

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

[2012] NZERA Christchurch 284
5372653

BETWEEN JACINTA LOWE
 Applicant

AND GEORGE WESTON FOODS (NZ)
 LIMITED
 Respondent

Member of Authority: Christine Hickey

Representatives: Applicant in person, accompanied by Mark Derriman
 Jane Latimer, Counsel for Respondent

Investigation Meeting: 21 September 2012 at Christchurch

Submissions received: 17 May 2012 from the Applicant in writing and orally from
 Mr Derriman on 21 September 2012
 21 September from Respondent

Determination: 21 December 2012

DETERMINATION OF THE AUTHORITY

- A. Jacinta Lowe was unjustifiably dismissed.**
- B. George Weston Food (NZ) Limited is to pay Jacinta Lowe 8 weeks of lost remuneration. The amount is to be agreed between the parties.**
- C. George Weston Food (NZ) Limited is to pay Jacinta Lowe \$6,000.00 compensation for humiliation, loss of dignity and injury to her feelings.**

Employment relationship problem

[1] Jacinta Lowe was the South Island Finance Manager of Weston Milling, a division of George Weston Foods (NZ) Limited. She was managed by the National Finance Manager who was based in Auckland.

[2] During 2008, 2009 and 2010 Ms Lowe's performance reviews showed that she either "met" or "exceeded expectations" and was "on target" or "above target". Ms Lowe received pay increases and bonuses in those three years.

[3] In June 2011 Billy Aucamp was appointed as the National Finance Manager. The previous national finance manager completed the provisional half-yearly rating assessment for Ms Lowe before he left. He rated her work performance as "meeting expectations" and being "on target".

[4] Mr Aucamp met Ms Lowe at the end of August 2011 to conduct her end of year performance review. He told her that he considered that she was "developing performance" in all areas. Mr Aucamp's review meant that she did not meet expectations and was not "on target". Ms Lowe disagreed with Mr Aucamp.

[5] Mr Aucamp did not complete the performance review process. Instead, he directly passed his rating of Ms Lowe's performance to another manager who conducted the annual salary reviews and made decisions about annual bonuses.

[6] In early November 2011 Mr Aucamp came to Christchurch and met with Ms Lowe. He handed her a letter that confirmed her performance review rating as "developing performance" and informed her she would not receive a pay rise. The letter also said that Ms Lowe would receive a bonus of \$1,204.88.

[7] The main purpose of the meeting was to inform Ms Lowe about a proposal to restructure her role and the North Island finance manager's role and to locate both new finance roles in Auckland.

[8] Ms Lowe was given five days to provide any feedback on the restructuring proposal. Three of those days were not working days. Ms Lowe did not provide any feedback. However, on the fourth day Ms Lowe made a written complaint about how Mr Aucamp had handled her performance review calling it "bullying and unfair treatment".

[9] Three days later Mr Aucamp sent Ms Lowe a letter telling her that the South Island finance manager's role had been retained but that it would be relocated to Auckland. As a result her position had been:

... disestablished. We will work with you to identify any suitable redeployment opportunities, including potential redeployment to Auckland. In the event that we are unable to offer you a suitable alternative position

you are hereby given notice that your employment will cease on 16 December 2011.

[10] The letter set out how much redundancy pay Ms Lowe would receive, and offered her a Certificate of Service and outplacement assistance.

[11] Three days after that the national employee relations manager rang Ms Lowe and told her that Weston Milling agreed that Mr Aucamp had not followed the proper performance review procedure but did not consider that he had bullied her. It agreed that she had been unfairly treated but did not consider that she had lost “any benefit” as a result of that.

[12] Ms Lowe requested that she be allowed to finish work before 16 December 2011 because of stress brought on by the redundancy. She said that she did not want to see Mr Aucamp again. Weston Milling agreed that she could do a “hand-over” to someone else and could leave earlier and still be paid to 16 December 2011. Ms Lowe finished work on 25 November 2011.

[13] On 29 November 2011 the position of South Island Finance Manager was advertised internally, which was standard company procedure. An internal candidate was appointed.

[14] Ms Lowe says she was unjustifiably dismissed. She says the redundancy was not genuine and that the process was unfair. During the investigation meeting it became clear that Ms Lowe remains concerned about Mr Aucamp not following the correct procedure for her performance review.

[15] Ms Lowe seeks remedies of three months of lost wages, compensation for humiliation, loss of dignity and injury to feelings and the cost of her legal fees.

[16] Weston Milling says it commenced a consultation process in respect of a possible redundancy but Ms Lowe terminated her employment before the process was completed. It says that Ms Lowe failed to engage with it in the consultation process and left her employment before she could be considered for the role which had been relocated to Auckland.

[17] In any event, Weston Milling considers Ms Lowe could not have worked with Mr Aucamp, so could not have been appointed to the relocated South Island finance manager role. It bases that view on Ms Lowe’s complaint that Mr Aucamp was bullying her and had treated her unfairly and her reaction to working with Mr Aucamp

after the redundancy was confirmed. It considers Ms Lowe's dismissal on the basis of redundancy was justified.

[18] As permitted under s174 of the Employment Relations Act 2000 this determination does not set out all evidence and submissions received but states the Authority's findings of facts and law and its conclusions on matters requiring a determination. Those findings were made on the civil standard of the balance of probabilities, assessing the evidence to determine what was more likely than not to have happened.

Issues

[19] The issues the Authority needs to decide are:

- (a) Whether Ms Lowe's dismissal was justified on the grounds of a genuine redundancy carried out fairly and in good faith;
- (b) What, if any, remedies should be awarded to Ms Lowe.

Whether Ms Lowe's dismissal was justified on the grounds of a genuine redundancy?

Was Ms Lowe's redundancy genuine or was it a sham to get rid of Ms Lowe?

[20] The employer must prove that there were genuine commercial grounds for redundancy. In addition:

...So long as a employer acts genuinely and not out of ulterior motive, a business decision to make positions or employees redundant is for the employer to make and not for the Authority or the Court, even under s 103A.¹

[21] Ms Lowe believes that Weston Milling's decision to move her role to Auckland was a personal attack on her and a ploy to remove her from the company because Mr Aucamp did not like her. She says the letter stating that her performance was classified as "developing" added to her view that the company was trying to get rid of her.

[22] Ms Lowe told me that Mr Aucamp's announcement, during the meeting on 10 November 2011, that her position may be redundant was *a shock* and *I wasn't*

¹ *Simpsons Farms Ltd v Aberhart* [2006] ERNA 825, at paragraph 67.

thinking straight. She considered she should have been offered the role to be based in Auckland at that meeting.

[23] The letter of 18 November 2011 offered *to identify any suitable re-deployment opportunities, including potential re-deployment to Auckland*. However, Ms Lowe says she did not take that offer seriously. She thought:

It was a done deal. They told me to seek career advice to get help to do my CV and apply for other jobs.

[24] Ms Lowe says that if Weston Milling had made it clear to her that she would be the first person considered for the relocated role she would have known that the company valued her despite her *developing performance* assessment. She would not have felt that the purpose of the restructure was to get rid of her.

[25] She also says that if she had been offered the role she would have taken it and moved to Auckland. She said that she was “professional” and that if Weston Milling wanted her she could have worked with Mr Aucamp.

[26] However, she did not express interest in the role in Auckland because she did not want to beg for the job that she considered was hers anyway. She felt it would be humiliating to say she wanted the role in Auckland when the company had made it clear that it wanted to get rid of her.

[27] Mr Aucamp and Lindsay McGregor, the then General Manager of Weston Milling gave evidence that they were instructed by Mr McGregor’s boss, the Managing Director of Weston Milling in Australia, Peter McKinney, to:

... centralise the New Zealand finance function into Auckland as they had recently centralised finance in Australia.

[28] Mr McGregor says that when Mr McKinney initially proposed that the New Zealand finance function be centralised he did not:

... originally think that this was right for our business in New Zealand and told Mr McKinney and others that. However I was not the decision maker. Decisions were made from Head Office in Australia and the proposal to restructure New Zealand, went ahead.

[29] Mr McGregor says discussions about centralising the finance function started in July 2011. A Shared Services Team based in Auckland had already been formed to

look after the accounts receivable, accounts payable, tax and statutory reporting functions for both the baking and the milling divisions.

[30] Mr Aucamp says that when the Shared Services Team was established there had been redundancies in Christchurch and in Wellington. He also says the Shared Services Team establishment was a considerable change for the business and for the staff. In particular, Ms Lowe:

...had previously had an assistant accountant and other staff within her team reporting to her. The changes that had been made through to the end of June had already taken away some of these roles. Prior to me joining Weston Milling there had already been significant change.

[31] Mr Aucamp also says he was not part of the original discussion about restructuring the finance function in New Zealand that took place in Australia. Mr Aucamp was advised of the possibility of restructuring the finance function only after his August performance review meeting with Ms Lowe.

[32] Mr Aucamp says that on 10 November 2011 he and Ms Pepper clearly explained to Ms Lowe that the reorganisation was just a proposal at that stage. At the meeting Ms Lowe asked how much her redundancy pay would be and Ms Pepper told her those calculations had not been done.

[33] Mr Aucamp and Mr McGregor both gave evidence that establishes that Ms Lowe was a valued employee. Mr McGregor considers that “Jacinta had been a good performer”. He believes that her performance had come “‘off the boil’ a bit but she was still performing”.

[34] Mr McGregor attributes Ms Lowe’s fall in performance to issues that Mr Derriman, her husband, had in his role at the time managing the Weston Milling’s animal feed business. Mr Derriman gave evidence that he *left the business as a direct result of this disgusting episode, which immediately made my position untenable*. Mr Derriman clarified that by *this disgusting episode* he meant how he perceives Weston Milling to have treated Ms Lowe.

[35] Mr McGregor’s evidence was that Mr Derriman’s *disillusionment with the company* existed prior to any consideration of restructuring the finance roles. However, I do not consider that Mr Derriman’s employment history with Weston Milling is relevant to resolving Ms Lowe’s claim.

[36] Mr Aucamp says before the consultation about possible restructuring began he and Mr McGregor had discussed the proposal and they had “a key understanding that Jasmyn [Sun, then the North Island Finance Manager] and Jacinta could both competently fill [the proposed new] roles”.

[37] Mr Aucamp says that he had seen “considerable improvement in [Ms Lowe’s] performance each month – constant steady improvement”.

[38] I asked Mr McGregor whether consideration had been given to offering Ms Lowe the relocated role. He said:

...at no stage did I have an indication she was interested. Job was available. If Jacinta applied for it I would have said almost certainly offer it to her. Both roles were open for people to apply for – so if she had applied we would have almost certainly considered her very favourably as she was in the role and doing a pretty good job.

[39] Mr McGregor says that during the consultation phase neither Ms Lowe nor Jasmyn Sun were offered one of the new roles, although both roles were available to them. Ms Sun provided feedback about the proposal although Ms Lowe did not.

[40] Mr Aucamp and Mr McGregor’s evidence establishes that the impetus for the centralisation of the finance function did not come from Mr Aucamp and did not even come from within New Zealand. I accept that Mr McGregor initially resisted the Australian driven idea of centralising the finance function. However, it was imposed on the Weston Milling New Zealand operation by Mr McGregor’s manager in Australia, Mr McKinney.

[41] Ms Lowe contends that the decision to make her redundant was pre-determined. She relies on Mr Aucamp’s admission on 16 November that at some point after his 29 August 2011 meeting with her he was advised that:

It would become a tricky and complex situation if Jacinta was being performance managed whilst discussions about disestablishment were happening ... On this advice, I stopped the performance management process so as not to compromise the situation.

[42] However, I do not accept that is an admission that Ms Lowe was definitely going to be made redundant. Rather it is evidence that Mr Aucamp knew that a proposal to centralise the finance management functions in Auckland was being discussed. It was obvious that would affect Ms Lowe’s Christchurch based role but

does not go so far as to show that Weston Milling or Mr Aucamp, on 16 November 2011, had pre-determined that no matter what Ms Lowe would be made redundant.

[43] Ms Lowe still believes that the way her performance review was handled by Mr Aucamp meant that the decision to make her redundant was a personal one and based on Mr Aucamp thinking that she was not performing well enough. The unfortunate coincidence of the lack of information to Ms Lowe about her performance review, the letter reporting that to her and the decision that she would not receive a pay rise on the same day and at the same meeting as the redundancy proposal understandably meant that Ms Lowe was shocked and upset and took the redundancy proposal more personally than it was meant.

[44] However, I accept Mr Aucamp and Mr McGregor's evidence that they considered that Ms Lowe could have competently undertaken either of the proposed Auckland based roles.

[45] Centralising and creating the Shared Services Team meant that the South Island Finance Manager's role had already changed to a degree. For example, Ms Lowe no longer had so many staff reporting to her. The decision to relocate the South Island finance manager's role to Auckland was not a sham or a covert means of ensuring Ms Lowe exited her role at Weston Milling. I regard the decision to relocate the South Island finance manager's role to Auckland as a genuine business decision that Weston Milling was entitled to make.

[46] I also accept that the purpose of the meeting on 11 November 2011 was to inform Ms Lowe of proposed changes which may result in redundancy but that no final decision had been made. Ms Lowe was advised of the proposed changes so that she could consider these and provide feedback.

[47] However, my conclusions that the redundancy was not a sham and was entered into genuinely for business reasons are not sufficient to conclude that Ms Lowe's dismissal was justified on the grounds of redundancy. I must also consider the fairness of the process used.

Was the decision to make Ms Lowe redundant procedurally fair and undertaken in good faith?

[48] Ms Lowe says that there was not enough time for her to be able to give feedback on the proposal to restructure the two finance roles. She was advised of the proposed redundancy on Thursday, 10 November 2011. The next day was a public holiday in Canterbury. Ms Lowe became unwell and was not at work on the following Monday and Tuesday. The deadline for feedback was the end of the working day on Tuesday, 15 December 2011.

[49] The application of s.103A of the Act to personal grievance claims where redundancy is at issue was described in *Simpsons Farm's Limited v Aberhart*²:

[65] ...The statutory obligations of good faith dealing and, in particular, those under s4(1A)(c) inform the decision under s103A about how the employer acted. A fair and reasonable employer must, if challenged, be able to establish that he or she or it has complied with the statutory obligations of good faith dealing in s4 including as to consultation because and fair and reasonable employer will comply with the law.

[50] Section 103A(3) sets out procedural issues that the Authority and the Court must consider when applying the test of justification of dismissal. The wording of the procedural considerations does not make it clear that they must be taken into account when considering whether a dismissal is justified on the grounds of redundancy. However, they offer a guide to what constitutes a fair process. The Employment Court has concluded that *the Authority and the Court should try to give a sensible interpretation to subs (3)*³.

[51] In addition, section 4(1A)(c) of the Act requires an employer, who is proposing to make a decision that will, or is likely to, have an adverse effect on an employee's continuation of employment:

- to provide the employee with access to information relevant to the continuation of employment, about the decision; and
- an opportunity for the employee to comment on the information before a decision is made.

² [2006] ERNZ 825

³ *Angus and McKean v Ports of Auckland Limited* [2011] NZEmpC 160, at paragraph 52. Although this case was not a redundancy case.

[52] Friday, 11 November was not a public holiday for Ms Lowe's North Island counterpart, Ms Sun, or for Mr Aucamp or Mr McGregor.

[53] Mr Aucamp says he originally intended to travel to Christchurch on 26 October 2011 to discuss the proposed restructuring with Ms Lowe. He sent Ms Lowe an agenda which included a number of items, but did not include the proposed restructure. However Mr Aucamp became ill and did not go to Christchurch that week. He arranged instead to go there on 10 November 2011.

[54] The original time-frame for consultation was to communicate the proposal on 26 October 2011 and allow until the close of business on 15 November 2011 for feedback. Mr Aucamp did not adjust the close date for feedback on the proposal which remained 15 November 2011.

[55] On Monday, 14 November 2011 Ms Lowe was off work ill. That is also the day she made her complaint about Mr Aucamp. Consultation was due to finish on Tuesday, 15 November 2011. Mr Aucamp's evidence was that he attempted to get hold of Ms Lowe by phone and became aware that she was away from work ill. However, I am not satisfied that he left any messages for her to call him or called her at home or on her mobile phone.

[56] The redundancy proposal affected only two employees. Ms Lowe was affected to a greater extent than Ms Sun because if she was appointed to one of the new roles she would need to move to Auckland.

[57] Mr Aucamp says it was made clear to Ms Lowe at the 10 November 2011 meeting that if she required more time to give feedback on the proposed restructuring that *she only needed to ask for this*. He said that Ms Lowe was pretty upset after hearing of the proposal. He said that she was offered Employee Assistance Programme (EAP) help. He understood that Ms Lowe spent some time alone with Ms Pepper after he left the meeting.

[58] Mr Aucamp says that once he became aware of the complaint against him he was advised not to contact Ms Lowe. That may have been a prudent decision in light of her complaint. However, that statement contrasts with what he told Ms McFadden on 16 November 2011 when he said *we are meeting with her [Ms Lowe] again on Friday [18 November 2011] to receive her feedback*.

[59] Whether or not Weston Milling decided that Mr Aucamp should no longer communicate directly with Ms Lowe, as her employer it still had a duty to act in good faith towards her. I consider that under any circumstances giving affected staff such a short timeframe to give feedback is likely to be close to the line on adequacy of time and therefore on fairness. It is unfortunate that in postponing the intended date of notifying of the proposed redundancy from 26 October 2011 Weston Milling did not extend its timeframe for consultation past 15 November 2011. That is especially so when three of the five days are not working days.

[60] Given that by 14 November 2011 Weston Milling knew that Ms Lowe had made a complaint against Mr Aucamp it should have been clear to it that she was unlikely to be able to communicate with Mr Aucamp any further about the proposed redundancy.

[61] Also by 14 November 2011 Weston Milling knew that Ms Lowe was ill so should have known that it was difficult, if not impossible, for her to formulate a meaningful response within the timeframe Weston Milling had proposed.

[62] I consider that Weston Milling should have ensured that someone other than Mr Aucamp contacted Ms Lowe at home and offered her an extension to the time for feedback before making its decision on the finance roles.

[63] It is impossible to know whether once she had recovered from her illness Ms Lowe would have been able to give any feedback which meant that the final proposal would be any different. However, she was not given a reasonable chance to give meaningful feedback to the proposal affecting her role.

Should Weston Milling have given Ms Lowe prior warning that it was going to make a redundancy proposal on 10 November?

[64] Ms Lowe considers that she should have been given some warning that there was going to be restructuring of the finance roles before the meeting on 10 November 2011.

[65] Mr Aucamp says that he knows how much of a shock an announcement about a proposed redundancy could be and decided that the best way to deliver the news was in person.

[66] I understand that the news of the proposed restructuring came as a shock to Ms Lowe. However, I consider that Mr Aucamp was correct to deliver the news in person. I consider that it was just a proposal at that point and that Weston Milling was genuinely seeking feedback. That is evidenced by the fact that the proposal did change after feedback was considered. I also consider that Ms Pepper's involvement on 10 November 2011 was a positive one and intended to be helpful to Ms Lowe.

[67] I do not consider that Weston Milling should have made some other kind of announcement about proposed restructuring before the meeting on 10 November 2011. I do not consider that Mr Aucamp delivering the news in person was in any way a breach of good faith or fair process.

Did Weston Milling already have someone else in mind to replace Ms Lowe?

[68] Ms Lowe believes that Mr Aucamp already had a candidate in mind to replace her when the restructuring was proposed.

[69] Mr Aucamp says that was not the case but that when the role was internally advertised the only candidate was one that he had worked with in Australia. Mr Aucamp says he considered not recommending him for appointment because he knew how it could look to Ms Lowe and Mr Derriman. However, instead he:

stepped away from the interview process and let Lindsay McGregor and the recruiter do the interview so Lindsay McGregor was the key decision maker.

[70] I accept Mr Aucamp's evidence and do not consider that Weston Milling had a pre-determined replacement for Ms Lowe in mind before she was made redundant.

Should Weston Milling have offered Ms Lowe the role in Auckland rather than making her redundant?

[71] Weston Milling does not argue that the role of South Island Finance Manager had changed to any great extent merely that the location of the role had changed because there were expected efficiencies and benefits in having all the finance team together in one location. The impact of the establishment of the Shared Services Team had already occurred and Ms Lowe had been carrying out her role in the light of those changes. Ms Lowe, Mr Aucamp and Mr McGregor all considered that she would have been capable of performing the role although based in Auckland.

[72] However, Weston Milling argues that once Ms Lowe made her complaint about Mr Aucamp it could not offer her the job because she had made it clear that she considered Mr Aucamp a bully and therefore Weston Milling assumed that she would not wish to work with him again.

[73] Although it is Weston Milling's position now that Ms Lowe would not wish to work with Mr Aucamp again I do not accept that was its position on 18 November 2011. That is because the finalised redundancy proposal letter to Ms Lowe included:

we will work with you to identify any suitable redeployment opportunities, including potential redeployment to Auckland.

[74] That letter was written after Ms Lowe had made her complaint about Mr Aucamp. In any event, Ms Lowe was entitled to make a complaint about Mr Aucamp's actions in failing to adequately complete and report on her performance review. The fact that she did so was not a legitimate reason for her employer not to offer to redeploy her in Auckland.

[75] Weston Milling did not offer Ms Lowe the re-located role or *any other suitable re-deployment opportunities*, nor did Weston Milling supply her with any information about the process it intended to adopt in filling the position. For example, Ms Lowe was not told Weston Milling intended to advertise internally on 29 November 2011, during her notice period, and she was not provided with any new position description.

[76] Weston Milling argues that if Ms Lowe was interested in relocating to Auckland for the role she would have told them so.

[77] It also says that after Ms Lowe was informed of her redundancy she made it clear she did not want to have any personal contact with Mr Aucamp and felt *unsafe* around him.

[78] An employee is bound as much an employer by the duty of good faith set out in section 4(1A)(b) to be responsive and communicative. It is not disputed that Ms Lowe did not positively indicate that she wished to pursue the role in Auckland. However, the law is clear that in cases of redundancy as part of the process of deciding whether to make an employee redundant employers need to consider whether

it could redeploy an employee to an alternative position if one exists and the employee is able to perform the role⁴.

[79] Mr Aucamp and Mr McGregor's evidence about Ms Lowe's ability to undertake the relocated role and their belief in her competence is clear and undisputed.

[80] The question of whether or not Ms Lowe would have accepted an offer to take up the re-located role was not one for Weston Milling to make pre-emptively or at all; it was a decision for Ms Lowe to make. It is impossible to know what she might have decided at the time. However, she was not given any opportunity to decide whether she would apply for or take up the relocated role or not.

[81] I consider that the failure of Weston Milling to make a positive offer to Ms Lowe to redeploy her to the role in Auckland, although Mr Aucamp and Mr McGregor considered that she was capable of performing the role, was significant. The failure to offer Ms Lowe the role and the failure to invite her to apply through the internal application process, or to give her any information at all about the process of applying for the relocated role means that Weston Milling failed to act in the way that a fair and reasonable employer could have done in all the circumstances at the time. Therefore Ms Lowe's dismissal was unjustified.

Remedies

Is Ms Lowe entitled to be reimbursed for lost wages?

[82] I have found that the redundancy process was flawed making the dismissal unjustified. Ms Lowe has claimed lost wages. Under sections 123(1)(b) and 128 of the Act I am able to order Weston Milling to reimburse Ms Lowe for the lesser of actual lost remuneration or three months ordinary time remuneration lost as a result of her unjustified dismissal.

[83] Ms Lowe is a chartered accountant. She provided evidence that she applied for a *concessionary career break* from her membership of the NZ Institute of Chartered Accountants; this allowed a remission of fees. Her membership has been temporarily put on hold from 18 July 2012 to 13 June 2013.

⁴ *Wang v Hamilton Multicultural Service Trust* [2010] NZEmpC 468 and *Jinkinson v Oceania Gold (NZ) Ltd* [2010] NZEmpC 102

[84] Ms Lowe no doubt had some degree of incapacity and lack of confidence during the period immediately after 18 December 2011 when her wages were paid up to. In addition, it was not a good time to look for a new role as the Christmas and New Year period is one during which most businesses are closed down.

[85] Ms Lowe is entitled to the lesser of the amount of remuneration actually lost in the 13 weeks after 18 December 2011; which goes to 13 March 2012.

[86] However, in considering how much lost remuneration it is just to award I need to consider whether Ms Lowe has mitigated her loss. Ms Lowe says that she has been unable to obtain employment in any *equivalent role* since leaving Weston Milling. Ms Lowe told me that it was humiliating to have to tell prospective employers and the Institute of Chartered Accountants that she had lost her job. I asked her why it was humiliating to say that she had been made redundant. She told me that was because she did not think she was genuinely made redundant.

[87] Ms Lowe gave me no evidence about her attempts to find work in accountancy. For example I do not know how many, if any, jobs she has applied for since December 2011 in Christchurch or anywhere else.

[88] Ms Lowe and Mr Derriman did not remain in Canterbury after her redundancy and his exit from Weston Milling. Instead they have moved to Cromwell where they own a young orchard. Ms Lowe submitted that when she was employed her income was the major contributor to the maintenance cost of the orchard. Because she was unable to find a job in Christchurch she and Mr Derriman had to move to Cromwell to manage the orchard themselves.

[89] Ms Lowe says that she is 45 years old and *believed I would work for GWF on a six-figure salary until I retire*. I do not consider that a reasonable expectation in the modern business environment.

[90] I do not consider that Ms Lowe has mitigated her loss by attempting to obtain other suitable employment. She and her husband made a decision to move from Christchurch, the largest city in the South Island, to Cromwell, a small town, where job opportunities for accountants are no doubt fewer than in Christchurch.

[91] I also consider that the decision to move to Cromwell was because of the orchard business that she and Mr Derriman own and was a personal one not entirely

based on the fact that Mr Lowe had been made redundant and could not find equivalent work in Christchurch. Weston Milling cannot be held responsible for reimbursing Ms Lowe for all of her lost wages when her decision to move has lessened her opportunity to gain new employment in her professional field.

[92] On 21 November 2011 Ms Lowe sent an email to Scott Taylor, National Employee Relations Manager at Tip Top at the National Office in Sydney. She wrote that she understood the investigation into her complaint had been completed and wanted to know the outcome. She noted that she had been made redundant and had been required to work out her notice until 16 December 2011. She also wrote:

I am really stress about the whole situation and felt hurt and humiliation as all my friends and colleague at work was sympathetic and when they talk to me just reduced me to tears.

I have trouble sleeping since the proposal and had been prescribed sleeping pills which made me groggy in the morning. As below, Billy wanted to see me this Thur and I am not comfortable to deal with him as in my mind he had done me wrong despite the out come of your finding. I don't feel safe as he had already caused me so much pain, it feels unfair and unreasonable.

[93] Part of this e-mail was in reference to earlier e-mail of the same day from Mr Aucamp wishing to spend Thursday with Ms Lowe to plan for the month ahead and to organise a hand-over of her role.

[94] I note that at the investigation meeting Ms Lowe clarified that her comment about not feeling *safe* around Mr Aucamp did not mean that she feared being in his company because of anything he was likely to do but rather she feared that she might hit him.

[95] In light of how Ms Lowe felt about Mr Aucamp before she recovered the pay review letter (that he did not like her) and especially her desire not to be around him because she did not feel safe after she received the pay review letter and notice of the proposed redundancy, I do not consider that it is likely that even if she had been offered the role in Auckland and accepted it that her employment with the company would have lasted long because she would have had to be in daily contact with Mr Aucamp.

[96] In the light of the lack of mitigation of Ms Lowe's loss, of which the move to Cromwell is part, and her strong feelings against Mr Aucamp I consider it reasonable that Ms Lowe be paid for 8 weeks of lost remuneration.

[97] The parties should resolve the amount to be paid between themselves if they are able to. Ms Lowe will need to disclose whether she actually earned any other income over that period. If the parties cannot agree on the amount to be paid they may come back to the Authority for a determination on that point.

Compensation

[98] Ms Lowe has applied for compensation for humiliation, loss of dignity and hurt to her feelings. She says she:

lost confidence, was put under stress emotionally... over this ordeal, in addition I lost my closeness with my children by being forced to move out of Christchurch ... I have lost many sleeps over the injustice and still agonizing over all the pain I suffer.

[99] There is evidence from Ms Lowe's GP, Dr Mark Cohen, that she was unwell from the day after she heard of the proposed restructuring. On 23 November 2011 he wrote:

I have consulted with Jacinta on 2 occasions at the request of the Health and safety officer at CHCH. She has suffered a shock due to being told that her position was to be disestablished in Christchurch and would end in December this year. She has had sleep disturbance and difficulty with concentration consistent with an Adjustment disorder and stress. She has returned to work after a day off but is struggling with concentration and co-workers who are saying goodbye. She is tearful and wishes to leave work now to avoid this stress.

[100] I did not have any more recent medical evidence presented to me which demonstrates that Ms Lowe's stress related condition has continued.

[101] I consider that it is reasonable that Weston Milling pays Ms Lowe compensation of \$6,000.00.

Contribution

[102] Under section 124 of the Act when I consider remedies I must consider the extent to which the employee's actions contributed to the situation that gave rise to their personal grievance.

[103] Ms Lowe did not engage at all in the consultation process. I accept that she was unwell at the relevant time. However, the consultation time-frame was too short and therefore inadequate. Ms Lowe did not contribute to the fact that the time-frame was too short.

[104] Weston Milling had a duty to consider offering Ms Lowe re-deployment to a suitable role and did not do so. Ms Lowe made a formal complaint about Mr Aucamp but that cannot be a reason for Weston Milling not telling Ms Lowe about the process for appointment to the re-located role and telling her how to apply.

[105] Ms Lowe asked to be allowed to finish work earlier than 16 December 2011 because of her health and emotional problems which were due to the redundancy. However, I do not consider that her ill health and consequent ending of work on 25 November 2011 contributed to the fact that Weston Milling did not properly consider her for re-deployment.

[106] Ms Lowe did not contribute at all to the situation that gave rise to her personal grievance. Therefore, I do not reduce the amount of compensation I have awarded.

Costs

[107] Ms Lowe has claimed legal costs for the unsuccessful mediation. She was not legally represented at the investigation meeting. The Authority does not generally make costs awards for money spent on legal advice and representation related to mediation, particularly if there has only been one mediation held. That is because parties are encouraged to resolve matters by agreement rather than proceeding to litigation. However, if Ms Lowe has received legal advice after mediation to assist her to prepare for the investigation meeting I would consider her application for a reasonable contribution to her costs. I encourage the parties to agree on costs.

[108] However, if that is not possible given the time of year I give Ms Lowe until 25 January 2013 to make a formal application for costs. Weston Milling then has 14 days to respond. Until then costs are reserved.

Christine Hickey

Member of the Employment Relations Authority