Attention is drawn to the order prohibiting certain information in this determination

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2012] NZERA Christchurch 67
5357457

BETWEEN	MAREE HUMPHRIES Applicant
A N D	BLUE STAR TAXIS (CHRISTCHURCH) SOCIETY LIMITED Respondent

Member of Authority:	David Appleton
Representatives:	Tim Mackenzie, Counsel for Applicant Sarah Townsend, Counsel for Respondent
Investigation meeting:	5 April 2012 at Christchurch
Submissions Received	5 April 2012 from Applicant 5 April 2012 from Respondent
Date of Determination:	17 April 2012

DETERMINATION OF THE AUTHORITY

A. **The Applicant was unjustifiably dismissed and so her personal grievance succeeds.**

B. **The respondent must pay to Ms Humphries the sum of $10,000 pursuant to s 123 (1) (c) of the Employment Relations Act 2000 in relation to an unjustified disadvantage personal grievance arising from the respondent's wilful failure to consult with Ms Humphries about her redundancy.**

C. **The respondent must pay to Ms Humphries a further sum of $10,000 pursuant to s 123 (1) (c) of the Act in relation to an unjustified disadvantage personal grievance arising from the**

respondent's wilful spreading of rumours about Ms Humphries' earlier proposed dismissal

D. No penalties are awarded.

E. Costs are reserved.

Prohibition from publication

[1] Due to the sensitivity of the information, I order prohibition from publication of medical information presented to the Authority by Ms Humphries and by her GP, save to the extent that it has been referred to in this determination.

Employment relationship problem

[2] Ms Humphries claims the following:

a. unjustified dismissal in relation to her termination for redundancy on 5 August 2011;

b. breach of s.4 of the Employment Relations Act 2000 (the Act), in relation to alleged misleading and deceptive conduct regarding the respondent's response to a request for disclosure of board minutes, for which Ms Humphries seeks a penalty; and

c. breach of her employment agreement in relation to a contractual requirement to consult in the case of a proposed redundancy, for which Ms Humphries seeks a penalty.

[3] The respondent concedes that the dismissal of Ms Humphries was unjustified due to a failure to consult with her. However, it contends that the redundancy was genuine and that there was no breach of good faith, nor a breach of the employment agreement.

The evidence

[4] Ms Humphries' evidence was that she had started working for Blue Star Taxis in November 2007 and had initially got on well with members of the board of Directors. A new General Manager, Mr Wilkinson, was appointed in August 2008

and Ms Humphries reported to him. She said that she had generally got on well with Mr Wilkinson and had had a good working relationship with him.

[5] Ms Humphries said, however, that she had encountered hostility from certain taxi drivers from the beginning of her employment, and also from certain members of the board, once its composition had changed. This hostility took different forms, including insulting comments which were made about her within her earshot, and by at least one text message, which she had seen. Her evidence was that members of the later constituted board would often make loud and disparaging comments about her during their board meetings which would take place in the room next to her office. Ms Humphries had originally raised a disadvantage grievance in relation to this pattern of hostility of which she gave evidence, but withdrew her claim because she was unable to show that she had raised grievances about these issues within 90 days, as required by the Act. However, the evidence she gave is relevant in assisting the Authority to determine whether the decision to dismiss her for redundancy was based on a genuine redundancy situation or whether there had always been an agenda amongst the board members to terminate her employment.

[6] Ms Humphries gave evidence that another event that had caused her concern in early 2009 arose when Mr Wilkinson had handed her a copy of a long handwritten letter or memorandum, written by the Chairman of the board, Mr Branks. This had criticised the marketing function in various ways. Ms Humphries had spoken to Mr Wilkinson about its contents. Ms Humphries' evidence was that many of the points contained in the handwritten letter were inaccurate and that this demonstrated a hostility against her from the Chairman.

[7] In late April or early May 2011, Mr Wilkinson had asked Ms Humphries to attend a meeting with him at which he told her that she had to look for a new job and should leave as soon as possible. Ms Humphries said that Mr Wilkinson had talked in detail about what she could do next and had suggested that she could get two part time jobs. She said that this had been the first time that she had come to realise that her job was at risk.

[8] Mr Wilkinson's evidence on this point was that he had been aware that Ms Humphries had been unhappy at the respondent company, that he had been aware that she had been under stress and he had wanted to find out whether she was still

committed to the role. He said that he had talked to her about opportunities that may have been open to her in the context of her not enjoying her current role. He gave evidence that he had said to Ms Humphries *"is this really where you want to be?"*. It appears that the reason that Mr Wilkinson had this conversation with Ms Humphries was because the board had recently discussed her and her role and had concluded that her role should be disestablished and replaced by a lower level sales role. Ms Humphries' evidence continued that she had been shocked by this conversation with Mr Wilkinson, which had come out of the blue.

[9] A few days later, one of the drivers, Mr Iskander, who shortly after became a member of the board, had entered the office to see Ms Humphries and had told her that the board had wanted to *"get rid of her"*, that the board had been telling the drivers that she had already gone but that she was not to worry as she would not be losing her job. Ms Humphries' evidence was that Mr Iskander had gone on to tell her that he had warned the board that, due to the fact that it had predetermined the outcome, Ms Humphries would be able to take legal action against the company if it did actually dismiss her. The conversation had taken place in front of Mr Wilkinson, who has not said anything, but had walked away. Understandably, this news had left Ms Humphries feeling very insecure and uncertain in relation to her job and stressed by the situation. Ms Humphries told the Authority that some taxi drivers had also approached her around the time of this conversation with Mr Iskander, saying how sorry they were that the board had finally managed to dismiss her.

[10] Ms Humphries said that, a few days later, Mr Wilkinson had asked her to attend another meeting at which he had told her that her job was safe as he had spent a considerable amount of time persuading the board that it should not dismiss her. It was around this time, Ms Humphries said, that Mr Wilkinson had given her a copy of a letter that he had written to Mr Branks, the Chairman. A copy of this letter was before the Authority. It is germane to cite various sections of this letter, which was dated 25 May 2011. The letter stated as follows:

> *Dear Mr Branks,*
>
> *I am writing to you to outline my concerns regarding the comments made by two Board members at yesterday's Board Meeting.*

> *The comments arose during the discussion on the restructuring plan and motion regarding the termination of the marketing/sales manager.*
>
> *I would like to confirm the events that led to this discussion.*
>
> *At the board meeting held on 26th April the Board passed the following motion:*
>
> > *We disestablish the role of Marketing Manager and we appoint a Salesperson for three days a week effective as at 1st June.*
>
> *During the following week I put together a process that would meet both the requirements of the Board and, what I believe, to be our legal obligations with regard to employment law. I also made an appointment to discuss the process with Shauna McClelland, our employment lawyer on Friday 29th April.*
>
> *On Thursday 28th April a member of the Society approached me and asked why the board were sacking Maree as he felt that she was doing a good job. He went on to say that a Board member had advised him that the plan was to replace her with a younger woman in a short skirt that only worked three days a week. I advised the member that I would not comment on Board or Employment matters.*
>
> *:*
> *:*
>
> *The comments from the member were so accurate that I had no doubt that a Board Member had discussed the matter with a non board member.*

[11] The letter goes on to discuss advice that Mr Wilkinson had obtained from the respondent's employment law adviser. He then stated in the letter that he had had a conversation with Ms Humphries during which she had indicated that she was feeling quite stressed regarding the rumours that were circulating about her position. The letter then stated that the board had asked Mr Wilkinson to consult with another lawyer at Duncan Cotterill and rewrite the motion to include the words: *"following good employment practice and subject to legal advice"*.

[12] Mr Wilkinson then mentioned in the letter the conversation between Ms Humphries and Mr Iskander at which he had been present. The letter then stated that the issue had now *"gained widespread notice throughout the fleet, helped, no doubt, by a board member speaking at an election meeting and telling the assembled members what the board planned to do"*.

[13] The letter then goes on as follows:

> *The concerns I have are regarding the discussion at these meeting* [sic] *are:*
>
> *1) A board member accused me of obstructing the board in failing to carry out an instruction to disestablish the Marketing/ Sales Managers* [sic] *role.*
>
> *2) A board member said that we should proceed regardless of the outcome and they didn't care what it costs. This said after they were advised that costs could easily be in the $40,000 range.*

[14] Ms Humphries' evidence to the Authority was that, when Mr Wilkinson had told her that her job was safe, she had felt a sense of relief. However, once she had read the letter that Mr Wilkinson had written to Mr Branks, she had felt confused and hurt by the letter. For example, she had been hurt by the comment about replacing her with a younger woman with a short skirt. (Mr Wilkinson confirmed to the Authority that this comment had been made by a board member in all seriousness.)

[15] Ms Humphries told the Authority that she had then discovered by accident, a few days later, a copy of draft minutes from the April 2011 board meeting which stated the following words:

> *General Managers Report*
>
> *Discussion took place on the effectiveness of the Sales & Manager* [sic]
>
> *It was moved that:*
>
> > *We disestablish the role of Marketing Manager and we appoint a Salesperson for three days a week effective as at 1st June.*
> >
> > *Moved: Martin Miller*
> > *Seconded: Wayne Branks*
>
> *Letter/opinion from Richard Neave at Duncan Cotterill* [that section had been removed as it was legally privileged]
>
> *Alternative "No Risk" Motion:*
>
> *The Board amends the earlier motion regarding the position of Marketing Manager to now read "The Board instructs the General Manager to review the structure of all parts of the business and to make staff reductions where possible following good employment practice and subject to legal advice".*

[16] Reading these draft minutes caused Ms Humphries further distress she said. Her evidence was that it made her feel physically sick seeing it for real, in the board's own document. She said that, in her mind, this confirmed all the rumours that she had heard and that she could not believe that the board wished to dismiss her for not being *"effective"*.

[17] A few weeks later, on 8 June 2011, Ms Humphries received a letter from the respondent giving her a pay rise. The letter stated that the financial future of the respondent seemed sound. Ms Humphries said that this made her feel further bewildered and confused and that she was still expecting that she was going to be dismissed.

[18] Finally, on 7 July 2011, Mr Wilkinson asked Ms Humphries to come outside for a cigarette. He produced a letter and told her that her job was gone. The letter that he handed her read as follows:

> *7 July 2011*
>
> *Dear Maree,*
>
> *It is with regret that I have to advise that at yesterdays Board Meeting it was decided to disestablish your position of Sales & Marketing Manager with effect from Friday 5th August 2011.*
>
> *The financial impact of the recent quakes and subsequent loss of income from reduced work and abandoned shares has had a severe impact on the Society's revenue. Attached, please find a copy of this financial years budget projection discussed at yesterdays Board Meeting. The Board see no option but to reduce costs and your position is no longer viable for the foreseeable future.*
>
> *Despite there being no redundancy payment in your contract, the board recognises the work and energy that you have put into marketing the Society and have offered you a further five (5) weeks salary.*
>
> *On behalf of the Board we thank you all your work and west you all success in the future* [sic].
>
> *Yours sincerely*
> *Bob Wilkinson*
> *General Manager*
> *Blue Star Taxis (Christchurch) Society Limited*

Findings

[19] Ms Humphries argues that the redundancy was a sham and that there had always been an intention to dismiss her. The evidence of the respondent is that some members of the board had always had the intention, at least from April 2011, to dismiss Ms Humphries and that this did not change even after the legal advice it had obtained that dismissal would be unlawful at that point because of predetermination.

[20] Mr Branks, however, stated to the Authority that he had been aware that to dismiss Ms Humphries would have created a real risk for the respondent and therefore there was, in his mind at least, no intention to do so after that legal advice had been obtained. He said that, for him, the *"game changer"* was when Mr Wilkinson had produced a forecast in July 2011 which had estimated that the respondent was likely to make a significant loss, in the region of $92,000, during the 2011/2012 financial year. This forecast had been presented to the board in July 2011 and the board had concluded that there was an urgent need to reduce costs. It was that forecast which had led to the decision to disestablish Ms Humphries' post.

[21] Mr Branks gave evidence that all the fat had been trimmed from the company at that point, and that the only place to make a further significant saving was to disestablish the sales and marketing manager role. Mr Wilkinson had given evidence that, to do so, would save around $60,000 a year. Upon this disestablishment of Ms Humphries' role, her duties were absorbed by Mr Wilkinson.

[22] Ms Humphries also argues that it had always been the intention of the respondent to replace her with a salesperson role, as was evidenced by the draft board minute cited above from the April 2011 meeting. It so happens that a salesperson was recruited in early November 2011 carrying out low level sales duties as well as helping in the respondent's call centre.

[23] Despite the attempts of Ms Humphries to persuade me otherwise, I am not satisfied that the new salesperson role was 40% of the role that Ms Humphries had carried out prior to her redundancy. It is clear from the evidence of Mr Wilkinson and Mr Branks, and from the respective job descriptions of Ms Humphries' former role and the role of the salesperson, that the latter role is a significantly different, inferior

role in terms of responsibilities and skills compared with Ms Humphries' role. It also paid at a significantly lower level of remuneration.

[24] Mr Wilkinson gave evidence that the post holder of the new salesperson role (Ms Hill) had been appointed because she had previously worked for the respondent, and had heard that Mr Wilkinson had not been able to carry out those sales duties effectively once Ms Humphries' role had been disestablished. Ms Hill had therefore approached Mr Wilkinson asking if she could be recruited to take on that role. Mr Wilkinson had decided that his time could be more effectively used doing higher level duties and so had agreed.

[25] With respect to the allegation that Ms Humphries' redundancy was not genuine, the Authority is presented with the unusual situation where Mr Branks admitted that some members of the board had always intended to dismiss Ms Humphries but that he, as Chairman, had no such intention after having received legal advice on the legality of disestablishing her role until the financial forecast had been presented, showing a $92,000 forecast loss.

[26] I believe that the evidence of Mr Branks and Mr Wilkinson was credible on these points. Mr Branks' evidence was that the board members who had always wanted to terminate Ms Humphries' role were very unhappy when Mr Branks had declared that her role would not be terminated, and the fact remains that her role was not terminated until the $92,000 forecast loss had been formulated. I therefore am satisfied that there was a genuine need to make an urgent saving and that the most effective method of doing so was to disestablish Ms Humphries' role. I am also satisfied that it had not always been the intention of the respondent to replace Ms Humphries' role with a salesperson role.

Breach of the employment agreement

[27] Section 17 of Ms Humphries' employment agreement contains the following clauses:

> *Where the Employer proposes to implement a redundancy, the Employer shall, where practicable, consult with those employees affected or likely to be affected (together with their representatives, if applicable) as a result of the redundancy.*

> *In the event of a position being made redundant, any employee in that position who cannot be satisfactorily accommodated in another position will be given a minimum of 4 weeks notice of termination of employment.*
>
> *If you are made redundant, you will not be entitled to any compensation or other entitlements beyond the express terms of this agreement.*

[28] The respondent sought to argue that it had not been practicable to have consulted with Ms Humphries because of the urgent need to disestablish her role once it had been established that there needed to be a significant saving in cost. Whilst I accept that the respondent saw that there was such an urgent need, I do not accept that it precluded the respondent from carrying out a full and fair consultation process with Ms Humphries. Contrary to the belief of some employers, a full and fair consultation in relation to a proposed redundancy need not take an inordinately long time and the respondent could have fulfilled its obligations towards Ms Humphries under s.4(1A) of the Act within a reasonable period of time without causing itself significant prejudice.

[29] Therefore, I find that there has been a breach of the employment agreement in this respect.

[30] Section 134 (1) of the Act states that *every party to an employment agreement who breaches that agreement is liable to a penalty under this Act*. Counsel for the respondent argues that Ms Humphries is seeking a penalty for the same conduct that forms the substance of her personal grievance, specifically the failure to consult. Counsel for the respondent refers me to the Employment Court case of *Salt v Fell, Governor for Pitcairn, Henderson, Ducie and Oeno Islands* [2006] ERNZ 449, which indicated that it would be inappropriate to impose a penalty for the same conduct that has already been sufficiently condemned by a finding of unjustifiable dismissal and an award of remedies to the employee. I accept this argument and so decline to impose a penalty for the failure to consult with Ms Humphries contrary to the terms of her employment agreement.

Breach of s.4 of the Act

[31] Section 4 (1) of the Act states that:

> *The parties to an employment relationship specified in subsection (2)—*

> *(a) must deal with each other in good faith; and*
>
> *(b) without limiting paragraph (a), must not, whether directly or indirectly, do anything*
>
> > *(i) to mislead or deceive each other; or*
> > *(ii) that is likely to mislead or deceive each other*

[32] After she had been advised that she was to be dismissed for redundancy, but before the expiry of the notice period, Ms Humphries' counsel (Mr Mackenzie) wrote to Mr Wilkinson raising a personal grievance and also requesting *any board minutes or other documents relating to the redundancy and its genesis.* Mr Branks wrote a letter to Mr Mackenzie in reply on 29 July 2011, stating, inter alia:

> *Without a court order, you are not entitled to any Board Minutes. I do not believe discovery even goes that far. Furthermore, I wonder to which Board Minutes are referred to,* [sic] *or even whether or not they had been approved at the next meeting subsequent.*

[33] Whilst I am satisfied that Mr Branks was misinformed or misunderstood the respondent's obligations in relation to Mr Mackenzie's request for the board minutes, I believe that Mr Branks (or Mr Wilkinson, to whom Mr Mackenzie had written) must have been clear which minutes were referred to, because of the focus that had been given to the wording of the April 2011 minutes by the respondent prior to Ms Humphries' dismissal, and the fact that they had been changed in relation to Ms Humphries' post. I believe therefore that Mr Branks had been disingenuous in his reply to Mr Mackenzie.

[34] Furthermore, although Mr Branks gave evidence that he did not have a copy of the minutes in question, as he had never received them in draft form, and although Mr Wilkinson gave evidence that he had overwritten the draft minutes when the new motion regarding the disestablishment of Ms Humphries' post had been substituted, it is likely that other board members would have retained a copy. The draft minutes could, therefore, have been sought from those members and disclosed to Ms Humphries' counsel. No evidence was given that they were sought from them.

[35] I am therefore satisfied that the respondent had done something, namely write in the terms Mr Branks did on 29 July 2011, that was likely to mislead or deceive Ms Humphries and that it acted in breach of s 4 of the Act.

[36] Section 4 A of the Act provides as follows;

> *A party to an employment relationship who fails to comply with the duty of good faith in section 4(1) is liable to a penalty under this Act if—*
>
> *(a) the failure was deliberate, serious, and sustained; or*
>
> *(b) the failure was intended to undermine—*
>
> *(i) bargaining for an individual employment agreement or a collective agreement; or*
>
> *(ii) an individual employment agreement or a collective agreement; or*
>
> *(iii) an employment relationship; or*
>
> *(c) the failure was a breach of section 59B or section 59C*

[37] Although Mr Mackenzie was required to ask again for copies of relevant documentation, including directing a request to the respondent's counsel, the failure to provide the documentation continued after Ms Humphries employment had ended, and so after the respondent's obligation towards her under s 4 of the Act had ceased to apply. Mechanisms outside of s 4 exist post employment to deal with disclosure obligations. Taking this into account, whilst I believe that the respondent's failure to disclose the board minutes in question was deliberate, and was arguably serious, I do not believe that it was sustained, as it continued after its obligations towards Ms Humphries had ceased. I therefore decline to order a penalty against the respondent.

Remedies for unjustified dismissal

[38] Section 123 of the Act provides for the provision of remedies following a finding of unjustifiable dismissal. Reinstatement was not sought. Section 123(1)(b) of the Act provides for the reimbursement to the employee of a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance. Counsel for the respondent refers me to cases which establish that, where

an employee's dismissal for redundancy is genuinely justified, an applicant is not entitled to an award of lost wages. (For example, *Simpson Farms Ltd v Aberhart* [2006] 1 ERNZ 825 and *McGuire v Rubber Flooring (NZ) Ltd* 2/3/06 Travis J, AC9/06).

[39] I am satisfied that, although fundamentally flawed in terms of the procedure followed, the commercial reason behind the decision to dismiss Ms Humphries for redundancy was genuine. I am also satisfied that if a fair consultation had occurred, it would not have changed the respondent's view on the need to save Ms Humphries's salary, and it would not have resulted in Ms Humphries being redeployed to a vacancy within the respondent (as none existed at that time). Finally, I am satisfied that a fair consultation would not have taken longer than 5 weeks, in respect of which period Ms Humphries received an ex gratia payment upon the termination of her employment.

[40] Therefore, I decline to award any sum in respect of 123(1)(b) of the Act.

[41] The next question is to consider whether Ms Humphries is entitled to compensation for humiliation, loss of dignity, and injury to her feelings pursuant to s 123 (1) (c) of the Act. Evidence was heard from Ms Humphries' GP that Ms Humphries had presented to her with depression and anxiety several times in the period from February 2009 to August 2011, and that the GP had noted in most cases that these episodes had been triggered by work issues. In some cases, the GP's notes indicated that Ms Humphries had described herself as being very stressed by her work situation. Significant work related stress had been reported to the GP by Ms Humphries in May 2011, when Ms Humphries had been in the throes of uncertainty regarding the security of her job caused by the events described in this determination, and in July 2011, when Ms Humphries had been dismissed. On some occasions, the GP had prescribed stronger medication to assist Ms Humphries.

[42] In *Simpsons Farms Ltd v Aberhart* [2006] 1 ERNZ 825; the Court considered whether it was dealing with a dismissal grievance or one of disadvantage. It took the view that it was dealing with a disadvantage grievance given that the decision to dismiss was substantively justified when the defendant became superfluous to the plaintiff's business needs. The defendant's grievance related to the means by which the plaintiff went about making the decision rather than the decision itself.

[43] Section 103 of the Act provides that a personal grievance includes a claim that t*he employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer*.

[44] Turning to Ms Humphries' unjustifiable dismissal, there was a wilful failure to consult with Ms Humphries, despite the respondent having been given clear advice about the need to follow a fair consultation route. I am satisfied that this failure constitutes a disadvantage grievance, as the failure to consult resulted in her dismissal having come out of the blue after Mr Wilkinson had assured her that her job was safe. Although Ms Humphries had harboured some doubts about the security of her employment following her having stumbled across the original April 2011 board minutes, I am satisfied that the failure to consult caused Ms Humphries considerable distress and hurt, including causing a reasonably significant impact upon her health. In this regard, I believe that a reasonably high award under s 123 (1) (c) is justified, and I fix that award at $10,000.

[45] However, I am also very mindful of the considerable distress that had been caused to Ms Humphries prior to her dismissal, from May 2011, when she had begun to hear rumours about her dismissal. These rumours had been caused directly by a board member leaking information to drivers about the then board decision to dismiss Ms Humphries. This action by a board member, although criticised by Mr Branks during the Authority's investigation meeting as reprehensible, was still the action of her employer as far as Ms Humphries had been concerned.

[46] This action did not form part of the dismissal process because it had preceded the final decision of the board in July 2011 to disestablish Ms Humphries' role. Whilst Ms Humphries has withdrawn her claim for disadvantage in relation to the historic issues she had originally relied upon in her statement of problem, it is open to the Authority to find that a personal grievance is other than is alleged (s 122 of the Act). Section 160 (3) also provides that the Authority is not bound to treat a matter as being a matter of the type described by the parties, and may, in investigating the matter, concentrate on resolving the employment relationship problem, however described. I note that Mr Mackenzie raised a personal grievance for unjustified

disadvantage, relating to Ms Humphries' treatment in the workplace, in his letter to the respondent dated 19 July 2011. This personal grievance was raised within 90 days of the board meeting on 26 April 2011 following which the board member leaked the motion to dismiss Ms Humphries.

[47] In view of the above I find that the act of the board member in leaking the April 2011 board decision to disestablish Ms Humphries' role was an act of the respondent. I further find that it amounted to an unjustifiable disadvantage that no fair and reasonable employer could have done in all the circumstances at the time the action occurred (s 103A (2)).

[48] I am satisfied that Ms Humphries suffered significantly as a result of this unjustified disadvantage by her employer, including in terms of an impact upon her health, and that it is appropriate to award Ms Humphries a further sum pursuant to s 123 (1) (c) at a level which properly reflects the significance of the harm done. I assess that the harm done to Ms Humphries was at least as serious as that done by the respondent's wilful failure to consult, and so I fix this further sum at $10,000.

[49] Having assessed the remedies, Section 124 of the Act provides that, where the Authority determines that an employee has a personal grievance, the Authority must, in deciding both the nature and the extent of the remedies to be provided in respect of that personal grievance:

> *a. consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance; and*
> *b. if those actions so require, reduce the remedies that would otherwise have been awarded accordingly.*

[50] I am satisfied that Ms Humphries did not contribute to her personal grievances in any respect, and so I do not reduce the sums awarded under s 123 (1) (c).

Orders

[51] The respondent is to pay to Ms Humphries the following sums:

> a. $10,000 pursuant to s 123 (1) (c) of the Act in relation to the disadvantage she suffered in her employment due to the leaking of the board decision to disestablish her post in April 2011;

b. A further sum of $10,000 pursuant to 123 (1) (c) of the Act in relation to the disadvantage caused by the wilful failure to consult with her about the decision to disestablish her post in July 2011.

Costs

[52] Costs are reserved. Any claim for costs by the applicant should be made by lodging and serving a memorandum within 28 days of the date of this determination, and the respondent shall have a further 28 days to lodge and serve any reply.

David Appleton
member of the Employment Relations Authority