

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Clair Greenwood

AND Vodaphone New Zealand Ltd

REPRESENTATIVES Jenni-Marie Trotman for Applicant
Penny Shaw for Respondent

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETING 28 and 29 November 2006

SUBMISSIONS 7 December 2006

DATE OF DETERMINATION 30 January 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] When this matter was lodged with the Authority in July 2006, the problem Ms Greenwood wished the Authority to resolve was described as follows:

"the Respondent...failed to provide me with a safe working environment and thereby unjustifiably constructively dismissed me from my employment in May 2006..."

For a period exceeding 12 months I made complaints to Vodaphone that I was being bullied and abused by a fellow worker [C] and that I did not believe I was getting the support needed to undertake my role. I expressly notified Vodaphone that [C's] conduct, and the lack of support from Vodaphone, resulted in me feeling stressed and anxious.

Despite these complaints, and despite my having to have extended periods of time off work due to the stress and anxiety caused by [C] and Vodaphone, Vodaphone failed to take reasonable steps to avoid the harm.

I believe that it was clearly foreseeable to Vodaphone that if it allowed [C's] conduct to continue, and did not provide me with the support necessary to undertake my role, there was a risk that I would suffer harm and resign."

[2] In her closing submissions, Ms Trotman drew together the issues of bullying and stress, characterising the case as one of *"a constructive dismissal claim in circumstances where... [Ms Greenwood] was forced to resign as a result of workplace stress."* She identified the alleged stressors as C's conduct and associated difficulties for Ms Greenwood in carrying out her role, uncertainty surrounding Ms Greenwood's role and a lack of support from management. She argued that being subjected to these stressors seriously damaged Ms Greenwood's health, that the risk of this had been foreseeable, and that the respondent failed in its duty to take steps to address it. These are therefore the matters to which the respondent, Vodaphone, has been required to answer.

[3] Although it denies that C bullied Ms Greenwood Vodafone agrees that there were significant problems in the working relationship between Ms Greenwood and C. It also agrees that it was under an obligation to maintain a safe workplace. However, Vodafone says that during 2005 it was not foreseeable that the work environment posed any sort of risk to her. In March 2006 Ms Greenwood took stress leave and notified the respondent (through its human resources personnel) that she believed her work situation to be the cause of her health problems. Vodafone does not concede that there was a foreseeable risk of harm to Ms Greenwood even at this point, but it says that it responded with appropriate action to remedy the problems that were causing her concern.

[4] This action was as follows. The matter was referred to the manager two up from Ms Greenwood, Kelvin Hussey, who conducted an investigation which included interviews with every member of the peer group to which Ms Greenwood and C belonged. He decided that disciplinary action was not warranted against anyone involved. Rather than apportioning blame, his focus was on getting the peer group functioning again. He arranged for Ms Greenwood to have a temporary secondment to a role in a different team, away from C, after which he proposed bringing in a facilitator to work with the whole peer group to resolve all the relationship issues.

[5] However, Ms Greenwood was not prepared to return to her role under any circumstances. When no suitable position could be found for her elsewhere in the organisation, she resigned. After her resignation her health deteriorated further and she became seriously ill with depression. She has been unable to work since.

Issues for determination

[6] The issues for determination are whether Ms Greenwood was constructively dismissed from her employment as a result of a failure by the respondent to take steps to provide a safe workplace for her, or alternatively (on the same facts) whether she was unjustifiably disadvantaged. In determining these matters the following questions fall to be decided:

- i. Whether work related stress caused Ms Greenwood harm and whether Vodafone knew or ought to have known of the risk of this harm to Ms Greenwood;
- ii. If so, whether Vodafone took reasonable steps to prevent the harm;
- iii. If not, whether that amounted to a breach of duty of such seriousness that it was reasonable foreseeable that Ms Greenwood would resign, or in the alternative, an unjustifiable disadvantage.

(i) Did work related stress harm Ms Greenwood and was Vodafone on notice of the risk of this?

[7] Ms Greenwood was employed by Vodafone New Zealand Ltd in January 2005 in the position of Team Manager-Tier 2 Support, reporting to the Manager, Solutions Support, Ms Reeve. Ms Reeve in turn reported to the General Manager of Premium Customer Care, Mr Hussey. The position Ms Greenwood took had been vacant since July 2004 and carried with it a salary package of over \$100,000.00. Ms Greenwood came to it from another role in the telecommunications industry which she had held for some time. In making the move to Vodafone she had followed Ms Reeve, who had been her manager in her previous job, and was her good friend both professionally and socially.

[8] At the time she joined Vodafone, Ms Greenwood was dealing with long standing and serious issues of a personal nature. Ms Greenwood had confided in Ms Reeve about her problems well before her employment at Vodafone commenced. She wanted to move to a less stressful position than the one she had been in and hoped the Tier 2 team leader role at Vodafone would provide this.

[9] Ms Greenwood continued to confide in Ms Reeve about her personal problems after she started work at Vodafone. On 27 April 2006 Ms Greenwood responded as follows to an email from Ms Reeve:

"I'm trying to take care of myself, thank you for asking- I'm finally accepting my lot and with family assistance going back to counselling (which is why I wanted a stress free job @ ha ha) It all came to a head on the weekend which was one of the reason's [sic] I was not at work yesterday, the other was that my Uncle was nearly killed on Monday morning, he is in hospital recovering..."

And later the same day:

"I'm not really worried about the professional side, I try to keep it together, its more the personal side of things. Thanks for your support, though, it means a lot."

[10] Throughout her employment at Vodafone Ms Greenwood took one afternoon off a week to attend counselling sessions in relation to her personal issues.

[11] In a separate incident in mid March 2005 Ms Greenwood was attacked by a stranger in a carpark near her apartment. In her evidence Ms Greenwood downplayed the significance of this incident saying that (unlike the work issues) it was a one-off matter and had not had a lasting impact on her.

[12] As for the work Ms Greenwood was engaged in at Vodafone, it certainly was not "stress free." Solutions Support was at the front line of customer service and was under constant pressure to provide prompt efficient responses to problems. Ms Greenwood joined a Peer Group of two other team leaders in Solutions Support who also reported to Ms Reeve: Cath Long (Quality Assurance and Knowledge Manager) and Isaac Saina (Tier 1 Team Leader). Mr Hussey explained their work as follows:

"Vodafone operates a call centre that most customers call to notify of faults, this is what we refer to as Tier 0. A small number of specific customers would call Tier 1 faults. Tier 1 also deal with escalations from Tier 0, that is faults that Tier 0 have not been able to fix. The Tier 2 team deal with the highest complexity faults that have not been able to be dealt with at a lower level. Cath Long's role involved mostly project work dealing with new products and technology, quality assurance and coverage issues."

[13] Ms Reeve told me that:

"there is a natural tension between the tier one and tier two teams, they are quite reliant on each other operationally, if one team is not doing their job properly it impacts on the other team. The tier two team are extremely technically more skilled, many have engineer degrees/skill sets and have qualifications and years of fault management and support experience."

[14] For Ms Greenwood's first couple of months at Vodafone all went well at work. Then in April a second Tier 1 team leader, C, was appointed. In her evidence to me, Ms Long agreed with Ms Greenwood that it was difficult at first to establish a working relationship with C. Ms Long described his personality as follows: "[he had] *some odd mannerisms ...nervous tic...doesn't laugh easily...a bit nerdy...but workwise would deliver...*" Ms Long told me that over time she overcame this but she felt that Ms Greenwood did not.

[15] In fact, Ms Greenwood found it impossible to establish a satisfactory working relationship with C. (As Tier 2 team leader she worked more closely with the Tier 1 Team Leaders, C and Mr Saina, than did Ms Long.) By early May Ms Greenwood felt that the issues between her and C had become serious. She told me:

"I found that when approaching [C] about the operational issues within Tier 1 he objected and acted in a hostile, aggressive and argumentative manner towards me. I was unable to receive any support from Tier 1 in regards to cover, continuous improvement, process changes, meetings, training basically any involvement with Tier 1. As I was supposed to be operationally responsible for this area it made my job extremely difficult...Laureen never supported me or confirmed my role to [C]."

[16] I asked Ms Greenwood to give me examples of what C actually did. She explained that his tone and body language were a problem. When she was speaking to him about work related matters he would say very little, avoid making eye contact, and fold his arms.

[17] Over the winter of 2005 both Ms Long and Mr Saina were away from Solutions Support. Ms Long was on extended sick leave, having fallen ill with chronic fatigue. Ms Greenwood found Ms Long's absence hard as she had relied on her, along with Ms Reeve, for support. She also had to pick up some of Ms Long's work in the meantime. (When Ms Long did return it was to half time duties and she did not resume full time work until after Christmas.) Meanwhile Mr Saina had been seconded to another department during June, July and August. His role was filled on a temporary basis in his absence. While he was away Ms Greenwood told him on several occasions how difficult she was finding it working with C.

[18] Ms Long and Mr Saina both told me that they both knew from Ms Greenwood that she found C difficult, however, what she reported to them were criticisms of his competence. She did not report aggression from him. When they were there they never saw C being aggressive to Ms Greenwood; rather it was the other way round. Ms Long told me:

"I have read Clair's complaint and am astounded that she could say those things. We had two meetings to try and sort out issues within the team and in both of these Clair indicated that from her perspective things were okay."

[19] Ms Greenwood also told me:

"I believe the lack of clarification to [C] in regards to my role from day one was a contributing factor to his aggression and attitude to me."

[20] There is a major dispute as to the nature of the relationship between the Tier 2 team leader's role and that of the Tier 1 team leader. Ms Greenwood told me that she felt she was held accountable for deliverables which depended on the performance of others, the Tier 1 team leaders in particular. Ms Greenwood told me that prior to her employment Ms Reeve had told her that:

"the Tier 1 team leader was to have a dotted line reporting relationship to me where I would be responsible for training, developing and the statistics of the team, and the coaching of the Tier 1 team leader."

[21] Vodaphone denies this entirely. Ms Reeve and Mr Hussey told me that Tier 2 provided customer support at a higher technical level and was expected to provide technical training and support to Tier 1. However they said that this did not make the Tier 2 team, or its leader, senior to the Tier 1 team or its leaders. All three team leaders were at the same level in the organisation and were remunerated accordingly. Ms Reeve told me that she has no idea where Ms Greenwood got this perception from and denies it could have been anything she said. She says all she said about this to Ms Greenwood when she was first employed was that she expected her to assist and support Mr Saina in areas where she had greater experience, and vice versa.

[22] There is nothing in Ms Greenwood's job description (or anywhere else in the documentary record) to indicate that she had any responsibility over the Tier 1 team leaders. The only reference to her relationship with the Tier 1 team leader is the following:

"You are required to work with your counterparts and the Support Manager to ensure that the department as a whole is operating as efficiently as possible."

[23] Ms Greenwood was presented with her job description at the time of her employment but said nothing to Ms Reeve or anyone else about the absence of reference to this dotted line relationship. Ms Greenwood told me that at the time she had no concerns because she was confident that her extra responsibility was clearly understood and accepted.

[24] Ms Greenwood formally raised her concerns about C for the first time in an email to Ms Reeve on 29 July. The issue of the extent of Ms Greenwood's authority was identified there as a factor in conflict between Ms Greenwood and C. The email read:

"Laureen,

Had a run in with Chris this afternoon. I got onto him after the midday report about the Chats tickets being at 22, he flicked me back an email saying 2 words, "under control." At 4 when the afternoon report came out the tickets had gone up to 23. I went over to him to find out what the problem was, he was argumentative, told me that Bryan has been working on something that he can not and would not discuss with me and James had been training. I asked him didn't he think that Chats took precedence over training and whatever Bryan was doing and, he said once again in an aggressive tone that he would not discuss what Bryan was doing with me and that James had training booked in. I asked him would the Chats tickets be looked at now, he repeated the above in an aggressive tone. I asked Kevin to give me an update on the Chats at 4.30.

This was all said in front of Shannon and Kevin, which is both inappropriate and unprofessional. Please consider this a formal complaint, once again Chris had been most aggressive and had made no attempt to work with me this week, preferring to work alone. As I am the most senior team manager on the floor in your absence here I find it disturbing that he has staff who are working on issues "which he can not and will not discuss with me". I do not understand how I am effectively supposed to run the area operationally as per my job if the Team leader for Tier 1 will not discuss what he describes as "issues" with me.

[25] Ms Reeve was on leave at the time of this incident and before she went had asked Ms Greenwood to "follow up" the "Chats" tickets. She told me that by this she had meant for Ms Greenwood to pass on relevant information to C, not to tell him how to redeploy his staff. (Certain key reports came to Ms Greenwood who was required to pass on the information to Tier 1.)

[26] Ms Reeves told me that she returned from leave to Ms Greenwood's complaint as well as one from C, who called her to say he too was upset about the incident. He asserted that it was Ms Greenwood who had approached him very aggressively rather than the other way round. Ms Reeve told me that she spoke about the incident to C, Ms Greenwood and others who witnessed it. She satisfied herself that the Chats tickets were being handled satisfactorily in the circumstances as they were that particular afternoon, and:

"discussed with both of them about prioritisation and ensuring that matters were not blown up out of all proportion with all the operational workload we all had on. Both C and Clair seemed very happy with the outcome. Clair was however very verbal about what she thought of Chris, again very personal.

[27] Ms Greenwood feels that Ms Reeve took no action about her complaint. I have concluded that what Ms Reeve did was to focus on the operational issues surrounding the Chats tickets rather than directly and immediately tackling the relationship problems and role confusion which can be identified from Ms Greenwood's email. Ms Reeve told me that once progress had been made on the operational issues neither C nor Ms Greenwood appeared to want her to take the other matters any further. She left it at that although the subsequent personal development plans for both individuals contained references to the need for them both to look at how they communicated.

[28] Ms Greenwood told me that several times after this she asked Ms Reeves to clarify her role. She found that when she approached C about matters she understood fell within her brief he would ask what it had to do with her. She came to realise that he must have known nothing about the "dotted line relationship" and in around September or October she says she put it to Ms Reeve explicitly that she had thought she had a dotted line reporting relationship with [C]. She says she received no response.

[29] Ms Reeve denies having this put to her then. She does recall Ms Greenwood asking several times for clarification of her role but says this was usually in relation to specifics and she says she responded in that vein by outlining who was to take responsibility for particular tasks. She said that it was not until February 2006 that Ms Greenwood told her she was dissatisfied with her role and that she considered it had turned out to be different to what she was originally offered. Even then, she said, Ms Greenwood did not provide details.

[30] Ms Greenwood told me that she became unable to concentrate and was not sleeping. Her doctor prescribed sleeping pills. On August 18 she told Ms Reeve she was going to take leave:

"I'm going to put in for the week off next week on Annual Leave. I need a stress break bigtime. The [C] thing, Cath being away and picking up her work etc...Housesitting, I need some time out to recover."

[31] On her return, on 30 August, Ms Greenwood continued to voice the fact that she was feeling stressed, telling Ms Reeve of this as they attempted to work through operational issues as well as telling her:

"I am getting increasingly frustrated with the lack of clarity amongst the team in regards to my position here."

[32] Nonetheless at this stage, Ms Greenwood still found Ms Reeve to be supportive to her, expressing her thanks to her in a further email that day.

[33] Ms Reeve told me that she was well aware from her emails and other communications that Ms Greenwood was frustrated about operational issues at this time but she says she saw and heard nothing to indicate that Ms Greenwood felt unsafe at work. Ms Reeve sat close to her team in an open plan office where she could observe interactions between them. Throughout this time, Ms Reeve said, she observed no aggressive or bullying behaviour from C and felt that he put his point of view across in an appropriate way. Because she was privy to the personal issues Ms Greenwood was dealing with, and because she understood those to have impacted on Ms Greenwood significantly, she believed those issues were the source of the stress Ms Greenwood was feeling.

[34] In September Ms Reeve conducted Ms Greenwood's performance review and recorded that improvement was required and that Ms Greenwood's personal circumstances were impacting on her work. Meanwhile she attempted to tackle the operational issues which were still coming up between Tier 1 and Tier 2. In early October Ms Reeve called a meeting of her management team (Ms Greenwood's peer group) telling them that she had hoped to cover some of the operational challenges that kept being raised between Tier1/Tier 2. In an email exchange which followed Ms Greenwood told Ms Reeve that she did not think the issues were *"as bad as you make out"* but noted *"perhaps there is still that little [C] issue."*

[35] All the issues raised and discussed at the October meeting were operational ones, and according to Ms Reeve *"at no point in this meeting, or the future meetings, did Clair raise Chris as being hostile, aggressive and refusing to work."* Ms Reeve felt that some traction was gained as a result of the meeting, although this was not sustained for long. She told me that from this period on she began to observe Ms Greenwood becoming *"verbally rude and disrespectful in these meetings to her peers."* In November she conducted a further performance review with Ms Greenwood and raised this with her. Ms Reeve's evidence was that Ms Greenwood acknowledged what Ms Reeve was saying and told her that she was back on track because her personal issues were resolving. Ms Greenwood denies this.

[36] The last management team meeting for 2005 took place shortly before Christmas and (from Ms Reeve's point of view) passed without incident, as did the first of the New Year, on 11 January. Ms Reeve, Mr Saina and Ms Long all gave evidence that at this meeting, Ms Greenwood commented that she and C were getting along fine and that there were no outstanding operational issues at that point.

[37] Then, on 19 January Ms Reeve emailed her management team about a customer escalation that had not been handled in the way she wanted. She told me that it had not been directed at Ms Greenwood in particular. Ms Greenwood's response to SM Reeve included the following:

"...it would appear from your emails this morning that there is a serious lack of trust from the team with me..."

This morning I have come into work with a number of emails from yourself which feel like some sort of personal attack on my work ethic..."

[38] The two women met later in the day for their regular "one on one." Ms Reeve told me:

"...she just went for me. She was yelling and verbally attacking me as a person, a leader and a friend. I did not know how to react she told me that I didn't trust her, that I didn't support her. ...I simply said to her that I did not know where that had all come from but I would respond to her and we could meet again."

[39] Ms Greenwood agreed that she "lost it" with Ms Reeve at this meeting. She told me that by this time, she felt that her role was constantly being changed and she was often questioned on deliverables which were assigned to other members of the peer group.

[40] Ms Reeve emailed Ms Greenwood a couple of days later. This email provided feedback on the issues Ms Reeve understood Ms Greenwood to have raised, as follows:

- i. Lack of support from Ms Reeve;
- ii. Ms Greenwood's dissatisfaction with her role and concern that it was not what she had been led to believe (the "dotted line issue");
- iii. Ms Greenwood's July complaint about C;
- iv. Trust and a feeling of being outside the team;
- v. Ms Greenwood's apparent perception that all team issues related to "Tier 1...not delivering or improving."

[41] In relation to issues (i) (ii) and (iv) Ms Reeve expressed concern and asked for specifics of what the concerns were. In relation to (iii) she said:

"This matter has been discussed with you on numerous occasions. You are correct in stating that I verbalised last year that I did not know how we may progress this, and that mediation may be required. However after meeting as a team, and you all as individuals, this was agreed it was not necessary. My understanding, which is obviously contrary to yours, is that we verbally agreed this had got better, steps were being taken and you had confidence in the process being ongoing.

I have confidence in [C] as a leader..."

I know you have also done a lot of work and tried different style to work with [C], as has he. You confirmed to me last year that there was definitely progress.

If however you are not satisfied with my handling of this matter, please detail for me the outstanding formal issues you have with [C] so that I can take appropriate action.

[42] In relation to issue (v) Ms Reeve noted simply: "as advised, documented progress is happening."

[43] Ms Reeve concluded that if Ms Greenwood had no confidence in her as her leader then she needed to "talk to HR and get their support on working with me to this end."

[44] Ms Greenwood responded with one final email:

"I wish to discuss this no further, it has become apparent to me that your job is more important to you than our friendship. Hence the reason why I have never escalated or raised anything with HR in the past or will do in the future, as to me this is not as important and never had been more important than remaining friends. To me your support as a friend was way more valuable to me than some bullshit job.

As this has now become all about the job, I see no point in responding to the points below as that is where we choose to disagree. However I realise that you must record our conversation to cover yourself in the case that I took any action. Which I will not be doing."

[45] Ms Greenwood told me she felt that, because Ms Reeve had made it clear that she had no issue with C, she felt that she was "*completely on my own.*" She also felt that from at least this time on she was excluded by her peer group and was on the outer as it were.

[46] Mr Saina and Ms Long both denied this. Mr Saina agreed that since he and C were both Tier 1 team leaders, they tended to have common interests and to take common positions on issues. They also met daily for coffee to discuss their teams and plan their work. However, he said that this was necessary and had no sinister connotations.

[47] Ms Greenwood spoke somewhat bitterly to me about what she appears to have seen as her abandonment by Ms Long, who by Christmas 2005 was no longer providing the sort of support to Ms Greenwood that she once had. Ms Long told me that after her return from her sick leave she was preoccupied with getting her work done and looking after her own health. She did what she needed to do and left, rather than lingering for lunches and drinks.

[48] I do not consider there to be any foundation to the assertion that Ms Greenwood was excluded by her peer group. Indeed I consider her attitude to Ms Long's change in behaviour demonstrates a lack of empathy and collegiality on the part of Ms Greenwood, rather than vice versa.

[49] Ms Greenwood told me that during late January and February she felt that her mental and physical health were at an all time low. As a result of the stress she was feeling, between 8 March and 10 April she was placed on stress leave by her doctor.

Determination

[50] The emphasis of the applicant's case was initially on C's conduct, with the problem framed as a constructive dismissal arising primarily out of the employer's failure to address alleged workplace bullying by C.

[51] Ms Greenwood's own evidence tended not to support an allegation of bullying. She described a dysfunctional working relationship where her attempts to resolve operational problems, in the exercise of what she considered legitimate authority, were thwarted by an uncooperative (and purportedly junior) colleague who did not acknowledge that authority. The examples she gave demonstrated that C resisted her efforts and argued with her however the behaviour she described is in my view more accurately labelled defensive than aggressive. Not to put too fine a point on it, Ms Greenwood's main problem with C was that he would not do what she asked him to do.

[52] Ms Long and Mr Saina worked in an open plan area with Ms Greenwood and C and were present at the peer group meetings where much of the interaction between C and Ms Greenwood took place. Although they were away for a time, they were back during the months leading up to Ms Greenwood's stress leave. They stressed to me that they never saw C bully Ms Greenwood. (If anything, they felt she was aggressive to him.) I have concluded that it would be a misnomer to refer to C's conduct (even as described by Ms Greenwood) as bullying. I am not satisfied that Ms Greenwood was bullied at work, by C or anyone else.

[53] Ms Trotman has not conceded that the alleged conduct cannot be characterised as bullying. However, in closing submissions she has emphasised the second limb of the applicant's case: that she did not get the support from management that she believed she needed to undertake her role. It is not disputed that Ms Greenwood chose not to escalate her concerns until March 2006 so "management" effectively means Ms Reeve. Ms Trotman argues that even if the conduct did not amount to bullying, the relationship between Ms Greenwood and C was dysfunctional and remained a source of stress as did the confusion around her role and the associated difficulties for her in carrying it out. Ms Trotman says that Vodafone knew, or should have known that these factors posed a risk to Ms Greenwood's health.

[54] Ms Reeve was aware that she had problems in her team and attempted to address them at several points during the year to March 2006. Specific operational matters were addressed as they arose, and sorted out. In a fast paced environment such as this, they had to be. While new issues would arise all the time, there were no particular on-going unresolved issues to create debilitating stress. It is also relevant to note that the nature of the work in Solutions Support, especially at Tier 2, was about finding solutions to difficult and challenging problems. It was an inherent part of Ms Greenwood's job to deal with these and she was paid a very high salary in recognition of this. Operational matters did not, therefore, pose a foreseeable risk to Ms Greenwood. Progress was also made in addressing the personal side of the conflict between Ms Greenwood and C. I accept that in January 2006 Ms Greenwood had indicated that they were getting along better. When she later expressed concerns about him they related to his competence rather than his behaviour to her. It could not have been foreseeable to Ms Reeve that the conflict between Ms Greenwood and C (in itself) posed a risk to her.

[55] However Ms Greenwood's confusion about her role was not addressed. Ms Greenwood described herself to me as effectively an informal "2IC" to Ms Reeve. It remains unclear how she came to think this, but I accept it was a genuine belief (as demonstrated in emails to Ms Reeve, including some of those which have been quoted here.) I also accept the evidence of Ms Reeve and Mr Hussey that Ms Greenwood did not have the extra authority or responsibility she describes herself having.

[56] Ms Reeve told me that she was unaware of how Ms Greenwood saw things until February 2006 when she first heard her say she had a "dotted line reporting relationship" with C. She says that until then she did not know that Ms Greenwood thought her role carried additional responsibility. Nor did she know that this was stressing Ms Greenwood.

[57] Ms Reeve impressed me as a credible witness and a hardworking manager who was trying her best to deal with the problems in her team, but nonetheless I conclude that she has failed to see something that should have been plain from Ms Greenwood's emails from at least July. I am satisfied that it was or should have been clear to Ms Reeve from then on that Ms Greenwood was labouring under a misapprehension about the extent of her authority. The evidence I heard was not sufficient for me to find that Ms Reeve said or did anything to give Ms Greenwood this false impression of her role. However, once it had been signalled, it was up to the employer to clarify matters.

[58] While Ms Greenwood's misperception persisted, further problems in the working relationship with C were inevitable. Ms Greenwood's behaviour to C was dictated by her misperception of her authority and her frustration that she could not "get traction" with him on what she saw as pressing issues. This was, I find, the underlying cause of the distressing conflict between her and C. It also caused Ms Greenwood to carry a burdensome sense of responsibility for Tier 1 as well as Tier 2 deliverables. She believed that she would be held accountable for C's failures to deliver as well as her own. I accept that it was very stressful for her to feel that she had to take responsibility for things she had effectively little or no control over, especially given the fast paced environment where standards and expectations of customer service (a "Wow" experience) were very high.

[59] For whatever reason, Ms Reeve did not recognise and address the issue. I am satisfied, on balance, that the lack of clarity around her role, associated difficulties in performing it, and Ms Reeve's failure to address these issues combined to cause Ms Greenwood significant stress. I also accept that this was a factor in the ill health Ms Greenwood experienced in March 2006.

[60] However Ms Greenwood was also dealing with personal issues that had been a serious concern before her employment with Vodafone even commenced. Then soon after she started work there she was the victim of an attack. The assertion that these matters did not materially contribute to her health problems is simply not credible. At the very least, they will have rendered her less resilient in relation to the everyday demands of the workplace. Ms Greenwood's emails to Ms Reeve in January 2006 also show that she was hurt at what she perceived was a change in her personal friendship with Ms Reeve. That is not something for which Vodafone can be held responsible let alone liable.

[61] The period in question was clearly a difficult time for Ms Greenwood in many ways. I accept that confusion around her role and responsibilities in relation to the Tier 1 team leader, C, was a cause of serious stress to her, and that this workplace stress was a factor which contributed to Ms Greenwood's health problems. However I am not satisfied that it was the only or even the primary cause.

[62] From July 2005 it should have been clear that Ms Greenwood was labouring under misapprehension about her role. From late August (when Ms Greenwood advised that she needed "*a stress break big time*") it was foreseeable that the resulting stress could affect her health. Unfortunately, because Ms Reeve did not identify the role confusion, she also failed to recognise the risk it posed.

[63] I have also considered whether Ms Reeve's knowledge of Ms Greenwood's personal problems put the respondent on notice that she was more than usually vulnerable and so particularly at risk. I have concluded that it did not. Ms Reeve was privy to personal information about her problems which Ms Greenwood divulged in confidence, however this was expressly in the context of the friendship. Ms Reeve kept it confidential. (The specifics remain that way and were not disclosed to me in evidence.) The fact that Ms Reeve possessed this information does not put Vodaphone on notice of any particular vulnerability on Ms Reeve's part.

[64] From August 2005 Ms Reeves should have been aware that Ms Greenwood's confusion about her role was causing her stress, additional to that caused by her personal problems and outside the normal demands of her position. The respondent was thus on notice that Ms Greenwood was at risk of harm. However the respondent was not on notice of Ms Greenwood's particular vulnerability and so could not have anticipated the extent of the risk to her.

(ii) Did Vodaphone take reasonable steps to prevent the harm?

[65] I have already recorded my conclusion that Ms Reeve did not address the issue of role confusion. From August to March reasonable steps were not taken to prevent harm.

[66] Things changed in March however. As soon as Ms Greenwood went on stress leave the respondent's human resources division notified Mr Hussey. As it happened, he had very recently been advised by Ms Reeve of the issues with the Solutions Support Management team.

[67] Mr Hussey began his own inquiry into what was going on, interviewing all the team including Ms Reeve. He was due to go on leave shortly before Ms Greenwood's stress leave came to an end, and before he felt he had had a chance to properly assess her complaint. He arranged therefore to meet with her on 28 March and 6 April. It was agreed that she would assume a temporary role during his absence but that this was an interim solution as it was only a short term project. Meanwhile he felt that he needed more information about the detail of her concerns and asked her to provide him with a written summary of events.

[68] Upon Mr Hussey's return he reviewed all the information he had gathered including Ms Greenwood's extensive written summary and met with her again on 2 May. He recorded his conclusions in a file note as follows:

- *"...the incidents took place as stated. What differs is the take on the situation...*
- *It would be understating the case to say that a dislike existed between [Ms Greenwood] and [C] at times in my opinion it was open warfare*

- *In an attempt to resolve the situation [Ms Reeve] changed her management style to become more controlled and objective. This caused the realisation in [Ms Greenwood] that she was in a business situation and that her friendship with [Ms Reeve] was a side issue."*

[69] Mr Hussey recorded also that all of the management team had come to find Ms Greenwood difficult to deal with. He told me that although there was significant conflict within the team, there was no specific evidence of aggression towards Ms Greenwood; in fact it was her style that was described as aggressive. It was not in dispute that she had not escalated the matter and so he said:

"it seemed to me the most appropriate thing to do was to work with the team in a more formal way, perhaps with a skilled outside facilitator. All the other members of the team were open to this approach."

[70] On 4 May Mr Hussey and a member of the human resources team, Karen Grey, met with Ms Greenwood again to review the results of his investigations and to discuss what the next step would be, since the temporary role Ms Greenwood was in was to come to an end the next day. Mr Hussey acknowledged that there had been significant relationship issues in the team over a period of time but did not lay blame or identify a reason except to note that team members' behaviour could be affected if they had domestic issues to deal with. He also observed that the friendship between Ms Greenwood and Ms Reeve seemed to have created difficulty in managing the situation. He then proposed that Ms Greenwood be eased back into her role *"with appropriate skilled external support from a mediator/facilitator at a pace she felt comfortable with."* Ms Greenwood said she was not willing to consider this. What she wanted was another job within the organisation

[71] This was not a new idea. Mr Hussey and Ms Greenwood had talked about it from the time he became involved in the matter. He told me that for Ms Greenwood to move to another role was feasible if one could be found that suited her but by that stage she had had six weeks to consider other roles and nothing had come of it. It was explained to Ms Greenwood that the respondent was not prepared to create a role for her. Ms Greenwood then said that she felt she was being left no option but to resign, and wanted to speak with a lawyer. Mr Hussey gave her the next day off to do so.

[72] Ms Greenwood never returned to the workplace. On 12 May Ms Grey wrote to confirm in writing what had been covered in the meeting of 4 May. She noted:

"As advised to you we have investigated your complaint and believe the issues you have raised should be able to be resolved through the use of an experienced independent facilitator. You would have significant input into the process to ensure that you felt comfortable with it..."

Our aim is now for you to return to your role and we would like you to consider how we might be able to achieve this. Even though your temporary role has now come to an end we will continue to pay you until the end of the month, being 31 May 2006 to give us further time to resolve this.

If you do wish to resign this is your choice but we do want to be sure we have considered all the options and that you understand the consequences of your positions.

Please let me know by 26 May if you are prepared to reconsider your decision not to participate in facilitation.

[73] On 16 May the respondent receive a medical certificate saying that Ms Greenwood she would not be fit to return to work until 13 June. (It seems that this crossed with Ms Grey's letter of 12 May.) On 18 May Ms Grey wrote again, saying she was sorry to hear that Ms Greenwood was still not well and offering the services of the company doctor and EAP if either would assist. She then noted:

"In view of your current state of health it may be more appropriate that we discuss your decision to participate in the facilitation process to support you in returning to your role on the date when you will be fit to return to work as stated on your medical certificate..."

Please let me know if you require any other support to assist you at this time.

Best wishes for a speedy recovery."

[74] On 23 May, however, Ms Greenwood's solicitor wrote tendering her resignation and raising a personal grievance.

[75] Ms Greenwood told me a factor in her not returning to the workplace was her perception that she was expected to go directly back into her team on 5 May. Mr Hussey told me that he never intended this and thought this was made clear to Ms Greenwood in their discussions on 4 May. Even if he did not do so then, I am satisfied that Ms Grey's letters of 12 and 16 May did make it clear that a managed return was planned, with input from Ms Greenwood. I conclude that by the time she resigned it was not reasonable for Ms Greenwood to conclude that she was expected to go straight into her team.

Determination

[76] My conclusions so far can be summarised as follows. Ms Greenwood was confused about her role and what she was accountable for. Associated difficulties in meeting what she thought were her responsibilities were a source of stress for her and a source of conflict with her colleague, C, and eventually her manager, Ms Reeve, further compounding her stress. This stress was a contributing factor in a breakdown in her health however the principal causes of this breakdown were more likely to be the serious personal problems which she had been attempting to address since before her employment began.

[77] Ms Reeve should have but did not foresee harm to Ms Greenwood until late January 2006 at the earliest when she spoke to Mr Hussey about the problems as a first step to resolving matters. Unfortunately, before anything had been put in place to clarify Ms Greenwood's role or resolve any contradictions in what was expected of her, she fell ill and took stress leave.

[78] As at the commencement of that leave, in March 2006, Ms Greenwood had given no indication that she thought the employment relationship had irretrievably broken down. Matters were still capable of being rectified. Once Mr Hussey became involved he attempted to do so in the following way. He treated Ms Greenwood's complaint seriously and conducted what I find was a proper inquiry. He concluded that Ms Greenwood was not a victim of bullying but that there were serious issues to be addressed which were affecting the whole team.

[79] I find these conclusions reasonable. I consider that Ms Greenwood must share responsibility for the conflict in her relationship with C and eventually with other colleagues. She was wholly focussed on her own problems at the expense of showing consideration to her colleagues. Examples of this include the bitterness she expressed towards Ms Long over her unavailability after her illness and the unrelenting criticism of C both to his face and to others. (Given the latter it was unsurprising that she did not get a constructive response from him in relation to operational matters.)

[80] Meanwhile Ms Greenwood had finished her leave and returned to a project role which proceeded satisfactorily from her point of view as well as that of Vodaphone. At her wish, opportunities for ongoing work outside Solutions Support were investigated. However, when nothing suitable could be found, Mr Hussey proposed to return her to her team in a managed fashion with the assistance of an outside facilitator who would work with the team to resolve outstanding issues.

[81] Did all this amount to reasonable steps to prevent further harm? I conclude that it did. If Ms Greenwood had been bullied, attempting to address the problem through facilitation might have been very much the wrong thing to do. This was not a bullying case however. I consider that the respondent offered the support that was needed in the circumstances. It was not reasonable for Ms Greenwood to refuse to participate in a managed return to her team.

(iii) Was there a breach of duty of such seriousness that it was reasonably foreseeable that Ms Greenwood would resign, or in the alternative, was there an unjustifiable disadvantage?

[82] In the time since she left Vodafone, Ms Greenwood has experienced very serious problems with her health. However, I am not satisfied that workplace stress was the primary cause of her illness. The work environment, whilst not ideal, was not such as to cause a complete breakdown in the health of someone who was normally robust, and the respondent was not on notice of any particular vulnerability.

[83] The respondent was therefore entitled to ask Ms Greenwood to cope with normal workplace demands, including the process of rebuilding functional working relationships in Solutions Support. The immediate trigger for Ms Greenwood's resignation was the realisation that if she returned from her final period of stress leave, she would be going back into Solutions Support. Given that this was to be done in a managed and supported way, and given that there were no alternative roles for her at that stage, I have found that this was reasonable. Had the respondent failed to take steps to address the difficulties in the team the outcome of this case might have been different. As things stood, there was no breach of duty such as to cause a resignation. Ms Greenwood was not constructively dismissed.

[84] In any event, the full extent of Ms Greenwood's health problems did not emerge until after her resignation. It would seem that the resignation was a cause of further ill health as well as a consequence of health issues she had already experiencing.

[85] I have concluded however that Ms Greenwood did suffer an unjustified action, namely the respondent's failure (between August and March) to address the problems in Solutions Support. Although I accept that Ms Greenwood may have contributed to those problems, I also accept that she asked repeatedly for clarification of her role and did not get it. Meanwhile, she struggled on under the perception that she was being held accountable for the overall operational performance of not only her own team, but the Tier 1 teams as well. The resulting stress was a contributing factor to her health problems, and so caused her to be disadvantaged. She was also disadvantaged by a loss of remuneration as some of the leave she took prior to her project role was without pay.

Remedies

[86] Ms Greenwood suffered both emotionally and materially as a result of her disadvantage grievance. In the period to March 2006 she experienced distress and lost remuneration. However, her personal problems also contributed to her general distress and she herself contributed to the conflict in the workplace. The employer's actions were not, I find, the only or principal cause of what she went through. I am obliged to take into consideration this contributory conduct. **Taking this and all other factors into consideration I conclude that an award of \$6,000.00 is appropriate compensation. The respondent is ordered to pay that sum to Ms Greenwood pursuant to s.123 of the Employment Relations Act 2000.**

Costs

[87] Ms Greenwood had been only marginally successful in her claim. In such circumstances it is likely that any award of costs would be low. I recommend that the parties endeavour to resolve the issue of costs between themselves however if that proves impossible the party seeking costs has a period of 28 days in which to lodge submissions on the issue.

Y S Oldfield
Member of Employment Relations Authority