

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

ATTENTION IS DRAWN TO THE
ORDER PROHIBITING PUBLICATION
AT PARAGRAPH [8] OF THIS
DETERMINATION

AA 279/09
5070812

BETWEEN MS X
 Applicant

AND BAY OF PLENTY DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: Marija Urlich

Representatives: James Roberts, Counsel for Applicant
 Mark Beech and Shima Grice, Counsel for Respondent

Investigation Meeting: 4, 5 September and 20 October 2008

Further Information and 10 and 21 November, 4 December 2008
Submissions Received:

Determination: 14 August 2009

DETERMINATION OF THE AUTHORITY

[1] Ms X commenced employment with the Bay of Plenty District Health Board (“the DHB”) in March 2002 in a highly skilled position. In March 2006 she experienced chest pain and neck tightening whilst at work (“the serious harm incident”). Ms X says the cause of the serious harm incident and consequent ongoing ill health is work related stress. The DHB denies this. The serious harm incident has been the subject of an OSH investigation and abandoned prosecution. Ms X returned to work on a part-time basis in May 2006 but on medical advice ceased work in August that year. She has not worked since. Ms X received paid sick leave until June 2007 when the DHB ceased to continue that entitlement or, as it will be referred to in this determination, capped Ms X’s paid sick leave.

[2] This determination considers the personal grievance Ms X raised in June 2006 concerning the DHB’s decision to cap her paid sick leave. Ms X had earlier raised a

personal grievance concerning the causes of the serious harm incident (“the substantive personal grievance”). This determination does not deal with that issue.

The procedural history of this application

[3] This matter has had a long history in the Authority. The application dealt with in this determination was lodged in the Authority in June 2007 accompanied by an application that the matter be treated with urgency. A year passed during which multiple adjournments of scheduled investigation meetings were made and granted the detail of which need not be canvassed at this stage in the proceedings. During this period the parties have entered various arrangements concerning Ms X’s entitlement to paid sick leave and have made repeated efforts to resolve this issue including attending three mediations.

The parties’ respective positions

(i) Ms X

[4] Ms X says the DHB’s decision to cap her sick leave amounts to an unjustified action which has caused her disadvantage in her employment¹. She says the DHB:

- (i) breached the clear words of the employment agreement;
- (ii) unreasonably departed from the clear words of the general policy informing the employment agreement;
- (iii) failed to exercise its discretion in good faith;
- (iv) failed to act as a fair and reasonable employer in all the circumstances; and
- (v) failed to comply with its own policies, protocols and procedures.

[5] To remedy this unjustified action Ms X seeks a compliance order requiring the respondent to continue to pay sick leave until she is able to return to work or her substantive personal grievance is resolved, a finding that the respondent’s actions are unjustified, an award of general damages to reimburse lost wages and special damages

¹ Section 103(1)(b) Employment Relations Act 2000

relating to the costs associated with this claim and the costs arising from the decision to stop paid sick leave.

(ii) The DHB

[6] The DHB says in response to Ms X's claims that it has acted fairly and reasonably in all the circumstances and relies on the following:

- (i) since the event it has taken steps to eliminate the stressors related to Ms X's position at the DHB;
- (ii) the decision to stop paid sick leave was made with due consideration of the relevant factors and in line with the process set out in the employment agreement;
- (iii) the DHB has not unreasonably or unfairly departed from the general policy; and
- (iv) Ms X has provided no evidence of distress or considerable financial hardship consequent to the DHB's decision to stop paid sick leave and has not taken reasonable steps to pursue her substantive personal grievance.

The issues

[7] This employment relationship problem concerns Ms X's entitlement to paid sick leave and the parameters of that entitlement. It has two broad elements:

- (i) Under the terms of the parties' employment agreement could the DHB cap Ms X's paid sick leave? or
- (ii) Was the DHB's decision to cap Ms X's paid sick leave fair and reasonable in all the circumstances?

Non-publication order

[8] A non-publication order is made suppressing the publication of the name of the applicant and any evidence which might lead to the identification of the applicant including the area in which she worked.

The relevant provisions of the employment agreement

[9] With regard to sick leave the parties' employment agreement (MECA 1 July 2004 – 31 December 2006) provides:

25.1 Health & Welfare/Unspecified Sick Leave...

- (a) *The general policy is that your normal salary continues when you are absent due to genuine illness (not injury) or the illness or injury of your partner, a dependent or another member of your family or household. Where the frequency or pattern of absence is regarded as problematic or excessive or where your absence is prolonged, or where you do not participate in the organisation's rehabilitation programme, your employer may refer the matter to the Review Panel. It is acknowledged that sick leave is a joint responsibility of staff, the employer and the Union.*

The Review Panel is outlined in clause 25.2

...

- (f) *Following the Review Panel, the employer may decide not to continue to provide paid leave to you. This may lead to dismissal or a frustration of your employment agreement.*

...

25.2 Sick Leave Review...

- (a) *The Review Panel will comprise two employer representatives (one of whom will be the Health & Safety Advisor, or, in their absence, an HR representative), one staff representative (from a group of ten nominated by the NZNO) and the appropriate manager...*
- (b) *Referral of a concern to the Panel will be done via Human Resources. If a matter is referred to the Panel, Human resources will:*
- (i) *arrange a Panel meeting;*
 - (ii) *notify the employee in writing, including invitation to bring support and provide as copy of this clause.*

The Panel will:

- (i) *explain the concern to the employee*
- (ii) *ask for an explanation*
- (iii) *consider the explanation and any evidence available*
- (iv) *make a recommendation to Human Resources (this need not be unanimous).*

All panel members acknowledge that the proceedings of the Panel are confidential. Members of the panel have full access to any documentation of the employee's absences and sick leave history.

The employee has the right to request a review by the CEO or their nominee.

28.0 Policies and Procedures

28.1 *All employees covered by the Agreement shall comply with the employer's policies and procedures in force from time to time, to the extent that such policies and procedures are not inconsistent with the terms and conditions of this Agreement.*

[10] The relevant policies and procedures provide:

Sick Leave Protocol

...

6 *Reviews*

(a) *Managers or Human Resources shall instigate a sick leave review of an employee's circumstance whose history, frequency, patterns, or length of sick leave causes concern.*

(b) *The primary focus of the review should be to assist the employee to establish practical arrangements to recover from sickness or injury and to maintain a satisfactory attendance record. The review:*

...

- *restrict or withdraw, for a specific period the sick leave provisions, such actions being limited by [the legislation] and/or the employee's employment agreement.*

...

[11] To the extent that they do not limit or contradict the terms of the employment agreement, also relevant are the sick leave guidelines for managers (“Guidelines for Managing Sick leave and Wellness Review”).

The DHB's decision to cap Ms X's paid sick leave

(i) 20 October wellness review panel

[12] The issue of Ms X's paid sick leave was raised following a discussion regarding her current health status and the recent receipt of a review of the serious harm incident which the DHB had commissioned. The review made some recommendations regarding staffing levels in the area in which Ms X worked but found no evidence the serious harm incident was caused by staffing. This was not the end of the DHB's internal review of the serious harm incident these findings; part two of the review and independent assessment was pending.

[13] Prior to the 20 October meeting Ms X had not received written notice of any concern about continued paid sick leave and no specific concern was put to her to comment on during the meeting.

[14] The notes of the meeting record that Ms X was asked if she required, in a financial sense, the continued support of the DHB in the form of paid sick leave. Ms X explained her financial need for the continued payment of sick leave. The notes conclude with:

Outcomes:

MJ: Meet next week – Hollister Jones report. Have flagged that sick leave may not continue into perpetuity/options...

SDV: Adjournment – Ted indicated that sick leave should continue during investigation. OSH needs to complete investigation first, then meet after one month.

JB should retain sick leave during this time.

MJ: Will seek advice/respond at next meeting

[15] “MJ” is Meredith Jones the human resource advisor responsible for facilitating Ms X’s wellness reviews. “SDV” is Sue de Vries, Ms X’s union representative. “Ted” is Ted Harper, the DHB’s Health and Safety manager. The “Hollister Jones report” is a medical opinion commissioned by the DHB concerning Ms X’s health status. Dr Hollister-Jones had previously reviewed Ms X on 7 August 2006 concluding *...it seems reasonable to conclude work-related stress has been a major factor in the development of this [illness].*

[16] Following this meeting Ms Jones wrote to Ms X on 24 October summarising the agreed outcomes. In relation to paid sick leave Ms Jones wrote:

3. *It was acknowledged at the meeting, that it is important for the employer in managing this process to know what your preferences are in terms of your return to work, your recovery and the context of the serious harm allegation. This is to ensure that the employer can take fair and reasonable actions with all the information at hand. It is acknowledged that during discussions you, and your [union] representative have expressed a preference for paid sick leave to continue until further indication is received by OSH regarding whether they intend to investigate further. We indicated that we would consider this preference, in the context of your feedback and report back at the next meeting.*

[17] What does this paragraph mean? That the DHB wishes to know what Ms X’s expectations are in relation to the wellness review process so it can act fairly and reasonably, that Ms X wants paid sick leave to continue pending the outcome of the

OSH investigation and the DHB representatives would respond at the next meeting (which did not occur).

(ii) The intervening wellness review meetings

[18] Further wellness review meetings were held on 10 November 2006, 12 January and 13 February 2007. The issue of Ms X's sick leave pay was not discussed in any detail in these meetings:

- at the 10 November meeting Ms X's union representative raised the issue and was advised by Ms Jones that no decision had yet been made. The matter was not raised in Ms Jones' letter of 15 November summarising the meeting outcomes;
 - after the 12 January meeting Ms Jones wrote to Ms X *As discussed, we have confirmed that paid sick leave is supported by the DHB*; and
 - the issue was not addressed in the 13 February meeting, other than to confirm the 12 January outcome of continued paid sick leave.

(iii) The last wellness review meeting – 18 May 2007

[19] At this meeting Ms X was advised her paid sick leave was to be capped to 5 days for a six month period. Ms X said this advice came as a shock. The DHB witnesses say Ms X was on notice that her sick leave entitlement may be reviewed and the meeting was handled in a sensitive manner.

[20] The decision to cap Ms X's sick leave had been made at an earlier meeting attended by Ms Jones, Ms Jackson, Julie Robinson, the director of the professional area in which Ms X was employed and Graham Dyer, the DHB's chief operating officer. Ms Jones said the following factors were considered:

- (i) the total amount of sick leave Ms X had taken to date (222.25 days);
- (ii) the application of sick leave under the applicable employment agreement;
- (iii) the information in the sick leave guidelines;
- (iv) the outcomes of the review of the area in which Ms X was employed; and
- (v) the history of other staff members' sick leave compared with that taken by Ms X (Ms X's exceeded sick leave taken by other staff).

[21] Mr Dyer's written evidence sets out clearly what was discussed and his involvement in the process:

[34] *I looked at [Ms X's] sick leave history and considered the outcomes of the wellness review processes to date, Part I of the Review, and [Ms X's] general return to work. From my perspective it did not appear that [Ms X] was progressing on a return to*

work scheme despite our assistance. We also did not have any real indication of when [Ms X] would be able to return to work. As a rule of thumb, the BOP DHB generally do not pay sick leave beyond a period of three months. By this point, [Ms X] had been receiving paid sick leave for in excess of twelve months. Given the information before me, I suggested to the wellness review panel that they should consider capping [Ms X's] sick leave to, say, five days, allowing her to use it as she felt it would benefit her. I told them to do the review and make a call about the matter as they saw it. I thought this was the best course of action given [Ms X's] Employment Agreement at clause 25.1(f), states that the BOP DHB may decide not to continue to provide paid leave following wellness review panel being convened. The same provision is also noted in the Guidelines for Managing Sick Leave and Wellness Reviews ("the Guidelines").

[35] *The Guidelines also provide that where three months or more sick leave has been taken over the last twelve months, the wellness review panel can, after consultation with me (the Chief Operating Officer, COO):*

- a. Withdraw paid sick leave in excess of the Holidays Act provisions for the remainder of current sick leave period;*
- b. Cease annual leave accrual until the employee returns to work;*
- c. Pay annual leave;*
- d. Impose sick leave without pay.*

As a rule of thumb, we generally offered three months paid sick leave to employees. Beyond that, we looked at other options of dealing with the employee.

[36] *The wellness review panel had consulted with me about what options were available to them. I had given the wellness review panel approval to cap sick leave, essentially imposing sick leave without pay. By capping her sick leave [Ms X] was able to use what she had remaining to her as she chose to. Further, she had annual leave that she could utilise for additional money.*

[22] Following this meeting with Mr Dyer, and immediately prior to the wellness review meeting, Ms Jones spoke with Janine Barr, the Occupational Health representative on the wellness review panel. She described this advice as a professional courtesy; I take from this that it was Ms Jones' view that Ms Barr was not part of the decision-making process. Ms Jones told Ms Barr that the issue of paid sick leave would be reviewed at the meeting. Ms Barr told Ms Jones she did not agree on the grounds the wellness review panel had not discussed it and the OSH prosecution was afoot. Ms Barr understood the conversation ended with agreement that a meeting of HR and Occupational Health would be held to discuss the process around capping Ms X's sick leave.

[23] Ms Barr then telephoned Mr Harper to express her concern about the advice she had received from Ms Jones. Mr Harper said Ms X's paid sick leave should continue because *nothing had changed* - Ms X was still unwell and the OSH prosecution was afoot. Ms Barr said she went into the wellness review meeting

comfortable that the DHB would not be raising the sick leave issue until Occupational Health and HR had had a chance to discuss it and then with the wellness review panel.

[24] Ms X, Ms Jones, Ms Jackson (by teleconference) and Ms de Vries were present at the 18 May wellness review meeting. The meeting started with a review of Ms X's current health status. Ms X's sick leave was then raised with Ms Jones tabling a spreadsheet of sick leave Ms X had taken between 5 May 2006 and 4 May 2007. In her written evidence Ms Jones says she then told Ms X:

[68] ...
I explained to [Ms X] that I needed to flag that the BOP DHB would not continue to provide paid sick leave indefinitely. The amount of paid sick leave had previously been highlighted to [Ms X] as a concern.

[69] *I then handed over to Ros [Ms Jackson], as Ms X's manager. Ros explained that we were giving Ms X notice of a restriction in her paid sick leave for a six month period. We did not say that we were stopping her sick leave completely. We indicated that [Ms X] would continue to receive paid sick leave up to 4 June 2007 and then would have access to five further days paid sick leave until 3 December 2007...
Ros then asked Ms X for her feedback on this. While Ros and I had formed a view, we were open to receiving feedback it (sic) and engaging in discussion.*

[25] Ms Barr objected to the process. She said there should have been an adjournment to allow Ms X to consider the information presented at the meeting. Ms Jones said an adjournment was not necessary because all the parties were well aware of the key issues. This adjournment issue subsequently became the subject of a DHB internal complaint process, which does not have any bearing on the matters before the Authority.

[26] Mr X queried the application of the policy and Ms de Vries said the union would seek legal advice. The meeting closed shortly thereafter.

Events after 18 May

[27] Subsequent to the 18 May meeting Ms X's union made representations to the DHB concerning its decision to cap her sick leave. The parties have put their positions in writing. I am satisfied these documents accurately reflect the discussions between the parties and are worth setting out in full:

5 June 2007

Dear [organiser name's]

This letter is to confirm the discussion of our meeting on Thursday 31 May 2007 (with myself, Rosalind Jackson...and Sue de Vries...in attendance) whereby you confirmed that you had the mandate to represent Ms X with regard to the wellness review outcomes, and had requested that the employer consider providing a further month of paid sick leave to Ms X (your member). We agreed to take your request away for consideration.

I confirm with you that we believe that the offer of continuing to pay sick leave up to and including 1 June 2007 and then providing a further 40 hours of sick leave was reasonable. However in this situation, we will accede to your request to provide an additional three weeks (120 hours) of paid sick leave to Ms X.

Therefore, we are offering to continue to pay sick leave up to and including the 1 June 2007, and from 4 June 2007 onwards, 160 hours (equivalent to four weeks) of paid sick leave will now be available to Ms X in full recognition of the employer's obligations to sick leave payment.

Please advise as soon as possible how Ms X would like this paid eg, paid concurrently from 4 June 2007 onwards, or a date of her choosing, or over a longer period at a reduced FTE, or in conjunction with annual leave etc.

Please feel free to contact me on...if you require further information.

Yours sincerely

Meredith Jones

Ms de Vries replied on 7 June:

Dear Meredith

In regards to your letter dated 5 June 2007 confirming our meeting on 31 May 2007 and request to continue paying sick leave to Ms X.

The decision to stop paying sick leave from 1 June 2007 had already been made by the DHB before the last meeting of the wellness review panel on 18 May 2007. This decision had not been discussed with or agreed to by all the panel and so did not follow due process.

We note that you state that you will accede to our request to provide an additional three weeks (120 hours) of paid sick leave to Ms X. This request was only made after the DHB refused [the union's] first request to continue paying sick leave. While yes we agree in normal circumstances 44 weeks could be seen to be reasonable, in this particular case the unresolved issue of work related illness puts the situation in a different light. We would have preferred paid sick leave to continue until the issue was fully resolved. We also disagreed with the lack of notice of cessation of paying sick leave.

...

Yours sincerely

Sue de Vries

Ms Jones replied on 22 June:

Dear Sue

Thank you for your emailed letter of 7 June 2007...

We believe that we have followed due process as required by the [union] MECA, and aligned with the DHB's guidelines for managing sick leave. Clause 25.1(f) states that 'following the review panel, the employer may decide not to continue to provide sick leave to you'. This

outcome is at the employer's discretion and does not require the agreement of all panel members to be implemented. We also note that restriction of paid sick leave had previously been flagged by the employer during previous review panels.

Yours sincerely

Meredith Jones

[28] Concurrent with this exchange between the DHB and Ms X's union, Mr Roberts, counsel for Ms X, entered correspondence with the DHB challenging its decision to cap Ms X's sick leave.

[29] Mr Roberts wrote to the DHB's solicitors on 27 and 29 May 2007 seeking immediate reinstatement of paid sick leave.

[30] On 6 June Mr Beech provided a substantive response setting out the purpose of the wellness review panels and their use to date, in respect of Ms X's situation, that notice that paid sick leave would be capped was given on 18 June, that a meeting with Ms X's union had taken place subsequently where the union had acknowledged the reasonableness of the DHB's position and successfully negotiated a greater notice period of paid sick leave ceasing, that offer had been accepted by Ms X without prejudice to her claim that paid sick leave should continue, this caveat raised a workplace issue and mediation should occur.

[31] Mr Roberts replied on 18 June that the DHB had failed to comply with either the employment agreement or its guidelines as they relate to paid sick leave, paid sick leave should continue because that it the default position per the enabling documents, the wellness review process is designed to *promote positive solutions for employees affected by ill health* and the DHB's conduct caused and continues to cause Ms X's ill health. The letter also details how, in Ms X's view, the DHB has failed to comply with its own processes relating to the operation of the wellness review panel - it is the wellness review panel which makes any decision to cap sick leave after discussion with the effected employee and confirmation in writing. The letter challenges the DHB's position that the union endorsed the capping of Ms X's sick leave and refutes the reasonableness of comparing other employees' sick leave usage with Ms X's given the circumstances of her ill health. The letter concludes with

agreement to attend mediation and notice of intention to lodge an application in the Authority to require the DHB to continue to pay Ms X's sick leave.

Could the DHB cap Ms X's sick leave?

[32] The parties have recorded their agreement as to sick leave and its management in the MECA. The relevant provisions are set out in paragraph [9] above. In summary those provisions are:

- Paid sick leave is unspecified – if it is needed it is provided (cl 25.1(a));
- If the employer has a concern about sick leave then that matter can be referred to the review panel (“the panel”) (cl 25.1(a));
- In that event HR may refer the matter to the panel, arrange a panel meeting and write to the employee (cl 25.2(b));
- The panel must (i) explain the concern to the employee, (ii) ask for an explanation, (iii) consider the explanation and any evidence available and (iv) make a recommendation to HR (cl 25(b)); and
- The panel's recommendation is reviewable to the CEO or nominee (cl 25(b));
- Following the receipt of the recommendation of the review panel the employer may decide to cap paid sick leave (cl 25.1(f)).

[33] The DHB could only cap paid sick leave if the review panel process set out in cl 25 of the MECA was followed. This is reinforced by clause 6 of the sick leave protocol which refers to the sick leave review as the mechanism for regulating paid sick leave². The general guidelines must fall in with these strict requirements.

[34] The sick leave review is a very specific process with exact requirements. The purpose of such rigidity is firstly to have a mechanism to regulate a very broad entitlement (unspecified sick leave) and secondly to ensure the parties are absolutely clear about the process to be followed; which is apposite given the worker party's vulnerable state of health.

² Paragraph [10]

[35] Prior to the 20 October meeting the employer held a general concern regarding the length of Ms X's sick leave to date. I find the cl 25 process was not initiated prior to the 20 October meeting (cl 25(b)) because it was not the DHB's intention to review (in the cl 25 sense) Ms X's paid sick leave at that meeting. All the DHB wanted to do, at that stage, was raise with Ms X that paid sick leave could not continue in perpetuity. The *flagging* of this concern, the term used by the DHB's witnesses, is not notice required under cl 25.

[36] The concern about Ms X's sick leave became more focussed immediately prior to 18 May 2007 and a decision was made to cap Ms X's sick leave before the scheduled meeting at which Ms X was advised of the decision. There was some attempt by the DHB witnesses to characterise this as a consultative process; but such a conclusion is not supported by the evidence.

[37] I find the DHB did not follow the cl 25 process – Ms X was not put on written notice that the review panel was meeting to review her sick leave with a view to capping it, the concern and the basis for the concern were not put to her in writing, the concern and the basis for the concern was not discussed at the meeting, Ms X was not given an opportunity to respond, the review panel did not make a recommendation to the employer which was subsequently actioned.

[38] The DHB was contractually bound to follow the cl 25 process and in failing to do so capped Ms X's sick leave in breach of that contractual obligation and deprived her of the paid sick leave entitlement. Ms X has established a personal grievance that the DHB's actions amount to an unjustified action which has disadvantaged her in her employment.

Was the process used to cap Ms X's sick leave fair and reasonable?

[39] The DHB's witnesses say the 18 May meeting was conducted in this manner because the review panel process involving Ms X was very complex and needed to be handled sensitively and Ms X had become increasingly hostile and defensive. While I applaud the intention to handle such matters with sensitivity, fairness and reasonableness should not become the victims of obliqueness. If the DHB had

something difficult to say to Ms X (ie, a concern about the length of sick leave) then that should have been expressed in clear and unambiguous terms in a timely manner. The concern was hinted at on 20 October and then, seven months later, a decision

announced. It is little wonder Ms X felt the decision to cap her paid sick leave had come out of the blue.

[40] The evidence for the DHB also sought to justify the putting aside of the cl 25 mechanism on the basis that the process needed to be fluid because it was a complex situation. This was a flawed approach. The parties were contractually obliged to adhere strictly to the terms of cl 25. The cl 25 mechanism provided a tool to tease out those complexities and examine them in detail. The failure to follow the cl 25 mechanism meant the DHB's concern was not fairly put to Ms X, she was not given an opportunity to comment on that concern and the DHB did not have the benefit of considering her point of view.

[41] The intervention of Ms X's union after the 18 May meeting does not remedy any procedural flaw. I agree with Mr Roberts' submission that the union's intervention can be seen as an attempt to use the cl 25 mechanism and review the decision of the review panel.

Remedies

(i) Paid sick leave

[42] Ms X seeks reinstatement of her paid sick leave from the date payments ceased until her return to work or resolution of her substantive grievance. I understand that Ms X's employment has been terminated; that fact creates an end point to any orders relating to the reinstatement of payment of sick leave.

[43] I order reinstatement of paid sick leave from date payment stopped until the date Ms X's employment with the DHB was terminated. I find the applicable collective agreement is that dated 1 July 2004 – 31 December 2006. The subsequent document came into effect on 19 November 2007 after Ms X had resigned her

membership of the relevant union and does not cover or have application to her (cl 2 MECA 1 April 2007 – 31 March 2010).

[44] The DHB did not reconvene a review panel subsequent to the 18 May meeting. A justified outcome of a properly constituted review panel may have been the capping of Ms X's sick leave.

[45] Interest is to be calculated on those lost wages at today's 90-day bill rate plus 2%. This order is made pursuant to schedule 2 clause 11 Employment Relations Act 2000.

(ii) hurt and humiliation

[46] Ms X has established a personal grievance that the DHB's actions in capping her sick leave were unjustified and caused her disadvantage in her employment. She gave evidence to the Authority of the significant financial impact the loss of that income has had on her, her concern that the uncertainty of her circumstances has compounded her medical condition and led to poor sleep and need for anti-anxiety medication and her feeling that her health and wellbeing has suffered as a result of the DHB's attempts to save money.

[47] Ms X is entitled to an award for hurt and humiliation consequent to her personal grievance. I set that award at \$12,000.

(iii) special damages

[48] I do not accept grounds exist for an award of special damages to be made beyond the statutory remedies available to Ms X.

Costs

[49] Costs are reserved. The parties are invited to attempt to resolve this issue themselves. If they are unable to leave is granted for application to be made to the Authority to set a timetable for costs. Any such application should be made within 21 days of the date of this determination.

Marija Urlich

Member of the Employment Relations Authority