

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 124
3020976

BETWEEN KRISTINE TROUSSELOT
Applicant

A N D OXFORD BAPTIST CHURCH
Respondent

BETWEEN OXFORD BAPTIST CHURCH
Applicant

AND KRISTINE TROUSSELOT
Respondent

Member of Authority: Helen Doyle

Representatives: Peter Cahill , Advocate for Applicant
Stephen Corlett, Counsel for Respondent

Investigation Meeting: 17 and 18 April 2018 at Christchurch

Submissions Received: 6 May and 2 June 2018 from Applicant
18 April 2018 from Respondent

Date of Determination: 30 August 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A Kristine Trousselot was not unjustifiably constructively dismissed or disadvantaged by unjustified actions of Oxford Baptist Church.**
- B Oxford Baptist Church is unsuccessful with its counterclaim.**
- C Costs are reserved.**

Employment relationship problem

[1] Kristine Trousselot was employed by the Oxford Baptist Church (the Church) from 1 May 2012 in the role of Church Manager for 28 hours per week. The role was an amalgamation of three positions; Treasurer, Receptionist and Property Manager.

[2] Ms Trousselot has three employment relationship problems that she would like the Authority to resolve.

[3] She says that her resignation from her position as Church Manager by letter dated 26 April 2016 was in the nature of a constructive dismissal which was unjustified. Mr Cahill raised an unjustified dismissal grievance within the statutory time frame in a letter to the Church dated 8 May 2016.

[4] In his letter of 8 May 2016 Mr Cahill raised an additional grievance that there had been unjustified actions causing disadvantage. The facts set out in that letter were that Ms Trousselot's work environment changed when Gregory Morris became the Senior Pastor in 2015. There was an allegation that Mr Morris was bullying and that there were difficulties between Ms Trousselot and another employee. I shall refer to that other employee as T. There was reference to a Facebook Post and challenges in the work environment. The letter also referred to a Church newsletter and an announcement made at a service.

[5] The Church in its response to Mr Cahill dated 21 July 2016 did not accept that there was evidence Pastor Morris had engaged in conduct which amounts to bullying. It was noted there were no particulars to substantiate the claim and that any claim for alleged bullying was raised outside of the 90 day statutory timeframe. There was a suggestion of waiver in the applicant's final submissions. The response from the Church provided that "For the avoidance of doubt, our client is attending mediation in good faith in an attempt to resolve the constructive dismissal claim." The Facebook Post and the Church notice issues were specifically addressed in the letter on behalf of the Church. There can be no dispute that an unjustified disadvantage grievance was

raised about the Church notices within the statutory timeframe and I accept that no issue was taken about the Facebook Post so that can be considered.

[6] The statement of problem when lodged in October 2017 did not clearly identify the date of the actions/omissions relied on for the unjustified disadvantage claim and therefore it was difficult to establish whether they were raised within the statutory time frame. The Authority asked Mr Cahill, if it was maintained that the grievances were raised within the statutory time frames, to provide further particularisation with dates of actions or omission was required. If however grievances were outside of the time frames then Mr Cahill was asked to indicate whether he intended to make any application for leave to extend the time to raise the grievance.

[7] When Mr Cahill's memorandum was received on 18 December 2017 it referred to changes to Ms Trousselot's position without consultation in October 2014. It stated that concerns about this were raised but were never addressed. There was reference to the work atmosphere changing over the following years and concerns being raised but no action being taken. It was maintained that issues had been raised within the statutory period. The Authority Officer returned to Mr Cahill seeking further information however matters were not significantly advanced in the email response from Mr Cahill dated 28 January 2018.

[8] At the conclusion of the evidence at the Authority investigation meeting I advised the parties only grievances raised about actions within 90 days of the letter from Mr Cahill dated 8 May 2016 were raised within the statutory time frame. There was no clear evidence that any grievances had been raised before that date. Actions/omissions from 8 February 2016 will be considered. The other matters some dating back to 2013 were considered but as background to the claim for a constructive dismissal.

[9] Ms Trousselot said there had been a breach of good faith on the part of the Church. No penalty was claimed. A fair and reasonable employer could be expected to comply with the statutory obligations of good faith in the Act. I have considered good faith in the context of the claims of constructive dismissal or unjustified actions causing disadvantage rather than as a standalone claim.

[10] Ms Trousselot seeks compensation for loss of income in the sum of \$10,000 gross together with compensation for loss of dignity, hurt feelings and humiliation in the sum of \$30,000 and reimbursement of legal fees and disbursements.

Church's response and counterclaim

[11] The Church says that Ms Trousselot resigned voluntarily, that its actions about which a grievance was raised within the statutory timeframe were not unjustified and did not cause disadvantage and that it did not breach good faith obligations. The Church counterclaims for damages that it says resulted from a breach by Ms Trousselot of her employment agreement resulting in substantial accounting errors which caused the Church to incur loss. The Church seeks recovery of penalty interest incurred as a result and accounting costs that were charged to the Church to resolve a GST error.

Constructive dismissal

[12] Mr Cahill confirmed that Ms Trousselot relies on the third situation listed by the Court of Appeal in *Auckland Shop Employees v Woolworths (NZ) Ltd*¹ of the three recognised grounds in which a resignation could be found to be a constructive dismissal. That is that a breach of duty caused Ms Trousselot to resign.

¹ *Auckland Shop Employees v Woolworths (NZ) Ltd* [1985] 2 NZLR 372

- [13] The Authority needs to consider under this head of claim the following issues:
- a. Was Ms Trousselot's resignation caused by a breach or breaches of duty on the part of the Church?
 - b. If the answer is yes then was the breach or breaches of duty of sufficient seriousness to make it reasonably foreseeable by the Church that Ms Trousselot would not be prepared to continue working?
 - c. If it is found that Ms Trousselot was constructively dismissed then was that dismissal unjustified under s 103A of the Employment Relations Act 2000 (the Act)?
 - d. If it is found that Ms Trousselot was unjustifiably constructively dismissed then what remedies is she entitled to and are there issues of mitigation or contribution?

Credibility and modification/alteration of documents provided to the Authority

[14] I want to refer initially to how I intend to deal with disputes in the evidence.

[15] Both parties raise credibility issues. In final submissions Mr Cahill states that the evidence of Mr Morris could not be relied on because of issues to do with his memory.

[16] In submissions in reply Mr Corlett submits that Ms Trousselot's credibility must be seriously questioned. He makes that submission primarily because Ms Trousselot lodged two documents with the Authority that were altered and modified.

[17] There are factual disputes that will require resolution by the Authority. In such a situation the Authority needs to determine where the truth may lie from the evidence. It does so on the balance of probabilities by concluding from the evidence what is more probable than not. I am conscious in this case that the Authority was hearing evidence about matters that arose more than two years previously. Memories fade over time and the passage of time can allow subconscious reconstruction.

[18] I confirm that I do not intend to make a blanket finding of credibility in this case. The modification and alteration of documents before the Authority does however require special consideration and I will turn to that now.

[19] The first document that was lodged in an altered state was an email dated 19 April 2016 to Ms Trousselot from Delwyn Shaw who is an accountant and Chief Executive Officer of Church and Trust Accounting Services Limited (“CATAS”). Ms Shaw referred to this email in her evidence producing a full copy of the email dated 19 April 2016 that she had sent to Ms Trousselot. She noted that the parts that appeared to be removed included her advice to Ms Trousselot particularly in relation to GST issues and errors.

[20] The Authority asked Ms Trousselot why the email had been submitted in a different form to its original. Ms Trousselot responded that she had changed the email for her own purposes and there was a suggestion that its provision in a modified form could have been in error. I am less inclined to view it as an inadvertent error because it was not the only modified document provided.

[21] The second document provided to the Authority to which changes were made was an Integrity Audit Review report of the Church for the year ending 31 August 2015 (the integrity audit report). I am satisfied the integrity audit report was sent to Ms Trousselot in her role as Treasurer by the Chartered Accountant on 11 November 2015. She did not provide a copy to anyone else at the Church although in oral evidence said that she intended to do so in the New Year. I do not find Ms Trousselot’s evidence that she believed a copy of the report was provided to one of the Elders supported by the evidence.

[22] In February 2018 the Church sent the Chartered Accountant a PDF file of what Ms Trousselot had provided to the Authority as the integrity audit report. He provided the Church with a copy of the email he had sent to Ms Trousselot in November 2015 with the complete integrity audit report. I find that was the first time the Church had seen the full report.

[23] What was further established at the Authority investigation meeting was that Ms Trousselot was in possession of the original integrity audit report having removed and retained it notwithstanding that she was no longer an employee. I accept Mr Corlett's submission that the integrity audit report provided by Ms Trousselot to the Authority contained at least seven alterations and modifications from that original which included some text being moved, the deletion of some paragraphs and reformats.

[24] Initially the explanation was inadvertent scanning with two pages scanned together however the changes made were of a nature and a significance that I agree with Mr Corlett's submission that that explanation does not withstand scrutiny. The explanation provided in submissions was that it was an administrative error although that does not address or explain the significant changes particularly in circumstances where the original document was in the applicant's possession.

[25] I have considered what the Authority should take from the modification/alteration and production of these documents.

[26] At the time that Ms Trousselot resigned concerns about accounting for GST had been raised with her. She understood that there would be a review undertaken. Ms Trousselot was asked in cross examination if the GST issue was playing on her mind at the time of her resignation. Ms Trousselot denied it was and said it would/could be fixed and had been "dramatised."

[27] I have concluded from the altered documents that it mattered to Ms Trousselot how her work/performance was viewed by the Church and in turn by the Authority. I find that the raising of the concerns by Mr Morris about GST issues and the knowledge that there would be a review of how Ms Trousselot had accounted for GST in all likelihood played a reasonably significant part in the resignation.

[28] I am strengthened in this view by further matters.

[29] There is an earlier email Ms Trousselot sent to Ms Shaw dated 12 November 2015 when she wanted some assistance with the new reporting standards for the following year. She copied into the email what she said were the “pertinent parts of Mr Conaglen’s report” – the integrity audit report. Ms Shaw in her evidence said that she was surprised when she saw the actual integrity report in February 2018 by the omission which included various GST issues that needed addressing and recommendations including that “governance research the GST return and accounting processing.”

[30] The other matter is the letter to the Elders that Ms Trousselot provided at the same time as her resignation letter. The first matter raised in the letter is about the GST not being accounted for properly for the Fruit & Veg Co-op (Food Together) income from sales. In the letter to the Elders Ms Trousselot refers to the email from Ms Shaw dated 19 April 2016. She inserts an extract from the email that may in isolation have supported her view that there was a fault with the Xero software package. There is no reference to the parts of the email from Ms Shaw that suggested Ms Trousselot was not checking/reviewing the GST report before it was finalised and the return filed and that had that occurred such errors would have been picked up.

Was Ms Trousselot’s resignation caused by a breach of duty or duties on the part of the Church?

[31] Ms Trousselot wrote a detailed 5 page letter to the Elders at the time she resigned. I have assessed any alleged breach of duty against the matters in that letter concluding in all likelihood it contains the reasons Ms Trousselot resigned.

[32] Not every matter raised in the letter could constitute a breach of duty so it is not necessary to traverse each and every issue in the letter. Instead I have focussed on two broad concerns.

[33] The first is GST issues and how they were raised with Ms Trousselot and dealt with by Mr Morris. I have found that the raising of GST concerns and knowledge of a review was a reasonably significant reason for the resignation.

[34] The second is how issues Ms Trousselot had with another employee, who I shall refer to as T, were dealt with by the Church. Concerns about T feature prominently in the letter to the Elders. It is important to record that this is not a claim against T and whilst there were many criticisms about her I do not need to make findings on those including about “Plan G”. My focus is on what steps the Church took in respect of matters it knew about.

[35] I will start with considering whether a breach of duty on the part of the Church about GST issues caused the resignation.

Concerns about GST first come to the attention of Mr Morris by way of a text dated 22 March 2016 from Ms Trousselot

[36] A text message was sent from Ms Trousselot to Mr Morris raising a concern about T on 22 March 2016. At or about the time of that text Mr Morris had been exploring the idea of moving Food Together out from the umbrella of the Church and over to one of the Church’s Trusts. He thought this could provide accountability and governance. Ms Trousselot had some knowledge of this and stated additionally in her 22 March text to Mr Morris that the “fruit and veg account had also returned the church account quite a lot in gst so far this financial year \$ around 12 k so far... if you take it to the trust the church will lose that advantage...”

[37] Mr Morris said that raised alarm bells with him because he knew that Food Together was making a profit. He understood to receive the level of GST return of \$12,000 Food Together would have to be losing about or in excess of \$80,000. He queried the GST situation with Ms Trousselot during two meetings he had with her on 12 and 13 April 2016. He became concerned about the financial position of the Church and decided that he would ask T’s husband, who is a Church member and the former Church Treasurer, to see if he could identify any issues. T’s husband had also installed the Xero accounting software. Ms Trousselot was advised of this during the meetings and was unhappy.

Was the involvement of T's husband or the way that was done a breach?

[38] Ms Trousselot refers in her letter to the Elders that involving T's husband [to review the GST issue] where she was in an unresolved conflict situation with T was not professional or ethical. She wrote "Especially when he didn't even approach me first, or our accountant. I have found it incredibly hurtful...not to mention disrespectful."

[39] I accept Ms Trousselot was upset with the involvement of T's husband in reviewing the GST issue. T's husband did have a suitable background to carry out such a review and importantly for the Church agreed to review the GST issue without charge. Mr Morris said that T's husband and another Church member spent 140 unpaid hours reviewing the accounts.

[40] Mr Morris openly advised Ms Trousselot that it was his intention to ask T's husband to review the accounts. Ms Trousselot expressed that she was unhappy about this however that did not persuade Mr Morris not to use T's husband.

[41] There was foundation to the concerns. The review found that not all sales income from Food Together had GST deducted from it. It was found the Church had failed, as a result of that and some other matters that came to light, to return GST of \$17,089.43. The Church has had to pay a sum for late payment interest.

[42] I accept Mr Corlett's submission that Mr Morris could, in his role, ask another person to review the accounts to see if tax matters had been properly accounted for. It was in everyone's interest the issue was sorted out promptly because the Church has fundamental responsibilities to the Inland Revenue Department.

[43] I do not find a breach because of the involvement of T's husband in the review or the way that occurred.

Was the raising of the issues about GST on 12 and 13 April 2016 a performance matter?

[44] In final submissions Mr Cahill said that the GST issue should have been dealt with as a performance issue and he referred to a well-known Employment Court judgment on performance.² The argument about performance had not been advanced earlier and therefore was not the subject of any evidence.

[45] Objectively assessed issues about GST were at a very preliminary stage. Ms Trousselot's view as stated in her 22 March text message appeared to be that there had been GST returned on the Food Together account rather than a failure to deduct.

[46] I do not find that it had got to the stage of addressing performance concerns because it could not have been clear that there were any. Rather it was information gathering and understanding what had occurred and what the financial ramifications may be. I find there was no requirement for the Church to deal with the matter as it may a performance issue as at 12 and 13 April 2016.

21 April 2016 meeting

[47] In her letter to the Elders accompanying the resignation letter of 26 April 2016 Ms Trousselot wrote that when she tried to discuss the GST issues with Mr Morris on 21 April he "refused to let her speak" and raised his arm in her face and proceeded to draw a diagram on the white board before she could talk.

[48] Mr Morris adamantly denied that he raised his arm or tried to stop Ms Trousselot talking. He said that after the 12 and 13 April 2016 meetings he had spoken to Ms Shaw who agreed with Mr Morris that GST was not being paid. He said that Ms Trousselot presented him on 21 April with a new printout of the Food Together account saying that Ms Shaw had given it a "clean bill of health". Ms Trousselot says that Mr Morris did not contact Ms Shaw before the meeting on 21

² *Trotter v Telecom Corp of New Zealand* [1993] 2 ERNZ 659

April and that she did not advise him that Ms Shaw had given the account a “clean bill of health.”

[49] There is an email that confirmed Mr Morris was being kept updated by Ms Shaw before the 21 April meeting.³ Mr Morris said in evidence that he was trying to show Ms Trousselot what he wanted on the whiteboard and that he asked if there were documents that would “show that.” He said Ms Trousselot stated the missed GST was only about \$10,000 and suggested the Church “quietly spread it over two or three GST periods of two months each.”

[50] I find it likely that the meeting ended on the basis that Mr Morris would talk to and work with Ms Shaw and T’s husband to get to the bottom of the matter. Mr Morris said that Ms Trousselot was not happy about that and said GST was easily fixed. He felt it would take a lot of work to resolve.

[51] There may well have been a degree of exasperation on the part of Mr Morris because he wanted information so that he could understand the GST issues and felt that Ms Trousselot was downplaying the seriousness of the situation.

[52] I am not however satisfied that Mr Morris’s conduct on that occasion amounted to a breach of the implied duty of fair treatment. I find it less likely on the balance of probabilities that he put his arm up in an aggressive manner or insisted that Ms Trousselot stop talking. Rather I find it more likely he was trying to get her to understand the nature of his concerns in the circumstances by writing on the whiteboard.

[53] Ms Trousselot then left the workplace at lunch time which was the usual time she left on a Thursday. Mr Morris said that she looked “Okay” to him when she was leaving. Ms Trousselot said that she was distraught. I cannot be satisfied that Mr Morris was aware about this.

³ Bundle of documents at 25

[54] I accept it would have been stressful for Ms Trousselot in circumstances where she had made mistakes to have those come under close scrutiny and review. It would have been uncomfortable for her to have T's husband involved in that review. I do not however find that the Church breached its obligations to Ms Trousselot in the way it raised its concerns about GST and then commenced a review about how GST had been accounted for.

Concerns about T and whether there were breaches in how these were dealt with

[55] The other matter that was significant at the time of resignation was the issues Ms Trousselot had with T.

The Facebook Post

[56] Ms Trousselot stated in her letter to the Elders at the time she resigned that she had ongoing issues with T. She referred to these starting when T posted to a mutual friend's timeline a "very insulting Facebook page". Ms Trousselot wrote that she knew this was referring to her as a "barking dog" or "wresting with a pig". It is alleged that Mr Morris failed to properly address this concern after it was raised.

[57] Ms Trousselot raised her concern about the Facebook page with Mr Morris in or about December 2015. She accepted in her oral evidence that she may well have been mistaken about the Post being about her.

[58] Mr Morris said in his evidence that after Ms Trousselot raised the issue he spoke to T. He said T explained as she did in her evidence to the Authority that the Post had nothing to do with Ms Trousselot. T's evidence was that on 3 December 2015 she had watched with friends a movie called Holy Ghost Reborn. The producer of the movie profiles an African Pastor called Surprise Sithole who she found inspiring and motivational. She said that she found his Facebook page and liked it, followed him and posted what she considered was a "classic Surprise Sithole post" without alteration. She tagged two friends in the Post who had watched the film with her. T said that Mr Morris told her he would go back to Ms Trousselot. T rejected a

suggestion that by her reposting the philosophical statement that constituted a personal insult of Ms Trousselot.

[59] Mr Morris in his evidence said that he did return to Ms Trousselot and relayed to her what he had been told by T. Mr Morris said that he advised Ms Trousselot that the Church's preference is for any perceived conflict to be dealt with in the "Matthew 18" style. He explained this meant to talk to the person and try to sort out conflict. He said that he offered facilitated meetings with T and Ms Trousselot to assist but they did not occur as Ms Trousselot was unavailable.

[60] Whilst Ms Trousselot could not recall that Mr Morris returned to her about the Facebook Post I am inclined to conclude that he did. It seemed to me to be less likely, having discussed the issue with T and receiving a clear explanation about the Facebook Post, that Mr Morris would not have reported back to Ms Trousselot. The Church's then lawyers in a letter to Mr Cahill dated 21 July 2016, which was closer to the time of the event, wrote about the Facebook Post that Mr Morris advised Ms Trousselot the best way to resolve the issue was to follow the "biblical model." Further it was written that Mr Morris offered an opportunity of a facilitated meeting between her and T but due to Ms Trousselot's unavailability the meeting never took place to Mr Morris's disappointment.

[61] When I objectively consider this matter the focus by Mr Morris when he returned to Ms Trousselot may have been more on setting up a meeting with T rather than explaining about the Facebook Post. That may be why Ms Trousselot does not recall that matter clearly. There is no dispute however that there was discussion about the Facebook Post on 12 and 13 April 2016 and as I shall set out later I could not be satisfied that any delay in arranging a meeting was due to the Church.

[62] I accept Mr Corlett's submission that the Facebook Post was on T's personal page and did not have anything on it that, objectively assessed, would support that it was directed or aimed at Ms Trousselot. It was simply a re-post of a quote. Whilst it

made Ms Trousselot unhappy because she thought it related to her I do not find a breach on the part of the Church in respect of the Facebook Post.

Ms Trousselot takes steps -removal of T's access to the bank account

[63] T is the leader of Food Together having started it up from September 2014. It is a volunteer role. T also has a paid part time role at the Church as a Children's Pastor. I am satisfied that T does not report in her leader of Food Together role to Ms Trousselot.

[64] On or about 9 March 2016 Ms Trousselot removed, without discussion with T or Mr Morris, T's access to the Food Together accounts. Ms Trousselot said that the reason she removed access was because T was not talking to her and she wanted to get her attention.

[65] T needed to have access to the account for her work and was unhappy when she went online to see her orders and could not. She asked Mr Morris for help. Access was reinstated two or so days later. There was a dispute I do not need to resolve about how that happened. T felt that at that time she was relating well with Ms Trousselot but after that matters got "toxic". I find that matters at that point between T and Ms Trousselot came to a head and needed to be resolved

[66] There was a period between that date and 20 March 2016 when Ms Trousselot was unwell. I turn now to the alleged delay in holding a meeting. Ms Trousselot accepted in her oral evidence that she did not want a meeting before she returned from leave after the Christmas period in or about mid to late January 2016. Further she agreed that she was unable to attend meetings due to ill health on at least two occasions.

[67] Considering the evidence objectively I could not be satisfied from that the delay in setting up meetings was the fault of the Church.

T reimbursing herself out of the account

[68] There were some text exchanges in March 2016. Mr Morris sent a text message on Sunday 20 March 2016 to Ms Trousselot who had been unwell. I refer to aspects from the text because on its face it appeared that the employment relationship between Mr Morris and Ms Trousselot was supportive and positive. Mr Morris wrote that he hoped Ms Trousselot was better and “we [Mr Morris and his wife] have been praying for you” He said in his text that there was no pressure for Ms Trousselot to come back until she was well and to let him and his wife know if something needs to be done. Ms Trousselot responded to the text and advised that she would be in the following day.

[69] Ms Trousselot returned to work on 21 March 2016 and sent a further text on 22 March to Mr Morris saying that she had overdone it the day before and had decided to work from home. She also wrote she had noticed T had reimbursed herself from the account which she described as “an absolute no no...” She also wrote “What I don’t think you realise Greg is that this is new and unacceptable behaviour only since last week”. The text concluded with a statement that with simple checks and balances the problem with T can be resolved and then wrote “In a way that she doesn’t lose face...Because that’s important to her.. Blessings..”

[70] Mr Morris’s text response sent on 22 March to Ms Trousselot focussed on the reimbursement and he said he would explain that no-one reimburses themselves or can pay bills other than the Treasurer. He also said in his text that he would sort out a meeting with Ms Trousselot and T and explained that he would be absent for about a week. Mr Morris said that at the time he wrote that text he had forgotten that in fact he had authorised T to reimburse herself until T reminded him when she spoke to him. At the time of reimbursement Ms Trousselot was on sick leave.

[71] The Church produced an account operating authority dated 10 December 2014 that gave authority to Ms Trousselot, the late previous Senior Pastor Maurice Atkinson and T to transact on the account. Furthermore there was an email dated 22

December 2014 from Ms Trousselot to T advising T should now be able to access the fruit and vege account. It also provided that if T paid any account over the next few weeks Ms Trousselot needed invoices for coding. Ms Trousselot maintained in her evidence that there was another later account operating authority.

[72] I find from the evidence assessed in the round it was more likely that T did have written authorisation to pay bills when Ms Trousselot was away. I accept Ms Trousselot's caution about individuals not reimbursing themselves is wise. T said, and I have no reason not to accept this, that she obtained authority from Mr Morris to use the account on the occasion for reimbursements when Ms Trousselot was on leave.

Meetings 12 and 13 April 2016

[73] The first meeting involved Mr Morris and Ms Trousselot. The second meeting also involved an Elder Sonya Sillars who spoke alone for a period with Ms Trousselot to identify concerns. Both meetings were about 2 hours in duration

[74] At the Authority investigation meeting Ms Trousselot produced a typed file note of the two meetings which she accepted was not a verbatim record. The evidence of Ms Trousselot was that primarily the GST issue was discussed. Ms Trousselot did accept under cross examination that other issues of concern were discussed such as the Facebook Post, difficulties with T and concerns that she was abusing her authority and concerns about the job description.

[75] Mr Morris said that of the two hours that they met on 12 April 2016 only half an hour was talking about GST issue and the balance about other concerns and that on 13 April over one hour was spent discussing the issues other than GST. He additionally referred in his evidence to discussion about Ms Trousselot feeling undervalued and not appreciated and some boundary issues with T.

[76] I accept and weigh as submitted by Mr Cahill that Mr Morris did not take notes. It is difficult to accurately conclude the actual time spent discussing each topic.

What I do find is that there was opportunity for Ms Trousselot to raise her concerns at both meetings.

[77] There is a dispute as to what Mr Morris said about Ms Trousselot's job description at one or both of the meetings. Ms Trousselot said that Mr Morris told her he had no idea what was in her job description and/or was surprised at what she did in her role. Mr Morris said that he knew what Ms Trousselot's job involved. The important matter is that Mr Morris and Ms Trousselot were talking about issues to improve matters in the future.

[78] Another matter that there is disagreement about is whether Mr Morris said "he held people lightly." Mr Morris strongly denied that he said that and said that he held people highly but his view is that a job description can evolve. His evidence was that his comment may have been in relation to a job description although noted that any formal change to a job description does go to the Elders. I find it less likely that Mr Morris made a comment about "holding people lightly" and more likely that any comment of that nature if it were made was about the job description.

[79] There was also some evidence that Mr Morris queried whether the Church's accountant could undertake some of the accounting side of Ms Trousselot's role. Having heard from Ms Trousselot and Mr Morris I find it more likely than not that that was in the context of a discussion about providing assistance to Ms Trousselot with her workload in circumstances where she was very busy. In any event there was nothing concrete beyond a discussion before Ms Trousselot resigned.

[80] I am satisfied from the evidence that Mr Morris saw the work issues (the GST issues) and the interpersonal issues as separate even though they were both discussed at the meetings. The involvement of Ms Sillars and the email of 19 April 2016 that I will come to shortly support that.

What happened then?

[81] At the start of the second day of the Authority's investigation an email was provided to the Authority for the first time from Mr Morris to Ms Trousselot dated 19 April 2016. I have placed weight on the email as to where matters were left following the meetings and the manner in which Mr Morris communicated with Ms Trousselot at that time. I recalled Ms Trousselot to provide evidence about whether she received that email. She agreed as Mr Corlett submits that she checked her emails regularly and may have received it. I find that more likely in circumstances where Mr Morris was responding to Ms Trousselot's earlier email of 18 April 2016.

[82] Mr Morris had sent his email in response to an email from Ms Trousselot on Monday 18 April advising that she was working from home the following day. She set out that she was very busy and said in her email that she was "very stressed" over other work issues and how several months later they were not being addressed and had been allowed to escalate.

[83] In his email Mr Morris in his response said that hopefully they could talk on Thursday about work issues and that he "truly" appreciated that this was a busy time of the year for Ms Trousselot. He wrote this about the 13 April meeting.

Last Wednesday we met together with Sonya. And [sic] the end of the meeting I left you and Sonya together so that you could share and have some support from someone out of the office. Since the Elders meeting was shifted to Thursday afternoon I left it till then to meet with Sonya and to hear her feedback. We decided the next best move was to have you and T meet together, with others present of whom you can choose yourselves, to talk this through. This is also what I had already suggested would need to happen on Thursday morning when you and I were talking together at morning tea time. I've spoken to T on Friday and she is willing to meet. So I will work on a time that is suitable for everyone.

[84] In his email Mr Morris specifically addressed Ms Trousselot's statement in her email that the other work issues had been allowed to escalate when he stated:

Kris, I find this hard when you say I've allowed it to escalate. When I wanted to meet with you and Sonya it was you who suggested we don't meet and that these things would get better over time. It was me who insisted on

the meeting and I'm very pleased I did, as I hope you are too. Sonya was very insightful about how we communicate and end up with a few crossed wires, of which I'm pleased to learn and try to communicate better in the future.

Talk again Thursday morning and I hope you're feeling better.

[85] The email I find was supportive, Mr Morris acknowledged that he could learn to communicate better, there was a plan for dealing with the concerns in the future and a meeting between T and Ms Trousselot was to be organised. I found its content somewhat difficult to reconcile with Ms Trousselot's description of Mr Morris in her letter to the Elders as "defensive/.../biased and lacking in self-awareness..."

[86] Mr Morris said that he became aware of Ms Trousselot's resignation on 27 April 2016 from the Elders and that he felt "pretty dismayed" because he thought she would have spoken to him first. He said that the resignation was a surprise. Anzac Day was 25 April 2016 and Mr Morris sent a text to Ms Trousselot when she did not turn up to work on 26 April 2016. He asked where she was and that he hoped she was alright and did not have the flu which he wrote was going around the office.

[87] Ms Trousselot was on sick leave for the duration of her notice period of four weeks.

Conclusion about whether there were breaches

[88] I am not satisfied that there were breaches in how the Church dealt with the T issues individually or cumulatively. The Church attempted to set up meetings and then held two meetings with a plan to have a further meeting between Ms Trousselot and T when the advice about the intention to resign was received. That would have been an opportunity to see if issues could be discussed and resolved. To resign because of concerns about T without seeing if they could be resolved when there was a process in place was premature.

Was there a breach or breaches of duty of sufficient seriousness to make it reasonably foreseeable by the Church that Ms Trousselot would not be prepared to continue working?

[89] I have not concluded there were breaches of duty individually or cumulatively by the Church on an assessment of the reasons advanced for dismissal. Even if there were breaches on the part of the Church arising from the analysis above then I do not accept that they were breaches that were so serious so as to make it reasonably foreseeable that Ms Trousselot would then resign. Mr Morris said that the resignation came as a surprise to him. There was a plan in place for resolving issues with T and any communication issues between Ms Trousselot and Mr Morris. There was to be a review of the GST issue and although that would be stressful it was necessary.

[90] I do not find that Ms Trousselot has made out her claim that she was constructively dismissed.

Unjustified actions causing disadvantage

[91] The Authority needs to determine the following issues:

- (a) Was Ms Trousselot's employment or a condition of that employment affected to her disadvantage by an action of the Church?
- (b) If Ms Trousselot was disadvantaged then was the action unjustified?
- (c) If the actions caused disadvantage and were not justified then what remedies is Ms Trousselot entitled to?

Church notices and announcement

[92] I have not found breaches in relation to the Facebook Post, T paying accounts and timing of the meetings. . There was an issue whether Ms Trousselot was intentionally excluded from the Food Together and Foodbank. The evidence did not support that. There was also to be a process in place for talking through that matter.

[93] The main action relied on by Ms Trousselot that does not fall within the above factual matrix is the Church newsletters and announcements that followed her advice of her intention to resign.

[94] The claim in the statement of problem is that Mr Morris, in advising the congregation to check their personal tithing and giving against tax receipts in the same Church notice when Ms Trousselot's resignation was announced, casts doubt on Ms Trousselot's honesty in dealing with the Church finances and that Mr Morris in making the statement knew it was untrue and defamatory. The Church notices are distributed to Church members.

[95] The first notice the Sunday after Ms Trousselot announced her intention to resign provided about resignation:

Some big changes this week. Kris has resigned from her position at OBC after fulfilling the role for approximately four years. We wish Kris all the best for her future.

[96] Further down the notice it provided:

We have had a number of queries regarding the amounts given in the Church receipts issued for your personal tithing and giving. Sorry to have to ask, but could you please check your totals against your personal records, bank statements etc. If for some reason they don't match up please get in touch with [T's husband] by email...

[97] The following Sunday the Church notice provided again to check tithing and giving records against receipts and let T's husband know if they are found to be incorrect.

[98] Mr Morris accepted that he had additionally to the notices referred to the need to check personal records against receipts during the Church service.

[99] Ms Trousselot said that she was approached by those who had read the newsletter or had been at the service where Mr Morris verbally asked the Church members to check their receipts against giving who inferred from it that she had been dismissed or stolen money or was incompetent. She also referred to rumours. The

Authority did not hear evidence from anyone who may have concluded or thought that but I accept that Ms Trousselot was caused distress by the Church notice and announcements.

The resignation announcement

[100] I will start firstly with the statement that Ms Trousselot had resigned and whether announcing a resignation in this way affected Ms Trousselot's employment or a condition of her employment to her disadvantage.

[101] There is a difference between resigning and giving notice of an intention to resign at a later date. Ms Trousselot had given four weeks' notice of her intention to resign and a medical certificate covered that period. I understand that sick leave was paid for that period. I do note that in her detailed letter to the Elders Ms Trousselot wrote "My resignation is attached beginning immediately." In any event she did not return to work. It was not a situation where Ms Trousselot worked out her notice and her appearance at work could have caused confusion with the announcement of her resignation. I do not find that the announcement affected Ms Trousselot's employment in those circumstances to her disadvantage.

[102] It is unclear what conditions of employment could have been affected to her disadvantage by announcing a resignation. The newsletter did not set out why Ms Trousselot had resigned but wished her well for her future and set out plans to cover her role for the time being. Ms Trousselot had not asked that her resignation be kept confidential and because of the nature of her role in the Church her absence would have been apparent.

[103] I do not find that announcing Ms Trousselot's resignation caused disadvantage to a condition of Ms Trousselot's employment or that the Church announcing the resignation was unjustified.

The advice to check tithing and giving receipts against personal records

[104] The second action that Ms Trousselot says caused her disadvantage was the reference to checking tithing and giving records against the tax receipts in the newsletters and the verbal announcement by Mr Morris. The concern was that this was shortly after she had announced her intention to resign and in the same newsletter as the advice that she had resigned. As a result she says it was an attempt to cast doubt on her honesty/competence in a small community when she was on stress leave at the time.

[105] I have considered whether the action by the Church asking the congregation to check their records caused disadvantage to Ms Trousselot related to her employment or a condition thereof. Although an employee at the time she was on sick leave she did not return to the workplace. It is difficult therefore to conclude disadvantage related to employment. Conditions of employment can be a broader notion than simply terms of the employment⁴. It may be that what occurred by referring to the need to check personal records in the same newsletter as Ms Trousselot's resignation could be a disadvantage on the basis of a duty to provide a safe workplace and not to act in a way that may increase harm in the knowledge Ms Trousselot was unwell.

[106] That is not the end of the matter because the Authority must be satisfied that the actions of the Church were unjustified.

[107] I will start with the concern that Mr Morris knowingly made an untrue statement that there were queries about the amounts in the Church receipts. Mr Morris said in his evidence that a query had come to the office on the Wednesday Ms Trousselot resigned about the tithing and giving and the receipts and his wife had taken the query. As a result he said T's husband started looking further and found anomalies.

⁴ *ANZ National Bank v Doidge* [2005] 1 ERNZ 518

[108] The Authority saw one example where the tithing was \$720 and the tax receipt was over \$3000. The Church's evidence was that 26 errors were ultimately found to have been made but no documentary evidence about those was provided. Ms Trousselot took issue with the number of anomalies and did not accept they would be of that magnitude. It is suggested in Mr Cahill's final submission that concerns should have been referred to Ms Trousselot initially. I do not consider the Church had an obligation to raise its concerns with Ms Trousselot about the receipts and hear her response whilst she was on sick leave having advised her intention to resign. That was an issue that could I find fairly and reasonably be left to those who covered her work whilst she was unwell.

[109] I find on the balance of probabilities Mr Morris believed there could be an issue that some tax receipts may not match the tithing and giving amounts. I conclude that because I find it less likely that Mr Morris would have advised the Church members about something he did not genuinely believe was an issue at the time. He would know that in raising such an issue Church members would then have to take time to investigate their own records. I am strengthened in my view about that because the advice to check was not simply limited to the newsletter and Church service at the time the resignation was announced but was referred to again in the newsletter the following Sunday.

[110] I have then considered whether the timing of the request to check was justifiable. Mr Morris said that he felt that he needed to act before Church members lodged tax returns. I accept that there is some justifiable basis for that because it was late April and early May 2016 when the advice to check was given.

[111] I have then considered whether the placement of the request in the newsletter and the announcement at the Church service was justifiable. The tithing and giving was from Church members so I do not conclude that addressing them about checking through the newsletter and Church service was unjustifiable. There was also a clear separation in the newsletter between the resignation announcement and the advice to

check totals against personal records and no implication about Ms Trousselot's actions in the newsletter.

[112] In conclusion accepting that there may be a basis for concluding disadvantage to Ms Trousselot I am not satisfied that the part of the Church newsletters about checking personal records and/or any verbal statement that may have been made during the Church service was an unjustified action on the part of the Church.

[113] The unjustified action claims are not made out.

Counterclaim

[114] The Church counterclaims for \$2,356.99 in late payment interest and \$1785 in respect of accounting costs incurred as a result of the GST errors. The Authority needs to consider the following issues:

- a. Were there breaches of duty on the part of Ms Trousselot which caused losses to the Church?; and
- b. Was it reasonably foreseeable at the time the employment agreement was entered into that a breach would cause damage of the nature relied on?; and
- c. Should there be an award of damages?

[115] Ms Trousselot in her job description was obliged to reconcile GST and in her employment agreement to perform her work diligently.

[116] The evidence supported all cross checks were not carried out. Mr Corlett submits this was a deliberate breach. I accept that Ms Shaw considered the failures with GST were fundamental breaches of the Treasurer's obligations.

[117] Having heard the evidence I find that Ms Trousselot had become very busy in her role and somewhat overwhelmed. She had periods when she was unwell. In those circumstances I cannot be satisfied that the errors with GST were wilful and

deliberate. There is a troubling aspect about the failure to disclose the integrity audit report but I am not satisfied that would have changed, or at least changed significantly, the late payment interest or accounting costs.

[118] There is some obiter from Judge Inglis as Chief Judge Inglis was then in *George v Auckland Council*⁵ following discussion about the House of Lords judgment in *Lister v Romford Ice & Cold Storage Co Ltd*⁶ which she stated about recovery of damages from an employee that:

...Rather it is strongly arguable that in the modern context of employment relationships in New Zealand, and in light of the initial obligations conferred on the parties under the Act, an employer may not seek to recover damages from an employee arising from acts of negligence committed during the course of their duties. If it were otherwise it would have a chilling effect on the way in which employees undertake their duties, could lead to reactive claims or threats of claims against those taking personal grievances which would undermine the statutory timeframe for resolving employment relationship issues, and expose employees to significant potential financial liability for a breach even in circumstances that could never justify a dismissal.

[119] Judge Inglis noted that the Court of Appeal had expressly left open the issue of whether an employer can recover damages in such circumstances in *Katz v Mana Coach Services Limited*.⁷ Judge Inglis did not agree that other elements of a breach of contract claim such as foreseeability and loss provided an adequate safeguard once a breach, however minor, had been established.

[120] I accept that there were mistakes made about GST so that a breach can be established. It could have been foreseeable at the time Ms Trousselot entered into her employment agreement that failure to diligently check the reconciliation of GST could result in the Church incurring penalty interest and accounting costs.

[121] I do not find I am able to conclude the errors were wilful in a role that the Church in its own newsletter described as one that had grown to require specialist skills in many diverse areas. I am not satisfied that Ms Trousselot was a specialist as

⁵ *George v Auckland Council* [2013] ERNZ 675 at [147]

⁶ *Lister v Romford Ice & Cold Storages Co Ltd* [1957] AC 555, [1957 2 WLR 158, [1957 1 All ER 125 (HL)

⁷ *Katz v Mana Coach Services Limited* [2011] NZCA 610, [2011] ERNZ 186

such in her Treasurer role and there seemed some genuine confusion on her part as to the situation with the GST from her text message to Mr Morris on 22 March 2016 that caused him to become concerned. Her failure to check whilst unacceptable appeared to be because of time pressures and this caused mistakes. I am not persuaded looking at the matter in the round that Ms Trousselot should be liable for damages.

[122] The claim for damages is unsuccessful.

Obstruction of the Authority investigation

[123] Mr Corlett suggested it was open to the Authority to consider whether Ms Trousselot's conduct of producing altered documents gave rise to a possible obstruction of the Authority's investigation under s 134A of the Act. I do not find such a step is called for in the circumstances of this matter. Firstly it was accepted in the applicant's submissions that the integrity audit report provided by Ms Trousselot was not the correct one. Secondly although the Authority could have been misled which would have been serious it was not on this occasion because the Church was able to provide the full email and the full integrity report.

Costs

[124] I reserve the issue of costs.

A handwritten signature in black ink, appearing to be 'Helen Doyle', written in a cursive style with a long horizontal stroke at the end.

Helen Doyle
Member of the Employment Relations Authority