

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 720  
3205279

BETWEEN

LIANA HENDRY  
Applicant

AND

TALLEY'S GROUP  
MANAGEMENT LIMITED  
Respondent

Member of Authority: Peter van Keulen

Representatives: Michael O'Flaherty, counsel for the Applicant  
Graeme Malone, counsel for the Respondent

Investigation Meeting: 17 August 2023 in Nelson

Submissions and further information received: 17 August 2023 and up to 23 November 2023 from the Applicant  
17 August 2023 and up to 1 December 2023 from the Respondent

Date of Determination: 4 December 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Liana Hendry was employed by Talley's Group Management Limited as a claims manager.

[2] Ms Hendry has two sets of complaints about how Talley's acted toward her during her employment:

(a) Ms Hendry says she was bullied by her team leader and each time she raised this with Talley's it failed to act fairly and reasonably in response to her complaints.

(b) Talley's provided her with an anonymous complaint letter and then responded in an unjustified way regarding the letter and the implications of it for Ms Hendry.

[3] Talley's denies that it acted unjustifiably toward Ms Hendry; it says in fact it had performance and behaviour concerns relating to Ms Hendry and it was trying to resolve those concerns.

[4] In the end Ms Hendry was not satisfied with the way she was being treated by Talley's so she resigned.

[5] Based on these events, Ms Hendry raised personal grievances for unjustified action causing disadvantage and unjustifiable dismissal.

### **The Authority's investigation**

[6] The parties were unable to resolve Ms Hendry's personal grievances and they formed the basis of a statement of problem that she lodged with the Authority.

[7] Talley's responded to the statement of problem denying any liability.

[8] Ms Hendry's claims, set out in her statement of problem, were investigated and will now be determined by me. The claims that I investigated are:

(a) Unjustified disadvantage claims based on allegations that Talley's failed to deal with Ms Hendry's bullying complaints and that Talley's dealt with the anonymous complaint about Ms Hendry incorrectly.

(b) Unjustifiable dismissal in that the allegations above amount to a breach of duty which led Ms Hendry to resign.

(c) A breach of the duty of good faith based on the two sets of actions outlined.

[9] I investigated these claims by receiving written evidence and documents, holding an investigation meeting on 17 August 2023 and assessing the oral and written submissions of the parties' representatives.

[10] I received witness statements from Ms Hendry and Rebecca Plum and Nathan Howes of Talley's. In my investigation meeting, under oath or affirmation, these witnesses confirmed their statement and gave oral evidence in answer to questions from myself and the parties' representatives. The representatives then provided oral and written submissions.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

## **Issues**

### *Unjustified action causing disadvantage*

[12] An unjustified action causing disadvantage personal grievance is set out in section 103(1)(b) of the Act. This provides that an employee may have a personal grievance where their employment or any condition of employment is or was affected to their disadvantage by some unjustified action by their employer.

[13] Based on section 103(1)(b) of the Act, the questions to be addressed in respect of an unjustified action causing disadvantage personal grievance are:

(a) Were there any unjustified actions carried out by Talley's in respect of Ms Hendry?

(b) If so, did the actions cause any disadvantage to Ms Hendry's employment or a condition of employment?

*Unjustifiable dismissal*

[14] The first issue for an unjustifiable dismissal grievance is, was Ms Hendry dismissed?

[15] In this case Ms Hendry was not dismissed by Talley's, she resigned. Ms Hendry says that her resignation amounts to a dismissal because she resigned in response to breaches of duty by Talley's; this is a constructive dismissal.

[16] In order to resolve this, I need to establish what occurred and whether the events amount to a breach of duty. If there was a breach of duty I must then determine if that gives rise to a constructive dismissal applying the legal requirements established in relevant case law.<sup>1</sup>

[17] If these things are established such that Ms Hendry was dismissed, I must then consider the second issue; was the dismissal justified?

*Breach of the duty of good faith*

[18] The other set of issues that arise in Ms Hendry's claim relate to the allegation of breach of the duty of good faith. The question is, in acting as alleged, did Talley's breach the duty of good faith that it owed to Ms Hendry as set out in s 4A of the Act.

[19] If I find that Talley's did breach the duty of good faith I must then decide if a penalty should be imposed on Talley's. In order to impose a penalty against Talley's I must be satisfied that the failure was deliberate, serious and sustained or the failure was intended to undermine the employment relationship.<sup>2</sup>

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<sup>1</sup> *Auckland Shop Employees Union v. Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA); *Wellington etc Clerical Workers etc IUOW v Greenwich* [1983] ACJ 965; and *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA).

<sup>2</sup> Section 4(1A) of the Employment Relations Act 2000; and *Maddigan v Director-General of Conservation*

### *Steps for investigating Ms Hendry's claims*

[20] In the first instance I will consider what it is that Ms Hendry complains of as being an unjustified action and/or a breach of duty, including the duty of good faith, by Talley's. In this case Ms Hendry's complaints are that Talley's:

(a) Gave her an anonymous complaint letter and did so in circumstances that were distressing and unfair on her.

(b) Failed to investigate her complaints of bullying.

[21] So, I will decide if Talley's acted as alleged and if so if these actions are unjustifiable and/or amount to a breach of duty.

[22] Then, if it did act as alleged, I will consider whether Talley's actions give rise to an unjustifiable dismissal personal grievance and/or an unjustified disadvantage personal grievance and/or support the imposition of a penalty. If the actions do not, there is no basis for Ms Hendry's personal grievances and penalty claim and these claims will end there.

[23] If a personal grievance is established, I will then consider what remedies Ms Hendry is entitled to.

### **What happened?**

[24] From 14 July 2021 Ms Hendry was employed as a claims manager by Talley's.

[25] Ms Hendry says the work and the work environment were stressful and unpleasant from the outset. Ms Hendry says she raised concerns about these things with Ms Plum, her manager, on multiple occasions. In particular she says she raised complaints about bullying behaviour by her team leader (CFD).<sup>3</sup> Specifically:

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<sup>3</sup> Whether Ms Hendry's team leader bullied her or not, is not in issue in this claim. For this reason, it was not necessary for Ms Hendry's team leader to give evidence in my investigation meeting and as a result the allegations of bullying were untested by me. Therefore, I have chosen not to identify the team leader but will refer to them as CFD.

- (a) In early 2021 Ms Hendry became concerned about the use of Teams by CFD and a colleague. In particular, Ms Hendry was concerned that she could view the Team's conversations that they were having about other employees, including her and they were disparaging of her and others.
- (b) In January 2021, Ms Hendry was involved in a verbal altercation with another employee. Ms Hendry's complaint was that CFD did not intervene to protect her.
- (c) Throughout her time working with CFD, Ms Hendry says that they were dismissive of her work for no particular reason and would often simply return work to her without any reason.
- (d) CFD stopped acknowledging Ms Hendry in the morning each day.

[26] Ms Hendry says she raised these matters with Ms Plum and Ms Plum failed to act appropriately.

[27] During 2022 Ms Hendry also had some personal and family circumstances that were impacting on her, including having an impact on her work.

[28] By 16 September 2022 all of this had come to a head and Ms Hendry wanted some assistance or intervention from Talley's. Ms Hendry sent an email to Ms Plum in which she stated:

As discussed over the past couple of weeks I am struggling with my work/home life balance with some challenging issues at home. I am also struggling with being at work and the feeling of coming to work each day, some days it can make me quite tearful where I cry to my colleagues in regard to situations happening in the office.

[29] Ms Hendry's email then set out a request to vary her working hours.

[30] Ms Plum was away on 16 September 2022 and did not respond until 21 September when Ms Hendry sent her a follow up text. Ms Plum proposed that the two of them meet on 22 September 2022.

[31] In the meeting on 22 September 2022, Ms Hendry raised and discussed with Ms Plum, her request to vary her working hours and how that would assist her with her personal and family issues. She then raised her concerns about CFD and how she felt in the office due to them and other matters. Ms Hendry concluded by advising that things were so difficult for her at work she was thinking about looking for work elsewhere. Ms Plum then raised concerns she had about Ms Hendry's work including the completion of certain work, excessive phone use that appeared to be for personal reasons and speaking negatively about work generally and her work colleagues.

[32] Whilst these various issues were raised in the meeting of 22 September 2022 nothing was resolved. The only apparent action from the meeting was for Ms Plum to discuss Ms Hendry's request for flexible working hours with Mr Howes, the Human Resources manager for Talley's.

[33] Unrelated to the meeting with Ms Hendry, Ms Plum and Mr Howes had a telephone conversation on the afternoon of 22 September 2022 to discuss an anonymous complaint that had had just been received regarding Ms Hendry.

[34] The complaint letter received by Talley's raised alleged issues with Ms Hendry that the writer claimed had not been resolved. The alleged issues included:

- (a) Ms Hendry did not work a full day, often arriving late without a valid reason, leaving during the day for personal appointments and leaving early often because she had purported to work through part of her lunch break.
- (b) Ms Hendry had slandered Talley's on many occasions and her colleagues and manager. This included her openly talking about her dislike of the company and that she hates her job.
- (c) Ms Hendry using her personal phone all day for Facebook, snapchat and personal calls.
- (d) Ms Hendry was openly rude in meetings to Ms Plum.

[35] Both Ms Plum and Mr Howes were unsure about what to do with the anonymous complaint. In the end they decided that they should give Ms Hendry a copy of the complaint for transparency reasons and because it represented an employee feeling unsafe and they needed to do something about that. Despite this reasoning, Ms Plum believed they would not need to take any steps in relation to the complaint because it largely set out the concerns about Ms Hendry's conduct at work that Ms Plum had already raised with Ms Hendry.

[36] On 28 September 2022 Ms Plum met Ms Hendry and gave her a copy of the complaint. Ms Hendry was shocked and upset by the complaint, and her immediate reaction was to defend herself. Ms Plum reassured her she could have time to compose herself and the complaint carried no weight.

[37] Ms Hendry left the meeting and went to her car and called her father; she was upset and still shocked by the complaint. On returning to the office, Ms Hendry asked Ms Plum for a copy of the complaint and again tried to engage over the substance in order to explain herself. Ms Plum told her she did not need to defend herself and that she was a good worker.

[38] The next day on 29 September 2022, Ms Hendry contacted Ms Plum and told her she was still so upset and shocked by the complaint that she was unable to come to work. Ms Plum was supportive of Ms Hendry and told her about her ability to access EAP support through Talley's.

[39] Ms Hendry then emailed Mr Howes and asked to meet him. A meeting was arranged for 3 October 2022 and Ms Hendry and her sister attended that meeting. In the meeting Mr Howes could see how upset Ms Hendry was by the complaint and he told her he wished they had not provided it to her and simply thrown it away. Mr Howes told Ms Hendry this despite holding the view that the complaint needed to be addressed and should not be disregarded simply because it was anonymous. And he wanted to know what Ms Hendry's response was to the allegations.

[40] After the meeting on 3 October 2022 Ms Hendry remained off work. On 5 October 2022 Mr Howes sent Ms Hendry an email which included the following:

In terms of the anonymous letter we provided you, we believe it was appropriate you were given the letter in the interests of maintaining transparency and to reinforce the issues Becky has already discussed with you. While, as I advised you, the letter itself has no weight to the truth or otherwise of the allegations, the main underlying points in the letter include the very issues that [Ms Plum] has discussed with you as needing to be addressed and the existence or otherwise of the letter does not change that.

... An anonymous letter such as the one I received requires me to take further steps; the actual steps always depend on circumstances, although an initial check with [Ms Plum] would always be the first step.

...

While the letter and the issues raised by [Ms Plum] are no doubt upsetting, the fact remains will need to address these issues with you.

...

As stated however, the starting point has to be a discussion with you, it is our current view that some of the issues raised to need to be dealt with (if not informally, then in a performance management setting) but until we have the opportunity to hear your views on these issues, we cannot make a final decision or discuss options and outcomes that might be taken.

[41] On 7 October 2022, Ms Hendry raised personal grievances with Talley's, through her lawyer, based on Talley's actions in providing her with the anonymous complaint and for not investigating and dealing with her complaints of bullying.

[42] Talley's responded to Ms Hendry's personal grievances in detail on 21 October 2022. In summary Talley's position was:

- (a) By way of background Ms Hendry had made disparaging remarks about Talley's at work and Talley's had performance concerns about Ms Hendry that had been raised with her.
- (b) Despite the complaint being anonymous it could not be ignored and action needed to be taken; whilst the complaint was of limited evidential weight it did indicate a further enquiry was necessary. Providing Ms Hendry with an

opportunity to respond to the complaint without launching into a fuller enquiry was the least intrusive way of dealing with the issues.

(c) That Talley's had responded to and dealt with two specific complaints Ms Hendry had raised about CFD and the other two complaints regarding CFD had not been raised.

[43] After this exchange of correspondence, the parties agreed to attend mediation and pending this, Ms Hendry remained away from work on unpaid sick leave.

[44] There was little contact between the parties once mediation was scheduled except for an email sent from Ms Hendry's lawyer on 22 November 2022 after Ms Hendry had seen an advertisement from Talley's for a role that she believed was identical to hers, which suggested Talley's was looking for a replacement for her. Ms Hendry's lawyer raised this concern with Talley's in the email and then went on to record:

Our client is feeling increasingly anxious about returning to the workplace. In the past two months our client has been isolated away from work with no contact from her employer seeking to understand her health or what they can do to accommodate her return to work. Instead our client is faced with the prospect of returning to work for an employer who has rallied around a workplace bully, that has declined to accept any responsibility for humiliating our client by providing her with an unsubstantiated complaint, and has denied the fair and reasonable request of investigating workplace bullying claims. Your client has attempted to dismiss our client's legitimate concerns without taking any meaningful steps to engage with her and is seeking to rely on unsupported performance concerns to legitimise providing her with an anonymous complaint. ....

[45] Talley's did not respond to this email.

[46] On 28 November 2022 Talley's and Ms Hendry attended mediation but no resolution was achieved.

[47] After the mediation on 28 November 2022, Ms Hendry sent an email to Talley's advising it that she would return to work on 1 December 2022. Ms Hendry says that by this time she had been without pay for almost seven weeks and was behind on her mortgage

payments. As there was no resolution at mediation, she felt she had no choice but to return to work.

[48] On 29 November 2022, Ms Plum sent an email in reply to Ms Hendry. This email did not alleviate any of the concerns Ms Hendry had about returning to work, so on 29 November 2022 Ms Hendry sent an email resigning from her employment with Talley's. In this email she said:

I am resigning from my employment with Talley's.

My employer's actions in dealing with the issues I have raised regarding workplace bullying and the damage this has had on my mental health have left me no choice but to resign from my employment. Talley's have taken no steps to address the concerns noted in my lawyer's letter and has consistently failed to engage with me on how to provide a safe working environment.

Your response today to my indication that I would return to work still ignores the issues that have been raised and does not indicate that you will be taking any steps to investigate the matters raised. I feel that there has been a pattern of behaviour on Talley's part that has put me in a position where my only option is to resign from my employment. The inaction of Talley's in respect of the personal attack on the anonymous letter and my complaint of bullying by [CFD] are a significant breach of the trust and confidence that are placed in Talley's as my employer.

[49] Ms Hendry had an eight week notice period. Ms Hendry asked to work from home, given the concerns she had about her work environment and CFD. Talley's declined her request and as a result Ms Hendry chose not to work her notice period.

[50] After her resignation, Ms Hendry purchased a motel in a business deal with an acquaintance and she began working there from 14 December 2022.

## **Analysis**

### *Talley's breached the duties it owed to Ms Hendry*

[51] I conclude that Talley's breached the duties it owed to Ms Hendry, including the duty of good faith, by not properly investigating her complaints about CFD and the work environment, particularly as that impacted her. And Talley's breached the duties it owed to Ms Hendry, including the duty of good faith, by providing her with the anonymous complaint

without investigating it and in circumstances where it told her Talley's would not rely on the complaint yet it insisted that she respond to it.

[52] I accept that Talley's took some action in response to Ms Hendry's complaints about CFD but overall, it did not do enough. On analysis the response to individual complaints about CFD were superficial and appeared to be based on a preferred assessment of CFD and an assumption that Ms Hendry's complaints were motivated by a dislike of CFD and jealousy that they were given the team leader role.

[53] In doing this Talley's failed to look at the bigger picture of Ms Hendry's complaints and failed to properly consider if there was any substance to her concerns. This failure to act becomes even more relevant when Talley's received the email from Ms Hendry on 16 September 2022 and then had meeting with her on 22 September 2022. After these two events Talley's had an employee who:

- (a) Had complained specifically about actions of her team leader.
- (b) Was not performing optimally at work and appeared unhappy and disgruntled.
- (c) Specifically stated she was struggling with being at work, the prospect of even coming to work was difficult and she was reduced to tears because of what was happening in the office.

[54] To dismiss all of this at that time and focus on concerns about Ms Hendry's performance and behaviour, rather than considering whether the concerns about Ms Hendry were in part because of CFD and their behaviour and potentially wider issues for Ms Hendry at work is unacceptable. It appears the easier view was to believe all of Ms Hendry's issues were informed or created by her and her resentment of work and CFD; effectively turning Ms Hendry's complaints and concerns back on her as poor performance.

[55] What Talley's should have done at that point was step back from progressing it's concerns about Ms Hendry and taken a fresh and independent look at what was going on in the team including the behaviour of CFD and others, as well as Ms Hendry's involvement. It is clear to me that what was required was a review of how the team operated, including

individual behaviour to see if the concerns about bullying were true and/or whether Ms Hendry was in fact the source of her own issues.

[56] For Talley's to then seize on the anonymous complaint and progress issues about Ms Hendry's performance and behaviour was unfair. There are two simple points about the complaint:

- (a) Talley's should have investigated the complaint by reviewing the work and conduct of the team, which it should have already been doing in response to Ms Hendry's complaints.
- (b) An independent person should have dealt with the complaint and all of the issues with the team as Ms Plum was not only connected she was said to be subject of some of the alleged behaviour by Ms Hendry.

[57] The final point to make about Talley's using the complaint to progress matters with Ms Hendry was that what they told Ms Hendry was confused and conflicting. Ms Hendry was told the complaint was not being relied on and only being given to her for transparency reasons, then she was told it was provided because it covered matters already raised with her (so further evidence of Talley's concerns) and then she was specifically asked to respond to the issues raised.

[58] To compound matters, when Ms Hendry felt she had no choice but to return to work Talley's continued to ignore her concerns.

[59] As a result of the breaches by Talley's Ms Hendry resigned.

#### *Conclusion on personal grievances*

[60] Talley's actions outlined above were unjustified and as a result:

- (a) Ms Hendry suffered a disadvantage in her work.
- (b) Ms Hendry resigned in circumstances where it was foreseeable that she would, so she was dismissed. This dismissal was unjustified.

[61] This means Ms Hendry has established personal grievances for unjustified action and unjustifiable dismissal.

*Breach of duty of good faith*

[62] Talley's actions also amount to a breach of the duty of good faith. However, I am not satisfied that the breach was deliberate, serious or sustained nor was it designed to undermine the employment relationship. I accept the submission of counsel for Talley's, that Talley's actions were not intended to breach the duty nor undermine the relationship – Talley's acted as it thought best in terms of the concerns it had about Ms Hendry and her own complaints, albeit that I have found those actions were unjustified.

[63] In the circumstances I conclude that a penalty should not be imposed against Talley's.

**Remedies**

[64] As Ms Hendry has been successful with her personal grievances, I must turn to consider what remedies she may be entitled to in terms of those provided for under s 123 of the Act.

*Compensation*

[65] Compensation is awarded pursuant to s 123(1)(c)(i) of the Act; it is for the humiliation, loss of dignity and injury to feelings that an applicant suffers as a result of the unjustified actions (including dismissal).

[66] In assessing any amount of compensation that should be awarded to an applicant, my task is to quantify the harm and loss caused by the humiliation, loss of dignity and injury to feelings arising out of Talley's unjustified actions and breach of duty. Various Employment Court decisions provide guidance on this exercise of quantification.<sup>4</sup>

[67] What these decisions show is that I must consider the effects of the unjustified behaviour on Ms Hendry and in doing so I must identify the harm caused and the loss

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<sup>4</sup> *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71, *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132, *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

suffered as a result. Then I must quantify that harm and loss by assessing where that sits on the spectrum of harm and loss suffered by those that have been unjustifiably dismissed. Then I must consider where that corresponds to the spectrum of quantum awarded as compensation.<sup>5</sup>

[68] In assessing the effects of Talley's actions I must look at all of the unjustified actions or breaches of duty, that is the effect of:

- (a) The continued failure to respond to Ms Hendry's complaints about CFD and her work environment.
- (b) Providing Ms Hendry with the anonymous complaint with conflicting messages of what the effect of the complaint was and what Ms Hendry was to do in response to it, but ultimately requiring her to answer the untested allegations.
- (c) Talley's causing her to resign, in effect Talley's dismissing Ms Hendry.

[69] Ms Hendry's evidence of how she felt in response to Talley's actions included that she:

- (a) Was traumatised by the events, lost confidence and still gets emotional thinking about what happened.
- (b) Was stressed by the actions and the resulting financial impact on her.
- (c) Felt victimised and unsupported by Talley's.
- (d) Was disappointed that she had to resign and could not leave on her own terms.

[70] Based on this I assess the harm caused and loss suffered as being:

- (a) Humiliation at having to resign and not being able to tell her colleagues the reasons for this.

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<sup>5</sup> *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

(b) Loss of dignity through diminished confidence as a result of her mistreatment.

(c) Injury to feelings through being shocked and upset, feeling stressed, suffering sadness and disappointment and feeling victimised.

[71] This harm and loss is consistent with the moderate harm and loss suffered by those who are constructively dismissed and/or who do not have their complaints supported and properly investigated and resolved by their employer. In this case the harm and loss is compounded by the fact that it occurred over a period of time and was caused by a series of different and repetitive breaches by Talley's. In my view this elevates the compensation level above that which would apply to moderate harm or loss; in the circumstances I quantify the compensation to be \$28,000.

#### *Reimbursement*

[72] As Ms Hendry has established personal grievances if she has lost remuneration as a result of those grievances then pursuant to sections 123 and 128 of the Act, she may be entitled to her lost remuneration or three months ordinary time remuneration.

[73] Ms Hendry has lost remuneration because of the unjustified actions of Talley's. This is made up of:

(a) Remuneration lost during her absence from work on unpaid sick leave in the period 5 October 2022 until 30 November 2022.

(b) Loss of remuneration from her termination on 30 November 2022 until she commenced working in a motel business that she part-owned, on 14 December 2022.

[74] I have calculated the lost remuneration for these periods based on Ms Hendry's average weekly wage in the last full six months of her employment with Talley's. This average weekly wage is \$1,559.81. The amount of time for each period of loss is 8 weeks for unpaid sick leave and 2 weeks post termination. The total lost remuneration is therefore 10 weeks at \$1,559.81 per week, so \$15,598.10.

### *Contribution*

[75] As I have awarded remedies to Ms Hendry, I must now consider whether she contributed to the situation that gave rise to her grievance.<sup>6</sup> This assessment requires me to determine if Ms Hendry behaved in a manner that was culpable or blameworthy, and this behaviour contributed to her grievance.<sup>7</sup>

[76] I find that Ms Hendry did not act in a manner that was culpable or blameworthy and there is no basis for a reduction in the remedies I have awarded.

### **Summary**

[77] Talley's breached the duties that it owed to Ms Hendry and she has established personal grievances of unjustified dismissal causing disadvantage and unjustifiable dismissal. In settlement of these grievances Talley's must pay Ms Hendry:

- (a) \$28,000 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.
- (b) \$15,598.10 for lost remuneration pursuant to ss 123(1)(b) and 128 of the Employment Relations Act 2000.

### **Costs**

[78] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Ms Hendry may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum Talley's will then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

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<sup>6</sup> Section 124 of the Act.

<sup>7</sup> *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

[79] If the Authority is asked to determine costs, the parties can expect the Authority to apply its usual daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.<sup>8</sup>

Peter van Keulen  
Member of the Employment Relations Authority

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<sup>8</sup> For further information about the factors considered in assessing costs, see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).