



# New Zealand Employment Relations Authority Decisions

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## **Humby v Summit Property Management Limited (Christchurch) [2018] NZERA 1191; [2018] NZERA Christchurch 191 (17 December 2018)**

Last Updated: 21 December 2018

**IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH**

[2018] NZERA Christchurch 191  
3026695

BETWEEN TYLER HUMBY Applicant

A N D SUMMIT PROPERTY MANAGEMENT LIMITED Respondent

Member of Authority: Helen Doyle

Representatives: Applicant in person

Allister Nalder, Advocate for respondent

Investigation Meeting: 20 September 2018 at Blenheim

Submissions Received: On the day from Applicant

On the day from Respondent

Date of Determination: 17 December 2018

### **DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

**A Tyler Humby was unjustifiably dismissed from Summit Property Management Limited.**

**B Summit Property Management Limited is ordered to pay to Tyler**

**Humby taking contribution into account:**

- (i) \$12,999.10 gross under [s123 \(1\)\(b\)](#) of the [Employment Relations Act 2000](#) (the Act) being reimbursement of lost wages.**
- (ii) \$12,000 without deduction under [s123 \(1\)\(c\)\(i\)](#) of the Act being compensation.**
- (iii) \$71.56 being reimbursement of the filing fee.**

#### **Employment Relationship Problem**

[1]

Tyler Humby commenced working for Summit Property Management Limited

(Summit Property) on 11 January 2016 in Blenheim. Initially she was employed as a

Property Manager on a fixed term employment agreement to cover another employee's

maternity leave.

[2]

In March 2016 Ms Humby was promoted to the position of Area Manager on

another fixed term agreement. In September 2016 she accepted an offer for a permanent position of Area Manager.

[3]

On or about 16 March 2017 Ms Humby commenced maternity leave early due

to pregnancy complications. On 5 October 2017 Ms Humby advised her Nelson based manager Stewart Henry by email that she intended to return to work on Wednesday 1

November 2017.

[4]

Ms Humby was asked to attend a disciplinary meeting on 30 October 2017 by

Managing Director Allister Nalder. At the end of the meeting she was advised that there was a decision to terminate her employment with payment of a months' notice. A letter of 31 October 2017 was then sent confirming the termination of her employment.

[5]

Ms Humby says that she was unjustifiably dismissed from her employment.

[6]

Ms Humby seeks reimbursement of lost wages to the date of the investigation meeting and \$20,000 compensation.

[7]

Summit Property says that they acted in a fair and reasonable manner and do

not accept that Ms Humby's dismissal was unjustified.

**The test of justification in [s 103A](#) of the [Employment Relations Act 2000](#)**

[8]

The Authority is asked to consider whether Ms Humby was justifiably

dismissed. It is required to apply the justification test which is set out in [s 103A](#) of the [Employment Relations Act 2000](#) (the Act). When the Authority applies the test it does not determine justification by considering what it may have done in the circumstances. It is required under the test to consider on an objective basis whether the actions of Summit Property and how it acted, were what a fair and reasonable employer could

have done in all the circumstances at the time of the dismissal.

[9]

In applying the test the Authority must consider the four procedural fairness

factors set out in [s 103A\(3\)](#) of the Act. These are whether the allegations against Ms Humby were sufficiently investigated, whether concerns were raised with her, whether she had a reasonable opportunity to respond to them, and whether her explanations were considered genuinely by Summit Property before her dismissal. The Authority may take into account other factors as appropriate and must not determine a dismissal to be unjustified solely because of defects in the process if they were minor and did not result in Ms Humby being treated unfairly. Summit Property could also be expected as a fair and reasonable employer to comply with the good faith obligations which are set out in the Act at [s 4](#).

**The issues**

[10]

The issues for determination by the Authority in this matter are as follows:

(a) What were the reasons for dismissal?

(b) What are the material provisions of Ms Humby's individual employment agreement?

(c) Was there a full and fair investigation by Summit Property?

(d) Could a fair and reasonable employer have concluded serious misconduct on the part of Ms Humby?

(e) Could a fair and reasonable employer have reached the decision to dismiss in all the circumstances?

(f) If Ms Humby was unjustifiably dismissed then what remedies is she entitled to, and are there issues of mitigation and contribution?

**What were the reasons for Ms Humby's dismissal?**

[11]

In applying the test in [s 103A](#) of the Act it is necessary to identify the reasons for Ms Humby's dismissal and how Mr Nalder reached the decision to dismiss.

[12]

There is an unusual aspect in this case. The reasons in the letter of termination

dated 31 October 2017 are not the reasons given for dismissal at the only disciplinary meeting held on 30 October 2017. That will need to be addressed with reference to the allegations and what was concluded about them at the disciplinary meeting before

considering the letter of termination and the evidence of Mr Nalder.

[13]

The disciplinary meeting on 30 October 2017 was recorded and the Authority

was provided with both the recording and a transcript. At the disciplinary meeting Ms Humby was supported by her partner Luoxs. Mr Nalder attended with another staff member Nadine. At the meeting four allegations were to be discussed as set out in a

letter dated 25 October 2017.

[14]

The first was Ms Humby's performance standard and the reduction of

management numbers in her portfolio with 27 properties lost from between October

2016 to March 2017. The second was a failure to communicate with a property manager that her service levels were leading to significant management losses. The third was management of properties in Havelock and the fourth was that when requested by Mr Henry to attend a Tenancy Tribunal hearing, failed to attend and

failed to advise him of her non-attendance.

[15]

Each of the allegations was discussed in turn. The recording confirms that in

respect of the first allegation Mr Nalder obtained some understanding about the reduced numbers in the portfolio. There were issues around the impact of an earthquake, a previous employee potentially targeting clients and Ms Humby being unwell. He said at the end of the explanation *I'm not looking to blame from here I just want to know*. When he summed up towards the end of the meeting he said *I don't see any further action*.

[16]

Ms Humby's explanation about the second allegation about a failure to

communicate with a property manager was accepted.

[17]

Mr Nalder concluded the third allegation about the Havelock properties was

misconduct and stated *we would serve the um normal written warning in relation to that*.

[18]

The fourth allegation was the failure to attend a Tenancy Tribunal hearing. Mr

Nalder advised at the end of the disciplinary meeting that he found that to be serious

misconduct and was proceeding to terminate Ms Humby's employment.

[19]

I now turn to the letter of 31 October 2017. That provides for the termination

of Ms Humby's employment and states that Ms Humby is dismissed without notice and her employment ends immediately. Later on in the letter there is advice that a month's payment will be made. There is reference in the letter to three of the allegations, the Tenancy Tribunal issues, management of the properties in Havelock

and the loss of residential managements from the portfolio.

[20]

Mr Nalder in his letter set out that during the meeting there was a discussion

that Ms Humby's conduct during the incidents caused serious risk to the company's compliance and reputation and set an unacceptable example and standard for a property manager supervising others. Mr Nalder wrote out that he notified Ms Humby that the preliminary view was that he considered her actions to be serious misconduct

that justified her summary dismissal.

[21]

In his evidence at the Authority investigation meeting Mr Nalder said that the

reasons for dismissal were the conduct about the Havelock properties and the failure to attend the Tenancy Tribunal adjudication. He said that the reduction in portfolio

numbers was not a reason for termination, although there were concerns about that.

[22]

I accept that the reasons for dismissal were the concerns about the Havelock

properties and the non-attendance at the Tenancy Tribunal hearing.

[23]

There are addendums to the original individual employment agreement (the

employment agreement) signed on 9 December 2015 as Ms Humby worked in different roles. The last addendum was dated 6 September 2016 when Ms Humby

became a permanent employee in the Area Manager position.

[24]

Clause 24 of the employment agreement refers to discipline and clause 24.1 to

serious misconduct. Serious misconduct includes refusal to undertake the duties of the

employee's position or refusal to carry out any proper and lawful instruction given by the employee's superior or other person acting with the authority of the employer.

[25]

Misconduct includes any act or omission, while not being serious misconduct,

which has a significant effect on the employee's ability to carry out the duties of the employee's position. There is a warning process at clause 25 of the employment agreement. The Authority was also directed to the Area Manager additional duties and the property management duties.

**Was there a full and fair investigation by Summit Property?**

[26]

Ms Humby raised several concerns about the process. I will consider these

where necessary in my assessment of the two reasons for dismissal.

### *Management of Havelock Properties*

#### *Allegation*

[27]

This allegation was put in the letter of 25 October 2017 to Ms Humby as

follows:

Alleged that despite being aware that we had handed these properties back to the owner earlier in the year, accepted the management of the properties in December, despite that they remained in breach of the RTA, were substandard and non-compliant.

[28]

At the disciplinary meeting Ms Humby explained that she did not take on the

properties knowing that they had been handed back in March 2016. Ms Humby said that she had a look at the properties in December 2016 and had spoken to Mr Henry about the owner who wanted them rented out. Mr Henry told her then that they had managed the properties before and they had to watch the owner as he is *really bad at maintenance*. A management agreement was entered into but Ms Humby said that there was an accompanying letter that *Stewart and I wrote* with the agreement that said Summit would not take over management of the properties until the front house has

been *brought up to scratch*. That house apparently had no plumbing.

[29]

When the properties were inspected after Ms Humby had gone on maternity

leave in or about April 2017 they were found to still be non-compliant. There was concern that could expose Summit to complaints from tenants or other liabilities. The properties were then handed back again.

*Discussion with Mr Henry*

[30]

Mr Nalder took an adjournment during the disciplinary meeting to talk to Mr

Henry by telephone about the Havelock properties and Ms Humby's explanations. He told Mr Henry about Ms Humby's explanation that he had authorised her to take the property back on and that there was a document about this. His evidence at the Authority investigation was that Mr Henry responded *that's a lie*. He said that Mr Henry told him Ms Humby had contacted him in December 2016 and advised the owner had the properties compliant. However they then discovered after Ms Humby was on maternity leave that they were in a non-compliant state.

*Outcome advised at the disciplinary meeting*

[31]

When the disciplinary meeting resumed there was a discussion about the

outcome to all four allegations as referred to earlier. Mr Nalder from the recording said about this allegation that he could not understand why Ms Humby would have re-signed the properties when there was no proof to say the owner was now compliant. He referred to the outcome as misconduct for which there would be a warning.

[32]

He then said after the meeting as he was driving he thought further about the

Havelock properties and that he concluded Ms Humby had not been telling the truth. It then formed a reason for dismissal.

*Was this allegation investigated fairly and fully?*

[33]

Ms Humby said that she had insufficient information and had to respond by

memory to this allegation. She was provided with a copy of the March 2016 email from the previous Area Manager about the properties being handed back although it does not specifically refer to the reason why and a copy of the authority to manage the properties dated 1 December 2016. Ms Humby's explanation was that there was another document about the property prepared in conjunction with Mr Henry restricting it being tenanted until repairs had been carried out. Mr Nalder did not accept that there was such a document and when he asked Mr Henry he also denied that there was such a document. Had the disciplinary meeting been held on or after 1

November 2017 then Ms Humby would have returned to work from maternity leave and she would have been able to access information about these properties. There was unfairness I find about that particularly because this allegation was taken into account

as a reason for dismissal.

[34]

More fundamentally the concern Mr Nalder had about the truthfulness of Ms

Humby's explanation when he talked to Mr Henry was not put to Ms Humby so that she was able to respond. There was no allegation in the 25 October letter that Mr Henry knew that Ms Humby had re-signed the properties but that he was told by her they were compliant and that was then found to be untrue. Mr Henry sent a memorandum referenced *Report on Tyler Humby* dated 10 October 2017 to Mr Nalder. It was not sent to Ms Humby but Mr Nalder attached it to the statement in reply. Under the Havelock properties it included the following:

Stew questioned Tyler at the time she re-listed these and she assured him that the works were complete and that the properties were compliant.

[35]

That part of the memorandum was not put into the 25 October letter under the allegation about the Havelock properties although other matters in the memorandum were.

[36]

Ms Humby was initially told that this matter was considered to be misconduct and a written warning would be the outcome. On the basis that there was untruthfulness concluded by Mr Nalder the Havelock properties allegation was then relied on as a reason in reaching the decision to dismiss.

[37]

[Section 103\(3\)\(b\)](#) of the Act requires that concerns be raised so that under s

103(3)(c) there can be a reasonable opportunity for an employee to answer them and have their explanation genuinely considered under [s 103\(3\)\(d\)](#) of the Act. That did not happen in this case. The failure to put alleged untruthfulness was not a minor breach and it caused unfairness. I do not find that this allegation was investigated fully and fairly for these reasons before it was concluded that there was serious misconduct on Ms Humby's part and that she had been untruthful that the properties were compliant to Mr Henry.

### *Tenancy Tribunal*

#### *Allegation*

[38]

The allegation about the Tenancy Tribunal in the 25 October 2017 letter was as follows:

When requested by Stewart Henry to attend the tribunal, failed to attend and failed to advise Stewart of non-attendance.

#### *Explanation*

[39]

Ms Humby agreed that she did not attend the Tenancy Tribunal hearing on 10

January 2017. She did not agree that Mr Henry requested her to go but said that she spoke to him after the hearing. The reason that she did not attend she explained was because another Summit Property manager Ruth had dealt with the owner of the property directly in this matter when Ms Humby was away with a work related injury. Ms Humby also explained that it was not uncommon for another property manager to go to a Tribunal hearing if they have involvement in the situation that has been taken to the Tribunal. She thought that it was logical for Ruth to attend because she had more knowledge.

[40]

Mr Nalder did not at the disciplinary meeting accept that explanation. His

view was that Ms Humby was managing the property and that it was best business practice for the person having the relationship with the owner to be the person who represented Summit Property at the Tenancy Tribunal.

[41]

Mr Nalder talked further to Mr Henry by telephone during an adjournment of

the 30 October meeting about this matter as well. The meeting then resumed. Mr Nalder referred to his view this conduct was serious misconduct. The transcript refers to a discussion about what Mr Henry said. Mr Nalder said that *Mr Henry advised*

him he said this is what you need to take, please take the owner as well. Mr Nalder said about this matter ...I don't accept that the area manager would say um I didn't have

the knowledge, so I let the person that was dealing with it.

[42]

Ms Humby said after this that she was surprised that Mr Henry said that she

should take the owner as he did not live in Blenheim. She did not accept that Mr Henry asked her to take things to the hearing. She said that she spoke to Mr Henry after the hearing.

*Was this allegation investigated fully and fairly?*

[43]

The employment agreement provides that a failure to follow an instruction can

be serious misconduct. Ms Humby denied that she was instructed by Mr Henry to attend the 10 January 2017 hearing. In his evidence at the Authority investigation Mr

Nalder said that he concluded Mr Henry had instructed Ms Humby to attend.

[44]

The memorandum that I have referred to above that Mr Henry supplied to Mr

Nalder dated 10 October 2017 stated that Ms Humby had been instructed to attend the

Tenancy Tribunal and stated *This is failing to follow instructions of the employer.*

There was reference to this being serious misconduct.

[45]

Mr Henry in his evidence at the Authority investigation meeting said that there

was no formal discussion before the Tenancy Tribunal hearing on 10 January 2017 with Ms Humby but that *it never crossed his mind that Ms Humby would not attend* and that it was *part of her role*. He said that there was a discussion about how to defend at the hearing although Ms Humby did not recall any such conversation prior to

the hearing and said that she was experienced and knew what was required to defend

the case.

[46]

There was agreement that shortly after the Tenancy Tribunal hearing Ms

Humby advised Mr Henry of the outcome and told him that she had not attended. Mr Henry said that he would have preferred for her to have done so. Mr Henry asked Ms Humby to contact the owner of the property and request that he pay half of the amount awarded to the tenant and Summit would pay the other half. Ms Humby did this. She said that the owner agreed and she thought the matter was resolved as it was not raised again before she took maternity leave and until she indicated that she intended to

return in October 2017.

[47]

I do not find there was sufficient investigation into the allegation Mr Henry

requested Ms Humby to attend the Tribunal and she failed to attend and failed to advise Mr Henry of her non-attendance. Objectively assessed the request to attend was the most serious aspect of the allegation because it suggested disobedience and the alleged failure to attend can be seen in that context. The evidence that the Authority heard did not support that there was a direct and clear request or instruction that Ms Humby attend the Tribunal from Mr Henry. There was no dispute that Ms Humby did not attend the hearing but she advised Mr Henry of that very shortly after

the hearing.

[48]

When Mr Henry gave his evidence he said that he would have expected to have

been advised by Ms Humby that she was not intending to attend and in effect she had hidden her non-attendance from him. I do not find that concern was clearly put as required under [s 103\(3\)\(b\)](#) of the Act if that is what the *failed to advise Stewart of*

*non-attendance* refers to. Therefore under [s 103\(3\)\(c\)](#) of the Act Ms Humby did not have a reasonable opportunity to respond to the concern and have that response genuinely

considered.

[49]

I also find given the passage of time Ms Humby was disadvantaged because

she could not access her file notes and other material particularly about the Tenancy Tribunal hearing. She referred to having to rely on her memory during the disciplinary meeting. If the disciplinary meeting had been held after Ms Humby had returned back to work then she would have had that access to information.

[50]

I am not satisfied that there was a full and fair investigation into this allegation

for the reasons set out above.

*Other procedural concerns raised by Ms Humby*

[51]

Ms Humby raised several concerns about process. I have already dealt with

some of them. I want to refer to a concern of Ms Humby's that the disciplinary

outcome was predetermined and the real reason for her dismissal was the loss in portfolio numbers and an earlier refusal to stand down from her role.

[52]

There were some issues about the losses in the portfolio raised with Ms Humby

shortly before her maternity leave.

[53]

Ms Humby said that on 13 March 2017 Mr Henry met with her and told her

that Mr Nalder had no confidence in her. Further she said that she was told Mr Nalder wanted her to stand down from her position of Area Manager due to the loss in portfolio numbers. Ms Humby said that she was given until the end of the day to make a decision and if she stepped down then she was advised that she could have a

position as a Property Manager.

[54]

There is an email from Ms Humby to Mr Henry of 13 March 2017 setting out

the advice she received that Mr Nalder had asked her to stand down from her position. She asked for more time to make a decision and amongst other matters that Mr Henry email confirmation of the matters they had discussed that morning in the email. Mr

Henry did not respond to that request.

[55]

On 15 March 2017 Ms Humby emailed Mr Henry and advised that because of

a serious complication with her pregnancy she had been hospitalised and that her care team had advised that she was now required to take her maternity leave. Ms Humby

did mention that the unexpected pressure put on her had not helped the situation.

[56]

Mr Henry then responded and advised amongst other matters including that Mr

Nalder could meet that day:

I'm not sure what you mean in regard to, Unexpected pressure, Allister held off meeting with you last month on the matter due to your medical leave, however I'm sure as part of your role as the Area manager for property managements, which has the responsibility for growth in portfolios, you were

already aware of the concern with the significant reduction in management numbers which is impacting on the viability of

the current staffing situation.

[57]

Ms Humby advised that she was not able to meet that day with Mr Nalder.

[58]

Within the notice about entitlement to parental leave dated 28 March 2017 Mr

Nalder wrote the following:

Within the Area Manager Schedule of Duties they are accountable for the growth in management numbers. Due to your ill health we have not had the opportunity to review with you the non-performance in this regard during January and February. When we made arrangements to meet in March to complete a review of declining management numbers, you advised us of your intention to take immediate maternity leave. This review will need to take place upon your return.

[59]

At the point when Ms Humby took her maternity leave there was a basis for

her to conclude that the dissatisfaction about her portfolio management numbers was the main concern for Mr Henry and Mr Nalder. Mr Henry in his evidence agreed that he had a conversation with Ms Humby on 13 March about stepping down to a property manager role. He said that Ms Humby had taken 23 days off for medical reason between 12 January 2017 and 10 March 2017. The business was going backwards and another property manager had been given one month's stress leave. There were also

issues about customer service.

[60]

Mr Nalder did not accept that the decision to terminate was predetermined or

based on the decrease of portfolio numbers. I cannot conclude with certainty from the evidence that the decision to dismiss was predetermined or that the dismissal was because of the portfolio numbers.

### **Could a fair and reasonable employer have concluded serious misconduct on the part of Ms Humby?**

*Havelock Properties*

[61]

There was a basis for the concern that Summit Properties had about the

Havelock properties. Substantive fairness overlaps with the procedural unfairness about the adequacy of the investigation and the failure to meet the minimum standards expected of a fair and reasonable employer. A conclusion was reached that there was untruthfulness because of advice given that the properties were compliant to Mr Henry

at the time they were re-signed. That was never put as part of a fair process and so it can only be considered under [s 124](#) of the Act as contribution if the Authority considers remedies. Further the disciplinary outcome advised to Ms Humby at the disciplinary meeting was a warning on the basis that the conduct was considered misconduct. I do not find that there was an adequate or fair investigation to enable a fair and reasonable employer to conclude that the conduct with the Havelock properties was serious misconduct.

*Tenancy Tribunal*

[62]

I do not find that there was a full and fair investigation from which a fair and

reasonable employer could conclude a request to attend the Tenancy Tribunal from Mr

Henry and subsequent disobedience by Ms Humby.

[63]

That leaves a concern that Ms Humby did not attend when Summit Property

expected her to as part of best practice and as part of her role. Objectively assessed that is less serious than the initial allegation that Ms Humby was facing that she disobeyed a request to attend from her manager. Ms Humby's explanation was that she did not attend in circumstances where she thought another property manager had more knowledge and she did not consider it unusual that the Area Manager would not

attend. Mr Nalder and Mr Henry had a very different view.

[64]

Summit Property was entitled to let Ms Humby know of its dissatisfaction and

future expectations. The Authority needs to consider whether a fair and reasonable employer could conclude the failure to attend the hearing in all the circumstances was serious misconduct. I find that the conduct and the seriousness with which it was viewed needs to be weighed with the fact that Mr Henry did not raise this matter again after January 2017 with Ms Humby before she went on maternity leave. It was not raised for example at a meeting on 2 March 2017 with Mr Henry where the typed notes show discussion with Ms Humby about several different matters. It was not raised at the 13 March 2017 meeting when it was suggested that Ms Humby stand

down and be a Property Manager.

[65]

In all the circumstances I do not find that a fair and reasonable employer could

have concluded serious misconduct because Ms Humby did not attend the Tenancy

Tribunal hearing and sent another Property Manager.

**Could a fair and reasonable employer have reached the decision to dismiss in all the circumstances?**

[66]

I have found procedural and substantive unfairness. I do not find that a fair and

reasonable employer could have reached the decision to dismiss in all the circumstances.

[67]

Ms Humby has a personal grievance that she was unjustifiably dismissed and is

entitled to consideration of remedies.

## **Remedies**

*Lost wages*

[68]

[Section 128](#) (2) of the Act provides for reimbursement of lost wages. If the

Authority determines that an employee has a personal grievance and has lost remuneration it must, whether or not it provides for other remedies, order payment of the lesser of the sum equal to lost remuneration or 3 months ordinary time remuneration. The Authority may in the exercise of its discretion under [s 128](#) (3)

order an employer to pay a sum greater than that in [s 128](#) (2).

[69]

Ms Humby confirmed in her evidence that she had applied for roles from

December 2017 but that it was difficult to obtain a property managers role in

Blenheim. Written email applications/responses for roles were supplied together with roles applied for on Trade Me listings.

[70]

Ms Humby obtained work in the property area from 1 May 2018 and then

obtained another role from June 2018. Her salary at Summit Property was \$65,000 or

\$5416.66 gross per month. The Inland Revenue Department earnings information shows that from the date of dismissal until the end of August 2018 Ms Humby received one month's payment from Summit Property and was then in receipt of a benefit until May 2018. For May until the end of August 2018 earnings received were

\$13494.00 gross.

[71]

I have weighed some commercial issues with the Summit Property office in

Blenheim that were traversed in evidence by Mr Nalder. These issues could impact on certainty of continued employment

beyond three months. I am not prepared, in those

circumstances, to exercise my discretion to award a sum greater than that under [s 128](#)

(2) of the Act.

[72]

Ms Humby's actual loss of remuneration is greater than 3 months' ordinary

time remuneration. Subject to issues of contribution I find Ms Humby is entitled to the lesser reimbursement of 3 months ordinary time remuneration of \$16,249.99 gross.

*Compensation*

[73]

Ms Humby said that she felt humiliated by her dismissal and said that things

were coming out about her and *getting around* the small town that she was dishonest. She felt that she had been treated unfairly and had never thought she would not return to work at Summit Property after her maternity leave. She needed to support her children and financially there was lots of pressure and she separated for a period from

her partner. She said that after dismissal she went through a stage of *who cares*.

[74]

I accept that Ms Humby was impacted by her dismissal and that she expected

to be able to return to work after her maternity leave ended. She experienced financial and personal pressures and felt that she was the subject of gossip and speculation

because of her dismissal.

[75]

Subject to any contribution I find a fair and reasonable award under this head is

\$15,000.

*Contribution*

[76]

The Authority is required where it finds a personal grievance made out to

consider under [s 124](#) of the Act the extent to which the actions of the employee contributed towards the situation that gave rise to the grievance and if required reduce

the remedies that would otherwise have been awarded.

[77]

The Authority is required to consider on the balance of probabilities whether

Ms Humby did what she was alleged to have done. I turn firstly to whether Ms Humby told Mr Henry that the Havelock properties were compliant. This was apparently during a discussion in December 2016. Mr Henry's evidence was that he was told by Ms Humby that the properties were compliant and that at that point she had re-signed the properties. When asked by Ms Humby at the Authority investigation

meeting he could not recall a discussion about renovations and he did not recall writing a letter that there would be no tenancy of the properties until they were compliant. Ms Humby's evidence was to the effect that the owner was to undertake the renovations first and there was a discussion about renovations.

[78]

I could not be satisfied on the balance of probabilities that Ms Humby

deliberately told Mr Henry the properties were compliant when they were not. I do accept Mr Henry's evidence that he believed from the conversation that to be the case. Compliance was Mr Henry's focus I find rather than on renovations. I cannot rule out some miscommunication at the time leading to different recollections. It seemed having heard the evidence that Ms Humby considered the properties were compliant except for plumbing. There is insufficient information to reach a finding about whether there was a letter about the properties or what happened with the tenancies at the properties. I find blameworthy conduct to a limited degree because Ms Humby as Area Manager was not as careful as she should have been

about the state of the properties. There may have been some renovation undertaken however the properties were still non-compliant and there could have been a consequence for Summit

Property as a result.

[79]

I do not find that Mr Henry instructed Ms Humby to attend the Tenancy

Tribunal rather he took it for granted that she would. I heard evidence from Ruth who attended and she confirmed involvement and knowledge with the situation that gave rise to the hearing. I accept Ruth felt confident to attend the hearing. I do not conclude that Ms Humby was anything other than straightforward after the hearing

about her non-attendance to Mr Henry.

[80]

There is an element of blameworthy conduct I find because Ms Humby did not

tell Mr Henry in advance of the hearing that she was not going to attend and why she was intending to send Ruth. I do not find on the balance of probabilities that was to hide the fact that Ruth was attending. Nevertheless the hearing was an important matter that impacted on her employer and Ms Humby should have told her manager that she was not attending. Mr Henry if he knew in advance would no doubt have asked Ms Humby to attend as well. Instead by the time he understood what had occurred the hearing had taken place and he could only express his view that he would have preferred Ms Humby to attend.

[81]

I find that there was contribution to the extent set out above and remedies

should be reduced by 20%.

#### **Orders made**

[82]

Taking contribution into account I order Summit Property Management

Limited to pay to Tyler Humby under [s 123\(1\)\(b\)](#) of the Act the sum of \$12999.10 gross for reimbursement of lost wages.

[83]

Taking contribution into account I order Summit Property Management

Limited to pay to Tyler Humby the sum of \$12,000 without deduction for compensation under [s 123 \(1\)\(c\)\(i\)](#) of the Act.

Ms Humby was unrepresented but is entitled to reimbursement of her filing fee of

\$71.56 and I so order.

Helen Doyle

Member of the Employment Relations Authority