

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Sharon Walker (Applicant)  
**AND** Telecom New Zealand Limited (Respondent)  
**REPRESENTATIVES** Jeff Goldstein, Counsel for Applicant  
John Rooney, Counsel for Respondent  
**MEMBER OF AUTHORITY** Philip Cheyne  
**INVESTIGATION MEETING** 13 September 2005  
14 September 2005  
**SUBMISSIONS** 23 November 2005 (applicant)  
12 October 2005 (respondent)  
27 October 2005 (applicant in reply)  
**DATE OF DETERMINATION** 23 November 2005

DETERMINATION OF THE AUTHORITY

*Employment relationship problem*

[1] Sharon Walker was employed by Telecom New Zealand Limited from about September 1999 until about February 2005. Her personal grievance claim is that she was unjustifiably disadvantaged in that employment by various actions and omissions on the part of Telecom managers relating to her attempts to gain promotion or advance her career within Telecom from about 2001. Ms Walker also says that Telecom breached s.4 of the Employment Relations Act 2000, the obligation to deal with her in good faith.

[2] There is a significant amount of written, oral and documentary evidence canvassing events spread over a number of years. However, the law limits an employee's ability to raise problems in the Authority by the requirement that they must first raise any grievance with their employer within 90 days of the action alleged to amount to a grievance occurring or coming to their notice. The exception to this rule is not relevant in the present case. Here, it is common ground that Ms Walker first raised a grievance in an email which she sent on 14 July 2003. This determination will focus on the events that occurred within the preceding 90 days which Ms Walker says are unjustifiable actions by Telecom causing her disadvantage in her employment.

[3] There is a second limitation point that should be dealt with now. There is an evidential dispute about whether a further grievance was raised on 19 January 2004 about a decision made on 26 or 27 January 2004 not to offer Ms Walker a different position (the Business Analyst role). It is common ground that the next complaint by Ms Walker about the failure to offer her the BA role

was not until much later, well after 90 days had passed. In these circumstances, could Ms Walker have validly raised a grievance by allegedly doing so a week or so prior to the unjustified action that disadvantageously affected her employment? In *New Zealand Automobile Association Inc v McKay* [1996] 2 ERNZ 622, the Employment Court considered the effect of s.33 of the Employment Contracts Act 1991, the predecessor provision to s.114 of the Employment Relations Act 2000. There, the Court made it clear that the *legislation (section 33(2)) sets limits not only upon the expiry of the 90-day period within which to submit a grievance but also upon its commencement*. The effect in that case was that the employee did not validly submit an unjustified dismissal personal grievance when the communication relied on occurred before the end of the notice period, therefore before the dismissal. There is no material difference in the wording of s.114(1).

[4] Applying *McKay* I find that it was not legally possible for Ms Walker on 19 January 2004 to raise a grievance about the decision made on 26 or 27 January 2004 that she would not be offered the BA secondment. It is therefore unnecessary to resolve the evidential dispute about whether anything sufficient to raise a grievance was said on 19 January 2004.

[5] Counsel sought to distinguish between allegedly unfair treatment in the consideration of Ms Walker's application for the BA role prior to 19 January 2004 and the decision not to offer her the role. The latter was said to be merely the consequence or outcome of the former. The definition of this type of personal grievance is set out at s.103(1)(b) of the Act. It is a claim that the employee's employment is, or was, affected to the employee's disadvantage by some unjustifiable action by the employer. All the elements must exist before a grievance can arise. In the statement of problem, Ms Walker refers to being upset with Telecom's expressed reasons for not offering her the BA role and embarrassed when work colleagues, who believed she would be appointed, learnt that she had not been. There is no evidence that Ms Walker's employment, her on-the-job situation, was otherwise disadvantageously affected by Telecom's actions over the BA role. All the alleged disadvantageous effects occurred on or after 26 or 27 January 2004. Put another way, there could be no grievance relating to the BA role prior to 26 January 2004 and no grievance about it was raised until well past the expiration of 90 days after that time.

[6] Applying these two limitation points, I will set out the background events to the issues raised in Ms Walker's email dated 14 July 2003 and consider whether any grievance is established. I will then go on to consider the allegation of breach of good faith and the associated claim about a failure to treat Ms Walker in a fair and reasonable manner.

### ***The people involved***

[7] Ms Walker was a training and procedures specialist. She reported to the Training Documentation Manager (Gloria Porter). There is ample evidence that Ms Walker performed highly in that role and was well regarded by Gloria Porter and others.

[8] In her 14 July 2003 email, Ms Walker criticised Sue Atkins. Ms Atkins is currently employed by Telecom as Segment Performance Manager but has held other management positions for a number of years. Ms Walker has applied for a number of positions that reported to, or through to, Ms Atkins.

[9] Ms Atkins reported to Paul Mortiboy and from July 2003 to Andrew Crowhurst. Mr Crowhurst's role is two tiers below the Chief Operating Officer for New Zealand so he is (and Mr Mortiboy was) a senior level manager.

[10] Sue Chappell was the South Island Regional Sales Manager based in Christchurch at the time at a similar level to Mr Crowhurst. Sue Tait was also based in Christchurch as the Manager of

Corporate Service Centre, the site servicing Telecom's high value customers. At the relevant times, Ms Walker did not report to or through to either Sue Chappell or Sue Tait.

[11] Sonia Clark was the Manager of Contact Centre Technology and was responsible for the Genesys Project aimed at implementing new call delivery software into Telecom's call centres. She is involved in the decision about the BA secondment position. Ms Walker never reported to or through to Ms Clark.

### ***Ms Walker's July 2003 grievance***

[12] The basis of Ms Walker's grievance is set out in her 14 July 2003 email to Mr Crowhurst. In that email, Ms Walker says that Ms Atkins had been involved every time she had been interviewed for other positions within Telecom. Ms Walker says that it had become apparent that she would *hit a brick wall* every time she applied for a position that involved Ms Atkins. Ms Walker refers to her recent applications for a SIM position and onsite implementer position. She alleges that Ms Atkins had misled her with incorrect information and had discriminated against her. Ms Walker also says that she did not have the same opportunities for training, promotion or transfer as other employees. That is supported by reference to secondment opportunities. Ms Walker is critical of Ms Atkins for obtaining feedback about her from others. Ms Walker says that she felt ambushed about the involvement, without adequate notice, of Mr Mortiboy in a meeting on 9 July 2003. Complaint is made about the delayed starting time of that meeting and a situation where Ms Walker returned to work from leave to find a successful candidate for the SIM position using her desk and computer. In her email, Ms Walker proposes mediation, seeks a prompt response and asks for the matter to be handled discreetly.

[13] To resolve these complaints, I need to describe more fully the sequence of events surrounding the positions mentioned by Ms Walker in her email.

### ***Job applications***

[14] In August and December 2001, Ms Walker applied for team leader and manager positions. Ms Atkins was responsible for recruiting into these positions. Ms Walker was unsuccessful. Ms Atkins says that Ms Walker interviewed well for the team leader position but ultimately other candidates were considered to have more experience. The manager position was senior to the team leader position and Ms Walker was not selected for an interview. There is no evidence to suggest anything improper in these decisions.

[15] Ms Atkins says that she does not recall being asked by Ms Walker for written feedback in relation to these applications but I accept Ms Walker's evidence that she did make such requests. No feedback was received. For the reasons explained above, the failure cannot now constitute a grievance.

[16] In evidence, Ms Walker referred to potential secondments arising in November 2002 and January 2003. Ms Walker applied for both. She was not offered the November 2002 secondment. There is nothing in the evidence to suggest anything improper about that. In respect of the January 2003 secondment, the complaint is that it was offered directly to another employee. Ms Atkins' evidence is that the secondment was based in Auckland and it was offered to a Christchurch-based employee who, for personal reasons, needed to be based in Auckland for a period of time. There is no reason to doubt this evidence.

[17] About 9 April 2003, Ms Walker applied for a SIM position. She was one of six people short-listed for a second interview. Ms Atkins was involved in that decision and conducted the final interviews (on 5 June 2003 for Ms Walker). After the final interviews, the appointment was put on hold pending an announcement about a related restructuring process.

[18] On 17 June 2003, Ms Walker was interviewed by Ms Atkins and Mr Mortiboy for several other positions (Solution Designer and Solution Development and Onsite Implementer) that had become available due to the restructuring process. Ms Walker's existing position was not directly affected by the restructuring but she took the opportunity to apply for these other positions to advance her career. Other existing staff, including those directly affected by the restructuring, applied for one or more of these roles. Ms Atkins and Mr Mortiboy interviewed each person once only in respect of all of that person's applications. On 24 June 2003, Ms Walker advised Ms Atkins that she was going on leave and asked to be contacted on her mobile phone in respect of the applications including the outcome.

[19] Ms Atkins had encouraged Ms Walker particularly to apply for the onsite implementer role. Ms Atkins spoke to Ms Walker's manager (Gloria Porter) who strongly supported the application. After the interview, Ms Atkins also spoke to Sue Tait and Sue Chappell to gauge their views about Ms Walker's suitability. Sue Tait and Sue Chappell were based in Christchurch and managed sites or Telecom functions that the onsite implementer would need to work alongside. The feedback received by Ms Atkins did not support Ms Walker's appointment to the onsite implementer role and accordingly a decision was made that she would not be appointed.

[20] On 2 July 2003, while still on leave, Ms Walker learned that others had been advised of the outcome of their applications for the restructured positions. Ms Walker left a message for her manager but later that day she received a phone call from Ms Atkins who told her that she had not succeeded in any of the applications, including the earlier SIM position. Ms Atkins told Ms Walker that the feedback from the sites was not positive. She did not identify who had provided the feedback, nor was she asked to. During the call, Ms Atkins suggested that they have a face-to-face meeting to discuss the situation further, it being apparent that Ms Walker was upset by what had been said. Later it was agreed that they would meet at 9am on 9 July 2003.

[21] There is a conflict of evidence about one aspect of this phone call. Ms Walker's evidence is that she said that it appeared that Ms Atkins would block her every time she interviewed her. Ms Atkins responded by saying *that would be fair comment*, confirming that Ms Walker would not succeed in any job application involving Ms Atkins. For her part, Ms Atkins denies saying this. She accepts that she said *fair comment* in response to the proposition that she would block Ms Walker's application for the SIM role. However, Ms Atkins' evidence is that Ms Walker has many valuable skills that could suit her for other positions within Telecom. I accept the evidence of Ms Atkins that her response was limited to being a comment about the SIM role.

[22] Ms Walker returned to work from leave to find that one of the appointees for the SIM role had been placed at her desk. The evidence is that there was a shortage of space and that Ms Atkins thought that a more permanent arrangement would have been made before Ms Walker's return from leave. I accept that this experience caused Ms Walker some upset at the time. The space issue was then sorted out. Later, Ms Atkins apologised. Her evidence is that Ms Walker graciously accepted the apology. Ms Walker's evidence is that an apology was proffered but that she did not accept it. However, I prefer Ms Atkins' evidence on the point.

[23] Before the meeting on 9 July 2003, Ms Walker spoke to a number of managers from the sites in an effort to test Ms Atkins' claim about their negative feedback. She learned that Ms Atkins had not spoken to any of these people and that they had a positive view of Ms Walker's work with them. The only person who Ms Atkins had spoken to and who was approached by Ms Walker was Sue

Tait, but she declined to speak to Ms Walker. Ms Tait alerted Ms Atkins to these developments and Ms Atkins also spoke to at least some of the managers who had been approached by Ms Walker.

[24] The meeting on 9 July 2003 started about 30 minutes late. Ms Atkins had left a voice message explaining the delay but Ms Walker did not get the message until about 9am, the time the meeting should have started. Ms Walker, Ms Atkins and Mr Mortiboy were present. There are notes made by Ms Walker after the meeting which I accept as a substantially accurate account of the meeting. To summarise, Ms Walker was critical of the presence of Mr Mortiboy and said she felt ambushed. Telecom offered to defer the meeting but Ms Walker preferred to proceed. There was discussion about the onsite implementer's position. Ms Walker explained how she felt there was prejudice or discrimination against her which she attributed to Ms Atkins. They discussed the apparent inconsistency between Ms Walker's positive feedback from site managers and Ms Atkins' report of negative feedback. Ms Walker advocated for reconsideration of her application for the onsite implementer role and proposed taking her on in that role for a probationary period or a secondment. The meeting ended with an arrangement for Telecom to check with its human resource people and reply to Ms Walker by Friday.

[25] Ms Atkins responded on Friday, 11 July 2003 by telling Ms Walker that Telecom does not normally offer trial or probationary periods and that they would proceed to more widely advertise the onsite implementer role. Ms Walker then sent her email dated 14 July 2003 to Mr Crowhurst. There followed a meeting on 30 July 2003 between Ms Walker, her representative, Mr Crowhurst, Ms Atkins and a Telecom HR advisor. Mr Crowhurst followed up that meeting with the letter dated 8 August 2003. The letter provided a substantive response to the issues raised by Ms Walker in her 14 July email and during the 30 July 2003 meeting. In general, Telecom declined Ms Walker's requests regarding the onsite implementer role.

[26] Two additional points should be mentioned. The letter includes information compiled by Ms Atkins showing her rating of Ms Walker's skills against those required for both the SIM role and the onsite implementer role. There was also Ms Atkins' account of feedback sought and obtained by her regarding Ms Walker and the text of an email from Sue Tait explaining the reasons why she considered Ms Walker unsuitable for the onsite implementer role. The second point is that the letter repeated the earlier offer from Ms Atkins for Ms Walker to undergo some Telecom funded career planning support to assist her with career development.

[27] Following on from Mr Crowhurst's letter of 8 August 2003, there was a mediation meeting in September 2003. Ms Walker also took up the offer of career planning support. Mediation did not resolve the grievance and, in December 2003, Telecom declined to participate in further mediation.

[28] Also in December 2003, there arose the possibility of a Business Analyst secondment position. I accept the evidence of Ms Atkins that she understood the need at that point to be for a pure business analyst and that she encouraged the relevant managers (Sonia Clark and Tara Parata) to consider Ms Walker for the secondment. Ms Walker was interviewed by Sonia Clark in mid-January 2004 for that secondment. By then however Ms Clark's thinking about the scope of the role had changed so that it included a requirement related to established relationships. I accept Ms Clark's evidence that she told Ms Walker that she had the skills for a pure business analyst role but would need to consult with other managers (including Sue Tait) about their views. Ms Clark consulted with Sue Tait, Ms Atkins and others to gain a perspective on Ms Walker's suitability for the business analyst secondment. Ms Clark then thought that Ms Walker did not have the established relationships required for the role and spoke to Ms Walker about that on or about 26 January 2004. Ms Walker asked for the opportunity to respond and provided some material on 26 and 27 January 2004 in further support of her application. On or about 27 January 2004, Ms Clark confirmed to Ms Walker that she was unsuccessful. No grievance about this decision was raised until well after 90 days had expired bearing in mind my earlier determination about anything

said on 19 January 2004. It is therefore unnecessary to resolve several evidential differences about what Ms Clark actually said to Ms Walker.

[29] In late February/early March 2004, Ms Walker was seconded to a team leader position essentially covering for the absence on a secondment of her manager, Gloria Porter. I accept Ms Atkins' evidence that she was consulted about this and was supportive of the secondment.

[30] Prior to this secondment, Ms Walker spoke to her manager (by then, Andy de Raat) and requested a temporary reduction in her working hours from full-time to 32 hours per week. Mr de Raat consulted with his manager (Mr Crowhurst) as he was obliged to do and then approved the reduction. It is the uncontested evidence of all involved that Ms Walker asked for the reduction to allow her to pursue study options. There is no evidence to support Ms Walker's assertion that she was treated any differently from others in respect to this request and, in any event, her request was granted.

[31] There is evidence from Ms Walker that her request for reduced hours was actually the result of stress arising from the problems she had experienced with the job applications, especially the business analyst secondment. Given the earlier conclusion that no grievance was validly raised at the time, it is not necessary to deal with the point any further in respect of the business analyst position. To the extent that stress was caused in respect of the other applications, that can be remedied if a grievance is established.

[32] Ms Walker's employment with Telecom terminated in early 2005. There is no grievance before me regarding the termination of the employment.

### ***Discrimination***

[33] In evidence, Ms Walker advanced her grievance as if it involved at least an element of unlawful discrimination. That type of grievance is defined by ss.104, 105 and 107 of the Employment Relations Act 2000. In general, it is discrimination if an employer does not afford an employee the same opportunities for training and promotion as are made available to other employees with substantially similar skills and qualifications by reason of the employee's union involvement or by reason of the 13 grounds listed in s.105 (for example: sex, marital status, religious belief).

[34] In the present case, I do not accept Ms Walker's assertion that she was not offered the same opportunities for training or promotion as were made available to comparable others with substantially similar skills, qualifications or experience. The evidence establishes that Telecom simply preferred other candidates based on the relevant manager's assessments of how well candidates were suited to the various positions. However, even if I was persuaded that Ms Walker's assertions were accurate, there is still a complete lack of any evidence that Telecom's actions were *by reason directly or indirectly* of any of the prohibited grounds of discrimination listed in ss.105 and 107. Accordingly, there was no discrimination.

### ***Unjustified disadvantage***

[35] I accept the point made by counsel for Ms Walker that the earlier restrictive interpretation of the predecessor to s.103(1)(b) was changed by cases such as *Alliance Freezing Co Southland Ltd v NZ Engineering Union* [1989] 3 NZILR 785.

[36] I was referred to *Mason v Health Waikato Ltd* [1998] 1 ERNZ 84 to support the principle that loss of promotional opportunities can amount to a disadvantage. In that case, the employer was unable to justify its decision not to allow the employee to supervise students and interns. That potential work experience was an important part of the employee's career development as a clinical psychologist. The employee was disadvantaged in his employment by the decision not to offer him those opportunities. For reasons that need not be mentioned here, the employer was unable to justify its decision so the employee had a personal grievance.

[37] In the present case, Ms Walker had opportunities for promotion and secondment as the above account of events demonstrates. For example, she was shortlisted and interviewed a second time for the SIM position. She was encouraged by Ms Atkins to apply for the onsite implementer role and was interviewed for that position. She was also able to apply for other restructured positions. She was considered for the business analyst role. Eventually she was seconded into a team leader position. That marks a significant difference between this case and the facts in the *Mason* case.

[38] The allegedly unjustifiable actions of the employer in the present case are various steps taken by Telecom in reaching its assessment about Ms Walker's suitability for the SIM position, the onsite implementer role and the other restructured positions bearing in mind the earlier point about limitations. To assess those claims, it is necessary to consider in greater detail the sequence of events relating to those assessments.

[39] There is no reason to doubt Ms Atkins' evidence that she considered Ms Walker's suitability for the SIM role as against those others who were shortlisted. Ms Atkins simply reached the conclusion that Ms Walker was not the person best suited for the position as she saw it. Ms Atkins' evidence is that she rated Ms Walker as needing improvement in a number of the competencies for that role. Understandably, Ms Walker does not agree with that assessment but it was one for Ms Atkins to make. I see no basis for challenging it.

[40] I accept Ms Atkins' evidence that she spoke to Sue Chappell on 19 June 2003 and Sue Tait on 27 June 2003 to gauge their views as to Ms Walker's suitability for the onsite implementer role. Ms Atkins was entitled to seek their views because the successful candidate for the onsite implementer role needed to work with them and their teams. Ms Atkins had conversations with these managers during breaks in meetings she and they were attending on the two dates mentioned. Ms Walker is critical of Ms Atkins for seeking this feedback in *open forums* but there is no evidence that she has been negatively affected as a result. Both managers were critical of Ms Walker. For example, Ms Chappell thought that Ms Walker was *very black and white* and found it hard to see things from another's point of view. Ms Tait thought that Ms Walker was quick to break relationships but slow to mend them. Understandably, Ms Walker does not accept these criticisms and points to materials such as her performance reviews to disprove them. That misses the point. Neither was Ms Walker's manager and both were entitled to their perspectives (whether right or wrong) as to how Ms Walker would fit alongside their areas of work responsibility. In the end, it was for Ms Atkins to assess that information along with her own views and decide whether she judged Ms Walker as the right person for the onsite implementer role.

[41] Ms Walker says that Ms Atkins misled her during their phone conversation on 2 July 2003 about the source of the negative feedback from the sites and was also vague and misleading about it during the meeting on 9 July 2003 involving Mr Mortiboy. I do not accept that Ms Atkins misled or deceived Ms Walker or did anything likely to mislead or deceive her. Ms Walker made an assumption about the level at which Ms Atkins had sought feedback but the assumption was wrong. Ms Atkins accurately conveyed what had been said to her but was guarded about who had said it. She was entitled to be guarded in that way, perhaps even required to be so, until checking with the others that they were prepared to be identified.

[42] Ms Walker says that she felt humiliated and embarrassed about the unexpected involvement of Mr Mortiboy, that she felt her job was under threat and that other employees who saw her being escorted from the general office area by Mr Mortiboy and Ms Atkins thought that she was involved in some sort of disciplinary meeting. There was nothing about the conduct of either Ms Atkins or Mr Mortiboy to reasonably create any apprehension in Ms Walker's mind that her existing job was under threat. As Ms Walker knew, the meeting was in response to her expressed dissatisfaction about the outcome of her job applications, not about her existing position. Nothing was said during the meeting that might cause Ms Walker to have any reasonable fear for her existing position. I do not accept that there was anything improper about how Ms Atkins and Mr Mortiboy accompanied Ms Walker through to the location of the meeting room. If others leapt to a wrong conclusion about what they saw, Ms Walker was able to dispel that. There is no evidence that Ms Walker suffered any disadvantage related to the conduct of the meeting. When Ms Walker made a point early in the meeting about Mr Mortiboy's presence, she was offered the opportunity to postpone the meeting but elected to continue. The conduct of Ms Atkins and Mr Mortiboy throughout was perfectly reasonable and no disadvantage was caused to Ms Walker by them in respect of the 9 July 2003 meeting.

[43] It should be apparent from my earlier description of events that Ms Walker's complaints about finding another person working at her desk was properly and completely answered by Ms Atkins' apology. I see no merit in her complaint about the timing of advice to her about the outcome of the various job applications. Ms Atkins had a number of employees to speak to and she prioritised that, speaking first with those potentially affected by the restructuring. Again, no disadvantage accrued to Ms Walker because she was not among the first to be spoken to.

[44] The result of the above findings is that Ms Walker does not have any sustainable unjustified disadvantage personal grievance arising from these events.

### ***Good faith and fair treatment***

[45] There is a claim that there has been a breach of good faith and that Telecom has failed to treat Ms Walker fairly and reasonably. To some extent, the basis for these assertions is undermined by the foregoing findings. However, there are several additional points which should also be considered.

[46] It is suggested that Ms Atkins predetermined the outcome of the onsite implementer application by deciding that Ms Walker did not meet certain competencies for the other position that she applied for about the same time. On that basis, it is argued that fairness required Telecom to arrange for someone other than Ms Atkins to determine the onsite implementer application. I have found that Ms Atkins treated Ms Walker fairly throughout this process. It is clear from my investigation that Ms Atkins was generally supportive of Ms Walker's attempts to advance her career in Telecom. However, even if that was not so, I am unaware of any principle of fairness that would require the relevant manager to disqualify themselves from participation in one selection process simply because of their participation in another.

[47] There was evidence that Mr Crowhurst and Ms Atkins have had a longstanding friendship and that he was surprised that anyone would lodge a personal grievance against her. The submission is made that Mr Crowhurst should have disqualified himself from involvement in attempts to resolve the personal grievance in favour of *someone with a truly neutral stance*. Mr Crowhurst saw himself as neutral in that he was not involved in the circumstances of the grievance. Whether or not Mr Crowhurst was neutral is irrelevant. He became involved when Ms Walker sent him her personal grievance email. He responded appropriately by meeting with Ms Walker, considering her claims and responding to them. Unfortunately, resolution of the grievance at that level eluded both

Telecom and Ms Walker. Nonetheless, Mr Crowhurst's involvement did not diminish Ms Walker's right to have her grievance claim adjudicated upon. There is no merit in the complaint about Mr Crowhurst's involvement.

[48] Ms Atkins is criticised for seeking feedback from Sue Tait knowing that her comments would be based on historical matters rather than up-to-date knowledge of Ms Walker. Ms Atkins had supportive knowledge relevant to the applications from Ms Porter, Ms Walker and her own dealings with Ms Walker. It cannot be a requirement of fairness for a manager to deny herself the advantage of other views simply because they do not support an applicant. I see no merit in the criticism.

[49] There is a point made about a lack of feedback for Ms Walker that inhibited her ability to seek training and development that would better suit her for other positions such as those she missed out on. It is answered by Telecom's submission, which I accept, that the implied duty on an employer to provide training is limited to training which ensures that an employee is capable of fulfilling his or her current position: see *Auckland Provincial District Local Authority Officers' IUOW v Mt Albert City Council* [1989] 2 NZILR 651.

[50] For the above reasons, I do not accept that there has been any breach of the duty of good faith or of Telecom's implied obligation to treat Ms Walker in a fair and reasonable manner.

### **Summary**

[51] The only grievances capable of determination on the merits are those arising from the job applications between April and June 2003.

[52] There is no sustainable grievance in respect of how Telecom dealt with these job applications.

[53] There was no breach of good faith and no breach of other duties by Telecom in respect of its dealings with Ms Walker.

[54] Costs are reserved.

Philip Cheyne  
Member of Employment Relations Authority