

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Adair Nithsdale Jeffries (Applicant)
AND Adis International Limited (Respondent)
REPRESENTATIVES Adair Jeffries In person
Naomi Cervin, for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 2 June 2005
DATE OF DETERMINATION 15 July 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Ms Jeffries submits she was constructively dismissed from her employment with the respondent. To remedy her alleged grievance she seeks lost remuneration including future earnings and compensation.

The respondent denies the applicant was constructively dismissed and submits the applicant resigned her employment of her own accord.

Background to the Claim

Adis International Ltd (Adis) is an international medical publishing house.

In July 1994 Ms Jeffries commenced employment with Addis as Assistant Supervisor/Catering. In March 1995 she transferred to position as Production Assistant in the Production Dept. The evidence discloses that the applicant was a hardworking, efficient employee. She was also very keen to develop within the company and to take on more complex, senior and higher paid roles. However, on 29 September 2000 the applicant resigned her employment.

At an exit interview held with the Group HR Director she expressed a number of concerns relating to her employment. On 6 December Ms Jeffries raised a personal grievance relating to her departure from the company. The company responded to the submission of grievance on 3 January 2001. Ms Jeffries took no formal action to have her grievance heard and determined by the Authority until 4 December 2003 when she filed a claim in the Authority alleging constructive dismissal. This was 2 days before the statutory deadline elapsed for the filing of a grievance (s. 114(5)). Ms Jeffries

submits she did not raise her grievance earlier because she had been advised by her doctor not to do so.

The Investigation

The investigation meeting was conducted over the course of one day.

Ms Jeffries was an unrepresented party. She was therefore allowed much greater leeway to present her concerns relating to her employment as she saw them unrestrained by the framework of the settled law relating to constructive dismissal. As a result Ms Jeffries has submitted evidence of perceived slights and alleged breaches of duty that she submits add up to what may (for convenience sake) be described as a conspiracy against her that goes back many years almost to the commencement of her employment in the Production Department of the company in March 1995. This was a conspiracy to hold her back from advancement within the company and it is evidenced by multiple incidents and statements that she now claims were breaches of duty towards her - breaches which left her with no option but to resign her employment.

The majority of the claims raised by Ms Jeffries fall into one of the following three categories:

- Conduct by the employer that Ms Jeffries now complains of but which happened after her dismissal e.g.¹ alleged amendments to the records of her 1998 and 2000 performance review documents; the complaint that Mr McGregor was complicit in the falsification of the time and motion records.
- Conduct/issues which apparently concerned Ms Jeffries at the time they occurred but which she did not take up at the time e.g. backdating of pay increases; invitations to the Adis 2000 opening ceremony and to the launch trip during the America's Cup.
- Issues which concerned Ms Jeffries that she raised at the time they occurred and which were resolved to her apparent satisfaction at the time e.g. the job banding issue; 1999 performance rating.

The respondent in this matter has taken all of the allegations against it seriously and has provided comprehensive evidence in its defence through briefed witnesses and supporting documentation.

Issues to be Decided

In considering Ms Jeffries claims I have looked to the relevant case law for guidance as to what Ms Jeffries must establish if she is to be successful in her claim.

Ms Jeffries bears the onus of showing (on the balance of probabilities) that the termination was, as a matter of law, a dismissal not a resignation. *NZ Amalgamated Engineering etc IUOW v Ritchies Transport Holding Ltd* [1991] 2 ERNZ 267.

For Ms Jeffries to establish that her resignation was in fact and law a dismissal she needs to show that there was breach of duty by the respondent of such magnitude that it entitled her to terminate the contract of employment.

¹ Examples given are not exhaustive of all the issues raised by Ms Jeffries under these heads

In Auckland Shop Employees IUOW v Woolworths (NZ) Ltd [1985] ACJ 963 the Court of Appeal held that constructive dismissal included, but was not limited to cases where:

1. An employer gives an employee a choice between resigning or being dismissed;
2. An employer has followed a course of conduct with the dominant purpose of coercing an employee to resign;
3. A breach of duty by the employer leads an employee to resign.

Lastly in deciding whether a breach of duty on the part of the employer caused Ms Jeffries to resign it is ***all the circumstances of the resignation*** that are to be examined not just the terms of the notice of resignation Auckland Electric Power Board v Auckland Local Authorities Officers Union [1994] 1 ERNZ 168.

In respect of the claims made by Ms Jeffries as evidencing breaches of duty by the respondent towards her, I note that incidents that occurred after Ms Jeffries resigned cannot possibly have influenced her decision to resign. These claims are dismissed and will not be considered in this determination.

With regard to certain events that apparently caused Ms Jeffries concern but which she did not raise at the time I note years have now elapsed since the alleged incidents and it seems trite to point out they are well outside the limitation period of 90 days for which to submit a grievance. The respondent was entitled to refuse to allow those matters to be raised outside of time.

It is also the case that because Ms Jeffries did not raise the concerns in question at the time she must be taken to have affirmed the contract despite the breaches of duty she now alleges. In Western Excavating Ltd v Sharp [1978] 1 All ER 713 at 717 per Lord Denning MR, Lawton and Everleigh LJJ concurring it was held that:

*“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. **Moreover, he must make up his mind soon after the conduct which he complains of; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.**”*

As a result, the claims submitted by Ms Jeffries which fall into the second category described above, are also dismissed i.e. concerns not taken up by her at the time they allegedly occurred.

Other matters which concerned Ms Jeffries were raised at the time they occurred. They were resolved to her apparent satisfaction at the time and cannot now be raised as valid grounds for an allegation of constructive dismissal. They too are dismissed.

What I am left with is to examine all the circumstances of Ms Jeffries resignation. In doing so I will examine the terms of the written resignation (26 September 2000), the concerns raised by her with Mr McLeod-Smith at the exit interview held with her (6 October 2000) and the terms of the personal grievance submitted by her to the respondent after her resignation (6 December 2000). Having considered the evidence and this documentation I find it is the following incidents/issues that must be examined in determining whether or not Ms Jeffries has been constructively dismissed (*Auckland Electric Power Board v Auckland Local Authorities Officers Union* cited above).

- Issues raised relating to the process and outcome of the 2000 performance review including the alleged hostility of Ms Waring.
- The failure by Adis to accommodate Ms Jeffries' request for a change to her working days/hours.
- The alleged falsification of the time and motion reports by Ms Waring.²
- Adis had failed over time to recognise her contribution and reward her performance and had held her back from work she sought experience in.
- The alleged failure by Adis to implement Ms Jeffries suggestions for improvements in the Production department.
- Unsatisfactory staff relationships within the Production team in general and in particular her supervisors' comments to other team members who retaliated causing her mental and physical stress.

Note: For the sake of certainty all matters raised by Ms Jeffries and not specifically dealt with by me in the remainder of this determination are dismissed. I note in respect of those claims that having considered all the evidence before me (where most if not all of these issues were addressed and responded to) they do not stand up to scrutiny as evidencing breaches of duty by the respondent towards Ms Jeffries.

Credibility

The parties are diametrically opposed in their evidence to the Authority. This calls for findings on credibility.

There can be no doubt that Ms Jeffries passionately believes all she has submitted to me in support of her view that there was a deliberate conspiracy by Adis management to sabotage and ultimately destroy her career with the company. It is a conspiracy story that grew by the minute over the period during which I have managed the file and worked on my determination. For instance evidence was produced to show Ms Jeffries was wrong in respect of her allegations that company managers had deliberately sabotaged the records held by it relating to her performance reviews for 1998/2000³. On being advised of this Ms Jeffries accepted the explanation but amended her grievance on this point to highlight the mistake as evidence of the company's negligence in respect of all matters pertaining to her concerns. This tendency to grow the allegations against the

² A similar allegation against Mr McGregor is dismissed. On Ms Jeffries own evidence she did not know that he approved of Ms Waring's amendments to the time and motion records until it was advised to her by Mr McLeod-Smith at the exit interview on 6 October. Mr McGregor's actions in approving the changes could not therefore have been in Ms Jeffries' mind and informing her decision to resign on 25/26 September.

³ Ms Jeffries records were not amended to her disadvantage there were simply mistakes made when they were photocopied at her request with the result that incomplete copies were sent to her.

respondent is also evidenced in the multiplicity of new allegations/evidence raised by Ms Jeffries in her closing submissions.

I note too that Ms Jeffries was adamant in her memory of incidents and statements made over the course of her employment. However, her memory is very selective and not infrequently was shown to be wrong e.g. the exchange with Ms Pascoe.

The respondent on the other hand has provided sound evidence and supporting documentation to refute the claims made by Ms Jeffries or has provided an altogether more probable explanation for the issues that have given concern to Ms Jeffries.

Where the evidence is in conflict it is the balanced and supported evidence of the respondent's witnesses that I prefer.

Issues raised relating to the process and outcome of the 2000 performance review including the alleged hostility of Ms Waring

Ms Jeffries alleges that Ms Waring falsified her 2000 performance review form by rewriting Ms Jeffries' record of her achievements for the year and deleting the comments in the section reserved for employee's comments.

Ms Jeffries also alleges that Ms Waring coerced her into signing the falsified document immediately without giving her time to review it prior to signing it. Ms Jeffries immediately went to HR about this coercion and was told she was within her rights to take time to review the document before signing it. It was when she reviewed the document that she discovered it had been falsified by Ms Waring. She amended the document to reflect her achievements and comments before signing it and returning it to Ms Waring.

Ms Jeffries also complains of Ms Waring's hostility demonstrated towards her at their performance review meeting on 20 September 2000. This allegation, it was submitted, was part and parcel of the overall decision taken by Ms Jeffries to resign her employment. In particular, Ms Jeffries alleges Ms Waring responded in a hostile manner to her taking up with her the fact she had overheard Ms Waring gossiping about her. She also submits that Ms Waring reacted in a hostile manner to her stated objective relating to her ambition (within a 1-3-5 year timeframe) to be the Assistant Supervisor within the Department. Ms Jeffries alleges Ms Waring told her she couldn't have Jan's job (Assistant Supervisor) or her own – that of Departmental Supervisor.

Ms Waring accepts the 2000 performance review process conducted with Ms Jeffries was fraught. She denies falsifying Ms Jeffries' record of her achievements/comments or that she asked Ms Jeffries to sign a document which recorded only her (Ms Waring's) assessments/comments. She notes, however, that the company's files contain a number of versions of the 2000 performance review for Ms Jeffries. This is because there were a number of versions of the document and all versions were submitted by her as part of the record of the 2000 performance process.

I find in respect of this matter that Ms Jeffries filled out a self assessment as the first step in the 2000 performance review process. Ms Waring filled out a separate copy of the same form recording *her* assessment of Ms Jeffries achievements. She did not complete the employee's comments section because it was not her role to do so. In all probability this was the copy of the form Ms Jeffries was asked to sign. Ms Jeffries considered her document had been falsified. However it was not Ms Jeffries' version of the document that she was asked to sign. Further there was no falsification of the document – just two documents prepared by each participant in the process for the purposes of the discussion to be held between them. Further, I find that there was no intention

on Ms Waring's part to hold back from management and the company records Ms Jeffries record of her own achievements and comments. That record was not held back but was forwarded by Ms Waring after the performance review along with other versions of the review to form a complete record of the 2000 performance review relating to Ms Jeffries. The complete record was presented to the Authority as evidence.

There was no falsification of Ms Jeffries 2000 performance review form nor was there any breach of duty by the company towards Ms Jeffries in relation to the preparation/completion or storage of the 2000 performance review document.

On the question of Ms Waring directing Ms Jeffries to sign the document with no opportunity to review it I accept that Ms Waring wanted the document signed promptly. There was no sinister motive/intended deception of Ms Jeffries in relation to this request – Ms Waring's reviews were overdue. I find no breach of duty towards Ms Jeffries in this respect and certainly Ms Jeffries went to the right quarter to check her rights in the matter and took time to rework the document before signing it and returning it. In essence any concern Ms Jeffries had in this regard was resolved.

On the matter of Ms Waring's allegedly hostile attitude to Ms Jeffries during the process I find it was a difficult process for both parties. Ms Waring considered that Ms Jeffries' performance warranted a FE (fully effective) rating. Ms Jeffries believed her performance warranted an EE (Exceeds Expectations) rating. Much of the contention between the parties related to Ms Waring's explanations for the proposed rating and Ms Jeffries' challenges to those explanations. It is apparent on the evidence that Ms Jeffries held the firm view that her work rate (doing more than one job at once and completing jobs with time to spare allowing additional jobs to be completed) and her many suggestions for improvements justified an EE rating. Ms Waring's view was that other criteria such as quality, communications, and team work were factors going to the rating awarded and that on some of these criteria there was room for improvement on Ms Jeffries' part.

It was Ms Waring's responsibility to have this discussion with Ms Jeffries. She was entitled to do so and the evidence shows she did that in a balanced and fair way. Ms Jeffries disagreed with the rating given and the record shows her disagreement and associated comments were noted. The Department manager, Mr McGregor, has recorded his acceptance of Ms Waring's assessment. It is all above board and there has been no breach of duty towards Ms Jeffries in respect of the outcome of the performance review and performance rating given to her in 2000. I find too, that when they could not agree on the performance rating, Ms Waring suggested involving Mr McLeod-Smith to mediate with a view to reaching agreement on the issue. It was Ms Jeffries who declined this suggestion. Ms Waring's conduct in this regard was conciliatory and evidenced a high degree of good faith behaviour in the conduct of the performance review.

I note too there was a process available to Ms Jeffries to challenge the rating. It was the same process that was successfully followed by Ms Jeffries in 1999. In 2000 Ms Jeffries decided to resign in preference to following the process known to her. That was her choice. There was no breach of duty by the company towards her in respect of the FE rating assigned in the 2000 performance review.

On the matter of Ms Waring's reaction to Ms Jeffries' ambition to be Assistant Supervisor it not disputed by Ms Waring that she pointed out the job was occupied and not available. While I accept Ms Jeffries' stated ambition was an innocent expression of her aspirations and appropriate to include in her performance review I also find that overall Ms Jeffries had a blinkered view of her future guided only by her own ambition regardless of the effects of her actions/attitudes on her work colleagues. This was a source tension in the workplace and the exchange needs to be seen in that light. In any event pointing out that the position was occupied and likely to remain so did not

amount to a breach of duty towards Ms Jeffries that singly or in combination with other issues relating to the 2000 performance entitled Ms Jeffries to resign her employment and succeed in a claim of constructive dismissal.

Lastly on the matter of Ms Waring's attitude Ms Jeffries alleges that Ms Waring responded with hostility when Ms Jeffries raised with her concerns that Ms Waring had engaged in gossip about her. There is insufficient evidence before me to find Ms Waring responded in a hostile manner and such a finding would be inconsistent with what the evidence and the record shows to be a scrupulously fair review. It is possible Ms Waring was surprised at the allegation being raised in a performance review session and she may have responded defensively. However, that would not amount to a breach of duty that would give rise to a successful grievance claim.

In conclusion on the matter of the 2000 review I also find there was no conspiracy to rely on limitations in the allocated budget for pay increases to deny Ms Jeffries' any earned increase following the 2000 performance review.

Request for a change of days worked⁴

Ms Jeffries worked 100 hours per month in an arrangement where she worked 21 hours in three weeks of the month and 37 hours in the fourth week. Her days of work were Tuesday, Wednesday and Friday. It must be noted that over the period of Ms Jeffries' employment in the Production Department there had been a number of changes made to the hours/days she worked at her request to accommodate her personal needs.

In the first half of 2000 Ms Jeffries' family acquired property in the north (I believe that property was in Managawhai). Ms Jeffries sought to consolidate the days she worked to Tuesday, Wednesday, Thursday so to leave her free to travel to Managawhai and to have unbroken time there from Friday through Monday.

I find the request was given serious consideration by Ms Waring and discussions were held in relation to the request between Ms Waring and Mr McGregor. However in a memo dated 1 May 2000 it was communicated to Ms Jeffries that the company was unable to accommodate her request for operational reasons.

Ms Jeffries later identified a way around the production issues that presented a barrier to her request being implemented. She suggested that if another worker (Ms Pascoe) agreed to swap her day off then that would allow Ms Jeffries to consolidate her working days to Wednesday, Thursday and Friday. Ms Waring asked Ms Jeffries to put the request in writing (Ms Jeffries did not do so) and told Ms Jeffries she would not ask Ms Pascoe to make the change. (Ms Pascoe had previously changed her days off to accommodate a change to Ms Jeffries' work days). On Friday 22 September, Ms Jeffries requested Ms Pascoe to change her day off to accommodate Ms Jeffries' wish to consolidate her hours of work over the days Wednesday/Friday. Ms Pascoe declined the request because it was inconvenient to her.

I find that Ms Jeffries became angry and abusive towards Ms Pascoe because she had declined the request to swap her day off to accommodate Ms Jeffries.

On the following Monday morning Ms Jeffries verbally communicated her intention to resign her employment and provided written notice on Tuesday 26 September. Ms Jeffries made no mention in

⁴ Ms Jeffries does not complain the employer's refusal to allow the requested change to work days was a breach of duty which influenced her decision to resign. It is dealt with here because the evidence shows Ms Jeffries' wish to change her days of work was a significant issue affecting the employment relationship at the time of her termination.

her evidence of the request to Ms Pascoe and her own response to Ms Pascoe's refusal to swap days off. When questioned about it she submitted Ms Pascoe's refusal to accommodate the proposal (which meant all hope of Ms Jeffries consolidating her days off was lost) played a small but insignificant part in her decision to resign. She said she had not mentioned it out of regard for Ms Pascoe who had confirmed to her at the time that it was a management direction that the swap was not to be permitted. She said her anger that day was directed not at Ms Pascoe, but at the unreasonable conduct of departmental managers (Ms Waring in particular). Ms Pascoe had no recollection of advising Ms Jeffries that the real reason behind the failure to accommodate Ms Jeffries lay with a departmental direction (although she believed operational reasons were behind the company's refusal to allow Ms Jeffries request). She also gave evidence, which I accept, that Ms Jeffries' abuse was indeed directed at her and not at the conduct of departmental managers who were unreasonably refusing Ms Jeffries' request.

As noted, Ms Jeffries makes no claim that she resigned because of the company's refusal to accommodate her request for a change to her hours. I find she was silent on this matter because she accepts the company's had the right to refuse the requested change (confirmed by her at the investigation meeting) and it is inconvenient and damaging to her credibility to have her conduct in this matter highlighted. However, given its juxtaposition to the resignation and the fact it is one of the first issues recorded as raised by Ms Jeffries in the exit interview conducted with her on 6 October, I find the inability to secure a change to her working days was at the forefront of Ms Jeffries' mind in her decision to resign her employment.

I reject Ms Jeffries' evidence that Ms Waring influenced Ms Pascoe's refusal to swap her day off. I find that on the contrary Ms Waring and Mr McGregor seriously considered Ms Jeffries' request for a change to her days of work but could not accommodate that request for genuine reasons related to the respondent's production needs. They were entitled to refuse the request. For the sake of certainty I find there was no breach of duty by the company toward Ms Jeffries in this regard and it did not provide Ms Jeffries with a valid basis to resign and succeed in a constructive dismissal action – a fact Ms Jeffries would appear to accept.

The alleged falsification of time and motion reports by Ms Waring

The Department maintained a record of time spent by employees on tasks within the Department. The record had no relationship to the time records kept by staff and submitted for remuneration purposes. Nor was it relevant to the performance assessment process. The record was designed to inform decisions on the allocation of resources. Ms Jeffries decided to record time worked by her to show she was doing two jobs at once so that one hour spent supervising the running of the Docutech machine was recorded as say 1.5 hours worked because she had spent 30 minutes engaged at another task during that one hour. In this way she believed she was able to show that she carried out up to three additional hours of work per week, which obviated the need for the Department to employ staff outside core hours to complete the work in question. Ms Jeffries considered the availability of this information to be highly relevant to establishing her claim for a high performance rating to improve her prospects for advancement within the company.

It is not disputed that Ms Waring amended the forms to represent the actual hours required to complete the various processes in question, so that if a Docutech job took an hour it was recorded as such. The hours recorded were also cross matched against the working hours of the employees involved to give an accurate record of the resource allocated to each task.

I find that Ms Waring did not make these amendments surreptitiously and that other workers records were also amended. Ms Waring was entitled to amend the record to represent the resource actually expended on each task consistent with the true purpose of the record. There was no

fraudulent alteration of the record for the purpose of deceiving Ms Jeffries or frustrating her prospects of advancement. There was no breach of duty towards Ms Jeffries in this respect.

Adis had failed over time to recognise her contribution, to reward her performance and had held her back from work she sought experience in

The weight of evidence before me refutes Ms Jeffries' claim under this head. In the 5 ½ years Ms Jeffries was with the Production Department she received 7 pay increases. Her job was reassigned to a higher remuneration band, she received a days leave for a particular job well done and she received an ex gratia bonus in 2000.

Ms Jeffries complained specifically about being held back from operating the Docutech machine for two years after she had completed training. The company was I find entitled to determine who would be assigned to operate this machine and when. Their explanation (which I accept) was that available and experienced personnel were utilised because of the volumes of production. There was no conspiracy to deny Ms Jeffries experience in operating the machine.

Ms Jeffries also indicated she wanted experience in managing bookwork. The evidence shows that the kind of work available was already within the job description of the Supervisor and Assistant Supervisor and on occasion involved issues of confidentiality.

It is also clear that Ms Jeffries had aspirations for advancement within the company and she was frustrated that she made no progress on this front. She applied for a job in the Stationery Department but that position was absorbed within another role and not filled.⁵ Ms Jeffries had aspirations to be Assistant Supervisor. I find she aspired to the position currently held by Jan Clements. It was not available to her.

Other positions within the company required specialised skills and qualifications in the area of healthcare. There were limited opportunities for advancement for persons with Ms Jeffries skill set. This was explained to Ms Jeffries. Regardless of the reasonable explanations put to Ms Jeffries she remained frustrated at her lack of advancement.

There was no breach of duty towards Ms Jeffries by the respondent that had the effect of holding her back from advancement within the company.

The alleged failure by Adis to implement Ms Jeffries suggestions for improvements in the Production department

This allegation is without foundation. The evidence discloses that Ms Jeffries was alert to and diligent in suggesting improvements within the Production Department both in respect to time, materials used and quality. The evidence shows that many of the suggestions made by Ms Jeffries were adopted by the company. Those that were not adopted were rejected for sound reasons.

A specific concern (raised under this head by Ms Jeffries at the exit interview with Mr McLeod-Smith) was Ms Jeffries stated preference to do other tasks whilst working on the Docutech machine. Ms Jeffries was unhappy that she been told to stay by the machine to deal with breakdowns. I find on this point it was entirely within Ms Waring's supervisory role to make this call and no breach of duty towards Ms Jeffries flowed from her direction in this regard.

⁵ Ms Jeffries complained about not being considered for this role but stated at the investigation meeting that it did not influence her decision to resign.

There was no breach of duty towards Ms Jeffries in respect to the company's attitude towards or the implementation of suggestions made by her for improvements.

Unsatisfactory relationships with staff

Ms Jeffries submits that she was subjected to such treatment/gossip/comments by Ms Waring and other team members that she suffered physical and mental stress which drove her to breaking point.

Taken overall I find that Ms Waring acted fairly and reasonably towards Ms Jeffries in sometimes trying circumstances. I accept there were tensions in the workplace and that this escalated after the company refused to allow Ms Jeffries to change her hours of work. It must be said, however, that Ms Jeffries contributed to the tension in the workplace through her blinkered views on productivity and criticism of what she saw as waste on the part of her work colleagues. When Ms Waring encouraged Ms Jeffries to strive for a better balance between her undeniable energy and commitment and the important criteria of quality and team work this advice was misread by Ms Jeffries as evidence that Ms Waring was covering up deficiencies in the performance of others and failing to recognise Ms Jeffries contribution. Her attack on Rae Pascoe was entirely unreasonable. Ms Jeffries' did not come to the Authority with clean hands on the question of poor staff relationships. I accept it is possible that Ms Jeffries was suffering from stress when she resigned her employment. However, at no time did she raise it with her employer and having considered all the evidence there is no breach of duty by the respondent or its managers towards Ms Jeffries that was causative of any stress suffered by her.

Lastly on this issue in respect of the claim that Ms Waring responded with alacrity on advice of Ms Jeffries' resignation saying she would finish her reference I accept this was simply a reference to the fact that when Ms Jeffries communicated that her family was planning a home in Managawhai, she advised that she would be resigning her employment. She later sought a change to her days worked and when that did not work out for her decided to stay with Adis. Ms Waring was referring to the fact she had previously turned her mind to preparing a reference for Ms Jeffries. This statement occurred after Ms Jeffries' resigned and did not influence her decision to resign. Ms Jeffries thought it insensitive and has woven it into the fabric of her overall grievance but I do not find it to be a breach of the respondent's duty towards her.

Conclusion

At the time Ms Jeffries resigned she was unhappy with her performance review and her inability to advance within the company. Ms Pascoe's refusal to swap her day off was in all probability the last straw which propelled her into resigning her employment. There was no breach of duty towards Ms Jeffries in respect of any of these matters. In fact, it needs to be said that the evidence discloses that, contrary to Ms Jeffries' allegations, the respondent has treated Ms Jeffries and the concerns she has raised both during her employment and in the course of this investigation process with patience, respect and good faith albeit their position (in respect of Ms Jeffries' claim in the Authority) is that there is no case to answer.

Determination

Based on my findings above Ms Jeffries' claim that she was constructively dismissed is declined and she is not entitled to the remedies she seeks.

Costs

Costs are reserved. The parties are directed to attempt to resolve the question of costs between them. If they cannot do so they are to file and serve submissions on the subject and the matter will be determined

Janet Scott
Member of Employment Relations Authority