

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 437  
5335657

BETWEEN                      TINA COLES  
                                         Applicant  
  
AND                                SALUS CLUBS LIMITED  
                                         Respondent

Member of Authority:      Rachel Larmer  
  
Representatives:            Paul Pa'u, Counsel for Applicant  
                                         Terry Michaels, Director of Respondent  
  
Investigation Meeting:      27 July 2011 at Auckland  
  
Submissions:                29 July 2011, Applicant's submissions  
                                         08 August 2011, Respondent's submissions  
  
Additional information:      26 September 2011  
  
Determination:              06 October 2011

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**DETERMINATION OF THE AUTHORITY**

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- A      Ms Tina Coles was disadvantaged in her employment by Salus Clubs Limited's ("SCL's") unjustified actions.**
- B      SCL is ordered to pay Ms Coles;**
- (a)     \$6,500 distress compensation;**
  - (b)     \$3,500 towards her legal costs;**
  - (c)     \$71.56 for her filing fee.**

**Employment Relationship Problem**

[1]      In her Statement of Problem Ms Coles claimed that the termination of her employment on 31 December 2010 on the grounds of redundancy was procedurally and substantively unjustified. By the time of the investigation meeting, as a result of new information disclosed by SCL, Ms Coles accepted her redundancy was

substantively justified. Her claim therefore focused on procedural irregularities in the manner in which her redundancy was implemented.

[2] She also claimed SCL had breached its good faith obligations towards her.

[3] Although not claimed in her Statement of Problem, Mr Pa'u in his closing submissions sought a penalty for a breach of good faith, as well as a penalty for a breach of her employment agreement.

[4] I consider that natural justice requirements mean it is inappropriate to raise a request for penalties for the first time in closing submissions. SCL was not on notice it was at risk of penalties being imposed so did not have an opportunity to address that during the investigation meeting. Accordingly, Ms Coles' application for penalties is dismissed.

[5] In his closing submissions Mr Pa'u asked that the Authority make recommendations under s.123(1)(ca) of the Employment Relations Act 2000 ("the Act") to prevent similar employment relationship problems occurring. Unlike penalties a recommendation is not punitive, so I consider that SCL was not prejudiced by the request being made in closing submissions.

[6] SCL believed its treatment of Ms Coles was justified because it said it had genuine commercial reasons for closing its city gym and that it implemented the closure and redundancy in a fair and reasonable manner.

[7] Mr Terry Michaels, one of the directors of SCL, said that when he announced at a staff meeting on 17 December 2010 that the gym would be closing and all staff would be made redundant he told them that they were welcome to call anytime him if they wished to discuss the situation. He said no-one called him so he assumed that staff including Ms Coles did not have any problems, issues, or concerns as a result of the closure of the gym.

### **Ms Coles' work history**

[8] Ms Coles was employed by SCL from 2008 to 31 December 2010 as a Reception Administrator at Health & Sports City Club ("the gym"). However, her role was effectively as a manager responsible for running the office and gym. She

was viewed and treated as a valued senior member of staff.

[9] Ms Coles had a long association with the gym before SCL brought it in 2008. Ms Coles started work at a gym called “*Newmarket gym*” in 1982 as a receptionist. In 1987 the Newmarket gym changed its name to “*Healthlands*” and moved to Karaka Street in Newton. Ms Coles moved with it and worked there until 1988, when she went abroad to live for three years. When she returned from overseas she took up her old job at Healthlands. The gym changed ownership a number of times with Ms Coles staying on in her employment with each new owner.

[10] In 1995 the gym was sold and renamed “*Health & Sports*”. SCL purchased it in 2008 along with the Morningside branch of the gym. SCL also owns and operates a third gym called “*All Seasons*.” Although Ms Coles had only been employed by SCL since 2008, her connection with the gym went back to 1982, and apart from the three years she was overseas, she had effectively worked at the same gym (but for different owners) since 1982.

### **Background to gym closure**

[11] Since taking over the gym, SCL had faced increasingly serious financial issues. On 1 July 2010 SCL attended a meeting it had arranged with its landlord to discuss its financial difficulties and to ask for a substantial rent reduction.

[12] Mr Michaels, Mr Sutherland, Ms Coles and another long serving employee, Mr Clarrie McGregor all attended on SCL’s behalf. Mr Michaels said he took Ms Coles and Mr McGregor because the landlord knew them both so their presence would lend credibility to SCL’s representations that it was suffering serious financial hardship and therefore needed its rent reduced.

[13] During the meeting Mr Michaels said SCL’s financial situation was such that they needed a substantial rent reduction to stay in business or the gym would have to close. His view was that discussion put Ms Coles on notice of the potential closure of the gym. I do not accept that. The purpose of that meeting was to discuss a rent reduction because SCL wanted to stay in business. This was not notification to Ms Coles that the gym would in fact be closing in December 2010.

[14] Mr Michaels’ evidence was that Ms Coles was eager for news about the landlord’s response to the request for a rent reduction and she was told on a number of occasions that there had been no response. Mr Michaels believed those responses

should have lead Ms Coles to understand that there was a risk the gym would be closed because without a significant rent reduction it could not afford to continue running.

[15] I do not consider Mr Michaels' view about that was reasonable. I find that Ms Coles did not have reason to believe that the closure of the gym was imminent. After hearing the evidence I have concluded Mr Michaels did not have a sound basis to make the assumptions or draw the inferences that he did about Ms Coles' knowledge of the gym's ability to continue operating in the absence of a response from the landlord to SCL's request for a rent reduction.

[16] What Ms Coles was not told was that Mr Michaels had been in communications with the landlord that, at least since 20 August 2010, indicated it was likely the gym would have to close due to its financial problems. Mr Michaels admitted that he did not disclose these communications with the landlord to Ms Coles because he said he did not want to worry her unnecessarily.

[17] Ms Coles therefore had no way of knowing that Mr Michaels' email to the landlord on 20 August 2010 recorded that he was in the process of deciding the fate of the gym and "*it is looking increasingly likely that we will have no option but to close*".

[18] Nor was she aware that on 20 September 2010 Mr Michaels had written to the landlord stating "*it now makes more commercial sense for us to close than continue trading in the current form. [...] Closing down for us certainly appears to be the best option*".

[19] Likewise Ms Coles did not know that on 7 October 2010 Mr Michaels had again written to the landlord, stating "*I reiterate that closing this business remains our most attractive commercial option*".

[20] Ms Coles was not told that Mr Michaels had met with the landlord on 9 November 2010 to discuss the rent reduction and that during this meeting the idea of negotiating an early exit of the lease in return for a lump sum payment was raised, or that Mr Michaels had commenced negotiations over that option.

[21] On 17 November 2010 the landlord agreed to an early termination of the lease subject to SCL making a specified lump sum payment. There were negotiations back

and forth between the parties over the terms of an early exit from the lease, particularly regarding the amount of the lump sum to be paid.

[22] The amount of the lump sum payment was not agreed upon by the parties until 9 December 2010, by which time the parties had agreed on the terms of an early exit “*subject to contract*”. Mr Michaels said this meant the agreed terms had to be drawn up into a binding contract, the wording of which still had to be agreed by both parties, and then signed by both parties. He said he did not consider that the parties had a final deal until the contract had been signed.

[23] The contract to terminate the lease early was formally entered into by SCL and the landlord on 15 December 2010.

### **Notification of gym closure**

[24] Mr Michaels said he did not discuss the early termination of the lease with Ms Coles (or other staff) before he formally announced the closure of the gym as that would not have changed anything because it was the only option left for SCL.

[25] In 2010 staff and members heard rumours the gym may be closing. Ms Coles asked Mr Stuart Sutherland the Operations Manager about this and he told her it was business as usual. He also reminded Ms Coles that the gym had extended its lease to 2016 and that the landlords were the type to hold SCL to their contractual obligations, which effectively meant that the gym could not close. Ms Coles took some comfort from that and was satisfied the rumours were without merit.

[26] Ms Coles said that the first she heard about the gym closure was on 16 December 2010. Mr Michaels believed that Ms Coles must have known the gym would be closing before he announced it to her on 16 December. I have preferred Ms Coles’ evidence on that point because it is more likely to be correct. Mr Sutherland in his evidence described the closure of the gym on December 2010 as a “*bolt out of the blue*”, as did all of the other staff I heard from.

[27] I did not find Mr Michaels’ evidence credible that Ms Coles must have anticipated the gym’s closure before she was formally told about it on 16 December 2010 because he had ongoing informal discussions with her about the gym’s financial problems.

[28] Mr Michaels was unable to give any specific details such as when and where the alleged informal discussions occurred or what was said by either party which would have put Ms Coles on notice the gym was likely to close. When I pressed

Mr Michaels for these details his response was just that “*Tina knew*”. I do not accept that.

[29] Mr Michaels’ view was that Ms Coles would/should have been able to work out for herself that it was likely the gym would close because he had allegedly kept her informed about the “*lease issues*”. I find that he only discussed with Ms Coles SCL’s request for a rent reduction and the landlord’s failure to respond to that request. He never mentioned SCL had entered into negotiations to exit the lease early.

[30] Ms Coles’ evidence satisfied me that it was highly unlikely that she anticipated the gym would close in 2010. Mr Sutherland and the other staff I heard from shared Ms Coles’ view about that. I believe that Mr Michaels was the only person who knew the gym was likely to close in 2010, and I find he did not share that information with any of the staff.

### **Termination of employment**

[31] On Thursday, 16 December 2010 Mr Sutherland told Ms Coles that Mr Michaels wanted to see her in his office. She did not know what the meeting was about so had no idea her employment was about to be terminated. Ms Coles said she went into shock when Mr Michaels said the gym would be closing in two weeks and that she would be made redundant on 31 December 2010.

[32] Mr Michaels said he told Ms Coles she did not have to work out her full notice but she said she wanted to be there for her colleagues and the members, so preferred to remain at work.

[33] Ms Coles said she was too shocked to ask any questions so she just left the meeting and called the other staff to tell them to be at work the next day for an important meeting.

[34] A full staff meeting was held on Friday, 17 December 2010 during which Mr Michaels announced to all staff that the gym was closing and all staff who worked at the city gym would be made redundant but those staff who were also based at other gyms would not be made redundant because they would keep their jobs at the other SCL gyms.

[35] This announcement was made without any prior consultation and staff were not spoken to individually about their personal situation and circumstances.

[36] Mr Michaels said he told staff they did not have to work out their notice

periods but none of the witnesses I heard from recalled hearing him say that. I note that Mr Michaels spoke to staff without relying on any notes or written material and that he did not hand out any documentation summarising what issues he had discussed.

[37] The letters confirming notice of termination on the grounds of redundancy that were given to staff following the meeting did not state what, if any, assistance SCL intended to offer them, including whether or not they were required to work out their notice period.

[38] I consider it is likely that Mr Michaels intended to offer staff the opportunity not to work out their notice but with the stress of the announcement probably forgot to do so. Two of the staff I heard from said they would have accepted the offer had it been made, and I found their evidence about that credible.

[39] It is common ground that Mr Michaels told staff that if they required assistance of any kind they were free to call him 24/7. He felt that offered appropriate assistance to staff and when he was not contacted assumed no-one had any issues with the closure or redundancies.

[40] The staff I heard from said they felt reluctant to contact Mr Michaels because he was busy with other matters and after announcing the closure he was not present at the gym. They felt he should have made personal contact with them to discuss their individual circumstances. I agree that a fair and reasonable employer would have done so.

[41] The staff also believed that a meeting had been arranged with Mr Michaels for Wednesday, 22 December 2010 at the gym where they would have a chance to discuss their response to his announcement after they had had time to let it sink in. Mr Michaels' view was that staff were going to contact him if they wanted to discuss the closure. He said no-one contacted him so he did not think anyone wanted to talk to him, which was why he did not turn up at the gym as staff had expected him to. His failure to do so understandably left the staff, including Ms Coles, feeling let down.

[42] I consider this misunderstanding occurred because the closure of the gym and the associated redundancies were not handled properly.

[43] There was a dispute over whether or not Mr Michaels offered to assist staff to find new employment. The staff I heard from did not recall him making that offer but

Mr Sutherland did. I consider it likely that Mr Michaels did offer to help staff find new employment but that they were so shocked by his announcement that the gym was closing and the redundancies that they did not register his offer, and it was not repeated in a manner which they would have been able to assimilate (such as in writing or during an individual meeting).

[44] I also find that the assistance Mr Michael offered staff in finding new employment was based on staff approaching him for help. There was no process put in place for that assistance to be provided to staff automatically. I find that Ms Coles was never told what Mr Michaels and/or SCL intended to do (or had done) to assist her to find new employment. Ms Coles told me she had not received a reference from SCL, despite her requests for one.

### **Dismissal**

[45] I am satisfied that SCL's reasons for exiting the lease early and closing the gym were legitimate commercial decisions. The gym's closure meant that Ms Coles no longer had a position or job to do, so in that sense she was superfluous to SCL's requirements. Accordingly, her dismissal was substantively justified.

[46] However, the manner in which SCL went about exiting the lease early, effecting the closure of the gym, and implementing Ms Coles' redundancy was unfair and unreasonable and unjustifiably disadvantaged Ms Coles in her employment under s.103(1)(b) of the Employment Relations Act 2000 ("the Act").

[47] Under s.122 of the Act I determine that Ms Coles' grievance is of a type other than that alleged. She was unjustifiably disadvantaged in her employment but not unjustifiably dismissed.

### **Disadvantage**

[48] The Court of Appeal in *Aoraki Corporation Ltd v McGavin*<sup>1</sup> recognised that a

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<sup>1</sup> [1998] 1 ERNZ 601

just employer would implement its redundancy decision in a fair and sensitive manner. That did not occur in this case. The manner in which Ms Coles was dealt with was unfair and insensitive. SCL's actions breached its statutory good faith obligations and the good faith provisions in Ms Coles' employment agreement.

[49] Section 4(1A) of the Act, which came into effect in 2004 subsequent to the Court of Appeal's judgement in *Coutts Cars Ltd v Baguley*<sup>2</sup>, imposed additional statutory good faith obligations on parties to an employment relationship to those that already existed under s.4 of the Act.

[50] This included the new s.4(1A) obligation which was placed on an employer which was proposing to make a decision that may affect an employee's ongoing employment. That required an employer to provide the potentially affected employee with access to information relevant to its decision and an opportunity to comment on that information before it made a final decision<sup>3</sup> about a matter that may affect the employee's ongoing employment.

[51] The Employment Court in *Simpsons Farms Limited v Aberhart*<sup>4</sup> held that the statutory good faith obligations which came into effect in 2004 made good faith dealing and consultation mandatory in all cases. The Court held that the fundamental consultation principles identified in *Communication & Energy Workers Union Inc v Telecom New Zealand Ltd*<sup>5</sup> and the Court of Appeal's decision in *Wellington International Airport Ltd v Air New Zealand Limited*<sup>6</sup> had been strengthened by the s.4 good faith obligations in the Act.

[52] The s.4(1A) information sharing provisions set out an employer's minimum obligations in potential redundancy situations, so these form one element of the s.103A justification test. These good faith obligations inform the Authority's objective assessment of whether the decisions made by the employer and the way in which it made those decisions were what a fair and reasonable employer would have done in all the circumstances.

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<sup>2</sup> [2001] ERNZ 601

<sup>3</sup> S.4(1A)(c)(i)&(ii) ERA

<sup>4</sup> [2006] ERNZ 823

<sup>5</sup> [1993] 2 ERNZ 429

<sup>6</sup> [1993] 1 ERNZ 671

[53] The Court has held that a fair and reasonable employer would comply with its statutory good faith and consultation obligations because such an employer would comply with the law.<sup>7</sup>

[54] I find that SCL did not consult with Ms Coles over the proposed early exit of the lease which it knew would mean closure of the gym. Ms Coles therefore did not know that the closure of the gym was likely and/or imminent.

[55] I reject Mr Michaels' evidence that Ms Coles should have known (by working out for herself) that the gym was likely to close. Ms Coles and other staff reasonably believed and had also been lead to believe by SCL (by the comments made by Mr Sutherland) that it was very unlikely the landlord would agree to an early exit of the lease which was not due to expire until 2016.

[56] Clearly Mr Michaels was seriously contemplating closure as an option by August 2010. Although consultation was unlikely to have changed SCL's decision to exit the lease early, it would have put staff on notice that there was a risk that the gym would close.

[57] I do not accept that SCL can rely on s.4(1B) in the Act which avoids the need for an employer to provide access to "*confidential information if there is a good reason to maintain the confidentiality of that information*". Section 4(1C)(c) of the Act provides that a "*good reason*" includes "*protecting the commercial position of the employer from being unreasonably prejudiced*".

[58] Mr Michaels said that if gym members knew the gym may be closing then it would undermine the business because they may decide to leave. Consultation was required with staff, not members. Mr Michaels accepted that Ms Coles was an honest, trustworthy, and longstanding member of staff. He had no reason to doubt her loyalty to the business and he said that he had held her in high regard as an employee.

[59] I am satisfied that if Ms Coles had been consulted about SCL's proposed early exit from its lease and told that it had got to the point that closure looked like the best commercial option, she would have kept that information confidential if she had been asked to do so. It is not unusual for employers to consult with staff about a proposed restructuring on a confidential basis. I consider that is what a fair and reasonable employer in SCL's position would have done in all the circumstances.

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<sup>7</sup> Ibid 4

[60] It was also open to SCL to have agreed in principle on the terms of an early exit, “*subject to consultation with staff*” in the same way it had agreed to an early exit, “*subject to contract*”.

### **Matters that could have been discussed during consultation**

[61] I do not accept that consultation would have been futile. There were a number of personal matters which I discuss below which should properly have been addressed during individual consultation with Ms Coles. SCL’s failure to do that resulted in a number of misunderstandings which I find caused unnecessary distress, hurt, and anxiety to Ms Coles.

[62] Mr Michaels’ view that consultation would not have made any difference to his decision to exit the lease early and close the gym did not avoid the mandatory requirement imposed under s.4(1A) of the Act to consult with Ms Coles.

[63] Ms Coles’ partner is retired and she is the household income earner so they were reliant on her income. They had arranged for her partner to have surgery in December 2010 because it was a quiet time at the gym so Ms Coles had planned to take time off to look after him. She said they would not have made those arrangements if she knew her job was at risk.

[64] Ms Coles was also very anxious about finding a new job. She had never prepared a CV and had only ever worked in gyms. Mr Michaels told me he had a number of contacts so was confident he would have been able to find Ms Coles new employment. He believed he had communicated that to Ms Coles, but I find that if he did then the timing and manner of him doing so meant that it was not understood by Ms Coles, who felt that she had been left to find her own new employment.

[65] Mr Michaels accepted that his focus was on closing the gym and he had intended to assist Ms Coles after that had occurred. I also find that, notwithstanding his view that he treated Ms Coles well, he did not actually take any practical steps to support or assist her.

[66] At the time of her dismissal Ms Coles believed SCL was recruiting to positions at its other gyms. She thought that there was work available at the Morningside gym so she asked Mr Michaels about that. I accept her evidence that she felt he brushed her off by telling her that “*she didn’t want to work there*” and then

when she said she did, he cut her off with a curt response to the effect that there was nothing available and “*did [she] expect him to dismiss a Morningside employee just so [she] could work there*”. This caused Ms Coles considerable distress.

[67] As it turned out, as a result of evidence given by Mr Michaels during the investigation meeting, Ms Coles accepted that her information was incorrect and there had not been vacant positions available at the Morningside gym. That would have been communicated to her had consultation occurred.

[68] Ms Coles also believed that two staff had been recently transferred to the Morningside gym prior to the announcement of the closure of the city gym. Ms Coles believed these two employees had their employment protected because staff who were based at other gyms kept their jobs whilst all of the city gym employees were made redundant.

[69] After Mr Michaels gave evidence about why the two staff in question had been moved to the Morningside gym ahead of the city gym closure, Ms Coles accepted there were legitimate reasons for doing so which were unconnected to the closure of the city gym. This is yet another example of a misunderstanding that would not have occurred if SCL had met its consultation obligations because these issues could have been raised by Ms Coles and then addressed by SCL at the time of her redundancy.

[70] Because Ms Coles was never given an opportunity to discuss her individual situation before being made redundant she believed her redundancy was unfair because she had been treated less favourably than others. As it turned out that was not the case, but she did not know that until Mr Michaels gave his evidence.

[71] I also note that when giving his evidence Mr Michaels said that Ms Coles had been paid up until mid January 2011. That was not correct, she was only paid up until her employment terminated on 31 December 2010. That error by Mr Michaels was surprising and indicated that he thought SCL had given Ms Coles more financial assistance than it had. If proper consultation had occurred, that sort of mistake should not have happened.

[72] I find that the failure to consult with Ms Coles and the failure of SCL to consider or discuss her personal situation with her unjustifiably disadvantaged her in her employment.

## **Remedies**

[73] Ms Coles can only be compensated for the consequences of SCL's unjustified actions or omissions which disadvantaged her in her employment. She cannot be compensated for the consequences of her job loss because that was justified in all the circumstances.

[74] I find that Ms Coles' distress over the way she had been treated by SCL was compounded by its actions towards her on her second to last day of work, Thursday 30 December 2010. The gym was due to close the next day, Friday, 31 December 2010 but Ms Coles was asked not to attend work that day which prevented her from saying a personal farewell to members. I accept her evidence that she was very upset about that.

[75] On 30 December 2010 Ms Coles' lawyer raised a personal grievance which Mr Michaels reacted badly to. Although Ms Coles had asked that her grievance not be raised until after her employment had ended, Mr Pa'u was going overseas on holiday for six weeks and wanted to raise the grievance before he left in case his return was delayed.

[76] Mr Michaels had an angry conversation with Mr Pa'u the day he received the grievance. As a result of that, Mr Sutherland was instructed to advise Ms Coles that it was best that she did not come to work the next day because Mr Michaels was angry about her grievance.

[77] It was clear that Ms Coles was very distressed at the way in which her employment ended. She had effectively worked for the same gym for 17 years and had long standing relationships with colleagues and members. She described her life as being the gym because she had a passion for helping people with their fitness. She put in long hours and was a hardworking and committed employee. It was understandably a major blow to her to be told nine days before Christmas that her employment had been terminated.

[78] To her credit Ms Coles obtained a new job quickly but explained how she had found it hard to settle in to her new job at first because she was so upset about the way in which per SCL employment had ended.

[79] Ms Coles also expressed how “*gutted*” she was that she was asked not to attend work on the last day, thus depriving her of the opportunity to say goodbye to members she had told she would see on the last day.

[80] Ms Coles says she felt she was treated in a callous uncaring way. I accept that is an accurate description of how she was treated. During the investigation Ms Coles expressed her like and respect for Mr Michaels and said they had an excellent relationship. She said that made it even more difficult to be cast aside in the manner she was.

[81] During the investigation Mr Pa’u asked Mr Michaels if he was prepared to express any regret to Ms Coles for the way in which her redundancy had been handled on the basis that to do so would address her hurt feelings and give her some closure. Mr Michaels refused to do so.

[82] Mr Michaels’ attitude was that he had gone out of his way to assist Ms Coles (I find that he did not actually assist her at all) and if she had any issues with what he had said or done she should have raised those with him when she was still employed. He was very offended that she had consulted a lawyer and said that action ended any intentions he had to help her after the gym had closed.

[83] I consider an award of distress compensation of \$6,500 is appropriate.

### **Recommendations**

[84] The Authority has power under s.123(1)(ca) of the Act to make recommendations, if any workplace conduct or practices are a significant factor in a personal grievance, concerning the action the employer should take to prevent similar employment relationship problems occurring.

[85] I understand that SCL operates two other gyms which employ 20 or more staff between them. During the investigation Mr Michaels appeared unwilling to accept that SCL as an employer had statutory good faith and/or consultation obligations towards its staff.

[86] I am concerned to ensure that Mr Michaels as a director of SCL does not repeat the mistakes that were made made with Ms Coles’ redundancy. I therefore consider it appropriate to make a number of recommendations in the hope this may

prevent similar employment relationship problems occurring in future.

[87] I recommend that Mr Michaels, as director of SCL:

- (a) Takes legal advice from an employment law expert to ensure that he is fully and properly aware of the consultation and other statutory good faith obligations an employer has towards its employees;
- (b) Ensures that if a restructuring, sale, transfer, or closure of business situation arises that consultation with potentially affected employees, including individual consultation, occurs before a final decision is made to adopt the proposed change(s);
- (c) Ensures that when consulting with staff written information is provided to potentially affected employees so that it is clear what the proposal is, what impact the proposal is likely to have on them if it is adopted, and what (if any) assistance SCL has offered.

### **Costs**

[88] Ms Coles as the successful party is entitled to a contribution towards her legal costs. Mr Pa'u said she has incurred legal fees of \$5,700 and disbursements of \$200. Ms Coles sought full indemnity costs of \$5,900.

[89] This is not an appropriate case for an award of indemnity costs. There is no good reason to depart from the Authority's usual notional daily tariff based approach. I fix the tariff at \$3,500 for this matter which involved a one day investigation. I do not consider there are any reasons which warrant an adjustment to that notional daily tariff.

[90] I had no information as to what the disbursements claimed were for so I am not prepared to award the \$200 sought. I am aware that Ms Coles would have incurred a filing fee of \$71.56, so SCL is ordered to reimburse her for that amount.

### **Orders**

[91] SCL is ordered to pay Ms Coles:

- (a) \$6,500 without deduction under s.123(1)(c)(i) of the Act;

- (b) \$3,500 towards her legal costs;
- (c) \$71.56 to reimburse her for her filing fee.

Rachel Larmer  
Member of the Employment Relations Authority