

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 126/09  
5039342

BETWEEN SANDRA FORD  
Applicant

AND METALLIC SWEEPING  
(1998) LIMITED  
Respondent

Member of Authority: Paul Montgomery

Representatives: Robert Thompson, Advocate for Applicant  
Owen Paulsen, Counsel for Respondent

Investigation Meeting: 7 April 2009 at Christchurch

Submissions received: 11 May 2009 from Applicant  
11 May 2009 from Respondent

Determination: 6 August 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ms Ford claims to have been unjustifiably dismissed from her position as Office Administrator for the respondent and also to having been disadvantaged by what she alleges was her unjustified suspension immediately prior to her dismissal.

[2] Ms Ford seeks the remedies of reimbursement of wages lost as a result of her dismissal, compensation for humiliation, loss of dignity and injury to feelings, plus costs and disbursements.

[3] The respondent says that the dismissal for serious misconduct was justified and although conceding it did not have a contractual right to suspend, says in the particular cases, it was warranted. Accordingly, the respondent declines to grant the remedies Ms Ford wants.

[4] The parties were unable to resolve their differences in mediation.

**Essential facts**

[5] Ms Ford was employed by the respondent commencing on 7 April 2001 in an office administration role which involved her in general office work and she also managed the company's payroll. In the latter task, the applicant was the primary link between the company and the labouring and operational staff who at times were aggressive and threatening if querying their wages. Ms Ford says *throughout my employment, the office has been subject to ongoing thefts, vandalism and violence which I clearly put down to the type of people we employ and this has left me fearful, vulnerable and my safety seriously compromised on a daily basis.*

[6] The office in which the applicant worked was shared by staff of an associated business. Both companies operate radio telephone systems (RT) and the two office consoles sit beside each other.

[7] On 21 June 2005, Ms Ford was near them to respond to a message on the Metallic Sweeping RT. Mr Gerard Cooper, who worked for the associated company Christchurch Bus Services Limited (CBS), approached the applicant and Mr Ford says he accused her of turning the volume on the CBS RT down. She says he was aggressive and abusive towards her.

[8] Feeling aggrieved at Mr Cooper's behaviour and remarks and, she says, aware he had been verbally abusive to others in the past, Ms Ford followed him to his office. She made it clear she would not be spoken to in such a manner and asked Mr Cooper to apologise. Mr Cooper refused.

[9] Ms Ford says Mr Cooper continued to speak rudely to her *then made a move to come around the desk towards me in what I saw as an act of aggression that was likely to turn physical. I immediately left the office area, and was aware Clive Peter had been observing the entire episode and had made no attempt to intervene or assist me.* Mr Peter is the respondent's Managing Director.

[10] Mr Peter says he was in his office upstairs and heard, rather than saw, the opening exchange between the two protagonists. At the time, Mr Peter says he was dealing with a driver availability problem, but he came downstairs and says *I did not catch the conversation but I did see through the doorway that Gerard was behind his desk with Sandra on the near side by the door.*

[11] Mr Peter says the applicant left Mr Cooper's office commenting she would check her rights and went to her own office. He said Ms Ford approached him saying she wanted to talk to him. Mr Peter says he told Ms Ford he was dealing with a logistics problem at that time, but would see her once he had that sorted out. Mr Peter says Ms Ford reacted saying she was going to check her employment agreement regarding the required period of notice. Mr Peter says *I took this as a reference to an intention to resign. Sandra then added "in fact I'm giving you one week's notice". Sandra then stormed out of the office to her car.*

[12] Ms Ford returned briefly saying she wanted to check her holiday pay which reinforced Mr Peter's view that the applicant was resigning or intending to resign. He contests her evidence to the Authority that she returned to turn her computer off. He says it was still running when the applicant left some time before 9.30am that morning.

[13] Mr Peter asked Mr Cooper for a statement about the incident, which was later provided by email. Mr Peter then understood Mr Cooper had not accused Ms Ford of turning down the CBS RT, but told her not to turn it down.

[14] The morning after the incident, 22 June 2008, Mr Peter says he received an email from Ms Ford advising she would not be at work that day due to health reasons. He says he was confused by this and was unsure whether the applicant was withdrawing her resignation or whether she had intended working out her notice. Mr Peter was also concerned as the walkout reminded him of a previous occasion in October 2002 when the applicant left the office in protest at the respondent hiring a person who had reportedly been arrested on drug charges. Mr Peter says he made it clear to Ms Ford at the time that such behaviour was serious and that if it were to occur again, her job could be at risk. Counselling around how to react in such situations was arranged by the company with Ms Ford's agreement.

[15] On another occasion in September 2004, the applicant laid a complaint of sexual harassment against another employee. It transpired it was a genuine misunderstanding and the industrial chaplain involved suggested some counselling to assist her workplace interaction with other staff.

[16] On 22 June, Mr Peter spoke to Ms Ford by telephone in the mid afternoon. Ms Ford advised she had visited her doctor. Mr Peter says he did not inquire into the

reasons for the visit. Rather, his concern was to clarify whether Ms Ford was resigning or on sick leave and therefore would return. Ms Ford told him she was seeing her doctor the following day and would advise Mr Peter.

[17] Mr Peter says Ms Ford telling him her resignation was not to do with Mr Cooper but was *something she needed to deal with a long time ago*, further confused him. In the course of the discussion, Mr Peter said he needed to know Ms Ford's position as the end of the month was approaching and administrative tasks needed to be completed. He says the applicant told him she should not be difficult to replace. Mr Peter agreed he would wait to hear from Ms Ford the following day.

[18] Ms Ford emailed Mr Peter on 23 June to advise her doctor had put her off work until the following Monday, but also said that she would come to work on the next day (Friday) if she was needed. Still unsure of where things stood regarding the resignation, Mr Peter sought advice from Mr McGinn who, at the time, was away from Christchurch. Mr Peter finally contacted Mr McGinn the following Friday. When Ms Ford returned to work on 27 June, Mr Peter did not engage her on the matter of resignation as he was still trying to contact Mr McGinn, and he wanted to be sure he handled the situation correctly.

[19] Ms Ford carried out the end of the month tasks and, although delayed by a day, Mr Peter undertook a planned business trip to Tauranga on 29 June. Mr Peter established contact with Mr McGinn on Friday, 1 July following his return. The latter advised Mr Peter to arrange a meeting with Ms Ford to clarify her resignation as, if the applicant was leaving her employment, there was little point in addressing the 21 June walkout in a disciplinary setting. Mr Peter met with Ms Ford around 3pm that same day. In that meeting, Mr Peter says Ms Ford covered four main topics. She felt abused by Mr Cooper and this was the background to her resignation; she believed she had resigned under duress given Mr Cooper's behaviour towards her; she was legally entitled not to explain her absence due to illness, and she was not prepared to clarify matters further without her union representative present.

[20] Mr Peter said if she was having her union representative call at the office, he would prefer them to meet in an office other than the applicant's, as there was considerable confidential information in that area. Further, he says it was becoming more plain Ms Ford may have changed her resignation plan and he may have to address the walkout incident. He says he was also concerned at Ms Ford changing her

stance over the reason for her resignation. Mr Peter told the Authority *I was very concerned about her volatility.*

### **The company's disciplinary process**

[21] On 4 July 2005, Mr Peter issued a letter to the applicant convening a formal disciplinary meeting. The letter sets out three specific allegations. The first is that of walking off the job without authorisation or excuse. The second, which Mr Peter says was associated with the first, is the verbal resignation which he says *gives rise to the concern of potential loss of trust and confidence. This arises from your apparent volatility in the workplace, illustrated by walking off the job and hypersensitivity to workplace communications.* Finally, Mr Peter refers to a subsidiary allegation regarding a *wilful failure to follow instructions to keep the bus RT volume turned up.* The letter also states *these allegations are very serious and in the absence of a satisfactory explanation could place your employment in jeopardy.*

[22] Although the meeting was originally scheduled for Wednesday, 6 July at 2.30pm, the unavailability of Mr Chappell who was representing the applicant, gave rise to a change in date and the meeting was eventually convened on 7 July at the same time of the day.

[23] The meeting was attended by Mr Peter and Mr McGinn on behalf of the company and Ms Ford attended along with her representative, Mr Chappell.

[24] It is clear from the evidence that Mr McGinn acted as chairman for the meeting and at the outset advised the applicant there was no issue concerning Ms Ford altering the RT volume as had been set out in the letter of 4 July. Mr McGinn's evidence was that he clarified the central issue to be what took place between Mr Cooper and Ms Ford in the course of the interchange and the applicant's behaviour in walking off the job and apparently tendering her verbal resignation.

[25] The chairman then asked Ms Ford for her response to the allegations set out in the letter and this was provided by Mr Chappell on behalf of the applicant. The primary matters covered, following the withdrawal of the RT volume matter, were the argument itself and Mr Chappell made it clear that the applicant's decision to walk off the job was an appropriate reaction to the circumstances in which she found herself. Mr Chappell submitted that Mr Cooper not infrequently speaks inappropriately to people in the workplace and that this should be taken into account by the employer.

[26] Mr Chappell also took the view that, as a result of the confrontation, Ms Ford was entitled to feel the workplace was unsafe and this, in the light that Mr Peter had not intervened, it was acceptable for the applicant to leave the workplace.

[27] Mr Chappell returned to the earlier issue when the applicant had walked off the job stressing that Ms Ford had received counselling in that situation because she had been intimidated by gang members and in that case had been absent from the office for only a relatively short period. Mr Chappell closed his opening statement by referring to the applicant's attendance at her doctor's and the subsequent medical certificate saying that the reason for his member attending her doctor's was nothing to do with the employer.

[28] Some discussion regarding the interchange between the applicant and Mr Cooper then took place, in the course of which Ms Ford advised the meeting that the incident had taken place adjacent to another employee, Joanie Stewart, and Ms Ford invited Mr McGinn to check with Ms Stewart. Ms Ford also told the meeting she had heard that Gerard Cooper was a *homosexual and he hates women* and this is why she felt she needed to make herself safe by leaving the premises. When asked by Mr Peter why she had then followed Mr Cooper back into his office, it appears the question remained unanswered.

[29] Further, the applicant said that when she left Mr Cooper's office and uplifted her bag from her own office before leaving, she approached Mr Peter in his office upstairs to be told he could not talk to her for some 10 minutes and so she left the premises. At that point, Mr Chappell requested a break and during that break Mr Peter and Mr McGinn decided to have a discussion with Joanie Stewart to see whether she was able to shed any further light on the exchange as suggested by Ms Ford.

[30] Mr Peter invited Ms Stewart to his office and he introduced Mr McGinn, explaining the reason they sought her assistance. Mr McGinn's evidence is he does not recall Mr Peter asking any questions of Ms Stewart but left that task to him. His evidence was *I do not believe Clive asked any questions of Joanie, either at this stage or later when I took a written statement.*

[31] Ms Stewart told the pair she did not hear Mr Cooper screaming or yelling and did not think Gerard acted inappropriately at any time. Ms Stewart said she was

unable to hear what was said specifically but did confirm that the applicant followed Mr Cooper into his office and she had heard Ms Ford raising her voice over the top of Mr Cooper. Ms Stewart also volunteered the information that the applicant had approached her after having received Mr Peter's letter of 4 July setting out the allegations. Ms Stewart advised that Ms Ford had shown the letter to Ms Stewart with reference to the allegations from Mr Cooper referred to in the letter, and told Ms Stewart that the company had had to call the Police to deal with him and that *Gerard was a very dangerous man*. From what he was told, Mr McGinn says Ms Ford apparently concluded her comments on the letter to Ms Stewart by saying that Mr Cooper was an upstart and that she was going to make sure she got rid of him. Following this discussion, Mr McGinn asked Ms Stewart whether she would be prepared to make a written statement confirming what she had said and Ms Stewart confirmed she was prepared to do so. Ms Stewart then left Mr Peter's office and returned to her work.

[32] A discussion ensued between Mr Peter and Mr McGinn with Mr Peter expressing concern in the light of what Ms Stewart had told them, that the applicant may have given false information about Mr Cooper to Ms Stewart in order to garner support from a potential witness in respect of Ms Ford's claim that she walked off the job because the workplace was unsafe. Mr McGinn told the Authority that Mr Peter was concerned that such behaviour raised further issues of trust and honesty and he was concerned about the risk of Ms Ford influencing others were she to return to work, given the fresh material that had come from Ms Stewart.

[33] At the resumption of the meeting, Mr Chappell said that Ms Ford denied she had indicated to Mr Peter that she was resigning on a week's "notice" and Mr Chappell went on to say he could not be certain whether the word notice had been mentioned as the applicant was acting irrationally at the time because she wanted to get home and away from an unsafe workplace. In that context, Mr Peter pointed out that during his discussion with Ms Ford on 1 July the applicant had not denied tendering her resignation however, had explained her resignation by saying it had been made under duress. The evidence from Mr McGinn and Mr Peter indicate that Mr Chappell acknowledged that his member may have said something about a resignation.

[34] Mr McGinn then told Ms Ford and Mr Chappell of the interview that had taken place during the adjournment and that according to Ms Stewart, Mr Cooper had not been shouting at the applicant, and nor had he been acting inappropriately. Ms Ford denied that this was the case and continued to insist that Mr Cooper had been shouting loudly at her. Mr McGinn then went on to make the point that a serious matter had emerged which gave rise to a serious misconduct issue concerning honesty and trust. Mr McGinn then traversed the information that had been provided by Ms Stewart in respect of the danger Mr Cooper posed to other staff and went on to put to Ms Ford the view that Mr Cooper was an upstart and her intention to *get rid of him*. Significantly, no request was made at that time for an adjournment to discuss this new information prior to Ms Ford providing a response. According to the evidence of Mr Peter and Mr McGinn, she simply denied them. Ms Ford also denied attempting to use Ms Stewart as one who might support her claim that the workplace was unsafe.

[35] Mr McGinn then told the meeting that fairness required the applicant and her representative to be provided with a copy of the written statement Ms Stewart had agreed to provide to the company. The purpose, says Mr McGinn, was to provide Ms Ford and Mr Chappell of the opportunity to respond in a more considered way to the allegations set out by Ms Stewart.

[36] Mr McGinn also advised both the applicant and her representative that Mr Peter did not want Ms Ford returning to work until the matter around Ms Stewart's allegations had been resolved and that, until that could be achieved, Ms Ford would be suspended on pay pending an outcome of the investigation. Mr McGinn says neither Ms Ford nor Mr Chappell commented on the issue of suspension.

[37] A number of issues surrounding Ms Ford's medical condition which Mr Chappell suggested *may be relevant* were briefly discussed. Significant among these were the instructions Mr Chappell had from his member that she did not trust Mr Peter to keep any information relating to her medical condition confidential and she would be prepared to share such information only with a third party, such as a mediator. In spite of Mr McGinn's reassurance that the applicant was able to trust Mr Peter to treat the matter both sensitively and confidentially, Ms Ford reiterated she did not trust Mr Peter.

[38] Mr McGinn says he pointed out that unless Mr Peter was provided with information which would allow them to assess the relevance of any medical condition

influencing the applicant's behaviour at the relevant time, then such information could not be taken into account or treated as relevant in the decision-making process.

[39] A concern was expressed about the delay in Mr Peter raising the allegations in his letter of 4 July. The situation was explained as set out above in that Mr Peter did not want to disturb the situation or make a move which may have been perceived as unfair and so delayed any action in respect of the investigation until he was able to take advice from Mr McGinn.

[40] At the close of the meeting, Mr Chappell restated that the situation Ms Ford found herself in, that is an allegation of walking off the job, had come about due to the duress she was under by having to work in an unsafe workplace. The meeting then concluded.

[41] Following this meeting, Mr Peter arranged for Ms Stewart to return to the office to record her written statement. Having declined to write the statement out in her own hand, Ms Stewart said her preference was for her to speak and for Mr McGinn to write it down. Prior to signing it, Ms Stewart read the statement and left the office. Immediately following Ms Stewart's departure, Mr Peter faxed her statement to Mr Chappell's office. Mr Chappell replied on 8 July stating that Ms Ford strongly refuted the contents of the statement and there was no response to Ms Stewart's statement other than that denial.

[42] Significantly, Mr Chappell's response does not request a further meeting but states *we await the outcome of your deliberations and give notice now that if it is your intention to dismiss Sandra this will be vigorously defended.*

### **The respondent's decision**

[43] Mr Peter says that following the disciplinary meeting he needed to decide who was responsible for the argument which had developed between Ms Ford and Mr Cooper, as this was the incident the applicant was relying on to justify her leaving the office. He told the Authority *I was inclined to believe Gerard's version of events over Sandra. Joanie's comments supported Gerard's version and she had no axe to grind. Sandra's version was inconsistent in a number of respects.*

[44] Mr Peter also said he needed to decide whether Ms Ford had resigned and then withdrawn her resignation as the applicant was denying she had resigned in the

meeting but later her representative accepted she may have mentioned something about resignation when Mr Peter told the meeting of his own discussions with the applicant. The witness said *in particular there was a logical problem with Sandra's denial of resignation given that Sandra had advised me on 1 July that her resignation was under duress.*

[45] Mr Peter says that the issue of Ms Ford attempting to muster support for the proposition that the workplace was unsafe is another matter he turned his mind to. He told the Authority *Sandra had undermined her own credibility quite significantly by this stage and was not offering anything else to consider. In short I did not believe Sandra's bare denial. She had lied to me again about this issue.*

[46] Another issue Mr Peter says he considered was Ms Ford's lack of confidence and trust in him, given she was not prepared to provide him, even with a written undertaking, of details or even the generic medical problems she was facing. He told the Authority *in the end I concluded that I could not trust Sandra and that all trust in our relationship had been destroyed. Sandra was in a position that required high levels of trust and I felt there was no option but to dismiss her. My reasons are set out in full in my letter of 11 July.* That letter was sent to Mr Chappell as the applicant's representative. The letter is a full one but the crux of the decision comes down to a number of short paragraphs. The letter says:

*There are a number of areas where there is a conflict as to what occurred. I have proceeded on the basis that I have had to resolve those conflicts on a more likely than not basis where there is not supporting evidence available to me.*

*Where Sandra's account of events differed from what I had first hand knowledge of or was able to be confirmed by reference to others, then I am not inclined to believe her. Sandra's behaviour in our meeting was evasive when asked questions and she was often inconsistent in her answers.*

...

*I note that Sandra was prepared to return to work without any measures being put in place to protect her from an environment that had not changed since she stormed out. I feel able to dismiss this explanation and I am comforted in the view by the evidence from Joanie that Sandra has been telling stories about Gerard to gain support for the unsafe workplace allegation. I regard that action as serious misconduct in its own right. I do not believe Sandra's explanation of that allegation being a simple denial. Joanie has no axe to grind and I have no reason to believe she would make up such a serious allegation.*

...

*Sandra's unknown medical condition is in the end not relevant to my decision. ... I have given my assurance that I would respect confidentiality, however this has been rejected.*

...

*I note that with the benefit of representation, Sandra has stated to me that she does not trust me either.*

## **Issues**

[47] To resolve this employment relationship problem, the Authority needs to make findings on the following issues:

- Were the actions of the applicant in walking out and of promoting support for her view the workplace was unsafe capable of constituting serious misconduct; and
- Was the dismissal unjustified; and
- Was the suspension an unjustified action causing the applicant disadvantage; and
- If unjustified, what, if any, remedies are due to the applicant; and
- Did the applicant contribute to the circumstances which gave rise to the dismissal to an extent which would reduce remedies?

## **The test**

[48] The test of justification is set out in s.103A of the Employment Relations Act 2000 and its amendments. The section reads:

*For the purposes of s.103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.*

**The investigation meeting**

[49] Evidence for the applicant was provided by Ms Ford in person and by Mr Chappell. For the respondent, evidence was given by Mr Peter and Mr McGinn.

[50] The Authority thanks those who assisted it in clarifying the facts and issues in this matter and in particular Mr Paulsen and Mr Thompson for their questioning and submissions.

**Analysis and discussion**

[51] The applicant's refusal to disclose a serious health issue to the respondent is a most regrettable element in this case. The Authority unreservedly accepts, at the time of the 21 June incident, Ms Ford was unwell and concerned over her health. A diagnosis of cancer within days of the incident, but before the disciplinary meeting, would certainly have been a factor in mitigation for a fair and reasonable employer to consider in deciding an outcome. If Ms Ford had accepted Mr Peter's written undertaking to maintain any medical information for his consideration in total confidence, I doubt I would be writing this determination.

[52] The Authority unreservedly acknowledges Ms Ford's right not to disclose her personal medical condition. That is a decision which is properly hers to make as she sees fit.

[53] The difficulty for the Authority is its inability to consider that condition in evaluating the merits of this case and the actions of the respondent who was not privy to this significant information at the time it made its decision to dismiss.

[54] That said, there are matters relevant to the consideration of the applicant's claim which need to be analysed.

[55] The respondent says that on the occasion of Ms Ford's *protest* walkout in October 2002, Mr Peter made it clear that a repeat would put her employment at risk. I accept that that was said, yet to rely on that informal caution only, over two years later, carries little weight in its own right.

[56] However, there is a series of incidents spread through the employment relationship which indicate the applicant experienced significant difficulties at times relating to others in the workplace. The more significant ones are detailed above, and

the common thread appears to be Ms Ford's tendency to distrust the male of the species. I am confirmed in that view by her refusal to disclose even to her representative, Mr Chappell, the seriousness of the medical situation facing her. Ms Ford had retained Mr Chappell to act in her best interests, yet at the same time, deprived him of the opportunity to place a major mitigating factor before the respondent.

### **The process**

[57] The respondent, given the history of the employment relationship, and in particular Ms Ford's ambivalent messages regarding her resignation, decided it needed to inquire into the walkout incident and come to a decision in respect of the applicant's ongoing employment. This decision led to the 4 July letter to Ms Ford convening a disciplinary inquiry and setting out the concerns the respondent had in respect of the applicant's behaviour.

[58] Both parties had professional representation in the course of the inquiry process and Mr Peter's letter makes it clear Ms Ford's employment could be at risk.

[59] It is fair to say, up until Ms Ford suggested the respondent speak to Ms Stewart to verify the applicant's version of events, this was an unextraordinary inquiry. The information provided by Ms Stewart unearthed quite different information which Mr Peter needed to consider. Essentially, Ms Stewart's statement supported the reasonable behaviour of Mr Cooper and added a different dimension, that of Ms Ford's stated intention to *get rid of him*.

[60] The timing of Ms Stewart's information placed Mr Peter in a difficult position as the information was different from that he had expected, given Ms Ford's indication it would support her view of the incident. In fact, it went beyond the incident and raised the issue of an *unsafe* workplace, now focused on Mr Cooper and the assertion by the applicant that he was homosexual and hated women.

[61] In the light of Ms Ford's assertion to Ms Stewart, which was relayed to Mr Peter and Mr McGinn during an adjournment of the inquiry meeting, it is clear Mr Peter needed to consider a new aspect in his inquiry. He also needed to have Ms Stewart provide a written statement to be made available to Mr Chappell and Ms Ford for their consideration.

**The suspension**

[62] In such circumstances, and particularly in the light of Ms Ford's reported view the workplace was *unsafe*, I am of the view the brief suspension on full pay was justified, especially in view of there being no objection to that course of action by Mr Chappell. I note the suspension was on pay so the applicant was not denied income.

[63] Another issue raised with the Authority is the allegation the respondent did not, after providing Ms Stewart's written statement, provide the opportunity to respond. In fact, a response was made. It was consistent with Ms Ford's outright denial at the inquiry meeting. Mr Chappell finished his response by stating *we await the result of your deliberations*. That, clearly, signals the position of the applicant vis-a-vis the evidence of Ms Stewart and the inquiry and the process. I believe it not unreasonable, given that message from Ms Ford's representative, for the respondent to move from investigation to decision-making mode.

**The decision to dismiss**

[64] As Mr Peter catalogues in the dismissal letter, he took into account a range of matters. The one on which his decision ultimately rested is the respondent's lack of trust and confidence in Ms Ford and her strongly implied lack of confidence in Mr Peter, specifically in regard to her holiday pay entitlement and confidential disclosure of her medical condition. That indicates that the very basis of an employment relationship has reached the point of no return.

[65] The question remains, was the dismissal of Ms Ford for serious misconduct justified in all the circumstances? The defining evidence supporting Mr Peter's decision and its basis, was the statement from Ms Stewart which indicated Ms Ford was waging a campaign against what she perceived as an unsafe workplace without bringing any of those concerns on this issue to her employer's attention for inquiry and possible resolution. Mr Peter was entitled to take into account the assistance given to Ms Ford in previous difficulties with workplace issues and retaining her in its employment. He was entitled, in all the circumstances at the time, to decide Ms Ford's actions amounted to serious misconduct which went to the heart of the employment relationship.

## **Determination**

[66] Returning to the issues set out above, I find:

- The actions of the applicant in walking out and of promoting support for her view that the workplace was an unsafe one was capable of constituting serious misconduct.
- A fair and reasonable employer would, in all the circumstances, have reached this conclusion.
- The dismissal itself was justified.
- The suspension in all the circumstances, particularly Ms Ford's assertion she was unsafe in the workplace and the lack of objection from either the applicant or her representative, was justifiable.
- The applicant does not have a personal grievance and the Authority is unable to assist her further.

## **Costs**

[67] Costs are reserved.

Paul Montgomery  
Member of the Employment Relations Authority