

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 188  
5389092

BETWEEN CAROL HOLLYWOOD  
Applicant

A N D CORPORATE  
RESTRUCTURING LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Jenni-Maree Trotman, Counsel for Applicant  
Howard Thompson, Counsel for Respondent

Investigation Meeting: 01 May 2013 at Auckland

Date of Determination: 13 May 2013

---

**DETERMINATION OF THE AUTHORITY**

---

- A. Corporate Restructuring Limited unjustifiably dismissed Mrs Carol Hollywood. It is ordered to pay her:**
- (a) \$20,000 lost remuneration;**
  - (b) \$9,000 distress compensation.**

**Employment relationship problem**

[1] Mrs Hollywood and Mrs Victoria Toon, the sole director of Corporate Restructuring Limited (Corporate Restructuring), worked together for 7 ½ years at an accountancy practice before Mrs Toon set up Corporate Restructuring at the end of 2009. Mrs Toon was Mrs Hollywood's mentor over this period and they became friends.

[2] Corporate Restructuring employed Mrs Hollywood in June 2010 as a Chartered Accountant. It is a small accountancy and insolvency practice so Mrs

Toon and Mrs Hollywood worked very closely together. Mrs Toon described Mrs Hollywood as her “*right hand*”.

[3] They also developed what Mrs Toon describes as a very close friendship. Mrs Toon viewed herself as being “*like a mother*” to Mrs Hollywood and she gave a number of examples of the emotional and practical support she had given her. I note that the fact the parties may have had a close friendship did not absolve Corporate Restructuring from its responsibility to act as a fair and reasonable employer.

[4] In 2010 Mrs Hollywood met and married her husband, Mr Gary Hollywood and during 2011 became pregnant with their first child. Mrs Hollywood applied for paid parental leave giving 18 June 2012 as the first day of parental leave and 24 September 2012 as the date she would return to work. Her baby was born on 16 June.

[5] Mrs Toon says she only agreed to hold Mrs Hollywood’s position open for the 14 weeks she was on parental leave because she did not know the family might be moving to Australia. Mrs Toon said that if she had known that Mrs Hollywood may be leaving she would have refused to hold her position open on the basis it was a “*key role*” so it would be better for the business to hire and train a replacement employee as soon as possible which in the case would have been when she left to have her baby.

[6] In late April 2012 Mr Hollywood accepted a role in Australia as a swimming coach. He was due to start work in July subject to him obtaining a visa. His new employer published his appointment in its school newsletter. That information came to the attention of his existing employer in June so Mr Hollywood resigned.

[7] The family did not intend to move to Australia unless both Mr Hollywood and Mrs Hollywood’s mother Mrs Cai (who would continue living with them) were granted visas. It was not known how long that would take. Mrs Hollywood’s view was that until visas were granted the family’s move to Australia was not definite. Even if visas were granted Mrs Hollywood never intended to move to Australia until mid- January at the earliest<sup>1</sup> when her aunt (who had been staying with the family since June) was due to return to China.

---

<sup>1</sup> There was ample evidence to establish that was indeed the case.

[8] As it turned out Mr Hollywood did not start his new job until February 2013 because his visa was not granted until 7 February. Mrs Hollywood and her mother moved to Australia in March.

[9] Although Mrs Hollywood knew about her husband's job offer before she went on parental leave she did not discuss it with Mrs Toon. Mrs Toon believes that is a breach of fidelity because she would not have held Mrs Hollywood's position open if she had known about it. Mrs Hollywood's failure to discuss her husband's job offer or the family's plans with Mrs Toon was not a breach of fidelity. Mrs Hollywood was not legally required to share that information and she had good reasons for not doing so.

[10] Mrs Hollywood correctly identifies she would have had more than enough time after returning to work on 24 September to provide sufficient notice to Corporate Restructuring for it to engage and train someone to replace her if she left in early 2013. Mrs Hollywood's employment agreement only required her to give one month's notice.

[11] Unbeknown to Mrs Hollywood her husband was interviewed by a local newspaper which then published he would be moving to Australia to take up a new role the following month (July 2012). Mrs Toon became aware of this article, which led to her locating on the internet a copy of the newsletter from Mr Hollywood's new employer which announced his appointment. Mrs Toon then jumped to the conclusion that the Hollywood family were moving to Australia immediately.

[12] Mrs Toon was extremely upset at the news about Mr Hollywood's new job so arrived unannounced at Mrs Hollywood's home on 30 June. What exactly was said and done during this visit is disputed.

[13] The parties agree that Mrs Toon was crying most of the time and that Mrs Hollywood also started crying. Mrs Toon uplifted the company mobile phone and laptop from Mrs Hollywood. She explains this on the basis she did not expect to see the Hollywoods again. Mrs Toon also returned presents Mrs Hollywood had previously given her.

[14] On 2 July 2012 Mrs Hollywood received a letter from Mrs Toon which alleged she had lied and deceived her. It says (among other things):

*"I feel like you have kicked me in the guts. You have agreed that you lied to me and deceived me. [...]"*

*You used me; I believe there are ongoing issues of reliability and loyalty and wonder how we could even work together. [...]"*

*I need to know categorically if or when you intend returning to work at CRL and if I can even rely on your answer. Given all that has been going on behind my back, I now have serious issues of honesty and trust in regards to your employment at CRL.*

*I need to get on with my life and make plans regarding staffing at CRL. It's time you got on with yours. The least you can do under the circumstances is to make this as simple as possible.*

*Please let me know by 4pm Monday, 9 July 2012."*

[15] Mrs Hollywood emailed Mrs Toon on 8 July 2012 saying Mrs Toon's letter and home visit had upset her greatly but that she intended to return to work on 24 September. Mrs Toon replied by email on 11 July:

*"I still can't believe it. Still not one word of an apology from you. After all I have done for you. And then you get Gary to email me instead. How can you do that to me?"*

[16] Mrs Hollywood, through counsel, raised a personal grievance by letter dated 16 July 2012. She alleges the contents of Mrs Toon's communications of 2 and 11 July and the "verbal abuse" which had been inflicted during the home visit had unjustifiably disadvantaged her in her employment and that alternatively the removal of the work phone and computer could be viewed as a constructive dismissal.

[17] The grievance letter confirms Mrs Hollywood did not intend to follow her husband to Australia before early 2013 and her intention was to return to work on 24 September. She sought mediation and asked that any further communications be through counsel.

[18] There were then difficulties in arranging a mutually convenient mediation date. Mrs Hollywood says the only dates in an 8 week period Mrs Toon agreed to attend mediation were the dates on which she knew Mr Hollywood would not be in New Zealand so would be unable to support his wife.

[19] Mrs Hollywood claims the actions outlined in her grievance letter combined with Corporate Restructuring's failure to co-operate with attempts to agree on a

mediation date amount to a constructive dismissal. Mrs Hollywood resigned on notice by letter dated 24 August and her employment ended on 21 September 2012.

[20] Mrs Hollywood claims she was unjustifiably disadvantaged and unjustifiably dismissed. Corporate Restructuring says it did not disadvantage Mrs Hollywood in her employment and even if it did any disadvantage was justified. Corporate Restructuring denies dismissing Mrs Hollywood.

### **Issues**

[21] The following issues are to be determined:

- a. What occurred during Mrs Toon's visit to Mrs Hollywood's home on 30 June?
- b. Was Mrs Hollywood disadvantaged in her employment?
- c. If so, was any disadvantage justified?
- d. Was Mrs Hollywood constructively dismissed?
- e. If so, was dismissal justified?
- f. If Mrs Hollywood establishes her personal grievance claims what if any remedies should be awarded?

### **What occurred during Mrs Toon's visit to Mrs Hollywood's home on 30 June?**

[22] The conflict over what occurred during Mrs Toon's visit to Mrs Hollywood's home on 30 June is to be resolved on the balance of probabilities.

[23] Under s.174 of the Employment Relations Act 2000 (the Act) the Authority is not required to set out why it has made the factual or credibility findings it has. To save length in an already lengthy determination I do not set out the reasons for my findings. Suffice to say I have carefully reviewed the written evidence and have reflected on the evidence given by witnesses during the Authority's investigation and on counsel's submissions.

[24] I find that the following facts were either not in dispute or were proved on the balance of probabilities:

- a. Mrs Toon arrived unannounced at Mrs Hollywood's home.
- b. Mrs Toon was extremely emotional when she arrived and throughout her visit, crying almost constantly.
- c. Mrs Toon felt betrayed that Mrs Hollywood had not told her about Mr Hollywood's new job or the family's possible move to Australia.
- d. Mrs Hollywood was upstairs in her bedroom in pyjamas breastfeeding her newborn baby when Mrs Toon arrived at her bedroom door.
- e. Mrs Toon confronted Mrs Hollywood about the article in the Eastern Courier newspaper.
- f. Mrs Toon accused Mrs Hollywood of lying to her.
- g. Mrs Toon questioned Mrs Hollywood's morals as a Chartered Accountant.
- h. Mrs Toon claimed Mrs Hollywood had used her to claim maternity leave payments without intending to return to work.
- i. Mrs Toon asked Mrs Hollywood what had happened to her ethics and referred to the NZ Institute of Chartered Accountant's Code of Ethics.
- j. Mrs Hollywood said she would be returning to work as scheduled.
- k. Mrs Hollywood said she intended to join her husband in Australia but they were still waiting for visas so they did not know when they would go but she would not leave until mid-January at the earliest.
- l. Mrs Toon asked for the company laptop and mobile phone to be returned to her and she took these items when she left.
- m. Mrs Toon did not give Mrs Hollywood time to remove her personal information from the company phone before she uplifted it.
- n. Mrs Toon left two boxes of presents which Mrs Hollywood had previously given her on the doorstep after leaving the house. She had

brought these with her to return and Mrs Hollywood found them the next day.

### **Was Mrs Hollywood disadvantaged in her employment?**

[25] Corporate Restructuring denies disadvantaging Mrs Hollywood. It says Mrs Toon visited Mrs Hollywood to find out whether the information in the newspaper article was true. It says its letter of 2 July was merely seeking information and an explanation of Mrs Hollywood's intentions.

[26] I find that Mrs Hollywood was disadvantaged in her employment. The manner in which Mrs Toon confronted Mrs Hollywood disadvantaged her as did the content of Mrs Toon's communications. Mrs Hollywood was disadvantaged because Mrs Toon's highly emotional state meant she was unable to hear what Mrs Hollywood was trying to communicate regarding her return to work and move to Australia.

[27] Mrs Hollywood was disadvantaged because her right to peaceful enjoyment of her parental leave had been interrupted by Mrs Toon's determination to address work issues immediately. This resulted in Mrs Hollywood's personal space being invaded because employment issues intruded into her bedroom while she was breastfeeding.

[28] Mrs Hollywood had been observing the Chinese custom of remaining in her bedroom with the baby for the first 30 days after the baby's birth. Mrs Toon's visit required Mrs Hollywood to leave her bedroom for the first time since her baby's birth so she could get the company's mobile phone in order to return it to Mrs Toon.

[29] Mrs Hollywood was disadvantaged because her employer did not respect her privacy and did not raise its employment issues in an appropriate forum or in a reasonable manner. The unfounded accusations levelled against Mrs Hollywood which went to trust and confidence issues also disadvantaged her because it called her professionalism into question.

[30] The immediate removal of company property disadvantaged Mrs Hollywood because she lost access to personal information which she expected to have access to during her parental leave. Finding presents on her doorstep that she had given Mrs Toon in the context of Mrs Toon's visit and accusations disadvantaged Mrs Hollywood because it led her to believe her previously secure employment was in jeopardy at a time when she was at her most vulnerable.

## **Was the disadvantage justified?**

[31] Justification is to be determined in light of the section 103A justification test in the Employment Relations Act 2000 (“the Act”). This requires the Authority to assess “*whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the [...] dismissal occurred.*”<sup>2</sup>

[32] Corporate Restructuring says it was justified in raising the issues it did with Mrs Hollywood in the manner it did because “*its questions about her honesty and integrity were not misplaced.*” I do not accept that. Corporate Restructuring’s questions about Mrs Hollywood’s action were clearly misplaced and based on a misunderstanding of an employee’s obligations.

[33] Corporate Restructuring says Mrs Hollywood had a positive obligation, before embarking on her parental leave, to inform it about the possibility that she and her family would be moving to Australia. I find she did not.

[34] Corporate Restructuring says any disadvantage was justified because Mrs Hollywood withheld material information (namely that her husband had obtained a job in Australia) from Mrs Toon. It says Mrs Hollywood was obliged to communicate with it about Mr Hollywood’s Australian job opportunity so her failure to do so justify the actions it took and how it acted.

[35] I do not accept that submission. Mrs Hollywood was under no obligation to inform her employer that her husband would be moving to take up a new job in Australia, subject to him and his mother-in-law obtaining visas. She was only required to give one month’s notice. If Corporate Restructuring had wanted more than one month’s notice from Mrs Hollywood then it could and should have addressed that in the employment agreement, but it did not do so.

[36] If a prerequisite to Corporate Restructuring keeping Mrs Hollywood’s position open for her (instead of claiming it was a key role that could not be held open) was that she committed to a specific period of continued employment following her return from parental leave then Mrs Toon should have had that discussion with Mrs

Hollywood before she agreed to support her parental leave application. Corporate Restructuring's failure to do so is its sole responsibility.

[37] Mrs Hollywood did not breach any contractual or other legal obligation to her employer by not discussing her husband's new job with Mrs Toon. Mrs Hollywood was not obliged to volunteer this information to her employer prior to beginning her parental leave. There was more than enough time for Mrs Hollywood to discuss her family's relocation plans with her employer after she returned from parental leave.

[38] I find that Corporate Restructuring's actions and how it acted were not what a fair and reasonable employer could have done in all the circumstances. It is therefore unable to justify the disadvantage it subjected Mrs Hollywood to in her employment. Accordingly, I find that one or more of Mrs Hollywood's conditions of employment were affected to her disadvantage by Corporate Restructuring's unjustifiable actions.<sup>3</sup>

#### **Was Mrs Hollywood dismissed?**

[39] Corporate Restructuring denies Mrs Hollywood was dismissed because she resigned.

[40] Mrs Hollywood bears the onus of establishing on the balance of probabilities that she was dismissed and that her employment did not end as the result of a genuine resignation. The widely recognised legal test is whether the employment ended as a result of the employer's initiative. Contractual notice does not negate a claim of constructive dismissal.<sup>4</sup>

[41] Termination following repudiation of the contract by the employer is classed as a dismissal if the employee is entitled to terminate the contract by reason of the employer's fundamental breach of contract.<sup>5</sup>

[42] Mrs Hollywood claims Corporate Restructuring:

- a. Followed a course of conduct with the deliberate and dominant purpose of coercing her to resign and/or

---

<sup>3</sup> S.103(1)(b) of the Act.

<sup>4</sup> *Para Franchising Ltd v Whyte* [2002] 2 ERNZ 120

<sup>5</sup> *Wellington, Taranaki and Marlborough Clerical etc IUOW v Greenwich (t/a Greenwich & Associates Employment Agency and Complete Fitness Centre)* (SEL CAS) ERNZ 95

- b. Breached its implied duty not to act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence inherent in the employment relationship and/or
- c. Breached its implied duty to be fair and reasonable.

*Did Corporate Restructuring follow a course of conduct with the deliberate and dominant purpose of coercing Mrs Hollywood to resign?*

[43] Corporate Restructuring submits that except for Mrs Toon's short email of 11 July to the effect that she expected an apology, there was no direct communication between the parties and nothing that could be described as a course of conduct followed with the deliberate and dominant purpose of coercing her to resign.

[44] Given Mrs Toon made it clear she would not have kept Mrs Hollywood's position open for her if she had known about Mr Hollywood's job in Australia I consider it likely Corporate Restructuring adopted that same view when it did find out about the job. I consider it likely Mrs Toon did not want Mrs Hollywood to return to work so she could get on with finding and training her replacement as soon as possible.

[45] I find on the balance of probabilities that Corporate Restructuring (in the person of Mrs Toon) embarked on a course of conduct with the deliberate and dominant purpose of causing Mrs Hollywood to resign. In particular;

- a. Mrs Toon turned up unannounced at Mrs Hollywood's home on 30 June and confronted her with serious allegations which involved questioning Mrs Hollywood's ethics, integrity, morals, and honesty.
- b. Mrs Toon demanded responses from Mrs Hollywood despite the latter being in a vulnerable position.
- c. Mrs Toon insisted on the return of the company work phone and laptop on the spot so Mrs Hollywood was unable to remove personal information from the mobile phone.
- d. Mrs Toon brought with her, and returned, two boxes of gifts Mrs Hollywood had given her.

- e. Mrs Toon was extremely emotional during this visit and would not listen to what Mrs Hollywood was trying to explain about the family's plans and her intention to return to work as planned.
- f. Corporate Restructuring's letter to Mrs Hollywood of 2 July accused her of lying and deceiving Mrs Toon, it claimed Mrs Hollywood had used her employer to gain parental leave pay and that there were ongoing issues of reliability and loyalty.
- g. Corporate Restructuring questioned how the parties could continue to work together and told Mrs Hollywood the least she could do was to make this as simple as possible which I consider implies she should resign.
- h. Mrs Toon emailed Mrs Hollywood on 11 July in an accusatory manner seeking an apology.
- i. Corporate Restructuring did not make itself available to attend mediation other than in the week of 17 September knowing this was the only week during the eight week period in which mediation was sought that Mr Hollywood was unavailable to support Mrs Hollywood and to provide assistance with their newborn baby during the mediation.
- j. Corporate Restructuring opposed the mediation being held closer to Mrs Hollywood's home and insisted it be held in the CBD which would have required Mrs Hollywood to leave home with her newborn baby extremely early in order to arrive at mediation at the scheduled time.
- k. Corporate Restructuring said it was not available to attend mediation in August and from 1-13 and 24-28 September in circumstances when it could and should have made itself available to do so to enable the

problems Mrs Toon had created to be resolved before Mrs Hollywood returned to work.<sup>6</sup>

- l. Corporate Restructuring intimidated Mrs Hollywood by impliedly threatening to disclose at mediation confidential discussions she had with Mrs Toon which it considered she may not have wanted her husband to hear.
- m. Mrs Toon's evidence was she did not believe she would see Mrs Hollywood again after leaving her home on 30 June.

[46] The reasonable conclusion from Corporate Restructuring's reluctance to agree to a mediation date given the nature of the communications from 30 June onwards is that it did not want to resolve the issues and did not want Mrs Hollywood to return to work on 24 September.

[47] I reject Corporate Restructuring's submission that Mrs Toon had every right to regard Mrs Hollywood's "*non-disclosure*" as raising serious issues of reliability and loyalty and as having damaged the trust underpinning the relationship. The fact that Mrs Toon held these views supports my finding that Corporate Restructuring embarked on a course of conduct with the deliberate and dominant purpose of coercing Mrs Hollywood to resign.

*Did a breach of duty by Corporate Restructuring cause Mrs Hollywood to resign?*

[48] Corporate Restructuring say that apart from the difficulties in arranging mediation at a mutually convenient time and venue and the email message of 11 July, all the matters relied on by Mrs Hollywood occurred before she wrote to Mrs Toon on 8 July advising she would return to work on 24 September.

[49] I consider that misrepresents the situation. All of the parties' communications from 30 June onwards must be considered when determining whether there was a breach of duty of sufficient seriousness to entitle Mrs Hollywood to view Corporate Restructuring as having repudiated its duties under the employment relationship.

---

<sup>6</sup> I accept Mrs Toon was not available from 1-6 September because she was attending a conference overseas but she elected to do work or look after her grandson outside of these dates when she should have made herself available to attend mediation.

[50] The facts which led to my finding that Corporate Restructuring had embarked on a course of conduct designed to coerce Mrs Hollywood to resign, and that it had disadvantaged her, also constitute a breach of its implied duties of trust and confidence and to be fair and reasonable towards her.

[51] I find that Mrs Toon's actions in terms of the manner in which she communicated with Mrs Hollywood and regarding the content of her communications fundamentally undermined the trust and confidence inherent in the employment relationship. Her actions were not the actions of a fair and reasonable employer. I consider this breach caused Mrs Hollywood to resign.

*Was Corporate Restructuring's breach of duty sufficiently serious to make it reasonably foreseeable that Mrs Hollywood would resign?*

[52] Having established a breach of duty the next issue is whether it was reasonably foreseeable that Corporate Restructuring's breach of duty would lead to Mrs Hollywood's resignation.

[53] I find that Corporate Restructuring's conduct as a whole was such that Mrs Hollywood could not reasonably be expected to have continued in her employment. It was therefore reasonably foreseeable that if the problem was not fixed in a timely way then Mrs Hollywood would not return to work.

[54] Corporate Restructuring did nothing to attempt to fix the serious problems Mrs Toon had created. I consider it reasonably foreseeable Mrs Hollywood could not continue to work closely with Mrs Toon in her business after her attempts to obtain a mediation date were unsuccessful.

[55] Corporate Restructuring submits it was not reasonably foreseeable that Mrs Hollywood would resign if mediation did not occur before her scheduled return to work on 24 September because she never expressly said that.

[56] I do not accept that. Corporate Restructuring had expressed doubt that the parties could continue to work together so it was reasonably foreseeable Mrs Hollywood would not return to work on 24 September if something had not been done to address her employer's view about that.

[57] Corporate Restructuring's refusal to attend mediation in the week of 24 September without providing any reasons made it reasonably foreseeable, given the

circumstances that had arisen since 30 June, that Mrs Hollywood would end her employment.

**Was Mrs Hollywood's dismissal justified?**

[58] Mrs Hollywood's constructive dismissal was unjustified. Corporate Restructuring's actions and how it acted were not what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. It is therefore unable to justify Mrs Hollywood's dismissal under s.103A of the Act.

**What if any remedies should be awarded?**

*Mitigation*

[59] An employee is under an obligation to mitigate their loss if they want to recover lost remuneration. Failure to take appropriate steps to obtain new employment may break the chain of causation between lost remuneration and the dismissal.

[60] Mrs Hollywood applied for three jobs (in September/October) since her dismissal. I am therefore satisfied that she adequately mitigated her loss in the first three months following her dismissal.

*Lost remuneration*

[61] Mrs Hollywood did not obtain any work before moving to Australia in March. I am satisfied Mrs Hollywood lost more than three months' remuneration as a result of her dismissal. I am not prepared to award her more than three months' lost remuneration because I consider any loss after that period can be attributed to her failure to appropriately mitigate her loss rather than her dismissal.

[62] Corporate Restructuring is ordered to pay Mrs Hollywood lost remuneration of \$20,000 under s.128(2) of the Act.

*Distress compensation*

[63] I make one combined award of distress compensation to cover the effects of the disadvantage and dismissal grievances to avoid duplication.

[64] Mrs Hollywood was badly affected by the events that occurred from 30 June onwards. What should have been an enjoyable time with her first baby turned into a hugely stressful period.

[65] She was denied the opportunity to return from parental leave as planned. The family has been placed under financial pressure and has had to live off Mrs Hollywood's savings from the sale of property because Mr Hollywood was not working from June 2012 until February 2013. Mrs Hollywood has had to financially support her baby, her mother, her aunt and her husband all without the benefit of an income. She has also lost a job she loved and the collegial and social relationships that involved.

[66] Mrs Hollywood was subjected to serious and unfounded allegations and accusations which struck at the heart of her professional obligations as an accountant. She was particularly disturbed by Mrs Toon's threats to report her to the New Zealand Institute of Chartered Accountants for a breach of ethics and integrity.

[67] Throughout these proceedings Mrs Toon and her counsel have reiterated at every opportunity that Mrs Hollywood has lied, deceived and misled Corporate Restructuring and that her actions have been dishonest and deceitful because she did not disclose her husband's job offer to Mrs Toon. These unfounded accusations adversely affected Mrs Hollywood.

[68] Mrs Hollywood said that these allegations have hit her particularly hard because of her professional standing as an accountant. She has lost confidence and feels it would be extremely difficult for her to obtain work in New Zealand as a result of Mrs Toon's extensive connections throughout the profession.

[69] Mrs Hollywood was unable to secure a positive reference for her time with Mrs Toon and she believes that, along with the family's intended move to Australia, worked against her when she was seeking new employment.

[70] Corporate Restructuring elected to produce a lot of irrelevant but highly personal material relating to Mrs Hollywood and her husband and their private family affairs. Mrs Hollywood's distress was increased by having such matters aired in a public forum. Mrs Hollywood has devoted considerable time and resources to responding to all of the matters raised by Corporate Restructuring.

[71] Mrs Toon's threat to disclose information during mediation that Mrs Hollywood's may not have wanted her husband to hear also increased her hurt and humiliation.

[72] I consider the evidence supports a high award of distress compensation. Corporate Restructuring is ordered to pay Mrs Hollywood \$9,000 under section 123(1)(c)(i) of the Act to compensate her for the humiliation, loss of dignity, and injury to feelings she has suffered as a result of her disadvantage and dismissal grievance claims.

#### *Contributory conduct*

[73] Having determined that Mrs Hollywood has personal grievances, the Authority is required to consider the extent to which her actions have contributed towards the situation which gave rise to her grievances and if so reduce remedies accordingly.

[74] Corporate Restructuring submits that Mrs Hollywood, by choosing not to inform Mrs Toon at an early stage about the prospect the family would be relocating to Australia, substantially contributed towards the situation that gave rise to her personal grievance. I do not accept that because she was not obliged to provide such information.

[75] Contribution denotes some blameworthy conduct and I find Mrs Hollywood was entirely without blame.

#### **Costs**

[76] Mrs Hollywood as the successful party is entitled to a contribution towards her costs. The parties are encouraged to resolve costs by agreement. If that is not possible then Mrs Hollywood has 14 days within which to file a cost application and Corporate Restructuring has 14 days within which to reply.

[77] The Authority will be likely to adopt its usual notional daily tariff based approach to costs (currently \$3,500 per day) which will then be adjusted to reflect the particular circumstances of this case. The parties are invited to identify any factors which they say should result in an adjustment to the notional daily tariff.

**Rachel Larmer**  
**Member of the Employment Relations Authority**