

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Deanna Henare (Applicant)  
**AND** After Hours Moorhouse Medical Limited (Respondent)  
**REPRESENTATIVES** Carol Hannagan, Counsel for Applicant  
Eveline Beaumont, Advocate for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**INVESTIGATION MEETING** 29 November 2005  
**DATE OF DETERMINATION** 23 February 2006

DETERMINATION OF THE AUTHORITY

***Employment relationship problem***

- [1] The applicant (Ms Henare) alleges that she was unjustifiably constructively dismissed, disadvantaged and discriminated against by reason of a physical illness.
- [2] The respondent (Moorhouse Medical Centre) denies those allegations.
- [3] The parties attempted mediation but were unable to resolve their differences.
- [4] Ms Henare was employed by Moorhouse Medical Centre from 17 September 2003 as a casual medical receptionist. She became a permanent member of staff as a medical receptionist on 17 November 2003 and she worked in that capacity until her resignation on 16 June 2005.
- [5] The essence of Ms Henare's employment relationship problem with Moorhouse Medical Centre relates to the employer's treatment of her illness and its apparent consequences in the workplace.
- [6] During late 2003 and 2004, Ms Henare was suffering from endometriosis, a direct consequence of which was that she habitually took time off work before, during and after each period.
- [7] As a consequence of this debilitating condition, Ms Henare was scheduled for surgery on two occasions while the employment relationship continued and both of those occasions created issues which are part of the factual matrix of the employment relationship problem.
- [8] Ms Henare alleges that Moorhouse Medical Centre made it difficult for her to take sick leave when she needed it and refused to allow Ms Henare to take annual leave when her sick leave was extinguished.

[9] Those allegations are denied by Moorhouse Medical Centre.

[10] The nub of the constructive dismissal allegation is Ms Henare's contention that at a meeting with Dr Hawes (a representative of Moorhouse Medical Centre) on 18 April 2005, Dr Hawes allegedly said to Ms Henare that if Ms Henare got her lawyer involved (as she was indicating she would), he would prefer her resignation rather than the opportunity to work through the issues as she was proposing.

[11] Again, that central issue is denied by Moorhouse Medical Centre.

[12] Towards the end of the employment relationship, issues of performance were raised by Moorhouse Medical Centre. Ms Henare alleges that Moorhouse Medical Centre dealt with these matters inappropriately. That allegation, like the other allegations relating to sick leave matters and the allegations relating to constructive dismissal, are also denied by Moorhouse Medical Centre.

[13] Ms Henare also alleged that she suffered from workplace stress because of the way she was treated at work. She consulted her GP. Moorhouse Medical Centre denies they were responsible for Ms Henare's stress and in any event say they did not know she was stressed.

[14] The employment relationship ended by Ms Henare's resignation effective 16 June 2005 when, in Ms Henare's view, her attempts to resolve outstanding issues by agreement failed and she was physically unable to continue in the employment as a consequence of the workplace stressors of which she complained.

[15] Moorhouse Medical Centre deny that it connived at Ms Henare's resignation, deny that it failed to deal appropriately with her issues and deny that it knew that she was stressed.

### ***Issues***

[16] Broadly, Ms Henare's grievance alleges both disadvantage and unjustified constructive dismissal together with discrimination on the grounds of health.

[17] It will, however, be most useful to analyse the issues under the following broad headings:

- (a) Ms Henare's leave;
- (b) The constructive dismissal allegation;
- (c) Workplace stress;
- (d) Performance

### ***Ms Henare's leave***

#### ***(a) Annual leave***

[18] Ms Henare says she was denied leave by Moorhouse Medical Centre.

[19] Her employment agreement entitled her to 15 days annual leave and 10 days sick leave per year. Additionally, she was entitled to 30 days unpaid leave for serious illness. It seems these arrangements were standard for employees of Moorhouse Medical Centre rather than peculiar to Ms Henare.

[20] Moorhouse Medical Centre's evidence (which I accept) was that it had a standard policy by which staff applied for leave and this was essentially that leave applications were to be made in writing, including it seems by email. Ms Beaumont, the practice manager for Moorhouse Medical Centre, told me in her evidence that she had 35 staff on three rosters to look after and that she simply could not remember what staff wanted in respect of leave if they did not have a rigorous policy of requiring applications for leave to be in writing.

[21] Ms Henare says that she applied for leave on many occasions and her claim of course is that Moorhouse Medical Centre denied her application for leave from time to time, thereby she says acting unreasonably and/or unlawfully.

[22] However, Ms Henare accepted, in answer to a question from me, that the employer's records were accurate and the employer's records show that there was only one occasion where leave was not granted and that was an application for annual leave which Ms Henare made on 24 March 2005 for the period 29 May to 6 June 2005. This particular request which was for annual leave was refused because Moorhouse Medical Centre was implementing a new telephonist role over that period and Ms Henare had been assigned to that new role because of her expertise in that area.

[23] Moorhouse Medical Centre's evidence is that the leave which had been requested on 24 March was denied by email on 11 April 2005. That email is confirmed by letter on 13 April 2005.

[24] All other requests for leave made by Ms Henare were, it seems, granted. Both parties agree that Ms Henare took a lot of leave. Moorhouse Medical Centre's witnesses did not appear to be unduly anxious about the leave that Ms Henare was taking and certainly appeared to me to be sympathetic about Ms Henare's health problems and willing to help in any way that it could.

[25] For her part, Ms Henare contended that, notwithstanding the employer's accurate written records, she made a number of verbal applications for leave which she says were turned down. Her evidence was that she would only formalise things by putting in a written request for leave if she was certain that it would be granted.

[26] There is no other evidence of this state of affairs other than Ms Henare's testimony. She could not produce any independent evidence of this contention but said in answer to a question from me that she *would have spent a lot of time talking to Ms Beaumont (about leave)*.

[27] Ms Beaumont, in her evidence, denied that she spent time talking to Ms Henare about leave. Indeed she said unequivocally that she did not have conversations with Ms Henare about leave.

[28] I am inclined of the view, on the balance of probabilities, that Ms Henare's recollections of these matters are undoubtedly affected by her ill health and I prefer the evidence of Ms Beaumont and the clear records of the employer which suggest that Ms Henare took a significant amount of leave and that on only one occasion was her request for leave turned down. I am not persuaded on the evidence before me that Moorhouse Medical Centre behaved unfairly or inappropriately in relation to Ms Henare's requests for leave.

***(b) Inappropriate behaviour***

[29] There are other matters associated with the leave issue which I need to determine. Ms Henare alleges that Ms Beaumont, the practice manager, would make things difficult for her when she needed to take sick leave and in particular would sigh when Ms Henare rang to indicate that she would be ill that day. Ms Henare alleged that the sighing and grumbling from Ms Beaumont was accompanied by remarks to the effect that by being ill, Ms Henare was *putting pressure* on other staff.

[30] One particular point at which it is alleged that Ms Beaumont said that Ms Henare was putting stress and pressure on work colleagues was on 7 December 2004 when Ms Beaumont had approved sick leave for Ms Henare in respect of investigative surgery that Ms Henare was to undergo.

[31] Ms Beaumont's evidence was that she denied absolutely the allegations relating to sighing and she denied saying that Ms Henare was putting pressure on other staff as well. Indeed, Ms Beaumont stated categorically that she made no negative comment at all to Ms Henare.

[32] Based on the evidence I have heard, I find it difficult to conclude that Ms Henare did suffer the kind of negative response which she alleges. I found Ms Beaumont to be a credible and straightforward witness whose evidence on this point I believed. Conversely, Ms Henare was, by her own admission, quite unwell over the period in question and I can only conclude that the effect of a very painful condition and the drug therapy which was to some extent designed to address it may have had the effect of dimming her recollection of events.

[33] I am also motivated to reach the conclusion I have by the evidence of all the Moorhouse Medical Centre's witnesses to the effect that Ms Henare was a valued member of the staff who was well liked and considered to be competent. It seems unlikely that a work colleague would be described as well liked and popular if she was seen as letting the side down by taking excessive leave.

[34] Ms Henare's evidence also spoke of *a long period of intolerance intimidation and bullying from Ms Beaumont* so much so that Ms Henare alleges that she would dope herself up on pain killers in order to attend work so as to avoid the complained about behaviour from Ms Beaumont.

[35] Ms Beaumont denies the behaviour complained of and there was no independent evidence produced to me to suggest that the complained about behaviour happened at all.

[36] I asked Ms Henare for examples of the behaviour complained about and she told me there were plenty of examples but then gave me one only where she said that she and another receptionist were laughing and Ms Beaumont had complained about the laughing and then made some remark about *three strikes and you're out*.

[37] Ms Beaumont acknowledged that Ms Henare did laugh readily and she accepts that she may have spoken to Ms Henare and the other staff member and asked them to *tone down* the laughing. However, Ms Beaumont thinks the reference to the *three strikes and you're out* issue comes from the performance meeting that she had with Ms Henare and her legal adviser in May 2005 and not from the behaviour of Ms Henare and another staff member at the front desk.

[38] The short point is that Ms Beaumont appears to accept that there may be some truth in Ms Henare's recollection of the events complained of, but even if that is so, in no sense does that apparent agreement about some of the events justify the use of the phrase *a long period of intolerance intimidation and bullying* as a descriptor.

[39] This was the only example that Ms Henare could produce for me, except to say that most of the examples were from private discussions between her and Ms Beaumont and it was *the way she* (Ms Beaumont) *said things* – *her tone of voice* that justified the description contained in her brief of evidence.

[40] The difficulty with this, of course, is that the only evidence of the behaviour complained of comes from the applicant's own mouth and there is no independent evidence whatever to justify the phrase in question. Ms Beaumont denies absolutely behaving in that way, although she does recall the laughing incident and agrees that she may well have told Ms Henare to *tone it down*. That fact does not justify the descriptor Ms Henare uses in her brief.

(c) *Manipulation of leave*

[41] Ms Henare also alleges that Ms Beaumont effectively tried to manipulate her leave position so that when she extinguished her sick leave (and she took two years' sick leave entitlement in her 19 months of employment all on pay), Ms Beaumont tried to get her to hold back some of her annual leave so that that was available when Ms Henare had her operation.

[42] Ms Henare says that she tried to get Ms Beaumont to understand that she could apply for a benefit if she had a long convalescence period and had no entitlement to pay from her employer. Ms Henare says that Ms Beaumont said she was *not happy* to facilitate that.

[43] In her evidence and in answer to a question from me, Ms Beaumont admitted that she had no idea Ms Henare could get a benefit when she was in employment and she readily admitted that she could have said to Ms Henare at some point that she should hold back some annual leave because her specialist might say that she needed six weeks off after the operation and that was a long time to go without money.

[44] The evidence was that Ms Henare had not used all her annual leave entitlement although I accept as truthful the evidence that only one application for annual leave by Ms Henare was turned down and that that was for proper reasons. It follows that, unless I accept that Ms Henare was deliberately being talked out of taking leave for the reasons that she alleges, she could have made application for leave and had it granted.

[45] Ms Beaumont said in her evidence that she had tried to meet Ms Henare's needs for leave as best she could and Ms Beaumont gave evidence that Ms Henare always said she would not take leave without pay because she needed the money. It follows that what Ms Beaumont did was try to arrange Ms Henare's leave requirements on a paid basis. She actually approved more sick leave than Ms Henare had (on pay) and it is common ground that Ms Henare also received 14 days leave on top of her sick leave and her annual leave as *paid lieu days*.

(d) *Leave without pay*

[46] Finally in this collection of issues for determination is the issue of Ms Henare's entitlement to 30 days leave without pay for serious illness. Ms Henare said she did not know about this entitlement until it was pointed out to her by her lawyer at the meeting with Ms Beaumont on 9 May 2005. But that is inconsistent with Ms Beaumont's evidence who said in answer to a question from Ms Hannagan that ... *she (Ms Henare) knew about it (leave without pay) because she had applied for it in the past. She always said she didn't want leave without pay because she needed the money.*

[47] Certainly, Ms Henare's evidence is that she asked for leave without pay on 13 April 2005 in a discussion she says that she had with Ms Beaumont and in her brief of evidence at para.30, having said that she asked for leave without pay, she then goes on to say that she did not know that her employment agreement provided for leave without pay at the time she made this request. In any event, by her own testimony, she would appear to have asked for leave without pay in mid April and she says it was not until the meeting with Ms Beaumont at which her solicitor was involved on 9 May 2005 that she became aware of that contractual provision.

[48] Ms Henare also alleges that Ms Beaumont did not know about the provision in her employment agreement any more than she did. Ms Beaumont denies that contention and says that as she helped write the agreement, the claim is a bit far-fetched.

[49] It seems to me on the balance of probabilities that the following conclusions can be reached in relation to the leave issues raised by Ms Henare:

- (a) That, with one exception which seems to be a proper exercise of the employer's discretion, Ms Henare was granted each and every application for annual leave that she made;
- (b) That the suggestion that she was harshly treated by Moorhouse Medical Centre in relation to the taking of leave is not borne out by the records of the amount of leave of all types that she actually took;
- (c) That on balance the evidence of Ms Beaumont on the leave without pay issue is to be preferred and that in consequence, I find that both parties knew about the leave without pay provision in Ms Henare's employment agreement but that leave without pay was never granted, not because it was not known about by either or both of the principal protagonists, but because I accept Ms Beaumont's evidence that Ms Henare had a preference for leave on pay for obvious financial reasons.

[50] In particular, I am clear that there is no evidence whatever (apart from Ms Henare's various bald statements in evidence) that she was denied leave regularly and systematically and in an abusive and unfair way. The evidence suggests that Moorhouse Medical Centre went out of its way to provide as much leave on pay as it could (including in excess of Ms Henare's contractual entitlement). I find that the reason there was no record of leave without pay being taken is because Ms Henare preferred to have leave on pay. I accept the evidence of Moorhouse Medical Centre that leave was always dealt with by written application and I also accept the evidence of Ms Beaumont that she simply did not make a practice of talking to staff about leave, preferring the organisational certainty of having the matter in writing.

[51] It follows that Ms Henare cannot point to any supporting evidence at all that would suggest that she was in any way unjustly treated in relation to leave.

[52] I find then that there is no evidence to support Ms Henare's claim that she was disadvantaged by an unjustifiable action of the employer in respect of her leave and/or that there was any evidence of discrimination on the grounds of physical illness by reason of the employer's treatment of Ms Henare's leave position.

### ***The constructive dismissal allegation***

[53] Ms Henare says that she was constructively dismissed by reason of a campaign of unpleasantness which she says Ms Beaumont directed at her, principally in Ms Beaumont's treatment of Ms Henare's leave position, but also in respect of other inter-personal exchanges within the workplace.

[54] I have already dealt with the issue of leave and find no evidence whatever that Ms Beaumont behaved inappropriately in relation to Ms Henare's leave so insofar as that part of the factual matrix impacts on the constructive dismissal claim, I do not find it made out.

[55] Ms Henare also alleges that Ms Beaumont was unpleasant to work for and effectively victimised and bullied her.

[56] Again there is no evidence of this contention apart from Ms Henare's own view. Originally Ms Henare was calling a former work colleague to give evidence but after the briefs of evidence were filed on the applicant's behalf, the Authority was advised that that witness was not now to be called because of *significant changes* to her evidence since she had been summonsed.

[57] It follows that I am left again to either accept Ms Henare's bald statement that something happened without any evidence to support it, or to prefer the view of the employer's witnesses who say that Ms Beaumont was a fair and effective practice manager and that she generally had good relationships with everybody that she worked with. In the absence of any compelling evidence from Ms Henare on this point, I am satisfied that Ms Beaumont has done nothing wrong in her management of the workplace and in her inter-relationships with Ms Henare in particular.

[58] However, Ms Henare's constructive dismissal allegation has a further arm to it. On 18 April 2005, Ms Henare spoke with Dr Anthony Hawes who is a director and shareholder of the respondent, Moorhouse Medical Centre.

[59] The conversation between these two parties was by all accounts brief and Dr Hawes said it took place after he had finished seeing a patient.

[60] Ms Henare says that she spoke to Dr Hawes about her frustration in dealing with Ms Beaumont and in particular she told Dr Hawes that she would be consulting her lawyer about what she alleged Ms Beaumont was doing.

[61] She says that Dr Hawes said that he did not relish the idea of lawyers getting involved and that if lawyers were to be involved, he (Dr Hawes) would prefer a resignation from Ms Henare rather than having to work through the issues with some legal involvement.

[62] Ms Henare said that she said to Dr Hawes that she simply wanted to be able to take annual leave and have a holiday when she was not sick and that that seemed to be being precluded by the way that Ms Beaumont was trying to manage things. She says that Dr Hawes said to her that maybe she should resign when she had her operation.

[63] In his evidence, Dr Hawes denied absolutely that he had told Ms Henare to resign or that he had sought her resignation. He made the point in the clearest terms, as other witnesses of Moorhouse Medical Centre had also done, that Ms Henare was a valued member of the team and that they saw her as having a long term future with the organisation. He asks the rhetorical question in his brief of evidence as to why, given Moorhouse Medical Centre's wish to have Ms Henare start a new role as a telephonist with the firm, for which they thought she would be excellent, would they want to connive at her resigning.

[64] When I questioned Dr Hawes, however, he did acknowledge that some of what Ms Henare was alleging about the discussion may well have taken place. He admitted that he might have used the word *resignation* in the discussion but not he says in relation to her resigning. It is difficult to see what other context he would use that word for, were it not to have something to do with Ms Henare's tenure. Certainly, whatever Dr Hawes intended to say, Ms Henare has picked up the use of the word resignation and taken that as an indication that the employer wanted her to go.

[65] Dr Hawes also admitted that he would have been negative about getting a lawyer involved. He said to me that *by getting a lawyer involved it is a step down the path. I have never seen a marriage saved by a lawyer.*

[66] These comments, in all the circumstances, may well have impacted negatively on Ms Henare and may not have been well judged. However the question is whether they amount to evidence of a constructive dismissal. I do not think they do.

[67] In my opinion, this was a very brief unplanned meeting which Dr Hawes clearly was not expecting. It was common ground that Dr Hawes was not involved in the management of Moorhouse Medical Centre and that the day-to-day management was in the hands of Ms Beaumont.

Dr Hawes made it clear that he had confidence in Ms Beaumont and thought that she was fair and even-handed but unwilling to leave issues that needed to be dealt with.

[68] Dr Hawes may well have made observations which Ms Henare has taken the wrong way, but whatever Dr Hawes did say, I accept his evidence that he was not seeking Ms Henare's resignation. I know her evidence is that she wrote down what she understood him to have said immediately after the meeting and so that evidence is a contemporaneous written record in effect.

[69] However, having heard both Ms Henare and Dr Hawes give their evidence, I am simply not persuaded that Ms Henare accurately reports what Dr Hawes said. It is clear that she heard the word resignation at some point – Dr Hawes admits saying that word – but he denies absolutely that he said it in the context of trying to get her to resign because that was not in his interests. On balance, I prefer his evidence as to what happened in this very short exchange. I might have been more inclined to accept Ms Henare's recollection of these events had the rest of her evidence been more credible.

[70] In the normal course of events, an employer who seeks to encourage a worker to resign does so from a background of an unpleasant and difficult employment relationship. Despite Ms Henare's evidence, this does not seem to be such a relationship. Everybody spoke highly of Ms Henare in their evidence and said that she was an able and effective member of the team and somebody that they wanted to continue to have as part of the business. The employer had identified a new role for Ms Henare as telephonist and they thought that she would do that role exceptionally well. In those circumstances, it is just difficult to see why Dr Hawes would have suddenly got it into his head to try to advance Ms Henare's departure from the workplace in circumstances where, by his own admission, he had almost nothing to do with the day-to-day management of the firm and it seems his only real knowledge about Ms Henare's position was that she had been identified as the ideal person to fill the new telephonist role.

[71] In order to deal comprehensively with the constructive dismissal allegation, I need to consider all three well known categories of constructive dismissal. I have just indicated my view that the evidence does not support a conclusion that the employer had given the employee a choice between resignation or dismissal. I simply do not find that contention credible on the evidence I have heard in this matter.

[72] However, I need to decide also whether there is evidence that the employer has followed a course of conduct with the principal purpose of coercing a resignation. Again, while I accept that Ms Henare has consistently alleged that the employer was trying to get rid of her, there simply is no evidence of that other than her testimony and her mother's belief that the employer did not look after her well.

[73] Finally, the third category of constructive dismissal cases needs to be considered and I need to identify whether there has been a breach of duty by the employer which effectively leads to the resignation of the employee. Undoubtedly, if I had been persuaded that the employer had treated Ms Henare unfairly in respect to her leave, then this could certainly constitute a breach of duty of sufficient seriousness in my view to justify the contention of a constructive dismissal. That is not the position here. I have not been persuaded that the employer has done anything wrong in relation to Ms Henare's leave and indeed I think the evidence supports that the employer did everything it reasonably could to fit Ms Henare's significant leave requirements into the operational arrangements at the workplace.

[74] It follows then that I am not persuaded that Ms Henare has made out her claim that she has been unjustifiably dismissed by way of a constructive dismissal.

### ***Workplace stress***

[75] Next, Ms Henare alleges that she was a victim of workplace stress and she had her doctor give evidence of the treatment regime that he applied and the diagnosis that he made in respect of that situation.

[76] It is clear that as the employment relationship wound towards its termination, Ms Henare became less able to cope at the workplace and in the result, sought medical advice.

[77] The evidence indicates that she saw her own doctor on 22 April 2005 complaining of workplace stress, that she saw her GP again on 6 May 2005, again on 12 May 2005, again on 21 May 2005 and finally on 8 June 2005.

[78] Dr Timothy Wilson who gave evidence before me was Ms Henare's doctor and he indicated that he had diagnosed depression when he saw her first on 22 April. As the consultations continued over time, Ms Henare's symptoms worsened to include panic attacks, tearfulness, sleep disturbance and loss of appetite.

[79] Dr Wilson accepted that doctors drew their conclusions about this sort of diagnosis based on the information conveyed to them by the patient, but he said that doctors were good at identifying what was happening and why. He considered that the major reasons for Ms Henare's then illness was workplace stress but he accepted that Ms Henare's other serious physiological medical conditions may have had an impact as well.

[80] Clearly then the medical evidence suggests that towards the end of the relationship, Ms Henare was suffering from workplace stress which occasioned depression and various manifestations of anxiety in a clinical sense.

[81] The difficulty is that there is scant evidence that Ms Henare ever advised the employer of her distress in the workplace. She admitted that herself in evidence. She said that she did her job and would appear unaffected and would then collapse at home.

[82] Ms Beaumont said that she was never aware of workplace stress until receipt of Ms Hannagan's letter of 26 May 2005. That letter suggests that Ms Beaumont had been told of Ms Henare being stressed as early as 8 March 2005. In her written brief, Ms Henare refers to a conversation which she says she had with Ms Beaumont on that date in which she indicated that she was stressed but Ms Beaumont has no recollection of it and her evidence was that the letter from Ms Hannagan came as a complete shock to her.

[83] Other evidence from witnesses for Moorhouse Medical Centre including work colleagues of Ms Henare tend to support the picture that Ms Beaumont obviously had of a happy and loyal worker who, apart from her physiological health problems, had no obvious signs of unhappiness.

[84] For instance, Sarah Stephens who was Ms Henare's team leader, said that Ms Henare always appeared happy and was always *smiling laughing and joking*. She said that Ms Henare showed no signs of being under stress at work and appeared to be enjoying her job and life.

[85] Andrea Lewis is the nurse coordinator at Moorhouse Medical Centre. She described Ms Henare as *a happy and cheerful lady*. Ms Lewis said that she would have observed the signs of stress in Ms Henare if they had been present.

[86] In answer to a question from Ms Hannagan, Ms Lewis doubted if Ms Henare could be hiding her stress and she said she would have had plenty of opportunity to make a judgment because she worked closely with Ms Henare.

[87] It would seem then that there are differing views about whether Ms Henare was indeed suffering from workplace stress with her general practitioner firmly of the view that she was evidencing those symptoms and other health professionals with whom she worked within the health sector indicating that there was no evidence of stress while she was at work.

[88] That of course is a significant imponderable in itself, but it seems to me of more conclusive probative value is the sketchy evidence that stress was ever properly drawn to the employer's attention as a factor in the deteriorating employment relationship.

[89] Even on Ms Henare's view of matters, she raised stress once on 8 March 2005 (a discussion which Ms Beaumont does not recall) and then the next occasion on which the matter is brought to the employer's attention appears to be the letter from Ms Hannagan to Ms Beaumont on 26 May by which time, one fancies, the dye was well and truly cast.

[90] In those circumstances, it is difficult to see how, assuming that workplace stress was in evidence, and as I say there is doubt about that for a start, the employer can be held to account for circumstances that it simply did not know about soon enough in order to be able to deal with.

[91] It follows that I am not persuaded that Ms Henare has any viable cause of action in relation to her allegation of workplace stress.

### ***Performance***

[92] At the very end of the employment relationship, there were issues about Ms Henare's performance and these were addressed with her in two meetings, the first of which was on 5 May 2005.

[93] Ms Beaumont, for the employer, acknowledges that the employer's complaints were modest but mistakes were being made and it was important that the matter be addressed. This evidence of her attitude to Ms Henare's performance seemed absolutely consistent with what other witnesses said that Ms Beaumont habitually did in relation to other staff.

[94] The meeting on 5 May was between Ms Henare and Ms Beaumont and no other party was present. Ms Beaumont's evidence, which I accept, is that she showed Ms Henare the nature of the mistakes that were being made and asked her to improve her attention to detail.

[95] Ms Henare, in referring to the same meeting, indicated in her evidence that she thought she was to receive a verbal warning about the small mistakes that she had been making.

[96] In fact, no warning, verbal or written, was issued although Ms Beaumont clearly said to Ms Henare that if she continued to make mistakes then she would get into the disciplinary system and warnings would issue.

[97] Ms Henare's view was that she was being singled out for special treatment and that the only reason the matter was being progressed at all was because of the alleged differences that there had been in respect of annual leave.

[98] There was a further meeting between the parties on 9 May which Ms Henare says was called to try to *sort everything out without going any further*. This second meeting involved Ms Henare's lawyer, Ms Hannagan.

[99] Ms Beaumont on the other hand thought that this second meeting was a follow-up meeting to do with Ms Henare's work performance. Ms Beaumont thought the meeting went well and that she usefully conveyed the procedure for any future disciplinary process, agreed to approve further annual leave for Ms Henare, and discussed the new telephonist role that Moorhouse Medical Centre was proposing that Ms Henare fill.

[100] Ms Beaumont's evidence was that neither Ms Hannagan nor Ms Henare mentioned Ms Henare's state of mind, her health or her treatment at work in relation to her health.

[101] Ms Henare, on the other hand, says that she intended the meeting be limited to annual leave issues and that principally that was what was discussed although she agrees that there was discussion about the performance issue as well.

[102] By the end of the meeting, Ms Henare describes herself as being *livid*.

[103] Clearly these are two very different impressions of the same meeting, but it is difficult for me to derive anything improper in the employer's behaviour from the evidence before me. The employer is entitled to address performance deficits. Ms Henare alleges that she was singled out for special treatment and that other people who made similar mistakes were not subject to disciplinary meetings. As has been the case throughout this matter, Ms Henare makes such a categorical statement but provides no evidence whatever to support it. I am invited then to accept Ms Henare's word that these events happened in the face of a denial of anything improper from the employer.

[104] Again, I find nothing inappropriate in the behaviour of the employer in relation to performance issues.

### ***Determination***

[105] I am not persuaded that Ms Henare has made out her case, either in respect of constructive dismissal or in respect of disadvantage or in respect of discrimination.

[106] I accept that Ms Henare's views are strongly felt but it requires more than a bare assertion for the Authority to reach a conclusion favourable to theasserter. Throughout the course of this proceeding, Ms Henare has advanced a number of significant and sweeping propositions about the behaviour of the employer which simply are not capable of being supported by the evidence that has been presented to me.

[107] I am sure that Ms Henare's indifferent health has contributed to her feelings of unease in the workplace and to the dislike that she evidently feels for Ms Beaumont, the employer's manager.

[108] However, it seems to me that Ms Henare has developed a mindset that Ms Beaumont is the author of Ms Henare's misfortunes when the evidence available to the Authority simply does not support that proposition.

[109] There is nothing further I can do to assist Ms Henare. Her claim fails in its entirety.

*Costs*

[110] Costs are reserved. I note, for the sake of completeness, that Ms Henare is legally aided.

James Crichton  
Member of Employment Relations Authority