry to deny the applicant her timely entitlement to information requested by her. There is also the suggestion that the applicant's then representative, a union organiser, consented to a delay in the material being communicated to him and Ms Strichen. The material was any way communicated to Ms Strichen shortly after the mediation. The applicant also underwent mediation on a second date (May 2005) and (bearing in mind the confidentiality of mediation proceedings) wherein the applicant would have been able to address any concerns she had about the material at that time.
57. There is no evidence of the applicant being unjustifiably disadvantaged (let alone disadvantaged) by this action: if there was any disadvantage, the cure reasonably lay in resumed or further mediation.

Grievance 4: 22 April 2005

58. By way of an email dated 22 April 2005, Ms Strichen alleged that her 2003/2004 "*performance assessment and professional development, as contained in the Collective Employment Agreement ... did not occur*" (document 11 d). During the Authority's investigation, the applicant elaborated on this claim by alleging it was given to her without prior consultation, by way of a *fait accompli*.
59. Mr Pilato's evidence to the Authority is that, consistent with previous, standard practice and contracted obligations he provided Ms Strichen with a **draft** personal assessment so as to invite her comment, before proceeding to finalising it. Because of Ms Strichen's grievance the assessment, as it happens, was never finalised.

60. Ms Strichen did not provide the investigation with a copy of the performance assessment or any independent evidence in support of her claim. There is again no evidence of any unjustified disadvantage accruing to the applicant.
61. For these reasons, and as I have no reason to reject Mr Pilato's evidence, I am satisfied that the applicant has failed to make out her claim.

Grievance 5: 22 August 2005

62. By way of a letter dated 13 July 2005 (document included in the H section of the applicant's bundle), Ms Strichen was issued with an oral warning in respect of an email she sent on 25 March.
63. The warning followed earlier advice from the respondent in which it advised of its concerns about, and investigation into, the email; a written explanation had been sought from Ms Strichen. In response to the earlier advice, and by letter dated 30 June, Mr Unsworth advised the Ministry that, amongst other things, his client "*apologises for her (email) comments*". An explanation was provided, including comment that the applicant's actions were in response to material obtained under the Official Information Act which implied her performance in a relevant area had not been up to standard.
64. Part of this grievance allegation against the Ministry, as set out in her advice of 22 August (document 11 e) is covered by the confidentiality attaching to mediation. In that advice Ms Strichen also claimed – amongst other things – that the Ministry's use of disciplinary action was in breach of its code of conduct in that it was not prompt, consistent or fair, and that it had failed to undertake an appropriate investigation. Ms Strichen also said her email "*needs to be fully investigated to determine why (two Ministry employees) appear to be attempting to discredit my (work)*". As it happened, having already issued its oral warning, the Ministry declined to uplift the applicant's invitation to undertake a further investigation. I am satisfied that there is no evidence of any Ministry employee attempting to discredit Ms Strichen's work.
65. I am also satisfied the Ministry was entitled to rely on the concession implied in the apology set out in Mr Unsworth's letter of 30 June, to bring its investigation to a close and to issue the applicant with an oral warning. That was a fair and reasonable response in all the circumstances at the time.

Grievance 6: 27 April 2006

66. By letter dated 27 April 2006, and following her last day of employment, Mr Unsworth set out his client's claim that she had been constructively dismissed: the grievance was "*set out in the attached information which should be self explanatory*" (last page, document 11). While there are no attachments to that letter under tab 11 in the bundle provided to the Authority's investigation, during the investigation Ms Strichen confirmed a separate document in her bundle, "D", was the attachment.
67. As document D makes clear, Ms Strichen's decision to resign was "*enabled*" by the sale of her house (it had been on the market since October 2005): as the applicant explained it, she no longer needed to pay her mortgage. Ms Strichen also explained that she had accepted a lower house sale price so as "*to expedite my exit*". The applicant originally sought to recover the difference between the sale price and the government valuation from the Ministry, but subsequently withdrew her claim.
68. Document D also makes clear that Ms Strichen had also, since October 2005, attempted unsuccessfully to find alternate employment. The applicant attributed her failure to find another job to the requirement she disclose to potential employers that fact of her grievances against the Ministry.
69. Ms Strichen's document traverses at considerable length the issues that are set out above as well as raising new matters (e.g. a claim of deliberate misrepresentation of her work; that requests to the Ministry's chief executive officer to investigate unfair disciplinary action by another manager and the blocking off of a grievance were not responded to, etc). The applicant's complaints cover a 10-year time span and include claims of being scapegoated, psychologically bullied and abused "*by multiple people within*" the Ministry (p 7), lied to by various named employees and of corrupt internal office practices including nepotism. These allegations extend to other social workers, newly appointed and longer term, and managers at all levels. The document also comprehensively challenges many policy and management decisions and initiatives. Ms Strichen concluded her statement with a claim for \$470,000 compensation from the Ministry.
70. In support of her claim of constructive dismissal Ms Strichen advanced a medical assessment and her records (documents 5 & XYZ). I note here that included in those records is a 12 January 2005 medical referral record in which the applicant is recorded as advising her doctor of her decision to leave her employment. The records are self-reported but compelling evidence of the distress experienced by Ms Strichen as a

consequence of her employment but cannot be described as evidence that the Ministry acted unjustifiably and thereby caused the deterioration of the applicant's health.

71. While Ms Strichen's manager understood Ms Strichen had expressed to other staff her intention to leave once her house was sold (par 44 of Mr Pilato's witness statement), the extensive communication from the applicant does not make it clear that, should the Ministry not provide the remedies Ms Strichen sought in respect of her various grievances and concerns about other matters, then she intended resigning. This is a surprising omission given the extent of Ms Strichen's concerns, the time that elapsed from the record of the applicant's first decision (January 2005) to the date of her resignation (advised in early 2006), and the obligation on the applicant – in this instance – to be “... *responsive and communicative*”: ss 4(1A) of the Act. The Ministry's failure to understand that Ms Strichen's decision to resign was linked to its responses to her grievances is strengthened by a plain reading of her fifth notice of grievance, the letter of 22 August 2005 (doc 11): it makes clear Ms Strichen's intention to resign subject to constraints on arising out of her lack of qualifications, and her financial and family commitments, while making no mention of the consequences of the failure of the respondent to satisfy her concerns.
72. The Ministry's willingness to fairly and reasonably consider Ms Strichen's concerns is evidenced by the number of meetings it attended, including mediations, with the applicant and her representatives, the proposals it advanced to find resolution (including proposals to make use of assessors acceptable to the applicant) and its efforts to track down comment – both oral and written – that Ms Strichen alleged was damaging of her. It has shown every sign of attempting, fully and ethically, to respond to the concerns articulated by Ms Strichen: its ultimate refusal to accommodate her concerns is not evidence of any unjustifiable action but instead of its genuine view - following proper and extensive consideration of the claims advanced by the applicant and her advocates – that they were without merit. There is no evidence to support a claim that the Ministry acted in breach of its contracted obligations to Ms Strichen such that it was foreseeable she would resign.
73. There is no reason to conclude other than that, unhappy with the realities of her employment and after a prolonged period of conflict and deliberation about her future, and not because of actions by the Ministry in breach of its obligations to her, Ms Strichen made the decision to resign when circumstances permitted, on the sale of her house. That her decision to go was her own is evidenced by the historic nature of many of Ms Strichen's concerns and grievances: while their impact may have been accumulative, these matters were longstanding and as such had been endured by the applicant over a

number of years. What was clear was the unlikelihood of the Ministry changing its affairs to accommodate those concerns.

74. Following her resignation Ms Strichen went on to a sickness benefit. The applicant explained to the Authority during its investigation that, whereas she was made ill by the Ministry and was not fit to resume working for it, she was fit to work elsewhere: she undertook to provide the Authority with her medical certificate in support of that claim. As is made clear above (par 28), and by email received on 11 July, the applicant's medical certificate states the applicant was expected to be able to undertake full time employment in the future but no date could be given. The conclusion I reach from the certificate is that Ms Strichen was not fit to undertake employment at the date of her resignation and it follows that, were she to succeed with her claim of unjustified constructive dismissal (and she has not) the applicant would any way be ineligible for lost earnings.
75. Ms Strichen was clearly a capable and committed social worker. She was equally clearly held in high regard by many of her peers and a number of members of the community. While her concerns were and are real, they do not result from the Ministry unjustifiably disadvantaging the applicant. It is very unfortunate that extensive communication between the parties did not resolve Ms Strichen's concerns and ensure that her skills and talents remained, through the Ministry, available to the community.
76. After careful scrutiny of the evidence, I am able to conclude that, notwithstanding the strength of Ms Strichen's feelings and beliefs, her concerns and background allegations do not withstand objective scrutiny and do not result from unjustified omissions or commissions by the Ministry. Because of those findings I am satisfied it is unnecessary for me to address the applicant's generalised claims or the Ministry's claims about 90-day issues.

Determination

77. For the reasons set out above Mr Strichen's grievance claims against the Ministry are refused.
78. Costs are reserved.

Denis Asher
Member of Employment Relations Authority

