

NOTE: This determination contains an order prohibiting publication of certain information referred to at para [16]

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2023] NZERA 721
3183059

BETWEEN RUTH HONAMOMBE
Applicant
AND TEGEL FOODS LIMITED
Respondent

Member of Authority: Sarah Blick
Representatives: Peter Cranney and Emily Griffin, counsel for the applicant
Jane Taylor, counsel for the respondent
Investigation meeting: 3 August 2023
Submissions and information received: 7 and 18 August 2023 and 7 September 2023
18 and 25 August 2023
Determination: 4 December 2023

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ruth Honamombe was employed by Tegel Foods Limited (Tegel) as a process worker at its chicken processing plant in Henderson for over eight years. It was her first paid job in New Zealand after moving here from Zimbabwe. Ms Honamombe suffered a shoulder injury in September 2019, went back to work in 2020 but was unable to continue work in May 2021 due to ongoing issues with her shoulder. She started a return-to-work plan (RTW plan) in February 2022 but experienced pain again on return. She believes changes to her RTW plan exacerbated her injury, resulting in her being unable to work. In May 2022 Tegel terminated the employment for medical incapacity.

[2] Tegel denies the dismissal was unjustified, and says the decision was fair and reasonable based on the information available at the time. It says it held her position open for a substantial length of time, and there being no prognosis indicating when a return to work was likely, it was entitled to “cry halt” to the relationship.

The Authority’s process

[3] The Authority received written statements and heard evidence from Ms Honamombe and three Tegel employees at the investigation meeting – Senior People and Culture Partner Alf Robson, Employment Health and Safety Advisor Thea Manuel and Team Leader Vinel Kumar.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination does not record all the evidence and submissions received and considered but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders as a result.

The issue

[5] The issue for investigation and determination is whether Ms Honamombe’s dismissal was unjustified, and if so whether remedies should be awarded.

Background

Early employment

[6] Tegel is a large poultry producer. Ms Honamombe started working full time for Tegel as a process worker deboning chicken in September 2013. In about 2015 she became a Quality Controller (QC) in the Tray Pack area of the production. In about 2017 she became a QC in another area as well. She also worked as an orders person. When the Team Coordinator (TC) was away, she also filled in as back up or in an acting capacity. Her shifts could start as early as 3am.

Injury in 2019

[7] As QC, one of Ms Honamombe’s responsibilities was to ensure there were enough trays and boxes available for the processing lines. She said she had to lift heavy boxes of trays, cling film and marinade. In September 2019, Ms Honamombe suffered

an injury to her shoulder, reporting that the injury occurred while lifting a box at work which fell on her shoulder.

[8] In October 2019 Tegel asked Ms Honamombe to have a medical examination to assess her capacity to do her role. She saw a specialist who referred to her having right shoulder sprain and mild impingement with secondary muscle tightness in her neck. The letter also noted “I see no problems returning her to her normal role but the challenge will be the long term sustainability of heavy lifting/manual handling”. He also advised that Ms Honamombe avoid repetitive heavy lifting. The specialist noted the "possibility that she can return to process work Or can she be given some assistance and more task variation”. The letter stated the problem was not severe enough to warrant medical incapacity. Ms Honamombe returned to work in about October 2019 and Tegel says she worked “alternate duties” with lifting restrictions in place.

[9] Ms Honamombe says she attended a meeting with Human Resources and management with her union delegate in attendance. She says her delegate asked for her to return to being a process worker but Mr Kumar said they had no one to be the QC in Tray Pack. She says she was told she would keep doing the QC role and someone would do the lifting for her.

[10] Ms Honamombe says it was impossible to be the QC without lifting boxes, film and marinade and no one was made available to assist her on return to work. She says she complained many times that she could not lift boxes. Ms Honamombe says in June 2020 she complained to an HR person who told her the only way to stop her Team Leader Mr Kumar using her as a QC was to write a letter resigning as the QC, which she did on 10 July 2020. After this she was no longer asked to lift boxes and was transferred to a process worker role. She says however, she was supposed to have been an orders person which entailed lighter duties. She says because staff were rotating, she ended up doing process work as well as orders. She says she could not keep up with the production line as a process worker because she was sore and afterwards her arm would be sore and swollen.

[11] Ms Honamombe saw Tegel's doctor who on 11 June 2020 provided advice to Tegel that he did not see Ms Honamombe as being able to perform “normal or standard manual handling (product with weight over 15kg) in the foreseeable future”.

Ms Honamombe stops work in May 2021

[12] In May 2021 Ms Honamombe went to her GP who told her to stop working. She was then referred by a surgeon for an MRI which confirmed she had a rotator cuff tear. She was told she needed surgery before returning to work. ACC declined cover for Ms Honamombe's surgery due to a finding that her shoulder issue was because of a pre-existing degenerative condition. In the same month, Tegel wrote to Ms Honamombe requesting medical information. Tegel informed Ms Honamombe that depending on the information provided, her ongoing employment may be at risk. Ms Honamombe responded that she was awaiting surgery. Ms Honamombe provided medical certificates during this period.

[13] On 19 July 2021 Tegel wrote to Ms Honamombe again about her absence from work and asked her to attend a meeting to "discuss the termination of your employment due to medical incapacity". Tegel later agreed to delay a decision on Ms Honamombe's employment until the end of September 2021. In an email to a union who was assisting Ms Honamombe, Mr Robson wrote:

Further as discussed with you, due to Ruth's lengthy absence from Tegel, we may not be able to guarantee Ruth's return to her pre incident role in Chicken Processing however, provided Ruth is deemed fully fit for work, we will find a suitable alternate role in the plant.

Shoulder surgery

[14] In September 2021 ACC approved Ms Honamombe's shoulder surgery and weekly compensation - the initial ACC decision having been reviewed and reversed. On 13 October 2021 she had surgery for rotator cuff repair and subacromial decompression.

[15] In November 2021 she was scheduled to start physio but due to COVID-19 impacts and the continuing Auckland lockdown she did not start physio until the end of January 2022.

[16] During November 2021 Ms Honamombe's appointed occupational therapist (OT) suggested to Ms Manuel that Tegel provide videos of the workplace for an assessment of tasks, for a RTW plan. Ms Manuel sent videos footage of staff working

on production lines which the Authority has viewed. The Authority makes a non-publication order in relation to the video footage provided.¹

RTW plan

[17] Ms Honamombe subsequently provided a further medical certificate which stated she was "fit for some work" from 14 February 2022 until 13 March 2022 but should do no lifting or forceful movements, no heavy physical work and should work "between" two to four hours and on "two to three days per week".

[18] In early February 2022 Ms Honamombe attended a meeting with her union representative, Mr Robson, Ms Manuel and the OT regarding a RTW plan. Mr Robson's notes record the OT as saying "gradual mobilisation" was recommended, that Ms Honamombe was happy to see how things go, and her doctor had recommended positive reinforcement. Mr Robson recorded:

I explained to Ruth our concern has always been about whether injury is going to heal enough to allow her to make a full return to work. At the end of the day Ruth needs to consider whether she is going to be capable of coming back without hurting herself again.

[19] An RTW plan was agreed - Ms Honamombe would work for two to four hours for three days a week - Monday, Wednesday and Friday.

[20] Ms Honamombe recalls another meeting on 11 February 2022 at which Ms Manuel told her she would be "on her own" when coming back to work. Ms Manuel gave oral evidence that what she meant was that Ms Honamombe needed to play her part by telling Tegel immediately if she was experiencing any pain or discomfort.

Ms Honamombe's return to work in February 2022

[21] Ms Honamombe returned to work on 14 February 2022, doing a two hour shift. Mr Kumar spoke to Ms Honamombe at the start of the shift and says he told her she needed to manage herself in terms of how much she could do, and if she was in pain or discomfort to put her hand up. Mr Kumar says he spoke to the relevant TC to say if she slowed down that was not a problem. Ms Honamombe was given the task of putting soaker pads on trays on the first day. Mr Kumar says he spoke to Ms Honamombe at the end of her shift and she did not mention any pain or discomfort. At the end of her

¹ Employment Relations Act 2000, Schedule 2, clause 10.

shift Ms Honamombe says she went to find Ms Manuel but Ms Manuel was not in her office. Ms Manuel accepts Ms Honamombe sent a text message to her on 14 February 2022 stating “Hi Thea after work I had to go home and take my meds I am feeling some stiffness on my injured shoulder. See you on Wed”. There is no evidence Ms Manuel responded or approached Ms Honamombe on the Wednesday.

[22] Ms Honamombe worked on Wednesday 16 February 2022. It is common ground Ms Honamombe was put on the production line on a machine that day. Mr Kumar spoke to Ms Honamombe at the end of her shift and asked how she was, and says Ms Honamombe did not raise any concerns about being in pain or the tasks she was being asked to perform. Ms Honamombe did not recall that conversation.

[23] Ms Honamombe was put on the production line again on Friday 18 February 2022 and says it was “hectic”. After her shift Mr Kumar told Ms Honamombe her shifts would change the next week to Monday, Tuesday and Thursday, so that she could avoid the pressure of Friday as a busy day. Although Mr Kumar’s evidence was that he consulted the OT regarding this change, email correspondence from the OT the same day suggests otherwise.

[24] On 18 February 2022 the OT advised Ms Manuel by email that Ms Honamombe had reported levels of pain to the OT on each of the days worked, reporting a 9/10 on her second shift. The OT noted Ms Honamombe had advised her shifts for the next week had changed to Monday, Tuesday and Thursday. The OT stated she was interested to see the tasks Ms Honamombe was doing and “what may be the cause of increased shoulder pain” and asked if she could come and see the tasks Ruth was doing, if possible in light of COVID protocols.

[25] Ms Honamombe worked on Monday 21 February and Tuesday 22 February 2022 on the machines again. She says she tried to find Ms Manuel to report to her but could not find her, so instead reported to the OT. Ms Manuel sent an email to the OT and copied in Mr Kumar, asking when the OT would like to come to the site. On the same day Mr Kumar confirmed Ms Honamombe’s hours of work to the OT and Ms Manuel confirmed senior management did not object to the OT coming on site.

[26] Tegel says the work Ms Honamombe did on the line complied with restrictions applying to the RTW plan as it did not involve heavy lifting or forceful movements. By nature the work was very repetitive.

[27] Tuesday 22 February 2022 turned out to be Ms Honamombe's very last day working on site. She says on the Thursday she could not work because she could not move her arm.

[28] On the morning of 23 February 2022 the OT emailed Ms Manuel stating Ms Honamombe had advised of increased shoulder pain after work the day before and was at an appointment with a GP. Later the OT advised Ms Honamombe had a new medical certificate. Ms Manuel and the OT then agreed to reschedule any observation of Ms Honamombe working "following what is stated in the med cert", which was yet to be received from Ms Honamombe. A medical certificate was provided stating Ms Honamombe was fully unfit for work until 16 March 2022. Subsequent medical certificates were provided confirming Ms Honamombe as fully unfit for work until 8 May 2022.

[29] On 7 April 2022, Tegel wrote to Ms Honamombe asking for information on when and whether a return to normal duties was likely. The letter stated termination was a potential outcome and advised Ms Honamombe she could seek independent advice.

[30] On 14 April 2022, Ms Honamombe sent an email to Tegel, providing her response to Tegel's letter of 7 April 2022. Ms Honamombe told Tegel that her doctor had requested she see a specialist and that she was waiting for a date to be confirmed.

[31] On 29 April 2022, Ms Honamombe provided a letter from her doctor stating she was fully unfit to work until the end of June 2022. The letter also confirmed that Ms Honamombe had been referred to a specialist for further review, but that the earliest she was likely to be seen was 13 June 2022 and commented:

At this stage, it is difficult to determine the timeframe for her recovery, her prognosis and when she will be able to return to work without further assessment by the musculoskeletal specialist.

[32] On 4 May 2022 Tegel gave notice of its preliminary decision to end Ms Honamombe's employment due to her ongoing medical incapacity. It invited her to a meeting to discuss the issues, and the parties then met on 12 May 2022. Ms Honamombe was assisted by her union representative at the meeting. Ms Honamombe informed Tegel she had a specialist appointment in June 2022. She also said the change to working two days in a row had contributed to her situation.

[33] Tegel says it considered Ms Honamombe's feedback, but confirmed its decision to end her employment with one week's notice for medical incapacity. This was communicated by letter dated 18 May 2022. Ms Honamombe's employment ended on 25 May 2022.

After the dismissal

[34] On 13 June 2022 Ms Honamombe's doctor advised that she should recover full shoulder function over time. The doctor also noted that the delay in physiotherapy due to COVID-19 may have contributed to the delay in recovery.

[35] On 6 July 2022 Ms Honamombe underwent a procedure to manage a frozen shoulder. On 18 July 2022 a doctor advised that she "should be able to return to light duties" at the end of September 2022.

[36] On 25 July 2022 a physiotherapist advised Ms Honamombe she had developed post-surgical capsulitis, a not uncommon complication after surgery.

[37] On 22 November 2022 an occupational medicine specialist noted it is anticipated that [Ms Honamombe's] right shoulder will improve with reduced pain and increased movement as she recuperates from her adhesive capsulitis". The specialist believed a poultry process worker role was unlikely to be sustainable for Ms Honamombe because it can be of heavy physical demand and involves frequent use of her upper limbs with lifting, carrying and repetitive tasks likely to aggravate her right shoulder pain." She was to be reviewed on 6 December 2022.

[38] On 9 December 2022 Ms Honamombe's physician advised that an MRI scan was "reassuring, showing some mild residual capsulitis but no significant structural damage or any other features of concern" and no further surgery would be required.

[39] At the investigation meeting Ms Honamombe confirmed she continues to receive weekly ACC compensation, although she started doing volunteer work and in March 2023 started working part time as a shop assistant.

Collective agreement and Employee Handbook

[40] Ms Honamombe's employment was covered by a collective agreement which did not address any process around dismissal for medical incapacity.

[41] Tegel has provided a copy of its Employee Handbook which addresses health and safety matters. It provided that an employee and their Manager are fully responsible for maintaining safe and healthy working conditions, and stated an employee is expected to “participate actively in plans for return to work and rehabilitation in the event you experience a work related injury”. The Handbook also outlined a Rehabilitation Policy, relevant parts of which will be referred to shortly.

Justification for dismissal and the law on medical incapacity

[42] Justification for dismissal is stated in the Act, which at s 103A sets out the test of justification as being whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2). The test is 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.

[43] The essential rule governing dismissal for medical incapacity is as stated by Judge Castle in *Canterbury Clerical Union v Andrew and Bevan* is:²

... it is well established that an employer is not bound to hold open a job for an employee who is sick or prevented from carrying out his duties for an indefinite period. This is particularly so when the business of the employer requires the presence of permanent staff.

[44] It was stated succinctly by the former Chief Judge of the Arbitration Court in *Hoskin v Coastal Fish Supplies Ltd*: “There can come a point at which an employer ... can fairly cry halt.”³

[45] Dismissals for medical incapacity are similar to a termination on the basis of redundancy, it is a ‘no-fault-based’ situation on the part of the employee and as observed by the Chief Judge in *Lal v The Warehouse Group Ltd*, some of the factors to be considered under s 103A (3) of the Act do not sit comfortably with this category of dismissal. That judgement helpfully sets out the following framework to be adopted when approaching this type of dismissal:⁴

[33] The employer must give the employee a reasonable opportunity to recover. The terms of the employment agreement, any relevant policy, the nature of the position held by the employee and the length of time they have been employed

² *Canterbury Clerical Union v Andrew and Bevan* [1983] ACJ 875.

³ *Hoskin v Coastal Fish Supplies Ltd* [1985] ACJ 124 at p 127.

⁴ *Lal v The Warehouse Group Ltd* [2017] NZEmpC 66.

with the employer are factors which are likely to inform an assessment of what is reasonable in the particular circumstances.

[34] The employer must undertake a fair and reasonable inquiry into the prognosis for a return to work, engaging appropriately with the employee. This will likely involve seeking and considering relevant medical information. It will also involve explaining the reasons for the inquiry, the possible outcome of it, and providing the employee with an opportunity for input and comment.

[35] The employer must fairly consider what the employee has to say before terminating their employment. An employer is entitled to have regard to its business needs in deciding an appropriate response to the situation and any applicable timeframes. An employer is not obliged to keep a job open indefinitely, no matter how long an employee has been employed or how large the organisation is. For their part, an employee is obliged to be responsive and communicative.

[36] In cases of medical incapacity, and a reduced ability to undertake certain tasks, a level of engagement with attempts to facilitate a return to work may reasonably be expected. Fairness cuts both ways, consistently with the mutual obligations which exist in employment relationships.

Whether the dismissal was unjustified

Adherence to rehabilitation policy and change to RTW plan

[46] Although Tegel fairly and reasonably engaged with Ms Honamombe and her assigned OT in developing a RTW plan, the Authority finds Tegel did not adequately follow or implement its rehabilitation policy on Ms Honamombe's return to work in February 2022. Its policy provided for active rehabilitation of injured employees and proactive involvement of managers and staff, and that Tegel would seek to provide alternative duties in line with health advice where practical to do so. Further, the policy provided that the duties and the employee's workplace rehabilitation plan would be regularly reviewed to ensure effectiveness. I find Ms Honamombe's work was not sufficiently monitored when she returned in February 2022. Although Mr Kumar had a couple of apparently brief conversations with Ms Honamombe, she was largely left "on her own". Neither Mr Kumar nor Ms Manuel took any proactive involvement in ensuring the tasks Ms Honamombe was required to perform by her QC were suitable for her gradual mobilisation.

[47] The evidence is clear Ms Honamombe was put to work on the line on her second shift which required her to make consistent repetitive movements using her injured side. Although it appears Ms Honamombe was working on Tray Pack machines which did not keep moving if one side of the tray was not fed into the machine, she was pressured or felt pressure to keep up with a fully fit worker opposite her on the line. There is no

evidence to suggest either the QC or TC monitored the pace at which Ms Honamombe was working on the machines.

[48] I agree with counsel for Ms Honamombe that a fair and reasonable employer would have set up the return to work on the processing floor much more carefully. The evidence does not show management properly briefed Mr Kumar, the QC, TC or other workers of the full picture. At the investigation meeting, Mr Kumar had to amend his witness statement which said Ms Honamombe was kept off the production line on her return to work, as it was actually only her first day she was kept off the line. I agree with counsel that this is reflective of a lack of practical oversight by management of Ms Honamombe on the floor.

[49] Although Mr Kumar was well-intentioned in changing two of Ms Honamombe's days of work, that change was proposed to Ms Honamombe on 18 February 2022 without Tegel having first consulted with the OT about it, and before the OT could review the tasks Ms Honamombe was performing and before the change was implemented. Although the OT did not request the change of days not occur in her emails, that did not absolve Tegel from its responsibility to proactively monitor Ms Honamombe's gradual mobilisation.

[50] I note by the end of Ms Honamombe's shift on 18 February 2022, Tegel was aware of Ms Honamombe's self-reported pain levels. Despite this, there is no evidence management or other staff engaged directly with Ms Honamombe on either 21 or 22 February 2022.

[51] I find a fair and reasonable employer could be expected to adhere to its own stated rehabilitation policy in the above circumstances. Tegel failed to do so, and as such its actions were not those open to a fair and reasonable employer.

Reasonable Opportunity to Recover

[52] Ms Honamombe suffered what turned out to be a long term injury in September 2019, and Tegel continued to employ her for an extended period from May 2021 to February 2022 while she was unfit for work. I accept Tegel acted fairly and reasonably in doing so. However, Tegel again committed to rehabilitation in February 2022, having agreed in September 2021 that while it might not be able to return Ms Honamombe to her pre-incident role, if deemed fully fit for work it would find a suitable

alternate role in the plant. Rather than taking the time and adequately inquiring into why the RTW plan had not succeeded and considering whether the rehabilitation process could be recommenced with suitable alternate duties, Tegel took the decision to dismiss. It did so before imminent specialist information was received in June 2022. The Authority is not satisfied in the circumstances that Tegel gave Ms Honamombe a reasonable opportunity to recover after her return in February 2022.

A fair and reasonable inquiry into the prognosis for a return to work

[53] It is incumbent upon a fair and reasonable employer to ask for a medical prognosis before proceeding to a decision on whether or not to continue the employment. Tegel initially raised dismissal in the letter dated 7 April 2022, and on 4 May 2022 it again wrote stating it had formed a preliminary view that it should dismiss. The letter referenced the support Tegel put in place around a graduated return to work and stated the graduated return to work started with light duties. The letter went on to state that Ms Honamombe “could not sustain” the graduated return to work. At the meeting on 12 May 2022 Ms Honamombe pointed to the rehabilitation process as having exacerbated her injury and pointing out that new evidence was soon to be available.

[54] Ms Honamombe was then dismissed by letter 18 May 2022. The letter referred to an upcoming appointment with a specialist that would provide information on Ms Honamombe's capacity to return to work. Mr Robson stated in the dismissal letter that it was "possible" the appointment would shed more light on the issue but stated he had no certainty this would be the case. Mr Robson made the decision to dismiss because of Ms Honamombe's inability to work since 3 May 2021. Tegel had however already decided that rehabilitation was desirable and was obliged to make a full and fair attempt under its own policy. It did not undertake a full and fair inquiry into the prognosis prior to dismissing.

Nature of position and length of service

[55] It is accepted the nature of Ms Honamombe's position as a process worker necessitated a degree of fitness in order for Ms Honamombe to carry out duties. There were however alternate duties Ms Honamombe could perform which did not involve her being on the production line while on the RTW plan. Although Tegel has pointed to how it rotates its process workers so they perform all tasks, it remains unclear why a

long-serving single employee like Ms Honamombe could not be further accommodated outside the rotation policy for a period of time.

Employee's comments

[56] As noted, the letter of dismissal noted Ms Honamombe's complaint that a change had been made to her rehabilitation plan without her approval or consent which exacerbated her injury. The letter implied that the physiotherapist and OT had approved the change. In fact, they had not, and the OT was seeking to do a proper assessment of the work to be required. Counsel for Ms Honamombe submits Mr Robson relied upon this reasoning without disclosing it in advance to Ms Honamombe and giving her the opportunity to comment on it as required by s4(1A)(c) of the Act. Counsel says Mr Robson's decision-making relied upon reasoning that had been set out or set out adequately in the preliminary decision letter dated 4 May 2022. I agree with these submissions.

[57] The letter also stated Ms Honamombe did not inform anybody of her discomfort and pain, when that is not the case. Although I accept Ms Honamombe could certainly have been more forceful in bringing her concerns to Tegel's attention during her first week of work, the manner in which she did so must be seen in context. Ms Honamombe says she either raised her concerns about being on the production line with her TC, or felt she could not tell the TC this. She believed she had been told she was on her own and Tegel did very little to disabuse her of that belief. Indeed, there is no evidence the relevant TC or QC overseeing Ms Honamombe's return to work on the processing floor showed interest in or monitored her progress on the floor.

[58] The Authority is also satisfied Ms Honamombe's text message to Ms Manuel regarding experiencing pain on her first day of work went unanswered, and that Ms Honamombe made attempts to visit Ms Manuel in her office the same day and on others. She also reported her level of pain to the OT who communicated that to Ms Manuel on Friday 18 February 2022.

[59] Tegel points to a lack of communication and self-advocacy on Ms Honamombe's part. Although Ms Honamombe could normally be expected to communicate directly with management about her concerns, I consider the steps she took, including communicating through the OT as a conduit, was reasonable in all the circumstances at the time.

Business needs

[60] Tegel is a large New Zealand employer with over 2000 employees. Regarding its business needs, Tegel's evidence was that Ms Honamombe's inability to perform all tasks restricted its capacity to rotate people through roles, as there was a generic requirement for people to perform all positions. As already stated, it is unclear why Ms Honamombe's absence, a single long-serving employee out of over 200 workers at the plant, could not be accommodated for a further reasonable period.

Finding on personal grievance

[61] Although there is a vocational assessment which suggests repetitive physical poultry processing work was unlikely to be sustainable for Ms Honamombe, this was provided some six months after the dismissal, or with the prospect of alternate duties addressed. The justification of a dismissal must be assessed on the circumstances at the time of dismissal. Tegel has not been able to justify its actions at that time. Ms Honamombe is successful in bringing her claim for unjustified dismissal and is entitled to an assessment of remedies for her personal grievance.

Remedies

[62] While Ms Honamombe originally sought to be reinstated to her role and lost benefits and earnings, she now seeks only compensation for hurt and humiliation.

Compensation for hurt and humiliation

[63] Ms Honamombe's coverage under the Accident Compensation Act 2001 means no award can be made for personal injury.⁵ However, compensation can be awarded for non-economic loss suffered by her falling outside that Act.

[64] I accept Ms Honamombe suffered significant distress and humiliation following her dismissal. She gave compelling evidence about the emotional impacts on her. Ms Honamombe has stated the dismissal was another pain added to her life in addition to her injury, was made to feel it was her fault and was haunted by the experience. Ms Honamombe stated that Tegel had taken her dignity and herself being and that she was no longer confident. Ms Honamombe stated she was worried about being treated badly again or being hurt again and lived in fear without confidence or trust in herself and

⁵ Accident Compensation Act 2001, s 317.

others. She could not socialise with people, withdrew into herself and felt she had no meaning in life. Her mental health was greatly affected.

[65] The Authority is satisfied Ms Honamombe has experienced harm and having regard to the particular circumstances of this case, I consider that an award of \$30,000 under section 123(1)(c)(i) is appropriate to address her grievance.

[66] Although I have carefully considered Tegel's submissions regarding contribution which largely focused on a lack of communication and self-advocacy, given my earlier findings about the reasonableness of Ms Honamombe's actions, I am satisfied no deduction from the remedies awarded should be made.

Outcome

[67] The dismissal was unjustified. Tegel Foods Limited is ordered to pay \$30,000 as compensation to Ruth Honamombe within 14 days of the date of this determination.

Should either party contribute to the costs of representation of the other party?

[68] Costs are reserved. Ms Honamombe may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Tegel would 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.

Sarah Blick
Member of the Employment Relations Authority