

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Rosalie Nelson (Applicant)  
**AND** Air New Zealand International Limited (Respondent)  
**REPRESENTATIVES** Margaret Robins, Counsel for Applicant  
Kevin Thompson, Counsel for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 15 November 2005  
16 November 2005  
9 December 2005  
**SUBMISSIONS RECEIVED** 19 and 22 December 2005  
**DATE OF DETERMINATION** 22 March 2006

DETERMINATION OF THE AUTHORITY

[1] Rosalie Nelson was employed by Air New Zealand from June 1999 until 11 November 2004. During her employment with Air NZ Mrs Nelson held various human resource roles. Her last role was Human Resources Direct and Services Manager (“HR DSM”), which she had held since June 2002.

[2] In early 2004 Air NZ began a review of the HR Shared Services division where Mrs Nelson was employed. The timeframes around this review were unclear because the review abutted with the mammoth task of rolling out a new payroll system, a task which HR Shared Services was responsible for. At about this time Mrs Nelson agreed to take up, on a temporary basis, the role of Acting Manager Payroll and Data Management. In this position Mrs Nelson was responsible for implementing the new payroll module of PeopleSoft, a new computer programme tailored to Air NZ’s human resource information needs.

[3] The parties dispute how long Mrs Nelson agreed to perform this role; Mrs Nelson says she was led to believe the roll out would take from six weeks to three months and that that was what she agreed to, Air NZ says Mrs Nelson agreed to perform the role for at least 12 months.

[4] Mrs Nelson says Air NZ breached the agreed terms of the temporary assignment by requiring her to work excessive hours in the temporary role and refusing to allow her to end her employment by redundancy when her time in the role and the demands of the role far exceeded what she had agreed to. Mrs Nelson says Air NZ’s breaches of her employment agreement were so serious that she could reasonably treat her employment agreement as repudiated and that accordingly, she was constructively dismissed.

[5] By way of remedies Mrs Nelson seeks:

- (i) redundancy compensation and benefits calculated under the terms of her employment agreement;
- (ii) payment of hours worked in excess of 50 per week while she performed the temporary role;
- (iii) a bonus payment;
- (iv) compensation to the sum of \$20,000 pursuant to section 123(1)(c)(i) of the Act;
- (v) penalties awarded against Air NZ for failing to provide a safe and healthy workplace and failing to maintain the obligation of good faith; and
- (vi) interest on the sums awarded.

[6] Air NZ says that Mrs Nelson was not made redundant from her employment or unjustifiably constructively dismissed. Air NZ says it did not fail to provide Mrs Nelson with a safe workplace and that she has no entitlement to redundancy compensation, reimbursement of overtime hours worked, days in lieu or bonus payments.

[7] Air NZ says the following issues are relevant to this inquiry, that:

- (i) from April 2004 a consultation process was in place which may have resulted in the restructuring of the HR Shared Services division;
- (ii) in June 2004 Mrs Nelson agreed to take on the temporary role for at least 12 months;
- (iii) Mrs Nelson was never given notice of redundancy; and
- (iv) Mrs Nelson advised Air NZ on 14 October 2004 that her last day of employment would be 11 November 2004.

[8] To resolve this employment relationship problem the Authority must determine:

- (i) how long Mrs Nelson agreed to perform the temporary role;
- (ii) whether Air NZ breached the terms of Mrs Nelson's employment agreement, and if so, if those breaches repudiated the employment agreement;
- (iii) whether Mrs Nelson is entitled to redundancy compensation, and other related benefits, under the terms of her employment agreement;
- (iv) whether Mrs Nelson is entitled to be paid overtime for hours worked over 50 per week; and
- (v) whether Mrs Nelson is entitled to a bonus payment for work performed as Payroll Manager.

## **Issues**

### **(i) HR Shared Services review**

[9] Mrs Nelson reported to Neil Padley, General Manager – HR Shared Services. Mr Padley commenced employment with Air NZ, in this role, in March 2004.

[10] Shortly after commencing employment with Air NZ Mr Padley put together a restructuring proposal for HR Shared Services in consultation with his senior reports, which included Mrs Nelson. In April 2004 Mr Padley began the process of consulting with the wider Shared Services team about the proposed restructure and on 7 and 13 April 2004 he meet with Mrs Nelson to discuss how the proposal might affect her. The proposal directly affected Mrs Nelson; her role of HR DSM would merge with that of Manager Remuneration and Reporting, to create a single role of Manager Human Resources Services.

[11] At the same time as Mr Padley was consulting with HR Shared Services staff about the restructuring proposal the payroll module of PeopleSoft was being readied for implementation.

[12] Mr Padley took steps to prepare for the implementation phase of the new payroll system and in particular to prepare for “go live” which he described as a “resource intensive phase”. He estimated a resource spike of four to six weeks in this period. His first step was to split the payroll technical role from the day-to-day payroll implementation role. To this end Lynleigh Hyde, Payroll Manager, was seconded in a temporary role of PeopleSoft SME (Subject Matter Expert) to the PeopleSoft team. In this role she was to provide payroll expertise to the PeopleSoft team.

[13] The next step for Mr Padley was to fill Ms Hyde’s vacant Payroll Manager position in anticipation of the implementation of PeopleSoft. From the available managers Mr Padley decided to offer the role to Mrs Nelson. He said she had the necessary skills to successfully complete such a demanding role. He said that if she accepted that temporary role he intended to implement the Manager HR Services in an acting capacity, to fill the gap left by Mrs Nelson moving into the Payroll Manager role. Mr Padley intended to offer that temporary role to Ms Matthews in the event Mrs Nelson accepted the temporary role.

**(ii) How long did Mrs Nelson agree to fill the Payroll Manager role?**

[14] There is no dispute that Mrs Nelson agreed to fill the Payroll Manager role on a temporary basis. The dispute concerns when Mrs Nelson would step down from the role; Mrs Nelson says she agreed to perform the role for the “go live” period, Mr Padley says Mrs Nelson agreed to fill the role for 12 months.

[15] The Authority has received three pieces of contemporaneous documentary evidence relevant to this issue:

- (i) an Employee Action Sheet dated 4 June 2004, the date Mrs Nelson and Mr Padley reached agreement, which records the start date of 7 June 2004 but is silent on the end date; and
- (ii) Mrs Nelson’s emails of 4 June addressed to recruitment agencies with which she had regular dealings:

“Just to let you know that I will be moving into a new role next week looking after our payroll and data management team. This is an acting role for 6 – 12 months to sort out some issues in there and assist with go-live of our new payroll module in PeopleSoft’

and

“Today is my last day in my current role as I have been asked to move into the Manager, Payroll and Data Management role for a few months. Possibly 6 – 12 months.”

[16] Mrs Nelson said she advised the recruitment agencies that the temporary role would last for 6 to 12 months because she wanted to give a sense of continuity to these suppliers and she was unclear as to what was going on in relation to the restructuring. Mrs Nelson wrote these emails hours of the agreement with Mr Padley being reached.

[17] I have received considerable evidence of Mrs Nelson’s and Mr Padley’s intentions at the time the agreement was made and what it is likely they would have agreed to given their respective circumstances. I have also received documents recording what they understood the terms of agreement were, written some weeks or months after the agreement was struck.

[18] Mrs Nelson's emails of 4 June 2004 are compelling evidence that she and Mr Padley agreed that Mrs Nelson would act in the temporary role for 6 to 12 months. The emails are the only contemporaneous record of this key term. The 6 to 12 month timeframe reflects a compromise of Mrs Nelson's and Mr Padley's respective positions and the time span is consistent with the uncertainty as to how long the implementation phase would take. Mrs Nelson and Mr Padley's later actions confirm this timeframe; about five months after the agreement was reached they began to negotiate an exit date for Mrs Nelson from the temporary role.

[19] For these reasons I find that Mrs Nelson and Mr Padley agreed that Mrs Nelson would fill the Payroll Manager role on a temporary basis for 6 to 12 months being the anticipated implementation timeframe for the PeopleSoft, payroll module.

**(iii) Constructive dismissal**

[20] Mrs Nelson says she was constructively dismissed because Air NZ failed to provide a safe and healthy workplace and refused to release her from the temporary role and declare her redundant when her employment finished on 11 November 2004. This alleged constructive dismissal does not fall into either the category where an employee is given the choice to resign or be dismissed, or the resignation is coerced.

[21] In these circumstances the Authority must consider whether:

- (i) Air NZ breached any duty owed to Mrs Nelson;
- (ii) if so, was that breach of duty so serious that Mrs Nelson was justified in treating her employment agreement as being at an end and accepting that repudiation.

**(a) When did Mrs Nelson resign?**

[22] The parties dispute the date Mrs Nelson advised Air NZ of her decision to leave her employment. Mrs Nelson returned from a few days leave on 29 September 2004. I accept she felt disheartened at the prospect of continuing in the Payroll Manager's role; she said returned to a mountain of issues and long hours. That evening she applied for the position with ASB, which she currently holds, and wrote to Mr Padley withdrawing her application for the Manager HR Services position and advising of "*my intention to leave Air NZ*".

[23] Air NZ says this was Mrs Nelson's notice of resignation. Mr Thompson submits that an employee is entitled to give more notice than is required by the employment agreement. I accept this submission. However, I do not accept that Air NZ was entitled to treat this email as a notice of resignation; Mrs Nelson's email does not say when she will finish or, that she is providing four weeks notice, as required under the terms of the employment agreement. Mr Padley did not write to Mrs Nelson accepting this communication as a resignation and took no steps to clarify a leaving date with Mrs Nelson. This strongly suggests that he did not understand, and therefore did not treat, this email as a resignation.

[24] For these reasons I find Mrs Nelson gave notice of her intention to finish her employment with Air NZ on 14 October 2004 in the following terms:

On 13 September I received a letter signed by yourself stating that my role is being disestablished. I have on numerous occasions stated to you that I do not enjoy the position I am currently acting in and wish to exit from the company. There are no comparable roles within HR Services structure and you acknowledged and accepted that I was not applying for the Manager HR Services role. I did apply for a comparable HR Manager role in the organisation and was unsuccessful.

The role I am currently acting in is very stressful and detrimental to both my health and my family. I have also discussed this with you on numerous occasions. The company has made my situation intolerable and it is with great sadness that I write this to you. I was hoping to leave Air New Zealand on a positive note.

My final day with Air New Zealand will be 11 November 2004 and I expect that redundancy will be paid to me on my final day.”

[25] The reasons Mrs Nelson gave for advising of her last day of employment were:

- (i) she wished to be released from the acting role because it was detrimental to her health and family and she had raised this with Mr Padley repeatedly; and
- (ii) she was redundant because there were no comparable roles within Shared Services and she had been unsuccessful in applying for a comparable role within the organisation in May.

**(b) Did Air NZ fail to provide Mrs Nelson with a safe and healthy workplace?**

[26] Mrs Nelson’s employment agreement provides:

**“6. Hours of Work**

6.1 Your normal hours of work are 8 hours per working day. You are expected to work such extra hours and on such days of the week (including weekends) as may be reasonably required by the employer to ensure that work is completed in an efficient and timely manner. The remuneration package contained in this agreement covers all hours worked.”

[27] Air NZ’s workplace health and safety policies were part of Mrs Nelson’s terms and conditions of employment. These policies are comprehensive and include a policy for workplace stress. The policies are readily available to staff on the company intranet and Mrs Nelson confirmed she was familiar with these policies and the reporting processes.

[28] Mrs Nelson has provided the Authority with a spreadsheet of hours she worked from 17 July to 12 November 2004 compiled from her own records. Air NZ did not require Mrs Nelson to complete a time sheet. I accept Mrs Nelson’s record as accurate.

[29] Mrs Nelson worked an average of 61.5 hours per week from 17 July to 22 October 2004 (from 26 October until 11 November Mrs Nelson was on stress leave). She took 2 days sick leave and 5 days annual leave during this period. Of the 16 weekends which fell in this period Mrs Nelson worked four full weekends and five weekend days. During the weekend of 2/3 October Mrs Nelson worked from 9am on Saturday until 5pm on Sunday. I received evidence from Air NZ that Mrs Nelson was not alone in working these sorts of hours during this intensive phase of implementing the new payroll system.

[30] Mrs Nelson says the temporary role and work environment were stressful. The stressors associated with Mrs Nelson’s temporary position were the long hours, the set payroll close off deadlines, managing staff who were working long hours and being contacted directly by upset employees regarding pay queries. In addition to these stressors, Mrs Nelson said she had received no thanks from Mr Padley for the extra mile she had gone in the position and that by August 2004 she was in conflict with him over the length of the temporary assignment.

[31] Mrs Nelson says the hours she worked were excessive. She says that from July to October 2004 she was suffering symptoms of stress and that she repeatedly brought this to Mr Padley’s attention and received an unsympathetic response. Mrs Nelson said she was obliged to continue to work the long hours because she was responsible for achieving Air NZ’s objectives with respect to

the implementation of PeopleSoft in the payroll division. She says that any steps to maintain her team's health and safety during this time ie, availability of EAP and massages, were taken by her and that Mr Padley failed to take reasonable steps to ensure her workplace was safe and healthy.

[32] Mr Padley says that in anticipation of long work hours being required during the implementation of the new payroll system he spilt the workload of the payroll manager as described in paragraph 12 above. To support the payroll team through the anticipated long hours Mr Padley advised them that EAP services would be available to staff as well as posture/physiotherapy assistance. He said he meet with Mrs Nelson often to discuss her workload, counselled her on ways he thought she could manage that workload better and offered her team more resources in the form of temporary staff.

[33] Mrs Nelson has provided her relevant medical history, and a report from a specialist in occupational medicine. Mrs Nelson attended a doctor on 7 September 2004 reporting chest pains and took sick leave on 8 and 10 September 2004. Mrs Nelson was advised the chest pains were stress related. Mrs Nelson again visited her doctor on 27 October 2004 and received a medical certificate for 2 weeks sick leave. Mrs Nelson's doctor's note of this visit records:

“Very stressed +++working up to 80 hours a week. Work don't listen sleeps Ratty and irritable Not sleeping/eating etc. Chest pains Been 1x and not cardiac partner screaming at her as kids left on their own ++ while she works so much  
130/80  
thyroid NAD  
HS normal chest clear  
abdo NAD  
for some stress leave – Booked off two weeks  
Rx: 6 – Neocytamen 1MG PER MIL – 1 2x week for two weeks then we  
SIGS: 1 2x week for two weeks then weekly”

[34] The report of the occupational medicine specialist, Dr Chris Wall, is dated 18 October 2005 and retrospectively diagnosed Mrs Nelson from suffering symptoms of an acute anxiety disorder in October 2004. This diagnosis is based on Mrs Nelson's doctor's note of 27 October 2004. Dr Wall's report concludes:

“I am of the opinion that, combined with the long hours of work described, and interpreting Rosalie Nelson's description of the work characteristics at Air New Zealand there are sufficient factors present to attribute much of her distress to the work environment.

She has successfully coped with personal stressors prior to this without impacting on her work ability.

The fact that she slowly but steadily regained her composure after leaving the Air New Zealand job (while still maintaining a responsible job in the HR industry) would further indicate, in my opinion, that her distress arose from the situation at Air New Zealand.”

[35] I accept Dr Wall's report to the extent that it records Mrs Nelson's view of the events leading up to her finishing with Air NZ. However, for this reason the report can be given little weight. There was no evidence that Air NZ was aware or had been advised Mrs Nelson had developed an anxiety disorder by October 2004. Mrs Nelson's concerns about stress and workload and the impact on her health were raised with Mr Padley in a generalised fashion and the medical certificate provided to Air NZ was silent on the cause of Mrs Nelson's ill health.

[36] The Payroll Manager position was enormous and required Mrs Nelson to work excessive hours. However, I am satisfied on the evidence received that the hours Mrs Nelson worked resulted from Mrs Nelson's assessment of what was necessary to get the job done and her willingness, as a senior and conscientious employee, to execute those tasks to a professional standard. I received no evidence that Mrs Nelson was directed to work the excessive hours recorded.

[37] As a senior employee Mrs Nelson had considerable control over the work she and her team performed. For example, she was part of the management team which developed the health and safety strategy for the “go live” phase. I am satisfied that Mrs Nelson was able and did raise her concerns about the role with Mr Padley and that Mr Padley responded to those issues reasonably. It was reasonable for Mr Padley to respond by offering more temporary employees and make suggestions as to how he thought Mrs Nelson could better manage her work load. That Mr Padley declined Mrs Nelson’s specific request for Ms Wighton to be seconded as her 2iC was not unreasonable; his assessment was that Ms Wighton did not have the skills to perform the task and I have received no evidence to suggest that assessment was unreasonable.

[38] While a number of comments made to Mrs Nelson by Mr Padley can be described as imprudent and insensitive, they do not amount to bullying or harassment and therefore do not amount to breaches of the obligation to provide a safe and healthy workplace.

[39] For these reasons I find that Air NZ did not fail to provide Mrs Nelson with an unsafe workplace.

**(c) Did Air NZ unjustifiably fail to declare Mrs Nelson redundant?**

[40] Mrs Nelson’s employment agreement provides:

**“16. REDUNDANCY**

16.1 In the event of the Company having positions and/or employees surplus to requirements, the Company may offer and you may accept an alternative position. Where you are offered, and accept a reasonably similar alternative position, you will not be eligible to receive redundancy compensation. Where you are offered a position that is not reasonably similar and this is declined, you will be eligible to receive redundancy compensation and provided with a period of notice on the following basis;  
...”

[41] Mrs Nelson was advised her position would be disestablished in a letter dated 13 September 2004. The letter went on to describe the next step in the redundancy process - redeployment. The process outlined was that Mrs Nelson may apply for a position in the new HR Shared Services structure ie, the Manager HR Services position, and that if she was not successful then redeployment elsewhere within Air NZ would be sought. The letter then went on to say that this was not notice of redundancy and that Mrs Nelson’s “*current acting position continues.*”

[42] On 15 September 2004 Mrs Nelson emailed Mr Padley that she wished to be considered for the Manager HR Services position and reaffirmed her commitment to “*manage the payroll team until things are more settled and [that she would] continue to support HR services.*”

[43] On 29 September 2004 Mrs Nelson emailed Mr Padley withdrawing from consideration for the manager HR Services position and advising of her intention to leave Air NZ.

[44] On 14 October 2004 Mrs Nelson gave Air NZ four weeks notice, as required under her employment agreement, that her last day of employment would be 11 November 2004. Mrs Nelson asserted that she was redundant and that she should receive redundancy compensation.

[45] Mr Padley sought advice from John Charlesworth, Manager Corporate HR. His advice was that Mrs Nelson had not received notice that her position was disestablished or that she was redundant, that the new HR Shared services structure had not yet been implemented, that Air NZ needed her to continue as the acting Payroll Manager and that steps should be taken to discuss with Mrs Nelson and eliminate the causes of her stress at work. This advice was conveyed to Mrs

Nelson in a letter from Mr Padley dated 21 October 2004.

[46] On 19 October 2004 Mrs Nelson accepted a senior HR role with ASB, of which she immediately advised Mr Padley.

[47] In the meantime, Mrs Nelson met with Mr Charlesworth on 20 October 2004. Mrs Nelson told Mr Charlesworth that:

- (i) in June she knew her role had been disestablished and she felt she had been bullied into the temporary role;
- (ii) she felt sidelined because Megan Mathews had the acting role in the new structure;
- (iii) she had received no recognition for the long hours and effort she had put into the temporary Payroll Manager role;
- (iv) the hours were excessive and this was negatively impacting on her relationship with her partner and family; and
- (v) Mrs Nelson was adamant she was leaving on 11 November 2004 and wanted her redundancy compensation.

[48] Air NZ says it did not declare Mrs Nelson redundant because the restructuring of shared services was not yet complete, redeployment options for Mrs Nelson had not yet been explored and Air NZ still required Mrs Nelson's skills in the acting role of Payroll Manager.

[49] It is generally accepted as desirable to preserve the employment of an employee whose position has been declared redundant, if at all possible. The desirability of redeployment in a redundancy setting is reflected in the parties' employment agreement which provides a mechanism for an alternative position to be offered.

[50] Mr Charlesworth discussed his meeting with Mrs Nelson with Mr Padley. This discussion resulted in a formal offer being put to Mrs Nelson in a letter dated 21 October under Mr Padley's name, that:

- (i) Mrs Nelson's role as Manager HR Direct and Services had not been disestablished;
- (ii) the restructuring of HR Shared Services was still underway;
- (iii) Air New Zealand would continue to explore her redeployment within the organisation;
- (iv) if Mrs Nelson left on 11 November 2004, as notified, her termination would be treated as a resignation and she would not be eligible for redundancy compensation;
- (v) Mrs Nelson had excelled in the acting role but Mr Padley understood she did not enjoy the role and was finding it stressful and detrimental to her health and family;
- (vi) Mr Padley was looking for temporary resource and anticipated the high workload would diminish;
- (vii) a proposal that Mrs Nelson's acting role finish on 7 January 2005;
- (ix) an invitation to Mrs Nelson to suggest further ways to relieve the stress she was experiencing;
- (x) a requirement that Mrs Nelson undergo a medical assessment to determine the risk posed by the stress she was reporting;
- (xi) EAP was available; and
- (xii) advice that a withdrawal of her notice to leave Air NZ on 11 November would be accepted.

[51] Mrs Nelson responded to this offer on 22 October 2004, writing to Mr Padley:

- (i) rejecting any suggestion she had resigned;
- (ii) asserting she was redundant and entitled to redundancy compensation;
- (iii) confirming her last day with Air NZ would be 11 November 2004;
- (iv) seeking clarification as to who was responsible for deciding whether Mrs Nelson received redundancy compensation or not;
- (v) seeking a meeting on 26 October 2004 to finalise the redundancy issue;
- (vi) advising a personal grievance would be lodged if no resolution was forthcoming;
- (vii) seeking advice of a time and place for a meeting with the company doctor; and
- (viii) expressing her commitment to her job, the stress her and her family have suffered as a consequence and her sadness that her relationship with the company should end in this way.

[52] Mrs Nelson visited her doctor on 27 October 2004. She had felt sick over the weekend and as Air NZ had taken no steps to arrange an appointment with its doctor she decided to see her own. Mrs Nelson's doctor issued her with a medical certificate for two weeks sick leave from 27 October 2004 to resume work on 11 November 2004. The medical certificate provided by her doctor is silent as to the cause of the leave. Mrs Nelson has characterised this leave as stress leave and this is supported by the doctor's notes of the consultation of 27 October 2004 which have been provided to the Authority.

[53] On 29 October 2004 Mr Padley wrote to Mrs Nelson:

- (i) acknowledging Mrs Nelson's advice that she would be on stress leave until 11 November 2004;
- (ii) reiterating that Mrs Nelson had not received notice of redundancy or notice of termination of employment and that Mrs Nelson had initiated the termination of her employment;
- (iii) offering to end the temporary assignment on 7 January 2005, time off over the holiday season and the payment of redundancy compensation and a bonus of \$10,000 at that time;
- (iv) that he had considered ways to manage the workload issue;
- (v) confirming Mrs Nelson's letter notifying her employment would cease on 11 November and the earlier notification had been taken as a resignation and could not be treated as a redundancy situation;
- (vi) clarifying that the final decision lay with Mr Padley; and
- (vii) thanking Mrs Nelson for her commitment to Air NZ and wishing her well in the future.

[54] Mrs Nelson described this offer as "too little too late". On 31 October 2004 she lodged her personal grievance with Air NZ.

[55] Ms Robins submits that the unjustified failure to declare an employee redundant can give rise to a personal grievance<sup>1</sup>. I accept that submission as a statement of principal. Ms Robins submits further that Mrs Nelson had a right to be made redundant at 11 November 2004 because her position had been disestablished, it was no longer being performed and the new structure had been implemented, albeit on a temporary basis, there were no redeployment options and the temporary payroll position had reached its expiry.

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<sup>1</sup> *Watties Frozen Foods Ltd v United Food etc Union of NZ* [1992] 2 ERNZ 1038 (CA)

[56] Was Air NZ's refusal to declare Mrs Nelson redundant and dispense with taking the opportunity to offer her a suitable alternative position fair and reasonable in the circumstances? I find that it was for the following reasons:

- (i) by 11 November 2004 Mrs Nelson had not received notice that her position had been disestablished and that she was redundant. She had been advised the position would be disestablished, which suggests this event will occur in the future;
- (ii) part of the new HR Shared Services structure was implemented by 25 October 2004 when Ms Mathews was confirmed in the position of HR Services Manager;
- (iii) I am satisfied that Air NZ legitimately needed Mrs Nelson to continue to act as the Payroll Manager; changes continued to be made to the new payroll system given the Holidays Act 2003, new collective employment agreements and the Christmas holidays;
- (iv) under the terms of the 4 June 2004 agreement, Mrs Nelson was to remain in the role for 6 to 12 months to implement the new payroll system; and
- (v) the need for Mrs Nelson to continue in the acting role was a legitimate reason to defer the search for an alternative position.

### **Determination**

[57] For the reasons set out above I find that:

- (i) Mrs Nelson agreed to fill the Payroll Manager for a 6 to 12 month period;
- (ii) Mrs Nelson was not redundant from Air NZ and she was not entitled to redundancy compensation when her employment with Air NZ finished on 11 November 2004;
- (iii) Mrs Nelson was not constructively dismissed from her employment with Air NZ. She gave notice of her final date of employment. Such notice is usually fatal to a claim of constructive dismissal. I accept that the hours worked were excessive but for the reasons set out above I do not believe they occasioned any breach of Mrs Nelson's employment agreement;
- (iv) As a salaried employee Mrs Nelson had no contractual entitlement to hours worked over 50 per week. The claim for payment for hours worked in excess of 50 per week cannot succeed; and
- (v) The evidence does not establish that Mrs Nelson and Mr Padley agreed she would be eligible for the STI bonus scheme. Notwithstanding, eligibility for a payment under the scheme requires employees to be employed at the time the bonus is paid, which occurred after Mrs Nelson left Air NZ.

### **Costs**

[58] Costs are reserved. The parties are invited to resolve this issue themselves. If they are unable to do so they may apply to the Authority to determine the matter. The filing of documents relevant to the investigation outside the agreed timetable can be addressed to the Authority then.

Marija Urlich  
Member, Employment Relations Authority