

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 291/09
5119965

BETWEEN HELEN FOWLER
 Applicant

AND WESTPAC NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Danny Jacobson for Applicant
 David Gould for Respondent

Investigation Meeting: 26 March 2009

Submissions Received: 20 April 2009 from Applicant
 14 April 2009 from Respondent

Determination: 20 August 2009

DETERMINATION OF THE AUTHORITY

[1] Ms Helen Fowler worked for Westpac New Zealand Limited (“Westpac”) for 14 years. In 2003 she was appointed to the role of Priority Banking Manager. This position was based in Queen Street, Auckland. It was common knowledge that Ms Fowler had a strong desire to secure a permanent position in Tauranga.

[2] On 18 September 2006 Ms Fowler was seconded to Tauranga in the position of Home Loan Specialist for a period of twelve months which was to end, if not earlier, then on 16 October 2007. In the letter dated 27 August 2006 notifying Ms Fowler of her secondment Westpac advised her that at the end of the secondment period she would return to her previous position and be subject to her previous terms and conditions of employment.

[3] The terms and conditions attaching to the seconded position were covered in the 2006-2007 Collective Agreement, whereas, Ms Fowler's position of Priority Banking Manager was subject to the terms of an individual agreement.

[4] Ms Fowler was advised on 19 April 2007 that the role of Home Loan Specialist was to be disestablished. This surprised and upset Ms Fowler who raised a personal grievance. The parties met in mediation and resolved that grievance with the terms of resolution being set out in a confidential record of settlement. It is notable that when the parties met in mediation on 25 May 2007, Ms Fowler was aware that Ms Lenore Bauer had been permanently appointment to the position of Priority Relationship Manager in Auckland and had been assigned Ms Fowler's previous portfolio of customers.

[5] The terms of settlement included the following relevant terms:

It is agreed that the employee shall continue in her seconded role as Home Loan Specialist based in Tauranga until she finds alternative employment, either within Westpac or with another employer; or until her full secondment period expires on 16 October 2007, whichever is the earlier event.

In the event no alternative role has emerged for the employee, either within Westpac, or with another employer by 16 October 2007, the employee will have the option to return to her previous role of Priority Relationship Manager in Auckland. If the employee declines the option to return to her previous role at this time and no alternative role has been offered within Westpac, the employee's employment with Westpac will terminate at this time and no further notice period shall be required.

[6] In September 2007 Ms Fowler made enquiries regarding the ending of her secondment and return to Auckland. On 17 September Ms Liz Cannon, Area Manager for Auckland CBD area confirmed in writing that Ms Fowler would return to her previous position (although now renamed) Personal Manager – Staff as Customers, based at 79 Queen Street, Auckland and reporting to Ms Cannon, on Monday 22 October 2007.

[7] In response Ms Fowler disputed that she was returning to her previous role as she was aware the client base would not be the same, and she would no longer have a role in staff inductions. Ms Fowler claimed she would be redundant at the conclusion of her secondment and sought payment of her entitlements pursuant to the employment agreement.

[8] Following a number of meetings and discussions with no resolution, Ms Fowler took a period of sick leave. She then resigned from her position on 15 November while she was on sick leave. Ms Fowler claims her resignation was in fact a dismissal and that the dismissal was unjustified.

[9] Further Ms Fowler claims:

- Westpac has breached its statutory duty by failing to consult with her prior to making any decision adverse to the continuation of her employment and had failed to deal with her in good faith;
- Westpac is in breach of the employment agreement in that it failed to return Ms Fowler to her previous position as promised;
- Westpac has breached a term of the settlement agreement entered into on 25 May 2007;
- Westpac has breached an implied term in the employment agreement to treat Ms Fowler fairly and with dignity and in a way that was not destructive of underlying trust and confidence; and
- Westpac has breached the agreement in its failure to pay Ms Fowler redundancy compensation.

[10] Westpac denies all the claims.

[11] The issues for determination include:

- was Ms Fowler constructively dismissed?
- did Westpac breach its statutory duty by failing to consult prior to making any decision adverse to the continuation of Ms Fowler's employment and fail to deal with Ms Fowler in good faith?
- did Westpac breach a term of the employment agreement and settlement agreement entered into on 25 May 2007 by not returning Ms Fowler to her previous position?
- has Westpac breached the implied term of fair and reasonable dealings?
- was Ms Fowler redundant and therefore did Westpac breach the employment agreement by not providing her with the entitlements to redundancy?

Was Ms Fowler constructively dismissed?

[12] The basis for Ms Fowler's claim for constructive dismissal is that she left as a result of a breach of duty on the part of the employer, which is the third of the three non-exhaustive categories of constructive dismissal.¹

[13] The conduct amounting to a breach must impinge on the relationship in the sense that looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in her employer.²

[14] In coming to my conclusions under this heading I must determine the following issues:

- did Ms Fowler leave her employment as a result of a breach of duty on the part of Westpac? and
- if there was a breach, was it sufficiently serious to make it reasonably foreseeable that there was a substantial risk that Ms Gibson would leave her employment?³

Was the resignation caused by a breach of duty on the part of the respondent?

[15] Ms Fowler says the breach of duty arose when she returned to Auckland and found there was no work for her to do. She says Westpac failed to meet its obligations pursuant to s.4 of the Employment Relations Act 2000 in that it failed to be active and constructive in maintaining the employment relationship. Further Ms Fowler says, instead of being responsive and communicative, by avoiding the fact that it had permanently appointed Ms Bauer to Ms Fowler's position, Westpac had acted in a way that was likely to mislead or deceive Ms Fowler.

[16] Ms Fowler also says that Westpac's conduct was such that a reasonable employee could conclude Westpac demonstrated an intention that it no longer intended to be bound by the employment agreements it had with Ms Fowler.

¹ *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 1 NZLR 372.

² *Malik v Bank of Credit and Commerce International SA (in liq)* [1998] AC 20; [1997] 2 All ER 1 (CA).

³ *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1 ERNZ 168.

[17] Finally, Ms Fowler says Westpac failed to consult with her over a business reorganisation directly affecting her to her detriment and that this lay at the root of considerable distress and anguish to Ms Fowler.

Ms Bauer's appointment

[18] It was common ground that Ms Lenore Bauer was appointed permanently to the position held previously by Ms Fowler. At the same time another Priority Manager, based in Manukau, was promoted into Business Banking. The Manukau position was not replaced. Instead a large part of the Manukau portfolio of clients was given to Ms Bauer to manage, as well as Ms Fowler's portfolio. All clients under these portfolios were Westpac employees. At that time the balance of the clients became the responsibility of the Call Centre based in Christchurch.

[19] During the time Ms Fowler was on secondment a number of the clients from the call centre were transferred to Ms Bauer without a drop off in the clients she was relationship managing.

Return to Auckland

[20] In April 2007 when Ms Cannon was alerted to the early ending of Ms Fowler's secondment she was taken by surprise. Ms Cannon was not aware that Ms Fowler had been seconded, she was of the understanding that Ms Fowler had been appointed to a permanent role when she had gone to Tauranga.

[21] Notwithstanding that, it was decided that with the volume of work being undertaken by Ms Bauer, there was room for a second position. It was decided that the portfolio managed by Ms Bauer would be split out between Ms Bauer and Ms Fowler together a number of higher value Auckland based customers from the Christchurch call centre. Each would have approximately 250 clients. As stated earlier, these are exclusively Westpac staff which is the type of clients Ms Fowler had relationship managed prior to her secondment.

[22] In September 2007 Ms Fowler began making enquiries about her move back to Auckland. She emailed Ms Mandy Varney, and requested a letter confirming the

role she would be returning to in Auckland was the Priority Staff Relationship role she had left.

[23] Ms Varney responded by sending Ms Fowler a copy of the original letter setting out the terms of the secondment and advising Ms Fowler to contact Ms Doris Murphy if she had any further queries. Ms Fowler made contact with Ms Murphy and pointed out that she was aware that her previous role had been filled permanently and also confirmed that Ms Varney had assured her, she would return to her old position.

[24] On 17 September two letters were written by Westpac, one to Ms Fowler and the other to her representative. Both letters confirmed the previous notice to Ms Fowler that she would be returning to her old position which was now called Personal Manager – Staff as Customers.

[25] On 24 September, Mr Jacobson responded on Ms Fowler's behalf by disputing that she was being returned to her previous position as she would not have the same client base and she would no longer be involved in staff inductions. Mr Jacobson asserted that Ms Fowler had been made redundant and was entitled to the redundancy provisions from the employment agreement.

[26] In her written evidence Ms Fowler describes a conversation she had with Ms Cannon on 19 September where she says Ms Cannon offered for her to be based at Manukau. Ms Fowler says she explained that would be no good as she would be residing in Auckland Central. She says Ms Cannon told her during that conversation to stop making trouble. This is denied by Ms Cannon.

[27] Of that same conversation Ms Cannon says the option of being based in Manukau was raised by her because Ms Fowler had indicated to her that she could not afford to carry on running a home in Tauranga and having additional accommodation and travel costs in Auckland. At the investigation meeting Ms Fowler acknowledged that she had made these comments to Ms Cannon. Ms Cannon does not recall Ms Fowler telling her of the accommodation arrangements she had in Auckland Central and was of the view that at the end of the conversation Ms Fowler was to get back to her and advise her if she wished to be based in Manukau. The detail of where Ms

Fowler would be located was necessary to enable other arrangements to be put in place for Ms Fowler's return to Auckland.

[28] Westpac then responded to Mr Jacobson's letter in writing on 1 October confirming to Mr Jacobson that the role Ms Fowler was being offered on her return to Auckland was the same role, the primary duties being to relationship manage a portfolio of customers who are Westpac employees.

[29] In its letter Westpac explained that while the client base was not made up of the same people, Ms Fowler's client base would still be Westpac employees. Westpac confirmed that induction was no longer carried out by Personal Managers, but that was the only change to the job.

[30] Ms Fowler did not accept that the position being offered by Westpac was her previous position. Ms Fowler was aware of Ms Bauer's permanent appointment to the role and that there was only one role in the CBD in Auckland. That stance by Ms Fowler seems to ignore the fact that in May, she had signed a settlement agreement knowing Ms Bauer had been permanently appointed but notwithstanding that, Westpac, also knowing, had promised she would be entitled to return to her previous position. Thus, she must have been aware that Westpac would accommodate her return to work in Auckland.

[31] On 9 October Westpac wrote again to Mr Jacobson setting out the reasons why Westpac considered the role to be the same one Ms Fowler had left the previous year. The letter states:

1. The duties contained in the current position description of Personal Manager and the previous position description of Priority Manager, are for all practical purposes the same.
2. Both roles are graded MR1 with a salary range of \$55,153-\$82,279.
3. The Personal Manager role is to be located at 79 Queen Street, Auckland CBD, and will report to Liz Cannon, Area Manager. The previous role was based in the CBD, and reported to Liz Cannon.
4. The portfolio of clients for the previous position was Westpac staff. The current portfolio of clients is Westpac staff.
5. Helen will return to her Individual Management Agreement, the terms and conditions of which, remain unchanged.

[32] On 12 October, Mr Jacobson responded maintaining Ms Fowler's position that the role she was being offered was not her previous role as the client base was not the same and that she was no longer responsible for induction. Mr Jacobson asserted once again that Ms Fowler would be redundant on 16 October when her secondment ended.

[33] In her oral evidence Ms Fowler told me that her role in the induction process would take her approximately 15-20 minutes once a month. The job description applicable to the role Ms Fowler had prior to her secondment does not mention Induction as a Deliverable or Key Result. I am satisfied that induction presentations were not a major feature of Ms Fowler's role and therefore the removal of it from the Personal Manager role was not significant.

Commencement in Auckland

[34] Ms Fowler arrived to start work in her previous role, on 23 October. She says on her arrival she had no car park, so had to park in the customer car park, could not gain access to the building and had to rely on a colleague to provide her access, had no portfolio set up, no desk, no computer, no mobile phone, no business cards and no workspace allocated to her.

[35] Ms Fowler says that she met with Ms Cannon about 8.20am at which time Ms Cannon informed her no arrangements had been made as Westpac were waiting to hear from her as to where she wished to be located. Ms Cannon says it was at this meeting that she heard for the first time that Ms Fowler had made accommodation arrangements in Auckland Central.

[36] It is common ground that at this meeting Ms Fowler raised concerns about the quality of the portfolio she would be assigned and about whether she would be able to achieve her targets. Ms Cannon assured Ms Fowler that she did not believe it would be an issue given the size of Ms Bauer's portfolio, which was an amalgamation of Ms Fowler's original portfolio, the old portfolio from Manukau, new clients brought in by Ms Bauer over the preceding year and the clients transferred in from the phone team in Christchurch. Ms Cannon undertook to monitor the situation and make adjustments if necessary.

[37] It is also common ground that Ms Fowler and Ms Cannon discussed what Ms Fowler would be doing for the day. Ms Fowler says she told Ms Cannon that there was no computer or desk. Ms Cannon suggested she pop into the unit next door and see if they had a spare desk and to check to see if she could sign into the computer system. Ms Fowler also offered to assist other work colleagues to help fill in her day.

[38] After not being able to access the computer system Ms Fowler contacted Ms Cannon and updated her. Ms Cannon suggested Ms Fowler take the rest of the day off to settle into her new accommodation. Ms Cannon says she had already explained to Ms Fowler that it would take a couple of days to sort out her portfolio as it would be dependent on where she wished to be located.

[39] Ms Fowler attended work the next morning and met once again with Ms Cannon. Ms Fowler in her written evidence says Ms Cannon again proposed that she work at Manukau and that she should go home and consider whether that was a suitable option. Ms Fowler says she told Ms Cannon that she had already sorted out her accommodation and that working in Manukau would mean finding other accommodation.

[40] Ms Cannon in her written evidence describes the conversation she had with Ms Fowler quite differently. Ms Cannon says she noted Ms Fowler's objection to working with Ms Bauer and again suggested Manukau as a potential solution. Ms Cannon says she was careful to emphasise that this was only being suggested as a helpful alternative to being based at Queen Street and that the offer should not be taken as evidence that no role existed for her in the Auckland CBD.

[41] In answer to questions at the investigation meeting Ms Fowler acknowledged that she had told Ms Cannon that she couldn't work with Ms Bauer because she felt she had been let down that her job had been given to someone else. Ms Fowler told me it was difficult because she had become quite attached to her portfolio, and had become close friends with some of the clients.

[42] Ms Cannon says she recalls, with regard to the offer for Ms Fowler to be based in Manukau, Ms Fowler expressed some interest in the Manukau option and talked about looking for accommodation in South Auckland. Ms Cannon says there was

some further discussion about reporting lines and Ms Fowler confirmed her preference for continuing to report to her. This evidence by Ms Cannon was confirmed by Ms Fowler at the investigation meeting and contrasts with her written evidence.

[43] I have concluded that as at Wednesday 24 October Ms Fowler and Ms Cannon were considering options with regard the best location for Ms Fowler. I find that this was due to the fact that Ms Fowler did not wish to work with Ms Bauer and was concerned about the time and cost of travelling to and from Tauranga each week. This conclusion is supported by the oral evidence of Ms Cannon with which Ms Fowler agreed, that Ms Fowler had asked about having travelling time on a Monday and Friday.

[44] It is common ground that the next morning when they met again, Ms Fowler thanked Ms Cannon for the offer of being at Manukau but was declining it. Both ladies recall Ms Fowler becoming tearful during the meeting.

[45] Ms Fowler was still concerned that the role she was being offered was not her previous position. This seems to be based on the premise that because Ms Cannon was offering her the opportunity to be based in Manukau it was a different job. Ms Cannon however, was clear at that meeting that whether Ms Fowler sat in the Queen Street office or the Manukau office, it didn't matter at all. It is also clear that during the meeting Ms Cannon was attempting to make it easier for Ms Fowler from a travelling perspective.

[46] Ms Fowler advised Ms Cannon that she would be going home and seeing her doctor. Ms Cannon was happy for her to do that and suggested the doctor would probably put her off for a couple of days anyway. At the end of the meeting it was agreed Ms Fowler and Ms Cannon would meet once again on Monday morning at 9.00am to continue their discussions.

[47] Ms Fowler attended her doctor on 26 October. A medical certificate was provided to Westpac which stated that Ms Fowler would not be medically fit to return to work until 15 November.

[48] Ms Cannon says that during Ms Fowler's absence on sick leave she continued to actively look at options for Ms Fowler. About a week later, by 2 November Ms Cannon identified an opportunity which would involve Ms Bauer taking up the portfolio of another Personal Manager who had been promoted. This would mean Ms Fowler could have Ms Bauer's portfolio in its entirety. On 8 November this development was outlined in a letter to Mr Jacobson as follows:

...There has been a further development in the past week ... Helen's original portfolio of customers has been reassigned to her. This has been made possible through a vacancy in another area, which Lenore Bauer has moved across to, leaving Helen's old portfolio available.

It is our expectation that Helen will return to her role of Personal Manager – Staff as Customers, based at Level 5, 79 Queen Street, on Monday 19 November 2007. Helen will have a car park available for her use in the Downtown car park building, and her customers have been advised that she will be available to them from that date. Her business cards have been ordered and her desk has been set-up.

[49] On 15 November Ms Fowler resigned from her employment citing the conduct of Westpac in not making her redundant, failing to provide her with her previous position back, and the treatment received on her first day in Auckland as all contributing to her decision to resign.

[50] I find Ms Fowler's approach to returning to her previous position made it difficult for Westpac in all the circumstances. Ms Cannon in her oral evidence summed up the situation when she told me Ms Fowler was insistent that she wanted Ms Bauer moved out and her old portfolio given to her. Ms Cannon determined that even if she had been in a position to do that, Ms Fowler's old customers would have only been about 30% of the portfolio as a result of customers leaving and new ones being established.

[51] With respect to the location of the position, Ms Cannon was unequivocal in her evidence that the suggestion to locate Ms Fowler in Manukau was only done as an option to meet Ms Fowler's concerns. I have accepted Ms Cannon's evidence in this regard and agree with her when she says it makes more sense that Ms Fowler be located in Queen Street due to the support staff being located there and Ms Cannon being located there with the rest of her direct reports.

[52] The role Ms Fowler left included a portfolio of staff as clients. The role Ms Fowler was to return to, included a portfolio of staff as clients. Although initially which clients would form the portfolio had not been agreed, by 8 November it was clear that Ms Fowler would retain all her previous clients who still remained within the portfolio being managed by Ms Bauer.

[53] I find that the role Ms Fowler was to return to was the same role she left in 2006. The role was relationship managing a portfolio of customers, who were Westpac employees. I find there was no discernable difference in duties (with the exception that for 15-20 minutes each month there was no obligation to make an induction presentation to new employees), or the job description (with the exception that instead of one-on-one support there was now one-on-two support) and the role had a portfolio attached which, by 8 November, was the same portfolio (with the expected deletions and additions as happens over time) as the one Ms Fowler was relationship managing in 2006.

[54] I find it is more likely than not that Ms Fowler's considerable upset was not with the way Westpac was approaching resolving her issues with respect to the role, but that she would have to leave Tauranga. My conclusion is supported by the oral evidence of Mr Carl Fowler, Ms Fowler's son, who told me Ms Fowler was upset about not having a job in Tauranga.

[55] It was common ground that Ms Fowler decided in 2006 that she wished to be permanently based in Tauranga. She put her home on the market and sold it prior to being offered the secondment, and purchased a home in Tauranga. At the investigation meeting Ms Fowler confirmed Ms Cannon's written evidence that she had been actively looking for roles outside of Westpac to avoid having to return to Auckland.

[56] I find Westpac did not breach any obligation owed to Ms Fowler. On the contrary, I have found, pursuant to section 103A that how Westpac acted and the actions it took to return Ms Fowler to her previous position including taking into account her concerns as expressed to it, were the actions that would have been taken by a fair and reasonable employer in all the circumstances of this case. It follows that Ms Fowler does not have a personal grievance for constructive dismissal.

Did Westpac breach its statutory duty by failing to consult prior to making any decision adverse to the continuation of Ms Fowler's employment and fail to deal with Ms Fowler in good faith?

[57] It was acknowledged by Ms Cannon that she did not consult with Ms Fowler over the changes to the job description while she was seconded to her Home Loan's role.

[58] While I consider that failure to consult to be a breach of the requirements of s.4 of the Employment Relations Act I am not satisfied the changes made to the job description were adverse to the continuation of Ms Fowler's employment. As already set out in this determination it is my view that the changes were insignificant and did not impact on undertaking the role of Personal Manager.

[59] As for the alleged failure to deal with Ms Fowler in good faith, I am satisfied Ms Cannon dealt with Ms Fowler in good faith. Ms Cannon was at, all times after 17 September, attempting to meet Ms Fowler's needs and concerns with respect to her position, for example not wishing to work with Ms Bauer, and to accommodate her travelling time from Tauranga and back each week.

Did Westpac breach a term of the employment agreement and settlement entered into on 25 May 2007 by not returning Ms Fowler to her previous position?

[60] I find there was no breach of either the settlement agreement or the employment agreement. Ms Fowler was offered, in accordance with both agreements, the chance to return to her previous position. Yes, Ms Bauer had been permanently appointed to the role, however, once it was on notice that Ms Fowler was to return to her previous role Westpac identified a need to have two Personal Managers located in the CBD. Once that decision was made, who is to say which of the two roles was Ms Fowler's previous role.

[61] The fact remains that Ms Fowler was offered the same role (including the minor changes to that role), and by 8 November, that included the client portfolio Ms Fowler had been at pains to get back.

Has Westpac breached the implied term of fair and reasonable dealings?

[62] It is acknowledged that when Ms Fowler arrived in Auckland on 23 October no workstation or other facilities had been set up for her. I accept the explanation from Ms Cannon that this was because she was still in discussion with Ms Fowler about where Ms Fowler preferred to be located. The evidence before the Authority does not support a finding that Westpac breached the implied term of fair and reasonable dealings.

Was Ms Fowler redundant and therefore did Westpac breach the employment agreement by not providing her with the entitlements to redundancy?

[63] Ms Fowler says that when Ms Bauer was appointed to her role permanently, that action by Westpac resulted in a re-organisation that made Ms Fowler's position redundant and that the offer of a similar role in another city (Manukau) was able to be declined while preserving redundancy compensation. I do not accept that.

[64] Ms Doris Murphy, a people consultant with the Human Resources team of Westpac told me she received a telephone call from a very upset Ms Fowler in April 2007 who explained that she had just been told the seconded position would be ending before October. It was common ground that Ms Fowler made it clear to Ms Murphy that she did not wish to move back to Auckland as she had bought a house in Tauranga and was supporting her daughter and grand-daughter.

[65] Even though Ms Murphy was aware Ms Fowler's position would be made available to her in October she broached the subject of an assisted exit with Ms Fowler as this had been a possible solution for past employees. Ms Murphy raised this possibility with her manager, but was advised that the Bank had moved away from such a practice and the fact that a job was available for Ms Fowler ruled out any possibility of such assistance.

[66] It is common ground that Ms Murphy contacted Ms Fowler and advised that a potential exit package was not an option and should she not be able to find a role in Tauranga she would be returning to her role in Auckland. Ms Fowler was not very happy with this outcome.

[67] Ms Murphy says she did considerable work with the Recruitment team in her endeavours to help Ms Fowler into a role in Tauranga but she was not successful. Ms Murphy says she knew Ms Fowler was very distressed at the thought of returning to Auckland. Ms Fowler says she was not distressed about having to return to Auckland but rather missing out on roles she felt she was capable of filling in Tauranga.

[68] Ms Fowler was not redundant. Her secondment ended in April 2007, but was extended by agreement until October. The role Ms Fowler was to return to was the position she had previously left. By 8 November this included the same client list. There were minor changes made to the role during the 12 months she was on secondment and it is common ground that Ms Fowler was not consulted over those changes.

[69] However, the changes were of little significance given they were limited to a change to the title of the position, sharing a support person with one other rather than having one on one support, and the ceasing of involvement in the induction process which was, as I have found earlier, a minor part of the overall role. I find there were no substantive alterations to the role to be performed.

[70] Once Ms Fowler's secondment ended she reverted back to the terms of the Individual employment agreement. That agreement defines redundancy as:

...a situation where your employment is terminated by the Company, the termination being attributable, wholly or mainly to the fact that the position filled by you is, or will become, superfluous to the needs of the Company.

[71] The first step therefore is that Ms Fowler's employment had to be terminated by the Bank and that termination relied on Ms Fowler's position being surplus to the Bank's requirements. This is not the case here. Ms Fowler had a job in Auckland Central which was the same job she had left a year earlier.

Ms Fowler's claims have failed and I can be of no further assistance to her.

Costs

[72] Costs are reserved. I encourage the parties to resolve the matter of costs between them. If they fail to reach agreement on the matter of costs, Westpac New Zealand Limited may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority