

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 65
5418827

BETWEEN

RUTH CUNLIFFE
Applicant

A N D

WARKWORTH GOLF CLUB
INC
Respondent

Member of Authority: James Crichton

Representatives: Hugh Fulton, Counsel for Applicant
Chris Rowe, Advocate for Respondent

Investigation Meeting: 17 December 2013 at Auckland

Date of Determination: 25 February 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Cunliffe) alleges that she was constructively dismissed from her employment on 21 December 2012, that the respondent employer (Warkworth Golf Club) breached its duty of good faith toward her and either breached or threatened to breach various terms of her employment agreement as well.

[2] Warkworth Golf Club resists all of Ms Cunliffe's contentions and allege that she herself was guilty of a breach of good faith in undertaking a commitment to weekend work and then not performing it.

[3] Ms Cunliffe had been employed by Warkworth Golf Club since 2008 in a variety of positions, the most recent of which is styled Customer Service Supervisor. Generally, hours of work were rostered by agreement.

[4] However, the parties executed a fresh employment agreement relating to the position of Customer Service Supervisor. That employment agreement was signed by Ms Cunliffe on 15 March 2012. It is common ground that it mentions weekend work.

[5] Discussions commenced in April 2012 with a view to agreeing a roster for the winter months. Ms Cunliffe resisted the proposed weekend work and eventually, suggested that the parties attend mediation with a view to try and resolve matters.

[6] Various other suggestions were also made in an attempt to resolve matters but Warkworth Golf Club maintained its position that there was a signed employment agreement between the parties which contemplated some weekend work by Ms Cunliffe and she was simply refusing to perform sufficient weekend work to satisfy the needs of Warkworth Golf Club.

[7] Conversely, Ms Cunliffe's position is that she made various attempts to try to resolve matters, including several suggested compromises which involved her doing some weekend work, but none of these proposals was accepted by Warkworth Golf Club.

[8] Despite the ongoing disputation between the parties, Ms Cunliffe continued to work exclusively during week days at no diminution of her rate of pay.

[9] By letter delivered to Warkworth Golf Club on 22 December 2012, Ms Cunliffe resigned her position and subsequently a personal grievance claim was raised.

Issues

[10] It is apparent on the evidence that the Authority's focus must be on the meaning of the relevant clause in the employment agreement and the parties' engagement concerning that.

[11] However, the context is also relevant; it is clear that Ms Cunliffe was a well regarded senior employee of Warkworth Golf Club who had served in a number of capacities prior to the events complained of. However, the restructure of its management which Warkworth Golf Club entered into in 2011, needs to be briefly discussed to set the environment in which the eventual dispute took place.

[12] It follows that the Authority will need to address the following questions:

- (a) What happened during Warkworth Golf Club's restructure; and
- (b) What were the parties' obligations in terms of the operative employment agreement; and
- (c) Was Ms Cunliffe constructively dismissed?

What happened during Warkworth Golf Club's restructure?

[13] It is apparent on the evidence that during 2011, the Warkworth Golf Club undertook a restructure of its operations to refocus the Club's management, arrest a decline in membership, and address falling revenue while costs continued to increase.

[14] No objection is taken to that restructure, save for one issue that the Authority will come to shortly. The restructure seems to have proceeded on an entirely proper basis with an initial meeting between the Club's president and the staff, which meeting was followed by individual conversations with the employees, one of whom was Ms Cunliffe.

[15] The evidence the Authority heard was that, so far as Ms Cunliffe was concerned anyway, the proposed changes were welcome. Her evidence is quite explicit that she particularly welcomed the appointment of a General Manager (a new position) as she saw that as a positive development in terms of the long term future of the Club and because she saw that position as facilitating a better engagement between the Board and the staff.

[16] Nor does Ms Cunliffe make any claim that the process undertaken by Warkworth Golf Club was somehow inappropriate save in one particular respect relating to a complaint about the behaviour of the Board chair. The Authority addresses this point now.

[17] Ms Cunliffe says that in the general meeting with staff which initiated the consultation about the restructure, the chairman of the Board, Mr Thacker, "*constantly eyeballed me in an aggressive demeanour*". That claim is somewhat odd because there is no evidence that such a contention was raised by Ms Cunliffe with Warkworth Golf Club contemporaneous to the meeting.

[18] The evidence is that Ms Cunliffe wrote a letter to Warkworth Golf Club confirming support for the proposal on 27 October 2011. The evidence for

Warkworth Golf Club is that at no stage, until her evidence was filed in the current proceeding, did Ms Cunliffe raise this “*eyeballing*” allegation.

[19] Not only was it not raised by Ms Cunliffe at the time but, as the Authority has just noted, the complaint now raised is inconsistent with what Ms Cunliffe is recorded as having said at the time. Moreover, Mr Thacker, who gave evidence to the Authority, flatly denied the allegation and appeared genuinely hurt by it.

[20] What is more, the contention that Mr Thacker “*eyeballed*” Ms Cunliffe is inconsistent with the context. At the point at which the consultation meeting took place, there was absolutely no dispute of any kind between the parties. Ms Cunliffe was held in high regard by the Warkworth Golf Club and there had been no disputation at all between the parties.

[21] It seems to the Authority inconceivable, having heard Mr Thacker give his evidence, and heard him respond to questions from the Authority and from opposing counsel, that he would have “*eyeballed*” Ms Cunliffe as she contends; the Authority formed the view that Mr Thacker was a mild-mannered man and, even if provoked, would have been disinclined to adopt the strategy complained of. Certainly he was pushed somewhat in cross-examination by opposing counsel and there was no suggestion of the sort of behaviour that Ms Cunliffe complains of.

[22] Conversely, when Ms Cunliffe was cross-examined about the allegation, she prevaricated, seemed uncertain about precisely what it was she was claiming had happened, and was frankly totally unconvincing.

[23] The Authority concludes that, given the lack of any contemporaneous complaint from Ms Cunliffe, the lack of any convincing corroboration, Mr Thacker’s denial, and the performance of both Mr Thacker and Ms Cunliffe under cross-examination, that it is more likely than not that the “*eyeballing*” incident never happened.

[24] The first stage of the restructure was eventually confirmed as the creation of a new position of General Manager to the Warkworth Golf Club and Ms Cunliffe was encouraged to apply. She did in fact apply, was shortlisted but in the result Mr Michael Reid was appointed.

[25] Again, the evidence is plain that Ms Cunliffe remained positive about the process and amongst other things congratulated Mr Reid on his appointment.

[26] The next stage in the process, so far as it affects the present dispute, was the creation of a new position of Customer Service Supervisor which, again on the uncontested evidence before the Authority, was offered directly to Ms Cunliffe without any contestable process whatever. In the Authority's judgment, that fact supports Warkworth Golf Club's view, expressed throughout its evidence, that it thought highly of Ms Cunliffe and her contribution to the Club.

[27] Ms Cunliffe was appointed Customer Service Supervisor in February 2012 and the next step in the process was to marry a job description which had been drafted by the Club to a new employment agreement for the new role and have the parties execute those documents. Central to the job description and the subsequent independent employment agreement between the parties, from Warkworth Golf Club's perspective, was an intention that the new role would contribute to weekend work as necessary and that in particular, as Saturday was the Warkworth Golf Club's busiest day, the Customer Service Supervisor would need to have a significant presence on that day.

What were the parties' obligations in terms of the operative employment agreement?

[28] The operative employment agreement between the parties was signed by each of them on 15 March 2012. That employment agreement attached a detailed job description. While the Authority's focus must be on the terms of the employment agreement, it is nonetheless appropriate to observe that the job description has relevant provisions in it which impact on the understanding of the issue.

[29] That said, it will be apparent from the following paragraphs concerning the job description, that none of the provisions commented on specifically delineate the actual hours of work.

[30] The first of those the Authority wishes to refer to is under the first heading of "Overview" where the following statement appears:

The Customer Service Supervisor ... will provide the lead role in ensuring that the activities conducted from the Golf Operations Office ... and shop are delivered to a standard that will support the objective of [Warkworth Golf Club] being the preferred golf service provider.

[31] Further under the heading “Working Hours”, the following two provisions appear:

1. *The Club is open for virtually all daylight hours seven days a week. Consequently the working rosters need to cover all times when there is significant activity at the Club.*
2. *[Warkworth Golf Club] may require attendance at certain important events including but not limited to Saturday competitions, Friday Opens, Major Tournaments.*

[32] Under the heading “Provide coverage for other functions”, the following provision appears:

[Warkworth Golf Club] will always have a small staffing establishment requiring that all staff are highly flexible ... to provide coverage for other positions. [Warkworth Golf Club] will consequently require all staff to be cross-trained in all basic Club operations. Specifically:

1. *The CSS [Customer Service Supervisor] will train other staff in basic [Golf Operations Office and Shop] operations.*
2. *The CSS will obtain at [Warkworth Golf Club’s] expense the relevant licence to man the bar under supervision. At times may be required to provide cover for bar duties.*

[33] The independent employment agreement (the agreement) refers at clause 2.2 to the employee performing the duties set out in the job description and continues with the standard provision allowing modification of those duties “*following agreement with the Employee*”.

[34] In clause 4, the obligations of the parties are set out. Both parties have an obligation to act in good faith towards each other and to fulfil their obligations to each other concerning safety and health in the workplace. The employer is required to be a good employer and the employee is required to obey lawful and reasonable instructions, perform duties with skill and diligence and to “*conduct duties in the best interests of the employer and the employment agreement*”.

[35] The employment is a salaried one and it is implicit in the words used by the parties that the expectation is that while a minimum of 40 hours per week is specified, any hours in excess of that will be worked without additional recompense should they be necessary to complete the obligations of the role.

[36] The critical provision is clause 6.1, the relevant terms of which read as follows:

The employee shall be required to work a minimum of 40 hours per week, performed either on week days or weekends as rostered and agreed with the employer.

[37] The essence of the dispute between these parties is that while Ms Cunliffe maintains that she never agreed to the hours proposed by Warkworth Golf Club, the employer on the other hand accuses her of bad faith in signing an employment agreement which not only contemplated weekend work but required it, in circumstances where, on the facts, Ms Cunliffe was not prepared to work at the weekend.

[38] Before looking at the factual matrix, it is appropriate for the Authority to record that the clause is not artfully worded. As the Authority observed in questioning Mr Thacker, the problem with the clause is that it is not clear what happens when there is no agreement. The provision is silent about that circumstance.

[39] Of course, the *contra proferentem* rule could be applied to this circumstance to construe the provision against the party whose document it was (in this case Warkworth Golf Club). But that, arguably, does not assist in determining a practical outcome. Nor does it address Warkworth Golf Club's submission that in signing the agreement, Ms Cunliffe was guilty of deceptive conduct because the employer says she had no intention of ever working at the weekend.

[40] But with respect, that submission anyway cannot be right because it is apparent on the evidence of both parties that during the course of their negotiations about the matter, Ms Cunliffe made a number of proposals which involved her working at weekends. That said, the Authority has to observe that the parties were never at one about the extent to which Ms Cunliffe should work at the weekend.

[41] The employer says that it would have been self-evident to Ms Cunliffe, both from her extensive knowledge of the Club's operations and the documentation which the Authority has just recited (and particularly the job description), that weekend work was a pre-requisite and in particular, it appeared from the evidence the Authority heard that the employer's aspirations were for Ms Cunliffe to work either every Saturday or, at the very least, most Saturdays. This was for the very simple reason

that Saturday was the most important day in Warkworth Golf Club's week, a circumstance no doubt it shared with every other golf club in New Zealand.

[42] But if that is the position, and it appears to the Authority that that was the aspiration of the Warkworth Golf Club, why is it that the Authority has to derive that intelligence from extraneous evidence rather than from the clear provisions of the employment agreement?

[43] Put another way, if the Authority is correct in its conclusion that Warkworth Golf Club sought to have Ms Cunliffe work every or most Saturdays, surely that is a key provision which ought to appear in the employment agreement.

[44] But that is not in the employment agreement. What clause 6.1 says in the Authority's view is that the employee must work a minimum of 40 hours per week (not disputed), that that work must be performed either on week days or weekends (not disputed) as rostered and agreed with the employer (where the dispute is not about the words but simply about lack of agreement to any roster). Nowhere in the relevant provision is the expectation that the affected employee must work Saturdays or a majority of Saturdays.

[45] Indeed, a proper construction of the relevant provision arguably is that Ms Cunliffe's default position of preferring to work during the working week is acceptable because the relevant clause in the provision is disjunctive. Clause 6.1 provides that the required hours must be performed "*either on week days or weekends*". That is a disjunctive provision which contemplates that the hours must be worked either during the working week or during weekends. It does not even say that there must be a mixture of weekend work and week day work so, on the basis of the provision in the agreement alone, it is difficult to see how Warkworth Golf Club can insist that Ms Cunliffe work a majority of Saturdays.

[46] Of course, that ignores the emphasis which the Authority has tried to reflect from the job description, that weekend work is important to the Club, but even that is not explicit enough about what is obviously the focus of the Club's thinking, namely that Saturdays are the key day and that that key day must be worked by the occupant of this position.

[47] Moreover, the final clause of the relevant provision "*as rostered and agreed with the employer*" seems to require not just an agreement of the parties but an

agreement about the roster. The short point is there was no agreement about any roster and as the Authority has been at pains to point out, there is nothing in the agreement which identifies what the parties are to do in the absence of agreement. There is no provision, for instance, which gives the employer the right to make a final determination, in the absence of agreement, as is sometimes found in agreements of this sort. Nor is there any other mechanism set out for resolving such an impasse.

[48] On the facts then, the Authority's conclusion is that Ms Cunliffe was perfectly entitled to maintain that she must agree the proposed roster of hours and she might even have been justified in refusing to work weekend hours at all because of the disjunctive nature of the clause referring to "*week days or weekends*". The Authority would not put the latter point too strongly however, because of the various provisions it has referred to in the job description which seek to make it apparent that a key day will be Saturday.

[49] For the foregoing reasons then, the Authority is persuaded that Ms Cunliffe was perfectly entitled to continue working her original span of hours (10 hours a day over four work days), unless and until there was agreement between the parties about a new span of hours. The Authority does not accept Warkworth Golf Club's contention that Ms Cunliffe refused to work weekends; by its own evidence, it is plain that Ms Cunliffe proposed various arrangements which would have her working some weekend hours. The short point is that the hours that she proposed which included weekend work were never sufficient for the purposes of Warkworth Golf Club and therefore there was no agreement.

[50] It is apparent on the evidence that Ms Cunliffe made various attempts to try to broker a deal including suggesting that the parties attend mediation with a view to trying to resolve matters, but none of her proposals were acceptable to Warkworth Golf Club and none of the Club's proposals were acceptable to her.

[51] There was argument and disputation at the investigation meeting about exactly what proposals were on the table and when. In closing submissions for Ms Cunliffe, Mr Reid, the General Manager, was criticised for his evidence that the Club might have accepted five Saturdays in seven and he is accused of effectively manufacturing that evidence. The Authority does not take that point; the reality is that the relevant provision required an agreement about the hours to be worked and there was no such agreement.

[52] What is true is that Warkworth Golf Club has endeavoured to deal with the deficiencies in its agreement by referring the Authority to other extraneous materials including email exchanges between the parties during the negotiation. But none of that helps. Agreement is required and agreement was not forthcoming. If working every Saturday or most Saturdays was the Club's bottom line or its requirement, then it should have said so in the agreement and it did not.

Was Ms Cunliffe constructively dismissed?

[53] The Authority's considered view is that if Ms Cunliffe had simply maintained her position, namely that agreement to change her hours of work was required, and continued working in her role, there could have been no legitimate criticism of her by the employer.

[54] But of course that is not what happened. She reached a point at which she resigned her position with Warkworth Golf Club and then claimed that she had been constructively dismissed from her employment. What the Authority must now address is whether the elements of a constructive dismissal exist.

[55] First of all, it is apparent on the Authority's earlier analysis of the matter that Ms Cunliffe was quite right in not allowing herself to be forced into accepting hours of work which she did not agree with and that, in doing that, she might well have inconvenienced Warkworth Golf Club but she was doing no more than she was entitled to in terms of the employment agreement which it had drafted for her. So what was the constructive dismissal?

[56] Ms Cunliffe relies amongst other things on her contention that, during the course of the negotiations about the proposed change of hours, Warkworth Golf Club became so truculent and aggressive as to effectively drive her out of the employment such that, as a matter of law, its actions were repudiatory or in the well known phrase of Williamson J "*a sending away*".

[57] Ms Cunliffe was particularly troubled by the Club's technique of requiring rapid responses from her to new proposals from it. Of more moment is her contention that in a letter dated 30 May 2012, for the first time Warkworth Golf Club threatens her that if she will not agree to its demands, it would find another role for her "*with less hours and less pay*" and it was leaving that on the table until the close of business the day after the letter was written.

[58] There are numerous other examples of unhelpful observations generating more heat than light, and while the tone of the correspondence at this early stage from the Club is rather shrill, it is difficult to see how that material, taken by itself, is enough to ground a constructive dismissal. After all a constructive dismissal relies really on a reversal of the onus normal in employment matters where the employer is under an obligation to defend its actions. With the reverse of the onus in a constructive dismissal, the employee must justify on the balance of probabilities, her conviction that she was driven out. Bad manners, intemperate language, and plain old fashioned cussedness may not be enough on its own to justify a conviction that there has been a repudiation of the employment relationship.

[59] But Ms Cunliffe relies on other matters as well. First, there is an observation by a Board member of the Club directed at Ms Cunliffe which she took exception to. She says that the Board member said something to the effect that she was not wanted in the Club. Mr Reid, the General Manager, was physically present at the time and his evidence about what happened is different from Ms Cunliffe's. Clearly there was some sort of intemperate exchange, but the Authority is not disposed to put any great weight on the issue because Ms Cunliffe put no weight on it at all at the time. There was no complaint from her to the General Manager, indeed no action of any kind was taken by her and the Authority's impression of the exchange between her and the Board member is not informed by any corroborative evidence one way or the other. Mr Reid was present and his view of matters was different from Ms Cunliffe's. As a building block for a constructive dismissal, the episode could have no more than the most limited weight because Ms Cunliffe did nothing about it herself at the time.

[60] That situation has to be contrasted with another episode involving the same Board member where he made an uncharitable remark allegedly directed at another staff member (Ms Boston), who also gave evidence to the Authority. On this occasion, Ms Cunliffe was a witness to this remark and she insisted on making a complaint to the Board.

[61] The evidence the Authority heard seemed to suggest first that Ms Boston was not greatly exercised by the uncharitable comment, but more importantly that everyone agreed that the Board had dealt with the matter appropriately. That being the position, the juxtaposition between the Boston matter and the Cunliffe matter, both involving the same perpetrator, does seem to the Authority to emphasise the

point that Ms Cunliffe knew about the right to complain to the Board, had chosen to exercise that right on another occasion, but in relation to the issue between her and the Board member concerned, she took no steps. That rather supports the Authority's conviction that that aspect must have limited weight in supporting a constructive dismissal allegation.

[62] A second supporting aspect referred to by Ms Cunliffe is what submissions for the Club rather unkindly refer to the "*refrigerator incident*". The short point was that the General Manager decided to move a refrigerator downstairs so that Club members could buy a beer at the end of a golf round if the upstairs bar facilities were being used for another function. This move was done at short notice, while Ms Cunliffe was away from work. Because the refrigerator was placed in her work area, Ms Cunliffe took exception to the decision by the General Manager because she was not consulted.

[63] Yet she conceded at the Authority's investigation meeting that the General Manager had power to move the refrigerator in, as he had done, and it is difficult really to see this aspect as anything more than a storm in a teacup. Again, the Authority is forced to conclude that this issue can only play a very small part in mounting a claim of constructive dismissal.

[64] Next, there is an allegation that a member of the Club, variously described as a friend or an acquaintance of the General Manager, was being lined up to take over Ms Cunliffe's role.

[65] Perhaps more importantly, the Club member concerned was working on a casual basis for the Club on a day when Ms Cunliffe was not and he took it upon himself to rearrange the golf shop. This caused some consternation when Ms Cunliffe returned to duty and Ms Cunliffe described the shop as looking as if it had been ransacked by burglars. Mr Reid quite properly told Ms Cunliffe that she should put the shop back together again if she did not like what had been done but she chose not to do that.

[66] Finally, there was dispute about whether some mistakes in golf results were Ms Cunliffe's fault or not. The Authority is satisfied that Mr Reid was not particularly sensitive in addressing the matter with Ms Cunliffe, but again, nothing in Mr Reid's behaviour was sufficient to justify the total repudiation of the employment relationship which is part and parcel of a constructive dismissal.

[67] The Authority's considered view is that Ms Cunliffe was not constructively dismissed from her employment but simply resigned because she was fed up with the difficulties about reaching a conclusion on her hours of work. As the Authority has already indicated, if she had simply carried on with her employment, working the hours that she was prepared to work, the Authority's considered view is that the employment agreement she executed allowed her to do precisely that.

[68] But instead of doing that, she seems to have developed an increasing conviction that Warkworth Golf Club was endeavouring to get rid of her and the Authority is simply not persuaded that the evidence suggests anything of the kind. There is no doubt that the relationship between the parties was increasingly tetchy because Warkworth Golf Club was not getting its way in relation to the hours of work issue, but as the Authority has already opined, that was its own fault. It drafted the agreement and that agreement did not provide what it thought it provided. Ms Cunliffe was perfectly entitled to remain in the employment, working her original span of hours.

[69] In order to fall within the terms of the law on constructive dismissal, Ms Cunliffe must satisfy the Authority that the employer's conduct was ...*such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it...*: *Woods v. WM Car Services (Peterborough) Ltd* [1982] 1CR 693.

[70] Inconsiderate conduct causing some unhappiness or resentment is not enough and dismissive or repudiatory conduct must be found in order for the case to be made out: *Williamson J in Wellington etc Clerical IUW v Greenwich* [1984] ACJ 347.

[71] In the Court of Appeal judgement in the case of *Auckland etc Shop Employees etc IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372, three categories of constructive dismissal were identified, vis:

- (a) Was the employee given the option of resigning or being dismissed;
- (b) Was there a concerted strategy adopted by the employer with the dominant purpose of causing the employee to resign;
- (c) Was there a breach of duty by the employer so serious as to make the employee's resignation reasonably foreseeable?

[72] In the instant case, there is no suggestion of a resign or dismiss scenario. Nor is the Authority persuaded that there was a concerted strategy by the Club designed to bring about Ms Cunliffe's resignation. All the evidence suggests that the Club sought to retain Ms Cunliffe in the employment, that the Club thought highly of her. Moreover, while the evidence is redolent with frustration about the inability of Warkworth Golf Club to get its way and have Ms Cunliffe work weekends, there is no evidence that suggests any concerted strategy other than that strategy to have Ms Cunliffe work weekends. That was the driver for the Warkworth Golf Club's behaviour and not any desire to have her exit the employment. Indeed, the behaviour of the Club seems best understood as a determination to press on with its mistaken position, in the belief that Ms Cunliffe would eventually relent, if they just kept at it. That behaviour, while misconceived, is not, in the Authority's considered view, repudiatory of the employment relationship and does not create a situation where the employee *cannot be expected to put up with it*.

[73] That leaves the third leg to be considered, whether there was a breach of duty so serious as to make a resignation reasonably foreseeable. The correct approach with these cases was set out by the Court of Appeal in *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1ERNZ 168 when the Court identified that the first question for the tribunal was whether the resignation was caused by the actions of the employer and if the answer to that question was in the affirmative, the second question was whether the resignation was reasonably foreseeable. Put shortly, those questions might be referred to the causation question and the foreseeability question.

[74] The Authority has not been persuaded that Ms Cunliffe's resignation was caused by actions or inactions of the employer. Certainly there has been a long negotiation between the parties, which was getting nowhere, but there is nothing improper in parties negotiating with each other, certainly nothing in principle that would ground a breach of duty claim. But if the negotiations drag on, as happened here, and became intemperate, as happened here, can that constitute a breach of duty?

[75] The Authority is not persuaded that there has been a breach of duty by the Club although there is legitimate criticism of the tenor of their correspondence, and certainly nothing that went so far as to suggest repudiation by the employer. Nor is

the Authority persuaded that the other matters raised by Ms Cunliffe, like the refrigerator incident help. Even taken together, these matters are really of little moment and do not, in the Authority's view, add materially to the picture.

[76] So the Authority concludes that there is no causative nexus between the actions of the Club and Ms Cunliffe's resignation but even if the Authority is wrong in that conclusion, it is difficult to see how Ms Cunliffe's resignation could have been foreseeable. Warkworth Golf Club must be taken to have assumed that Ms Cunliffe would continue with her refusal to compromise her position on weekend work, at least to the extent desired by the Club and there was no intimation that she would respond in the way she did. The Authority concludes that her resignation was not foreseeable.

[77] For all those reasons then, the Authority is not persuaded that there has been a constructive dismissal in this case.

Determination

[78] The Authority has not been persuaded that Ms Cunliffe has been unjustifiably constructively dismissed and therefore her claim fails. However, the Authority is also clear that Warkworth Golf Club is completely mistaken in its view that the terms of the employment agreement it provided for Ms Cunliffe to execute allowed it to demand her to work a span of hours which she did not agree to and accordingly, its counter claim is also dismissed.

Costs

[79] Costs are reserved, but the parties are encouraged to try to resolve matters on their own terms. While Ms Cunliffe has been completely unsuccessful in her claim, it is fair to observe that Warkworth Golf Club has also been completely unsuccessful in its counterclaim and the parties may think that this is a case where costs should lie where they fall.

[80] If costs remain unresolved after discussion between the parties' representatives, either party may file an application in the Authority for costs to be fixed and the other party then has 14 days thereafter to file its response.

James Crichton
Member of the Employment Relations Authority