

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 316
3031634

BETWEEN HANNAH WILSON
 Applicant

AND RESTRUCT CONSTRUCTION
 LIMITED
 Respondent

Member of Authority: Andrew Dallas

Representatives: Paul Mathews, advocate for the Applicant
 Mary Crimp, counsel for the Respondent

Investigation Meeting: 4 and 5 February 2019 at Christchurch

Submissions: 11 February 2019 for the Applicant and 15 February
 2019 for the Respondent with further information
 received up to and including 28 February 2019

Date of the Determination: 29 May 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Restruct Construction Limited (Restruct) employed Hannah Wilson as a Labourer. Ms Wilson says she was excited and enthusiastic about her new role. However these feelings did not last. During a relatively short period of employment, Ms Wilson says Restruct constructively dismissed her, subjected her to one or more unjustified actions to her disadvantage in her employment and she was sexually harassed by Restruct's sole director and shareholder, Rana Hammond. Restruct and Ms Hammond denied Ms Wilson's allegations and her claim for remedies.

The Authority's investigation

[2] During the Authority's investigation meeting I heard evidence from Ms Wilson, her grandmother and her partner. I also heard from several witnesses employed by, or associated with, Restruct including Ms Hammond and Operations Manager, Craig Brenton, who is also Ms Hammond's partner.

[3] Having regard to s 174E of the Employment Relations Act 2000 while I have not referred to all the evidence received from witnesses or the submissions advanced by the representatives in this determination, I record that I have fully considered this material.

Issues

[4] Issues for investigation and determination were:

- i. Did Restruct unjustifiably constructively dismiss Ms Wilson?;
- ii. Did Restruct unjustifiably disadvantage Ms Wilson in her employment?;
- iii. Did Ms Hammond sexually harass Ms Wilson?;
- iv. If Restruct's actions were not justified, what remedies should be awarded, considering:
 - a. Lost wages; and
 - b. Compensation under s 123(1)(c)(i) of the Act; and
- v. Should either party contribute to the costs of representation of the other?

What happened?

[5] Ms Wilson commenced working for Restruct on 20 April 2018. She performed her work at the Grey Base Hospital in Greymouth, Westland, which was undergoing redevelopment. Ms Wilson lived in Greymouth with her grandmother. However, most other, predominately male, employees of Restruct lived in Christchurch and were provided with accommodation at "Neptune's Backpackers" in Greymouth. The significance of Neptune's to this employment relationship problem will become apparent from the discussion below.

[6] As part of her role, Ms Wilson acted as the “go between” between Ms Hammond and Mr Brenton and the other labourers by relaying work instructions and the like.

[7] Ms Wilson said she found the job initially very enjoyable but after a few weeks she said Restruct came to expect more and more from her. Ms Wilson said she increasingly found the job more and more stressful.

[8] Ms Wilson said that during her employment Ms Hammond engaged her in almost daily conversations about her personal life including whether she was “seeing” or “dating” “married men”. Ms Hammond denied this although she did accept she spoke to Ms Wilson on one occasion about going out to dinner with a “married man” but raised this out of concern. Ms Wilson said the man in question was actually a friend and father-type figure to her.

[9] In contrast, Ms Hammond said while initially pleased with Ms Wilson’s work and committed to mentoring her in the role, she became increasingly concerned about the tenor of some of Ms Wilson’s workplace conversations and her behaviour towards some of Restruct’s employees. Ms Hammond said she spoke to Ms Wilson about these matters. Ms Wilson variously denied these matters, provided more context or explained the particular circumstances.

[10] On or about 23 May 2018, Ms Hammond said she had cause to speak to Ms Wilson after she had apparently “spent the night” at Neptune’s with an employee of another contractor. Ms Hammond said she spoke to Ms Wilson about this because, on her account, employees and contractors staying at Neptune’s were not allowed to have guests stay overnight; she was concerned that colleagues and co-workers “knowledge” about the matter would be embarrassing to Ms Wilson and because her behaviour brought Restruct into “disrepute”.

[11] Ms Wilson did not deny she stayed overnight at Neptune’s but said she was not aware she was unable to stay there. Ms Wilson said she found Ms Hammond’s questioning about the matter quite inappropriate because it did not relate to her work. She further said Ms Hammond told her to stay away from the other individual concerned because that person was a “meth addict” and a “bad person”. Ms Wilson said this also had nothing to do with Ms Hammond.

[12] Ms Wilson said due to increasing workplace stress she developed a cold sore. She said Ms Hammond, referring to her, said to another colleague words to the effect of “you wouldn’t kiss her, you might catch something”. Ms Wilson also said she was asked if she caught the cold sore from the individual referred to in the preceding paragraph.

[13] For her part, Ms Hammond said she did make a comment to Ms Wilson about the cold sore in front colleagues on one occasion but Ms Wilson laughed it off and did not seem embarrassed or upset.

Incident on 20 June 2018

[14] Restruct decided to hold a “shits and giggles night” at Neptune’s for its staff. Ms Hammond asked Ms Wilson to assist her with the preparations. These included preparing for a novelty raffle by selling tickets around the worksite and organising raffle prizes. There was a dispute in the evidence about whether, while selling raffle tickets around the worksite, Ms Hammond and Ms Wilson discussed whether Ms Wilson would be the “lucky last prize” or whether this was raised by Ms Wilson with Ms Hammond and other work colleagues.

[15] Ms Hammond and Ms Wilson visited various shops around Greymouth on 19 June 2018 in order to the purchase raffle prizes. These included: “tradies socks and underwear”, “ladies gift packs”, “smellies”, chocolates and wine and various vouchers. Also included were “joke” prizes which included: condoms, novelty condoms, lubricant, false teeth holders and adult sized “onzies”.

[16] One of the shops visited was a local pharmacy. Ms Hammond told Ms Wilson to stay in the car while she went inside. While the precise reason for this was disputed, Ms Hammond agreed she told Ms Wilson to remain in the car. Ms Hammond said she picked up a number of items from the pharmacy including several “wrap it with love” packs which were being provided free by the West Coast District Health Board’s sexual health clinic.

[17] Once all the prizes had been secured, Ms Hammond and Ms Wilson went about organising them at Ms Hammond's house. Ms Wilson said at one stage she disappeared out of the room and then returned with a green polka dot bag. Ms Wilson said Ms Hammond told her that if she was drawn in the raffle she should choose the green polka dot bag because it was especially for her. Ms Hammond denied this.

[18] Ms Wilson then helped Ms Hammond set up the venue. All the prizes were laid out on a long table adjacent to the bar. At or about this time, Ms Wilson asked if she could stay the night at Neptune's. Ms Hammond agreed after asking another female Restruct employee if Ms Wilson could stay in her room. At approximately 9.30pm the raffle commenced. Ms Wilson said Ms Hammond asked her to take photographs of each person as they received their prize. Ms Hammond said Ms Wilson looked like she was having fun during the raffle.

[19] Towards the end, one of Ms Wilson's numbers was called out. On her account, Ms Wilson said as she approached the table, Ms Hammond reminded her to take the green polka dot bag which had been set aside from the other prizes. When she had done so, Ms Hammond announced the room that this was a special prize for Ms Wilson. When Ms Wilson returned to where she was standing and opened the bag, she discovered, condoms, lubricant, cold sore cream, baby wipes, a beanie and sexual health advice pamphlets from "wrap it with love" packs. Ms Wilson said she asked Ms Hammond: "why would you do this to me?"

[20] Ms Wilson said she was absolutely mortified, turned her back on the room and put the bag on the bar. Ms Wilson said Ms Hammond then asked two of her colleagues to come up and show the room the contents of the bag. Ms Wilson said she was close to tears and kept her back to the room.

[21] Ms Hammond denied the special prize was for Ms Wilson. She also denied directing Ms Wilson to choose the prize, hearing Ms Wilson say, "why would you do this to me?" or directing other employees to show the room the contents of the bag.

[22] Once Ms Wilson had composed herself with the assistance of work colleagues, she said she tried to enjoy the rest of the evening. However, she said she deliberately tried to avoid interacting with Ms Hammond. However, towards the end of the evening, Ms Hammond approached Ms Wilson and told her about an altercation she had with another employee. Ms Wilson also said that Ms Hammond told her the employee in question had told her that what she had done to Ms Wilson was sexual harassment. Ms Wilson said that Ms Hammond then said even if she wanted to lay a complaint about her conduct, she could not because it was outside work hours. Ms Hammond denied she said this.

[23] Ms Wilson said she was very stressed and anxious as a result of this further interaction with Ms Hammond and went home to her grandmother's house.

Events of 21 June 2018

[24] The next day at work, Ms Wilson said Ms Hammond asked her when she in the office, who she had been with at 2.30am that morning. Ms Wilson said she was asleep at her grandmother's house at that time. Ms Wilson said she then went outside to talk to the labourers, where the events of the previous night were a hot topic. Ms Wilson said as she was walking around the site, she received a text message from Ms Hammond asking her to come to the office. When she arrived, Ms Hammond asked her what she had been saying about the altercation with the other employee around the worksite. Ms Hammond also said she knew Ms Wilson was pissed off about her prize but had been living up to her reputation "with the Irish guy" in the toilet and that she should have her breath tested. Ms Hammond denied this but accepted she talked to Ms Wilson about information she had received about Ms Wilson being in the toilet with a work colleague.

[25] Ms Wilson said she decided at this point she could not continue on with work as she was also experiencing stomach pains. She said she left the site about lunchtime and as she was walking off, she could hear Ms Hammond "screaming out to her" but she said she was in too much pain to return to the workplace. Ms Wilson said when she got to her car, she noticed two "missed" phone calls from Ms Hammond. Ms Wilson then said Ms Hammond came "racing up" to her car "yelling and carrying on" about where she had been for the last half an hour and why she had been ignoring her phone calls. Ms Wilson said she explained why she did not answer the phone

calls. She said Ms Wilson accused her of lying. Ms Wilson said was too scared to tell Ms Hammond that she was going home.

[26] Ms Hammond agreed she called out to Ms Wilson across the car park, that she had a conversation with her adjacent to her car and told Ms Wilson she believed she was not telling the truth about not answering her phone calls because she saw her looking at her phone while she was calling her. Ms Hammond said she told Ms Wilson she expected her to be back at the worksite after her lunch-break. Ms Hammond said she subsequently discovered that Ms Wilson had completed her timesheet for the day.

[27] Ms Wilson said that when she got to her grandmother's house, she sent Ms Hammond a text message to the effect she had pains in her stomach and would not be returning after her lunch break. Ms Wilson said Ms Hammond responded by directing her to come to the office and saying that she believed she was "piss" crook. A further text exchange occurred where Ms Hammond said Ms Wilson's reason for not being able to return to work was described as "bullshit" and she was accused of "skiving" off work. Ms Wilson said the text exchange made her very stressed and anxious and she did not really sleep that night.

Events of 22 June 2018

[28] The next morning, Ms Wilson sent a text to Ms Hammond advising her that she would not be at work due to stress, lack of sleep and stomach pains. Ms Hammond responded to the text by denying Ms Wilson's stress had anything to do with work, that she does not follow instructions and that she was going to review her role.

[29] Ms Wilson said she sought advice after receiving the text from Ms Hammond because she believed her job was being threatened. After taking advice, she sent Ms Hammond an email outlining her concerns and asking for a meeting to discuss them. Ms Hammond did not directly respond to this email.

[30] Ms Wilson subsequently sent Ms Hammond a text message on 24 June 2018 (a Sunday) asking her what time she wanted the review meeting to occur the next day. She said she did not get a reply. Ms Wilson said she sent a further text message along the same lines on the morning of 25 June 2018. Ms Hammond responded by noting that Ms Wilson was not at work, had not called to advise she would not be attending for work and that she would not meet because she was dealing with other matters. Ms Wilson responded to this text and advised she would not be coming into work due to the stressful environment, the need to attend the doctor about her stomach issues and the need for a meeting to discuss her concerns about the workplace. Ms Hammond responded by asking Ms Wilson to “stop playing bullshit” about her stress.

[31] Ms Hammond did not dispute these text exchanges occurred and, indeed, attached them to her witness statement. As to reviewing Ms Wilson’s role, Ms Hammond said she stated this in response to Ms Wilson saying she was stressed and also the other issues Restruct was having with her. Ms Hammond said she did not respond to Ms Wilson’s email because she was in Australia. Evidently, she could receive text messages and not emails during this period.

[32] After these text exchanges Ms Wilson then stopped communicating with Ms Hammond, handing over responsibility for that to her employment advocate. Personal grievances were then raised on behalf of Ms Wilson on 25 June 2018 alleging failure to deal with her workplace stress and sexual harassment. After a statement of problem was lodged in the Authority on 28 June 2018, it was agreed that Ms Wilson would remain on paid leave pending mediation.

[33] However, after receiving Restruct’s substantive response to the personal grievances via its solicitors on 13 July 2018, Ms Wilson said she formed the view mediation would not fix the situation and she could not work for someone who said “such disgusting things about their employees”.

[34] On 26 July 2018, Ms Wilson’s advocate emailed Restruct’s solicitors and advised that the company’s response to Ms Wilson’s personal grievance was “simply outrageous”. In the same email he advised that Ms Wilson resigned her employment due to constructive dismissal with effect from that day.

The Authority's view

[35] Ms Wilson's employment relationship problem with Restruct is encapsulated in three causes of action before the Authority: unjustified constructive dismissal, unjustified action to her disadvantage in relation to a failure to deal with her workplace stress claim and unjustified action grievance arising out of alleged sexual harassment of her by Ms Hammond. Each is dealt with in turn below.

Did Ms Hammond sexually harass Ms Wilson?

[36] It is clear from a review of s 103 of the Act that sexual harassment is an actionable personal grievance and the Authority has jurisdiction to deal with such. The test for sexual harassment as alleged by Ms Wilson is set out in s 108(1)(b) of the Act, which relevantly provides:

108 Sexual harassment

(1) For the purposes of sections 103(1)(d) and 123(d), an employee is **sexually harassed in that employee's employment** if that employee's employer or a representative of that employer—

(a) ...

(b) by—

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

(ii) the use of visual material of a sexual nature; or

(iii) physical behaviour of a sexual nature,—

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

[37] Having considered the parties submissions and reviewed the evidence, I am satisfied that Ms Hammond sexually harassed Ms Wilson on 20 June 2018 in a manner consistent with s 108(1)(b)(ii) of the Act.

[38] As to the specific requirements of s 108, there is no question that Ms Hammond through the auspices of Restruct was Ms Wilson's employer. Alternatively, Ms Hammond was a representative of Restruct, a senior representative at that, and its controlling hands and mind as sole director and shareholder.

[39] Restruct accepted during the investigation meeting, and in its submissions, that the raffle prize Ms Wilson received on 20 June 2018 contained items of a sexual nature. A review of these items clearly finds that the items would constitute “visual material of a sexual nature” such as to meet the requirements of s 108(1)(b)(ii) of the Act.

[40] While Restruct submitted, consistent with Ms Hammond’s evidence, that Ms Wilson was not told by Ms Hammond to select the green polka dot bag if her number was called, I find it is more likely than not that this was the case for the following reasons. First, the contents of the bag were wholly or mostly purchased from the pharmacy while Ms Wilson was requested to stay in the car by Ms Hammond (her reason or reasons for doing so, I find, when compared to Ms Wilson’s evidence, were implausible). Second, while there were other “green bags”, the green polka bag, on Ms Hammond’s own evidence during the investigation meeting, was a one off. Third, the prize was set aside from the rest of the prizes. Fourth, the green polka dot bag contained a very specific prize: cold sore cream; for a condition that Ms Wilson suffered and Ms Hammond knew to be the case. Within this context, I find Ms Hammond’s explanations, given during her oral evidence, for this prize unsatisfactory.

[41] In any event, even if Ms Wilson was not told by Ms Hammond to select the green polka dot bag if her number was called, the visual items of a sexual nature contained in the bag were objectively inappropriate for a workplace function – and particularly one so male dominated as it was – and Ms Wilson was entitled to subjectively view these as unwelcome or offensive. Indeed, I am satisfied that Ms Wilson did find contents of the green polka dot bag unwelcome and/or offensive.

[42] Restruct said that even if Ms Wilson did show some embarrassment towards the items in the bag, this was short-lived. I do not accept this submission, accepting Ms Wilson’s evidence as I do, and it is also beside the point. Under s 108 of the Act, Ms Wilson was not required to convey to Restruct whether or not she viewed the contents of the green polka dot bag unwelcome or offensive. It is enough that she subjectively believed them to be so.

[43] As to the final limb of the test in s 108 of the Act, I am satisfied that Ms Hammond's conduct on 20 June 2018 did have a detrimental effect, indeed a number of detrimental effects, on Ms Wilson's employment. The findings in this determination, insofar as these relate to the events of 20 June 2018 and its aftermath, are testament to that conclusion.

[44] Two further observations need to be made. First, the harassment on 20 June 2018 occurred within the context of Ms Hammond's inappropriate interest in Ms Wilson's private life, which appears, on the evidence, to have occurred throughout the period of employment, and the levelling of informal allegations at Ms Wilson relating to perceptions of immoral behaviour unrelated to, or marginally connected with, the workplace.

[45] Second, to the extent Ms Wilson was drawn into this behaviour by Ms Hammond, it must be viewed through the prism of power dynamics in the workplace and understandable desire to "go along to get along" with her employer. Nor does it, or would it, detract from or diminish Ms Hammond's conduct. In any event, during the investigation meeting it became apparent that Restruct's evidence in relation to allegations about Ms Wilson's behaviour surrounding the 20 June event – that is, offering herself as the "lucky last prize" or her involvement with "the Irish guy" - was contradictory and ultimately, I would find, unreliable.

Did Restruct fail to deal with Ms Wilson's workplace stress such that it gives rise to a personal grievance for unjustified action to her disadvantage?

[46] Having found that Ms Hammond sexually harassed Ms Wilson, it is not necessary to separately find, as invited by Ms Wilson to do so, the conduct in question amounted to an unjustified disadvantage in her employment. While I note the evolving nature of Ms Wilson's case in this regard, and Restruct's objection to that, it is important to recognise that the Authority is not bound by the parties pleadings in any event.¹

¹ Employment Relations Act 2000, s 160(3)

[47] As to Ms Wilson's personal grievance for failure by Restruct to deal with her personal grievance relating to workplace stress, I find, relying on s 160(3) of the Act, this was overtaken by subsequent events and was ultimately subsumed into her allegation of unjustifiable constructive dismissal.

Did Restruct unjustifiably constructively dismiss Ms Wilson?

[48] The legal principles applicable to constructive dismissal are well known and do not require restatement here.

[49] Ms Wilson said her employment with Restruct was "under strain" prior to 20 June 2018 due to Ms Hammond's dealings with her private life and the levelling of informal, unfounded allegations. Ms Wilson said the employment relationship was then severally damaged as a result of the June 20 event. However, she did not regard this as the end of her employment and endeavoured to engage with her employer including by sending an email identifying issues with the employment and seeking to meet with Ms Hammond to discuss these. However, after some "unsavoury" text messages from Ms Hammond including what Ms Wilson regarded a threat to "review" her position, she decided to raise a personal grievance via her employment advocate.

[50] Ms Wilson said her personal grievance clearly put her employer on notice that if her concerns were not resolved she would have no choice but to resign. Ms Wilson said the "final straw" for her was when it became apparent from Restruct's lawyer's response to her personal grievance of 13 July 2018 that not only was her employer not willing to address her concerns, including by denying responsibility for the incident on 20 June 2018, but that it would also attack her character.

[51] Restruct strongly denied that Ms Wilson was constructively dismissed. Restruct said there was insufficient causal link between any of its conduct, which was denied, and Ms Wilson's resignation. It also said Ms Wilson resigned of her own free will and an apparent text exchange between her and a colleague disclosed by Ms Wilson's advocate in January 2019 suggested she never intended to return to her employment. Restruct also observed that Ms Hammond was unable to respond to Ms Wilson's email setting out her employment concerns and requesting a meeting with her due to the fact she was overseas.

[52] It also said the parties willingness to attend mediation also meant it was not reasonably foreseeable there was a substantial risk of Ms Wilson’s resignation. As to is correspondence of 13 July 2018, which Ms Wilson described as the “final straw”², Restruct said this occurred in advance of mediation and set out its response to serious allegations made by Ms Wilson about Ms Hammond.

[53] Two points arise from this. First, even if Ms Wilson was considering not returning to her employment as the disclosed text change could suggest, there is a temporal element to this and Ms Wilson is entitled to hold several concurrent or sequential views about her employment. Given the circumstances she was confronting, this is an only natural human response. Second, that Ms Wilson was considering attending mediation with her employer is to her credit and, in any event, it was clear from her evidence that she changed her mind about the utility of mediation after reviewing her employer’s response to her personal grievance.

[54] Having considered the submissions of the parties, and the evidence, I find it was reasonably foreseeable that Ms Wilson would resign her employment in circumstances where:

- (a) Ms Wilson was regularly asked inappropriate questions about her private life by Ms Hammond;
- (b) As part of (a) above, Ms Wilson was subject to inappropriate informal allegations of, what can only be described as, moral impropriety, by Ms Hammond;
- (c) she believed she was sexually harassed by Ms Hammond on 20 June 2018 (and has now found to have been so by the Authority);
- (d) Ms Wilson was subject to a fusillade of inappropriate, and on occasion abusive, text messages by Ms Hammond in the aftermath of the events of 20 June 2018 which denied the conduct, dismissed her claims of being stressed and threatened to “review” her employment.
- (e) the failure of Restruct to respond to Ms Wilson’s email setting out her concerns about her employment and asking for a meeting within the context of Ms Hammond directly communicating with her via text message during the same period; and

² *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA) at 374

(f) the inflammatory nature in which Restruct responded to Ms Wilson's personal grievance on 13 July 2018 and to which she ascribed the "final straw".

[55] Ultimately, the final straw giving rise to a constructive dismissal can be assessed as part of a cumulative weight of factors and I find that was the situation here.

What remedies should Ms Wilson receive?

Lost wages

[56] Having found Ms Wilson was subject to sexual harassment and unjustifiable constructive dismissal by Restruct, the Authority must under s 123(2) of the Act, even if it awards no other remedies, order payment of the lesser of a sum equal to lost wages or three months ordinary time wages. Unfortunately, neither of the parties' submissions grappled entirely correctly with this issue. Various deductions were made including accounting for Ms Wilson's brief receipt of the job seeking allowance from the Ministry of Social Development.

[57] I am satisfied that Ms Wilson made a reasonable attempt to mitigate the loss of her employment. Ms Wilson was able to obtain further employment relatively soon after being dismissed, however as she had not fully recovered from her ordeal, this employment overwhelmed her. She would obtain further employment with a former employer a while later. I award Ms Wilson three months gross lost wages together with any applicable holiday pay, and the lost benefit, if applicable, of employer Kiwisaver contributions, on that amount. Restruct are directed to calculate and pay these monies to Ms Wilson within 28 days of the date of this determination. If the parties cannot agree this figure, either or both parties are granted leave to return to the Authority to have the amount determined.

Compensation for humiliation, loss of dignity and injury to feelings

[58] Ms Wilson sought a global figure "in excess" of \$20,000 as compensation for humiliation, loss of dignity and injury to feelings or a cumulative figure awarding compensation for each established grievance to "send a clear message". She said her evidence as to the effect Restruct's actions had on her were supported by that given by her grandmother. Ms Wilson also points to Restruct's post-employment conduct.

[59] Restruct provided very detailed submissions. These canvassed the applicable law and took issue with Ms Wilson's cumulative compensation claim and the concept of "sending a clear message", which it said was not in keeping with established principles. Restruct said Ms Wilson had not provided evidence to support separate awards of compensation. It also said the factual matrix was effectively the same for all causes of action advanced by Ms Wilson. I accept this submission.

[60] In all the circumstances, a global award of compensation is appropriate. In making this award, I accept Ms Wilson's evidence, supported by that of her grandmother, about the impact the end of her employment had on her. While Restruct has raised the length of Ms Wilson's service as a matter of relevant consideration, it also conceded, correctly, this is "not determinative" of the issue of compensation. Restruct also pointed to the lack of medical evidence, although it again, correctly, conceded this was also not determinative. In any event, corroborative evidence of this nature is not necessary when considering compensation under s 123(1)(c)(i) of the Act.

[61] All relevant matters considered, and subject to any consideration of contribution under s 124 of the Act, I award Ms Wilson \$20,000 as compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act. Restruct is directed to pay this amount to Ms Wilson within 28 days of the date of this determination.

Contributory conduct by Ms Wilson?

[62] Having found that Ms Wilson is entitled to remedies for her personal grievances, I am required by s 124 of the Act to consider whether her actions were causative and blameworthy of the situation she found herself in.

[63] The parties did not directly address the issue of contribution, although Restruct referred to various matters, which could be construed as "contributory" in its submissions relating to compensation.

[64] Having considered all the evidence including the matters referred to by Restruct, I find, on the balance of probabilities, there was no blameworthy contribution on the part of Ms Wilson in relation to her personal grievances for unjustified constructive dismissal and sexual harrassment.

Summary of Ms Wilson's remedies

[65] The remedial orders made for Restruct to resolve Ms Wilson's employment relationship problem by paying her the following amounts within 28 days of the date of this determination:

- (i) Three months gross pay as reimbursement for lost wages and any applicable holiday pay on that amount; and
- (ii) \$20,000 as compensation for humiliation, loss of dignity and injury to feelings.

Costs

[66] As part of their submissions to the Authority, the parties dealt with the issue of costs.

[67] Ms Wilson has been successful in her claims before the Authority and was represented throughout, therefore she is entitled to an award of costs based on the Authority's daily tariff approach. Ms Wilson sought an uplift to the notional tariff for a two day investigation meeting of \$7000 on the basis of a perceived deficiency in one aspect of Restruct's evidence, which caused delay in the investigation meeting. Restruct said, in rejecting Ms Wilson's criticisms of this aspect of its evidence and pointing to issues with her own case, that an uplift was not appropriate.

[68] Having considered the matter carefully, I decline to exercise my discretion to award Ms Wilson an uplift in the notional tariff. That said I do see any reason based on the submissions or the evidence before the Authority to exercise my discretion to reduce the tariff either.

[69] So then, within 28 days of this determination, Restruct must pay Ms Wilson \$7000 as a contribution to the costs of her representation before the Authority.

Andrew Dallas
Member of the Employment Relations Authority