New Zealand Employment Relations Authority Decisions

Archibald v Waikato District Health Board (Auckland) [2017] NZERA 11; [2017] NZERA Auckland 11 (17 January 2017)

Last Updated: 6 March 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 11
5636304

BETWEEN KATHLEEN ARCHIBALD Applicant

AND WAIKATO DISTRICT HEALTH BOARD Respondent

Member of Authority: Vicki Campbell

Representatives: Caroline Mayston for Applicant

Greg Peploe for Respondent

Investigation Meeting: 21 November 2016

Submissions Received: 28 November and 8 December 2016 from Applicant

2 December 2016 from Respondent

Determination: 17 January 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

A. The dispute is resolved in Ms Archibald's favour and Waikato

District Health Board is ordered to calculate and pay to Ms Archibald the appropriate severance payment in accordance with clause 31.4.9 of the MECA within 28 days of the date of this determination.

B. Ms Archibald was unjustifiably dismissed. Waikato District

Health Board is ordered to pay to Ms Archibald the sum of

$10,000 under section 123(1)(c)(i) of the Act within 28 days of the date of this determination.

C. Costs are reserved.

Employment relationship problem

[1] This matter concerns the resolution of a dispute and a personal grievance for unjustified dismissal. Ms Kathleen Archibald claims she was entitled to reject an offer of redeployment and receive severance compensation because the redeployment offer did not meet the terms of the applicable multi-employer collective agreement (MECA). Ms Archibald also claims her dismissal by reason of redundancy was unjustified.

[2] The WDHB denies the claims. The WDHB says Ms Archibald was offered a suitable redeployment opportunity which she declined and under the terms of the collective agreement she was not entitled to a severance payment. The WDHB says the restructuring was genuine and the termination of Ms Archibald's employment was carried out in a fair manner.

[3] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from Ms Archibald and the WDHB but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Background

[4] Ms Archibald was employed as a Health Promoter located in Thames servicing the Thames-Coromandel and Hauraki Districts. The terms of Ms Archibald's employment were set out in a MECA between the PSA and 17 District Health Boards including the WDHB. The term of the MECA is 5 October 2015 to 31

October 2017.

[5] Health Promoters, like Ms Archibald, were based within the communities in which they lived and worked in Thames, Tokoroa, Te Kuiti and Taumarunui. Other roles such as drinking water, health protection, medical officers and administration were centrally located within the Hamilton office.

[6] The WDHB had previously operated on the premise that having the staff located at a community level would result in better health outcomes but had changed its view as health promotion had evolved from an education, information and community development role to a key influencing, facilitative, strategic and

supporting role. Reports to the Ministry of Health showed that service delivery of the WDHB's contractual deliverables tended to be limited to areas where staff were located, rather than in areas where the services were most needed.

Restructuring process

[7] The WDHB undertook a consultation process between March and May 2016 in which it proposed restructuring the delivery of Public Health services. The proposed changes to the Health Promotion team included renaming the roles to Health Improvement Advisors to reflect a fundamental change from promotional activities to improvement activities. Within the Health Improvement team it was proposed to establish three units to reflect the settings in which services would be delivered:

• Health Education;

• Healthy workplaces; and

• Healthy Whanau.

[8] It was proposed that each of the teams would be centrally located in Hamilton with an office in Thames but that the offices in Tokoroa, Te Kuiti and Taumarunui would be closed. The office in Thames was seen as a necessary access point for a difficult to reach geographical district.

[9] The proposal to restructure was set out in a consultation document dated 14

March 2016 and was outlined to employees at meetings held during March 2016. Employees were then provided with an opportunity to make submissions on the proposal.

[10] The consultation document notes that teams including the Health Improvement

Advisor positions:

...will be centrally located to the Hamilton office, except for one office that will be retained in Thames/Coromandel due to the site being an access point to our most difficult to reach geographical district and second largest population outside of Hamilton City.

[11] There was no indication in this document that employees based in Thames would be required to travel daily to Hamilton following the implementation of the restructuring. I am satisfied that a reasonable conclusion to take from the wording in

this document is that for those already based in Thames there would be little change in relation to their location.

[12] The PSA encouraged all Health Promoters to engage in the submission process and the Health Promoters as a group made a

combined submission. The Health Promoters focussed their submissions on the retention of the offices in Tokoroa, Te Kuiti and Taumarunui.

[13] Mr Daryl Gatenby, PSA organiser was involved in meetings with the WDHB on 19 and 26 April 2016 where the submissions from all affected employees, including the Health Promoters were discussed. Two meetings were necessary as there was not enough time to consider the feedback in one meeting given the number of submissions that had been received.

[14] After the meeting on 19 April 2016 Ms Deryl Penjueli, Manager, Public Health emailed Mr Gatenby setting out a summary of their discussions. The notes do not record any discussions about the options to be applied to affected employees in the event that the restructuring proposal proceeded.

[15] Ms Penjueli told me that at the second meeting on 26 April 2016 there was some discussion about the difference between a reasonable offer of redeployment and an unreasonable offer. I am satisfied it is more likely than not that Ms Penjueli had this conversation with Ms Bernie McKeany, HR Consultant, but not with Mr Gatenby.

[16] As at 26 April 2016 Mr Gatenby had not been made aware that the employees based in Thames would be expected to travel on a daily basis to Hamilton following the implementation of the restructuring.

[17] On 19 May 2016 the final decision regarding the proposal to restructure was set out in a decision document. That document, as with the consultation document, did not set out the requirement that Thames based staff would be required to travel daily to Hamilton and work from the Hamilton office. The document stated:

The Health Improvement team would be centralised to the Hamilton location, with a small office space retained in Thames for public health. All staff who require access to this space will be able to utilise it for the purposes of public health business;

Over time, and through attrition, new appointments would be made to work from the

Hamilton location.

[18] The WDHB then entered into discussion with all affected staff advising them of the final decision to implement the proposed restructuring which included the disestablishment of the Health Promoter positions and the closing of the three offices but retaining the Thames office and having all teams located in Hamilton.

Offer of the Health Improvement Advisor role

[19] On 25 May 2016 Ms Archibald attended a meeting where Ms Penjueli advised her and others that the role of Health Promoter was to be disestablished and the position of Health Improvement Advisor would be established. At the same time Ms Archibald received written confirmation of the verbal advice in a letter dated 23 May

2016 and a formal offer of redeployment to a Health Improvement Advisor role.

[20] Ms Archibald was advised, for the first time, that initially, for a period of between three and nine months, the new role would require her to travel to Hamilton on a daily basis during normal working hours, utilising a WDHB vehicle. After the initial period the need for travel so frequently would then be determined according to the requirements and planned activities of the position and by the direction of the Team Leader.

[21] Ms Archibald was advised that her current salary would remain unchanged and was asked to confirm her acceptance of the new position by 10 June 2015. Ms Archibald was unhappy with the requirement to travel daily to Hamilton and this was discussed in the meeting. Ms Archibald made an offer to attend meetings remotely by video link and travel to Hamilton two days each week. This offer was rejected by Ms Penjueli.

[22] On 26 May 2016 Ms Penjueli wrote to Mr Gatenby notifying him of the WDHB's view that the offer of redeployment to the Thames based Health Promoters was a reasonable offer. Ms Penjueli notified Mr Gatenby for the first time, that when the new structure started operating those employees based in Thames would be expected to travel to Hamilton frequently during work time and utilising a WDHB vehicle.

[23] The WDHB determined that the option of redeployment for the affected staff based in Tokoroa, Te Kuiti and Taumarunui was not reasonable because the offices located in Tokoroa, Te Kuiti and Taumarunui would be closed and therefore, if employees chose not to take up the option of redeployment they would still continue to be entitled to receive a severance payment.

[24] Despite concerns being raised by the PSA on behalf of Ms Archibald, and a meeting on 30 June 2016 to resolve matters, Ms Archibald's employment was terminated on 22 July 2016 without the payment of severance compensation.

Issues

[25] The issues for determination are:

a) Whether there was an agreement under clause 31.4.2 of the MECA on the appropriate options to apply to Ms Archibald as a

result of the restructuring;

b) Whether the rejection of the offer of redeployment prohibited a severance payment as set out in clause 31.4.9(i) of the MECA; and

c) Whether Ms Archibald has a personal grievance for unjustified dismissal and if so, what, if any, remedies be awarded?

Relevant terms of the MECA

[26] The following are the relevant terms of the MECA applying to change management:

31.4 Staff Surplus

31.4.1 When as a result of the substantial restructuring of the whole, or any parts, of the employer's operations; either due to the re-organisation, review of work method, change in plant (or like cause), the employer requires a reduction in the number of employees, or, **employees can no longer be employed in their current position, at their current grade or work location (i.e. the terms of appointment to their present position, then the options in sub-clause**

31.4.4 below shall be invoked and decided on a case by case basis in accordance with this clause.

31.4.2 **Notification of a staffing surplus shall be advised to the affected employees and their Union at least one month prior to the date of giving notice of severance to any affected employee**. This date may be varied by

agreement between the parties. **During this period, the employer and employee, who can elect to involve their Union Representative, will meet to agree on the options appropriate to the circumstances.** Where employees are to be relocated, at least three months' notice shall be given to employees provided that in any situation, a lesser period of notice may be mutually agreed between the employee and the employer where the circumstances warrant it (and agreement shall not be unreasonably withheld).

...

31.4.4 Options

The following are the options to be applied in staff surplus situations:

a) Reconfirmed in position b) Attrition

c) Redeployment d) Retraining

e) Severance

Option (a) will preclude employees from access to the other options. **The aim will be to minimise the use of severance**. When severance is included, the provisions in subclause 31.4.9 will be applied as a package.

...

31.4.7 Redeployment

a) Employees may be redeployed to an alternative position for which they are appropriately trained (or training may be provided). Any transfer provisions will be negotiated on an actual and reasonable basis.

...

31.4.9 Severance

...

h) Where there is an offer of redeployment to reduced hours, an employee may elect to take a pro-rata compensatory payment based on the above severance calculation.

i) Nothing in this agreement shall require the employer to pay compensation for redundancy where as a result of restructuring, and following consultation, the employee's position is disestablished and the employee declines an offer of employment that is on terms that are:

• the same as, or no less favourable, than the employee's conditions of

employment; and

- in the same capacity as that in which the employee was employed by the employer; or

• in any capacity in the which the employee is willing to accept.

[my emphasis]

Dispute

[27] Whether the WDHB has acted in accordance with the MECA is in dispute. There are two limbs to the dispute. Ms Archibald says firstly that the PSA and the WDHB should have agreed, but did not agree, on which of the options set out in

clause 31.4.4 of the MECA would apply in her case. Secondly, before relying on clause 31.4.9(i) not to pay severance compensation the WDHB had to ensure the offer of redeployment met the requirements of clause 31.4.9(i) and it did not.

Agreement on options

[28] Under clause 31.4.1 the PSA and the WDHB have agreed that the options to be applied to a restructuring will be decided on a case by case basis. At the investigation meeting there was no dispute that "*case by case*" can apply to each individual affected by the restructuring.

[29] Clause 31.4.2 requires notification of a staffing surplus to be advised to the affected employees and the PSA at least one month prior to giving notice of severance to any affected employee. During the one month period between notification of a surplus staffing situation and the giving of notice of severance the WDHB was required to meet with Ms Archibald and/or her representative, which in this case was Mr Gatenby, and agree on the options appropriate to the circumstances.

[30] The WDHB was of the view that Ms Archibald was not affected by a surplus staffing situation because there was a reasonable redeployment option available.

[31] On 10 and 17 June 2016 Mr Gatenby wrote to the WDHB disputing its view that the offer of redeployment for Ms Archibald was reasonable. Mr Gatenby advised that in his view the increased travel component of the new role was a significant change to Ms Archibald's current terms and conditions of employment and as such Ms Archibald did not accept the offer of redeployment. Mr Gatenby requested a meeting to enable the parties to agree on the options appropriate to Ms Archibald's circumstances as provided for in clause 31.4.4 of the MECA.

[32] Following Mr Gatenby's letters to the WDHB Mr Gatenby and Ms Pengueli agreed to meet to discuss Ms Archibald's situation on 30 June 2016. Mr Gatenby attended the meeting believing they were meeting pursuant to clause 31.4.1 and 31.4.2 of the MECA where the options set out in clauses 31.4.4 would be discussed and agreed.

[33] The meeting on 30 June 2016 was focussed on whether Ms Archibald should be entitled to severance compensation and not about which options should apply to

her as a result of the restructuring. As a consequence no agreement was reached as to which of the options would apply.

Did the offer of redeployment meet the requirements of the MECA

[34] Clause 31.4.9(i) prohibits the payment of severance compensation if the redeployment offer is on terms that are the same as, or no less favourable, than Ms Archibald's conditions of employment and are in the same capacity as that in which she was employed by the WDHB, or in any capacity which Ms Archibald was willing to accept.

[35] There is no dispute that Ms Archibald was not willing to accept the offer of redeployment. The question for me to answer is whether the terms were the same or no less favourable to Ms Archibald and in the same capacity.

[36] In reaching my conclusions I have been guided by decisions of the Employment Court where the Court has considered redeployment in the context of wording which requires positions to be "*substantially similar*".

[37] In *Wallis v Carter Hold Harvey Ltd1* the employment Court held that the test to be applied in determining whether two positions were "*substantially similar*" was an objective one. It is necessary to ask whether a reasonable person would consider there to be a sufficient difference between the two positions to break the continuity of employment, having regard to the characteristics of both the positions and the employee. *2* It is an acceptable practice to consider the personal characteristics of the person in question in assessing whether there was substantial similarity between the two positions.3

[38] Despite Mr Gatenby raising concerns about whether the offer of redeployment was reasonable, Ms Penjueli wrote to Ms Archibald advising her that her employment with the WDHB would terminate on 22 July 2016 and confirming her [Ms Penjueli's]

view that the redeployment was reasonable and no severance would be paid.

1 [1998] NZEmpC 245; [1998] 3 ERNZ 984.

2 Ibid at page 995 approved by the Court of Appeal in *Auckland Regional Council v Sanson* [1999] 2

ERNZ 597 at [19].

3 *Matthes v NZ Post Ltd* [1994] NZCA 471; [1994] 1 ERNZ 994 (CA).

[39] Ms Penjueli noted that the travel to the Hamilton site would be done as a group, there were two other employees who would also be travelling, and that the travel would be undertaken during working hours.

[40] On 17 June 2016 the PSA wrote again to the WDHB setting out its concerns that Ms Archibald would be required to drive from Thames to Hamilton each day which would involve three hours total travelling time. The PSA also raised concerns that the newly established position considerably increased the travel component of Ms Archibald's job which made it significantly different in capacity and terms to Ms Archibald's current role within the meaning of clause 31.4.9(i) of the MECA.

[41] The PSA pointed out that Ms Archibald was appointed to work within the Thames-Coromandel and Hauraki Districts and the new role would require her to work outside that area including driving to Te Kuiti, Tokoroa, and Taumarunui.

[42] During the meeting on 30 June 2016 Mr Gatenby raised concerns about the travel component of the new positions, particularly the requirement to travel from Thames to Hamilton daily. Ms Penjueli advised that Ms Archibald would be travelling with two other Health Improvement Advisors and would use a WDHB vehicle and the three of them would share the driving. Ms Penjueli also advised that the three employees would travel to work during their normal working hours. Ms Penjueli denied the travel would be significantly different to Ms Archibald's travel requirements as a Health Promoter and did not agree that the new position was less favourable.

[43] One of the Thames based Health Promoters who accepted the redeployment option and became a Health Improvement Advisor in July 2016 gave compelling and uncontested evidence to the Authority on the effect the daily travel has had on her health. This employee looked to be significantly younger than Ms Archibald. The evidence of this employee was that she was finding the travel challenging and contrary to the intention that the employees would travel together, for about 40% of the time, she travels on her own from Thames to Hamilton and return each day.

[44] This is because both the Thames based employees have been appointed to different settings and their teams are operating differently to each other. This is exacerbated by the fact that the second employee has been appointed to a Senior

position and is now working in Thames about three days each week and Hamilton two days each week.

[45] The evidence shows that both employees find the travelling to be extremely tiring. I heard compelling evidence from one of the two employees of increased body weight and mental health concerns which she attributes to the amount of travel being undertaken.

[46] Both employees gave evidence that they often have to travel outside normal working hours which is exacerbating the situation for them. Also, when travelling within working hours they have only five hours of productive working time which they are finding unsatisfactory.

[47] Associated with the travel arrangements is a sense of guilt that their team members start work at 8.30am each day whereas they arrive at or about 10.00am and whereas their team members finish at or about 5.00pm each day they leave the office at 3.30pm.

[48] Ms Archibald is 68 years old. She suffered from a serious kidney disease during her employment with the WDHB. About five years ago this resulted in Ms Archibald undergoing a kidney transplant. Ms Archibald's uncontested evidence is that since her transplant she has taken great care to maintain her health and she has been well. Ms Archibald's primary concern has always been about the amount of travel required of her and that it would have a detrimental effect on her health. This was raised as a concern during the meeting on 30 June 2016.

[49] Ms Archibald says that for her and in her circumstances which includes the need for her to manage her health very carefully, the requirement to travel from Thames to Hamilton daily meant the role of Health Improvement Advisor was not the same as, or was less favourable than the Health Promoter role.

[50] One of the two Thames based employees who gave evidence regarding the amount of travel they are currently doing to undertake their new roles has usefully provided me with a chart showing the travel she undertook in her role as a Health Promoter compared to the travel she has undertaken since the change in role.

[51] The chart demonstrates that the employee is undertaking significantly more travel than she undertook in her previous Thames based role. Over the period of twelve months in her previous role the employee travelled out of Thames on a total of

44 working days. In the 17 weeks (three and a half months) since the change of role the employee has travelled no less than 67 working days.

[52] As at the date of the investigation meeting it was anticipated that the daily travel to Hamilton would continue for the foreseeable future and it was highly likely that she will be required to travel from Thames to other areas in the Waikato district, including Tokoroa, Te Kuiti and Taumarunui.

[53] It was not disputed that there was a driving component to the Health Promoter role. Ms Archibald's uncontested evidence is that she would travel infrequently to Hamilton, Tokoroa or Te Kuiti for meetings with her Manager. On average Ms Archibald

told me she would drive sometimes 30 minutes to a maximum of 3 hours each week.

[54] If Ms Archibald had accepted the offer of redeployment she would be required to travel 12 hours out of a total of 32 working hours each week leaving a total of 20 hours (five hours a day) productive working hours each week.

[55] Ms Archibald considered the change in the number of hours she would be required to travel as being significant and did not believe she could cope with the travelling from a health perspective.

[56] The Employment Court has held that it is the distance and not the travel time that should be the comparable factor. The total distance Ms Archibald was required to travel in the new role was 202 kilometres.

[57] In *Westpac Banking Corporation v Money4* the Court of Appeal was asked to determine whether Palmerston North was within a reasonable commuting distance of Wanganui. This was a commute of approximately 74 kilometres. The Court of Appeal agreed with the Employment Court that in the circumstances where an employee was seeking to retain their role and was prepared to undertake the commute,

it was reasonable and the employee should have been redeployed.

4 [2004] NZCA 25; [2004] 1 ERNZ 576 (CA) at [19].

[58] I have distinguished the *Westpac* decision on the basis that Ms Archibald's health was a significant circumstance that needed to be taken into account and she had indicated clearly that she was not prepared to undertake the commute. Ms McKeany acknowledged at the investigation meeting that no research had been undertaken to ascertain how much travelling Ms Archibald was doing in her Health Promoter role.

[59] Taking into account Ms Archibald's health and the evidence from the two Thames based employees of the impact the travelling is having on them a reasonable person could conclude the significant increase in travel is sufficient to break the continuity of employment. Accordingly, I have concluded that the Health Improvement Advisor role with the requirement of being part of a team based in Hamilton was less favourable than the Health Promoter role.

[60] In the meeting on 30 June 2016 Ms Penjueli acknowledged that the new positions were changed significantly enough that Health Promoters could not be reconfirmed in the new positions. I have concluded from this that the Health Improvement Advisor roles were not in the same capacity as the Health Promoter roles.

Conclusion

[61] For the reasons set out above I am satisfied the obligation under the MECA to agree on the options appropriate to Ms Archibald's situation was not met. I am also satisfied the offer of redeployment does not meet the requirements of clause 31.4.9(i) in that it was less favourable and not in the same capacity as the Health Promoter role held by Ms Archibald at the time of the restructuring.

[62] Given my findings in relation to the redeployment option and in the absence of any agreement as to which of the options would apply (a situation not covered in the MECA)5 when Ms Archibald's employment ended by reason of redundancy she was entitled to a severance payment calculated in accordance with clause 31.4.9 of the

MECA.

5 *West Coast District Health Board v New Zealand Public Service Association*, CA 158/08, unreported, Employment Relations Authority Christchurch, 16 October 2008 followed.

[63] Waikato District Health Board is ordered to calculate and pay to Ms Archibald the appropriate severance payment in accordance with clause 31.4.9 of the MECA within 28 days of the date of this determination.

Unjustified dismissal

[64] Ms Archibald claims her dismissal was unjustified because the consultation process was flawed. Ms Archibald claims that important information relating to how the new roles would operate was not included in the consultation documentation.

[65] The WDHB says section 103(3) of the Act prohibits Ms Archibald from taking a personal grievance for unjustifiable action when that action derives solely from the interpretation, application or operation of any provision of any employment agreement.

[66] I disagree, section 103(3) of the Act applies to personal grievances arising under section 103(1)(b) of the Act which describes a personal grievance which arises because of a claim that an employee has suffered a disadvantage arising as a result of an employer's unjustifiable actions. Ms Archibald is not claiming that her employment was affected to her disadvantage, rather she claims a personal grievance as a result of being unjustifiably dismissed under section 103(1)(a) of the Act.

[67] The test of justification for dismissal is set out in section 103A of the Act. The test requires the Authority to assess whether the WDHB's actions and the way it acted was what a fair and reasonable employer could have done in all the circumstances at

the time of the dismissal.

[68] The Court of Appeal considered the application of section 103A in a redundancy setting in *Grace Team Accounting Limited v Brake.*6 That decision upheld the earlier Employment Court decision where the Court confirmed employers must show that a decision to make an employee redundant is genuine and based on business requirements.7 This requires the Authority to scrutinise the reasons relied on

by the employer in making its decision to dismiss.

6 [2014] NZCA 541.

7 [2013] NZEmpC 81.

[69] Section 4 of the Act requires parties to an employment relationship to deal with each other in good faith. Parties are to be active and constructive in establishing and maintaining a productive employment relationship in which they are responsive and communicative. The statutory obligations of good faith require employers to provide affected employees with access to information relevant to the continuation of the employee's employment and an opportunity to comment on the information before the decision is made.

[70] There is no dispute that the restructuring of the provision of health services which included the disestablishment of Ms Archibald's role was genuine. I do however have concerns at the process used and the quality of the information provided to Ms Archibald and the PSA during the consultation process.

[71] Neither the consultation document nor the final decision document made mention of the expectation that the Health Improvement Advisors based in Thames would be expected to travel to Hamilton on a daily basis for up to nine months. This only became known to Ms Archibald on 25 May 2016 when she was advised of the final decision and offered a role as a Health Improvement Advisor.

[72] The WDHB had undertaken research into the logistics and practicalities of travelling throughout the district during its review. The WDHB did not provide this information to Ms Archibald or the PSA during the consultation period. Neither did the WDHB undertake any assessment of Ms Archibald's travelling commitments under her old role to enable a comparison to be made about the travel requirements as between the two roles.

[73] The information relating to the significantly increased travel component for the new roles based in Thames was important information relevant to the continuation of her employment. The failure to provide Ms Archibald with the information to enable her to comment on it before the decision was made is a breach of the WDHB's obligations of good faith.

[74] In *Unkovich v Air New Zealand8* the Court held that failure to comply with contractual terms may lead to a conclusion that a subsequent dismissal is without justification and the employee therefore has a personal grievance.9

[75] The WDHB breached the terms of the MECA when it failed to agree with Ms Archibald the options appropriate to her, prior to giving her notice of the termination of her employment. Ms Archibald received notice of the termination of her employment on 13 June 2016 despite Mr Gatenby seeking a meeting on 10 June 2016 to discuss and agree on the options to apply to Ms Archibald under clause 31.4.2 of the MECA.

[76] In all the circumstances of this case, the WDHB's actions in breaching its obligations of good faith and the terms of the MECA were not the actions an employer acting fairly and reasonably could take. Ms Archibald has established to my satisfaction that her dismissal was unjustified and she is entitled to a consideration of remedies.

Remedies

[77] Ms Archibald seeks compensation for humiliation, loss of dignity, and injury to feelings. Ms Archibald gave compelling evidence about the effect her dismissal had on her. She referred to going through a grieving process after her long career with the WDHB had finished in the way that it did. Ms Archibald misses her work and her colleagues and has the added stress and worry of her diminished financial situation.

[78] Ms Archibald says the final letter reminding her of the end of her employment simply reminded her to hand back all of the WDHB property and did not convey any sense of thanks or recognition of all her years of service.

[79] I am satisfied Ms Archibald has suffered considerable emotional distress as a result of her unjustified dismissal and consider an award of $10,000 under section

123(1)(c)(i) of the Act appropriate.

8 [1993] NZEmpC 63; [1993] 1 ERNZ 526.

9 Ibid at 579.

[80] Section 124 of the Act requires me to consider the extent to which Ms Archibald's actions contributed towards the situation

that gave rise to her personal grievance. If I consider her actions so require I must reduce her remedies accordingly.

[81] I am satisfied Ms Archibald has not contributed to the actions giving rise to her personal grievance and no reduction to her remedies will be made.

[82] Waikato District Health Board is ordered to pay to Ms Archibald the sum of

$10,000 under section 123(1)(c)(i) of the Act within 28 days of the date of this determination.

Costs

[83] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Ms Archibald shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The WDHB shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[84] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors require an adjustment upwards or downwards.

Vicki Campbell

Member of the Employment Relations Authority
