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Perkins v Beardmore Family Trust No.2 (Wellington) [2018] NZERA 2110; [2018] NZERA Wellington 110 (5 December 2018)

Last Updated: 11 December 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2018] NZERA Wellington 110
3019791

BETWEEN VICTORIA JOAN PERKINS Applicant

AND BEARDMORE FAMILY TRUST NO. 2

Respondent

Member of Authority: Michele Ryan

Representatives: Applicant in person

Russell Wilson, counsel for Respondent

Investigation Meeting: 4 April 2018 at New Plymouth

Further information

Received:

15 April 2018 from the Applicant

17 April 2018 from the Respondent

Determination: 5 December 2018

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Victoria Perkins began working for the Beardmore Family Trust No.2 (the Trust) as a farm assistant at its property in west Taranaki, on 4 July 2016. She resigned 3½ months later.

[2] Ms Perkins says she was verbally dismissed on 5 October 2016. In the alternative, she says her resignation on 11 October 2016 was given in circumstances that amount to a constructive dismissal. In either event, Ms Perkins says her dismissal was unjustifiable. She further alleges she was suspended unjustifiably. Ms Perkins seeks corresponding remedies, as well as penalties for various breaches of terms of employment and the Employment Relations Act.

[3] The Trust says Ms Perkins was neither actually or constructively dismissed, nor unjustifiably disadvantaged. It says she resigned freely and it was required to make alternative employment arrangements to have the work done.

The Authority's investigation

[4] Ms Perkins represented herself at the Authority's investigation. Sam Williams provided evidence in support. The Trust was legally represented. Trustee and manager of the Trust's farm, Mark Beardmore, attended the meeting as did his wife Sandy Beardmore, his father Brian Beardmore, and Trust employee Ronald Dons, Both parties provided written statements in advance of the meeting.

[5] As is permitted by s 174 of the Employment Relations Act (2000) not all the evidence or material provided to the Authority

during the course of the investigation is referenced. Rather, this determination states findings of fact and law necessary to dispose of Ms Perkins' claims.

Relevant background information

[6] Ms Perkins met Mark and Sandy Beardmore soon after renting a house near to the Trust's farm in late 2015. A friendship developed between Ms Perkins and Mrs Beardmore. Ms Perkins had no prior experience in farming but in late June 2016 the parties agreed she would undertake general farming duties on a casual basis until the calving season began. It was envisaged Ms Perkins would then assist Sandy Beardmore with calf rearing activities. An individual employment agreement was provided soon after Ms Perkins started working. Terms and conditions however, were never fully settled and the document was not signed. She was paid \$20 per hour.

[7] Ms Perkins' claim centres on four events, as follows:

The first event - 23 September 2016

[8] Both parties agree that the conversation on 23 September 2016 began with Mr Beardmore raising an issue that Ms Perkins had "*badmouthed*" him to another employee two weeks previously. Ms Perkins does not deny the substance of the concern but says Mr Beardmore should have raised the matter with her earlier. Mr Beardmore says this was the first time Ms Perkins was available on her own to have the discussion.

[9] Ms Perkins says Mr Beardmore went on to criticise, unfairly in her view, several aspects of her performance. In particular, she says he told her she worked hard when he was around but stood back when Sandy Beardmore was there, that she could not be trusted to do the job on her own, and had not learned as much as he had hoped. There was then a discussion about her rostered hours and timesheets. Ms Perkins' written evidence states the conversation finished with Mr Beardmore advising her to consider whether she wanted to be here and it would be discussed the following Monday.

[10] She further says he told her he didn't want to sack her, but if it came to it he would".

[11] In contrast, Mr Beardmore says the discussion was an informal and everyday conversation. He accepts performance matters were discussed and that he told Ms Perkins that she had not learnt as much as he had hoped. But Mr Beardmore denies he told her he didn't trust her to work on her own or that he threatened to dismiss her, or to think about if she wanted the job. He says quite the opposite. He says he urged Ms Perkins to take on more responsibility so that Sandy Beardmore could have a break. He says he advised her if she was unhappy with anything he had said, to come and see him on Monday morning.

[12] It is common ground that several days after the meeting of 23 September 2016

Ms Perkins was told Sandy Beardmore was stepping back and that she [Ms Perkins] would be doing the majority of the calf rearing going forward.

The second event - 5 October 2016

[13] The crucial event occurred on 5 October 2016. There are critical differences between Ms Perkins' and Mr Beardmore's account of what was said over the course of the morning.

[14] At the material time Mr Beardmore's vehicle was parked in front of a particular calfeteria assigned specifically to feed very young calves. Ms Perkins selected an alternative calfeteria for the task. Mr Beardmore intervened.

[15] The evidence given on behalf of the Trust was that Ms Perkins' choice of calfeteria that morning raised the potential for calves to consume penicillin infused milk. This could lead to a significant and negative commercial impact on the Trust's operations. I accept it was reasonable for Mr Beardmore to be concerned about Ms Perkins' actions in the circumstances. Ms Perkins agrees she was aware of the importance of using the correct calfeteria, but denies she placed calves at risk in that instance.

[16] Mr Beardmore questioned Ms Perkins as to why she using a calfeteria that contrary to prior instructions. He says Ms Perkins told him "*it was easier*" and that she "*knew what she was doing*". She denies making these statements. She says she told Mr Beardmore she was afraid to approach him, but he made no further inquiry with her about that.

[17] They went on to discuss operational matters. At some point Ms Perkins raised a concern that her employment agreement had not been finalised. Ms Perkins says Mr Beardmore took issue as to whether she was recording her start times accurately in timesheets. Both parties allege that by this point the other had become angry.

[18] Ms Perkins says "*the next thing I know Mark was saying I was being dismissed, and given 14 days' notice*". In stark

contrast, Mr Beardmore says Ms Perkins “*began walking off and I asked her where she was going. [She] turned to tell me I had fired her*”. In evidence both individuals says they were shocked by what the other had said.

[19] Ms Perkins says Mr Beardmore then said he was going to consider whether to dismiss her or not, whereas Mr Beardmore says he told her he had not dismissed her and did not want to go down that track. Ms Perkins says she told Mr Beardmore he would need a good reason to dismiss her and that he said he would put in a letter that she did not follow instructions. Mr Beardmore denies saying that. He says Ms Perkins had asked earlier in the conversation to “*put everything in writing*”. Nor do they agree on how the conversation ended.

[20] Ms Perkins says she was again asked to consider if she wanted to continue working on the farm whereas Mr Beardmore says he sought Ms Perkins’ assurance that she would follow instructions. Mr Beardmore left to attend an off-site meeting and advised they would discuss the matter the following day.

[21] Ms Perkins received advice and returned to work in the afternoon. Later that evening she left a voice message with Mr Beardmore advising she had an appointment

to attend the following day and would not be at work. Mr Beardmore confirmed the request by text. The following day Ms Perkins obtained a medical certificate and was unfit to work until 10 October 2016.

The third event

[22] At 7.34 am on Monday 10 October 2016 Mr Beardmore sent a text message to Ms Perkins advising that he didn’t require her at work and would organise a meeting for later in the day. The meeting was ultimately convened at 2 pm the following day.

[23] In the intervening period the parties exchanged several texts messages. Ms Perkins alleged she had been unfairly suspended and requested the reasons for the suspension to be put in writing. She repeated her view that she had been dismissed, and asked for information about what was to be discussed at the meeting.

[24] Mr Beardmore responded advising he had made it clear (on 5 October) that she had not been dismissed. He said she would be paid for 10 and 11 September 2016 and had not been suspended. The meeting was to talk about how the work was to be done before she started again.

Meeting on 11 October 2016

[25] Ms Perkins was accompanied by a support person and Mr Beardmore and his father, Brian, both attended the meeting. The meeting was recorded on Mrs Perkins’ mobile phone and has been valuable to my assessment.

[26] Ms Perkins was given a letter setting out the issues discussed over the previous two conversations. Ms Perkins considers the letter was disciplinary in nature.

[27] The meeting did not resolve matters. Ms Perkins advised she had attended the meeting on the basis that the Trust would talk about moving forward and that she was only there to listen to what was said. Nevertheless the pair continued to dispute aspects of the conversations held on 23 September and 5 October 2016, and whether Ms Perkins had been dismissed. Mr Beardmore considered he was being “*set up*” which was denied. The parties also discussed the employment agreement.

[28] The meeting ended in the following way:

PERKINS: ... that’s all I wanted to say so I am finished and the

meeting is over.

BEARDMORE: So, hang on, where are we going to from here, the meetings over, are you

PERKINS: I’ll let you know.

BEARDMORE: Are you not coming back to work?

PERKINS: I need to go away and think. You told me on Wednesday when we had that conversation, you told me to go away and think about if I really wanted to be at the farm.

BEARDMORE: Yes that’s right

PERKINS: Right. So what was that comment supposed to do, Mark? To make me go away and think about whether I wanted to keep my job?

BEARDMORE: No, no, whether you can follow my instructions, Victoria. The fact is

PERKINS: No that’s not what you said, I’m going to end it there

thank you. Ta.

BEARDMORE: So I'm just supposed to sit here now and wait for however long.

PERKINS: I've actually got a 3 o'clock appointment that I have to get to and I'll contact you today and let you know.

BEARDMORE: As to what, whether you're coming back to work or

whether you are finished?

PERKINS: Yeah. Whether I can face it.¹

[29] The discussion moved briefly to the employment agreement. Mr Beardmore then stated he needed "*some sort of finality*" because of the impact Ms Perkins' absence had on Sandy Beardmore and that he needed someone else do the job if Ms Perkins was not happy to come back to work.² Ms Perkins' agreed to notify Mr Beardmore that afternoon as to what she was doing.³

[30] Ms Perkins sent a text later that day advising the Trust that it would receive a letter of resignation in the near future.

[31] In a letter dated 13 October 2016 Ms Perkins stated she had been unlawfully suspended and been treated in an unfair manner. She said she had lost trust and

confidence with Mr Beardmore and was unable to return to work.

¹ Transcript of meeting, page 7

² Above n1 at p 8

³ Above n1 at p 10

[32] The parties have been unable to settle their differences. The Authority is left to determine Ms Perkins' claims.

The issues

[33] The issues for determination are;

(i) whether Ms Perkins was actually dismissed on 5 October 2016; (ii) whether she was constructively dismissed on 11 October 2016;

(iii) whether Ms Perkins was disadvantaged unjustifiably when she was not required to attend work on 10 and 11 October;

(iv) whether the Trust failed to provide Ms Perkins' with a written employment agreement, a safe work environment, and wage and time records when requested, and if so should penalties be awarded.

Was Ms Perkins dismissed verbally on 5 October 2016?

[34] A dismissal is the termination of employment at the initiative of the employer.⁴ It is a "sending away".⁵

[35] Setting aside which of the two differing accounts better reflects the discussion on 5 October 2016, by Ms Perkins' own evidence Mr Beardmore retracted the purported statement of dismissal almost immediately after it was said. She conceded under questioning that when she and Mr Beardmore then quarrelled over whether she had been fired, she did not consider the end of her employment was a foregone conclusion. This evidence leads me to conclude that Ms Perkins' employment was not terminated on 5 October 2016. This claim is dismissed.

Was Ms Perkins constructively dismissed?

The claim

[36] A constructive dismissal is where an employee appears to have resigned but, in reality, the resignation has been forced or initiated by the employer.

⁴ *Wellington, Taranaki and Marlborough Clerical Etc IUOW v Greenwich* (1983) ERNZ Sel

Cas 95

⁵ Above at n4

[37] In *Auckland etc. Shop Employees etc IUOW v Woolworths (NZ) Ltd*⁶ the Court of Appeal identified a range of

circumstances which may result in a constructive dismissal, including where an employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign. It is this category by which Ms Perkins says her dismissal was effected.

[38] In order to determine Ms Perkins' claim I must first establish whether the conduct alleged actually occurred.

Assessment of evidence

[39] It has not been possible to determine precisely what was communicated between Mr Beardmore and Ms Perkins during their respective exchanges on 23

September 2016 and 5 October 2016.

[40] In order to resolve the conflict, the transcript of the meeting of 11 October

2016 has been helpful to the extent the parties revisited those exchanges during the course of this meeting. I have further examined the consistency of each witness' oral evidence and whether there are contradictions or inconsistencies with the written statements provided and/or undisputed facts.

[41] Applying the above considerations, where the parties are in dispute over material facts I have made findings on what is more likely to have occurred than not.

Discussion

Did Mr Beardmore threaten Ms Perkins with the possibility of dismissal on 23 September?

[42] Turning to Ms Perkins' claim that she was threatened with the possibility of dismissal, I am not, on balance, persuaded the statement was made.

[43] The reason for this finding is that Ms Perkins made no further reference to the alleged threat during either of the later interactions on 5 October or 11 October 2016. In each of these instances the parties hotly disputed whether Ms Perkins had been dismissed on 5 October 2016. Ms Perkins was assertive on both occasions. I consider it more than likely she would have reminded Mr Beardmore of the prior

threat, if it had occurred, as a means to reinforce her position during those discussions.

6 (1985) ERNZ Sel Cas 136

Did Mr Beardmore seek to encourage or coerce Ms Perkins to resign on 23 September?

[44] Nor do I accept the claim that Ms Perkins was asked to consider whether she wanted to continue to work on the farm, and that the parties would discuss the matter on Monday 26 September 2016. If Mr Beardmore had made the request as alleged I consider he would have returned to discuss her view on the matter the following Monday.

[45] I note that in written evidence Ms Perkins says the request to consider her position was made twice. Both occasions are reported in an almost identical fashion, and both instances are said to have occurred at the end of each of the conversations in dispute. I find there is a high possibility that Ms Perkins has mistakenly repeated this allegation across two different events. My view is supported by the transcript of the meeting on 11 October 2016 where Ms Perkins referred to the statement occurring on

5 October.

[46] As with my finding regarding the threat of dismissal, if the statement to consider her future had been made on two occasions before the meeting of 11 October

2016 I consider Ms Perkins would have said so.

[47] Lastly, the evidence that Ms Perkins had been charged with increased responsibilities shortly after the discussion on 23 September undermines the allegation that the Trust was seeking at this time to coerce Ms Perkins to resign.

Did Mr Beardmore threaten to dismiss Ms Perkins on 5 October 2016?

[48] I accept Ms Perkins' view that Mr Beardmore dismissed her on 5 October

2016 is genuinely held. However this does not establish he did in fact dismiss her, and I am not persuaded he did so for two reasons.

[49] Firstly, the transcript of the 11 October 2016 meeting reflects Ms Perkins and Mr Beardmore engaging in a relatively rapid exchange of opinions. There are occasional instances where one party interrupted the other to express an opposing standpoint. It is notable that Mr Beardmore asked Ms Perkins on three occasions to stop talking over him and at one point went on to say “...*this is what happened last Wednesday [5 October] which is why you didn’t clearly hear the facts as we were trying to discuss them*”.

[50] Taking into account the pattern of communication on 11 October 2016, I find

Mr Beardmore’s appraisal as to the way the conversation progressed on 5 October

2016 likely to be accurate, and provides a cogent explanation as to why each side is diametrically opposed to what the other alleges he or she said. It is entirely possible that in the midst of each party seeking to express their position, and where voices were raised, Ms Perkins misinterpreted what exactly was being communicated.

[51] An additional factor may further explain why I consider Ms Perkins misunderstood Mr Beardmore. Her written evidence records that several days prior to the 5 October discussion she began writing down her arrival times at work and what she was doing “*minute to minute*” during the day. A copy of that material was not provided to the Authority but her statement says:

“I started doing this as I felt my job was under threat and that Mark Beardmore was looking for any reason to get rid of me. I started making these notes to protect myself.”⁷

[52] Ms Perkins was unable to clarify why she began recording that information at this point in time particularly when she had recently been entrusted to lead the calf rearing, the issue of her arrival times had not yet been raised, and there is no evidence of an additional dispute with Mr Beardmore after 23 September.

[53] This evidence leads me to conclude that Ms Perkins had developed a mind-set that Mr Beardmore planned to dismiss her prior to the discussion of 5 October. That belief was not a reasonable one to hold. In the heat of an argument, and where her sensitivity to the possibility of dismissal was already heightened, her perception about what was said may have simply have clouded.

[54] I am not persuaded Ms Perkins was dismissed or threatened with the possibility of dismissal on 5 October 2016.

Did Mr Beardmore seek to encourage or coerce Ms Perkins to resign on 5 October

2016?

[55] Returning to the allegation that Mr Beardmore asked Ms Perkins to consider her future, this comment appears to be broadly accepted by Mr Beardmore although

he says he asked Ms Perkins if she was willing to follow his instructions.

⁷ Ms Perkins’ Written statement of Evidence dated 30 January 2018, at para. 16

[56] On balance, Mr Beardmore’s account sits better against the background events of that day, although either statement conveys an over-riding message of dissatisfaction with Ms Perkins’ performance at the time. I accept Ms Perkins was upset by Mr Beardmore’s straight-talking approach on the matter. But I am satisfied the comment was in direct response to Ms Perkins’ earlier cafeteria selection. Mr Beardmore was entitled to want an assurance that Ms Perkins would adhere to the strict procedures required in the cow-shed. I am not persuaded the statement formed part of a course of conduct to coerce Ms Perkins to resign.

Was the instruction not to attend work part of the course of conduct aimed to coerce

Ms Perkins to resign?

[57] I am unwilling to conclude that the decision to delay Ms Perkins return to work following her sick leave until the parties met can be fairly characterised as an action aimed to encourage Ms Perkins to resign. Whilst I have reservations as to whether the instruction was procedurally fair, I have no doubt the aim of the meeting was to discuss the issues that had arisen over the previous fortnight or so.

Did the Trust embark on a disciplinary process or take disciplinary action as part of its course of conduct to coerce Ms Perkins to resign?

[58] As previously noted Ms Perkins points to the letter given to her at the meeting of 11 October 2016 and says it was disciplinary in nature, and used as another means to coerce her to resign.

[59] Mr Beardmore says the letter was drafted in response to Ms Perkins request on

5 October 2016 to have him put the matters they discussed in writing. His evidence is consistent with the opening sentence of the letter which states “*This letter is to put in writing (as you required) our discussions on 23rd September and 5th October.*”

[60] I find it more likely that the request to have Mr Beardmore document the issues was likely made by Ms Perkins and undermines the allegation that the letter was constructed for disciplinary purposes.

[61] Nor do I accept the meeting of the same date was a “disciplinary proceeding” as Ms Perkins asserts. There is nothing in the transcript which suggests Ms Perkins was required to answer to the matters set out in the letter or that Mr Beardmore sought to, or did, impose any action against Ms Perkins.

Was there other conduct aimed to obtain Ms Perkins resignation?

[62] Ms Perkins refers to an additional range of actions that occurred in the final meeting which she says further demonstrates Mr Beardmore desire to have her resign.

[63] She points first to a portion of the transcript in which Mr Beardmore requested “*finality*” and that he then advised “*what he would pay me should I resign*”. She says “*at no point had I ever said that I intended to resign*”.⁸ I am unwilling to accept an inference that the prospect of Ms Perkins’ resignation was initiated by Mr Beardmore, noting that the word resign was not used by either party during the meeting. It is clear from the transcript that Ms Perkins first introduced that possibility.

[64] Next, Ms Perkins says she was pressured into making a prompt decision as to whether she wished to continue with her employment.⁹ This claim is also not evidenced in the transcript which records Ms Perkins advising Mr Beardmore that she would contact him that day and let him know.

[65] Ms Perkins says Mr Beardmore referred to her employment agreement and said that if he had ensured it was signed before she began working then her 90 trial period would have been valid.¹⁰ She says this comment proves Mr Beardmore intended to get rid of her. I am not persuaded. The contents of the employment agreement were traversed in the context of a discussion about how the employment relationship began and what was agreed regarding hours of work. The reference to the trial period provision was incidental amongst those matters and I am unwilling to infer the intention Ms Perkins has ascribed to it.

[66] Next, Ms Perkins alleges that Mr Beardmore’s statement in the meeting of 11

October that he would “*rather let the lawyers deal with the situation*” was an intentionally intimidating statement. The comment should not be considered in isolation however.

[67] Mr Beardmore’s reference to the involvement of lawyers is made following a comment that the meeting was not progressing well having asked Ms Perkins not to speak over him. I accept also that the statement was made against a background

whereby Ms Perkins had advised she had obtained legal advice.

⁸ Ms Perkins’ Written statement of Evidence dated 30 January 2018, at para. 51.

⁹ Above n8 at para. 55

¹⁰ Above n8 at para 52

Overall finding

[68] It is unfortunate that Ms Perkins’ employment ended the way it did. But I have not been persuaded that the instances highlighted, either individually or cumulatively, meet a threshold where I could confidently determine Mr Beardmore, as the manager of the Trust, adopted a course of conduct with a deliberate and dominant purpose to coercing her to resign. Ms Perkins’ claim a constructive dismissal has not been established.

Was Ms Perkins unjustifiably disadvantaged?

[69] Ms Perkins requests the Authority to find she was unjustifiably disadvantaged when she was instructed not to attend work.

[70] At the beginning of the Authority’s meeting the Trust applied to have this claim struck out on the basis that a personal grievance concerning the action had not been raised. Counsel pointed to a letter drafted by Ms Perkins’ (then) representative in December 2016 that raised a claim of constructive dismissal but which was silent about the circumstances concerning the alleged suspension.

[71] I rejected the Trust’s application. Section 114(2) of the Act provides that:

... a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

[72] It is settled law that no *“particular formula of words needs to be used”* to raise a personal grievance.¹¹

[73] Ms Perkins did not use the term *“personal grievance”* in the text messages of 10 and 11 October 2018, but the content was unequivocal. She advised the Trust on several occasions that it had suspended her from attending work. She made several requests to have the Trust provide her with the reason(s) for the decision. The Trust can have been in no doubt that she was dissatisfied by the decision and wanted the matter addressed.

[74] The Trust accepts it requested Ms Perkins not to come to work until it had met with her to discuss the events of 5 October 2016. It is clear Mr Beardmore did not

11 *Creedy v Commissioner of Police* [\[2006\] NZEmpC 43](#); [\[2006\] ERNZ 517](#) at [\[36\]](#)

consider the request had the effect of a “suspension” because Ms Perkins was paid for the intervening period. I agree with Ms Perkins’ text message however, that the *“instruct[ion] not to come to work ... is for all intents and purposes a suspension whether you call it that or not”*.

[75] The Employment Court has held:

It is well established that the employment relationship creates an obligation on the employer to do more than simply pay wages. Employees have a right to work. Other than by agreement or for good reason, the employer should provide the employee with work and

allow the employee to do that work.¹²

[76] Although the employment agreement was not signed I am satisfied it governed the relationship between the parties. Amongst other things the agreement allowed for Ms Perkins’ suspension where there were health and safety concerns involving stock. The material provision also states *“Before we make any decision to suspend you, we must discuss the proposal of suspension with you and consider your views”*.

[77] Whether or not Mr Beardmore’s reasons for wanting to meet before Ms Perkins returned to work warranted her suspension, the Trust was contractually and statutorily bound to allow Ms Perkins a chance to comment on the matter and genuinely consider any response before it suspended her. The law recognises that the right to be heard on a proposal to suspend is not absolute,¹³ but I am not satisfied that the prevailing circumstances were such that it was reasonable for the Trust to ignore

its obligations. The procedural omission was not the action of a fair and reasonable employer in the circumstances. Nor can I conclude it was minor and did not result in Ms Perkins being treated unfairly. It follows that Ms Perkins was unjustifiably disadvantaged by the Trust’s action and has a personal grievance.

[78] Ms Perkins did not lose wages as a consequence of the suspension. Her evidence leaves me with the impression that she was concerned more by the Trust’s failure to consult or provide reasons for the suspension, rather than the impact of the suspension itself, noting it lasted slightly less than two working days. Nevertheless I accept she was distressed by the Trust’s actions, although I consider the overall effect on her was slight. Ms Perkins did not contribute to the situation that led to this claim.

A modest award of \$750 is appropriate to the circumstances.

¹² *Harris v Charter Trucks Ltd*, Couch J, 11 September 2007, CC16/07 at [98]

¹³ *Graham v Airways Corporation of New Zealand Ltd* [\[2005\] NZEmpC 70](#); [\[2005\] ERNZ 587](#)

Should penalties be awarded?

[79] Ms Perkins seeks penalties for the Trust failure to provide an employment agreement, a safe workplace and wage and time records when requested.

[80] The claim that the Trust did not provide a safe workplace has not been established, and is therefore dismissed.

[81] There is no dispute Ms Perkins was given a draft employment agreement for consideration. It is clear the employment agreement was not formalised but that is a separate matter to whether an employment agreement was provided. The ground on which Ms Perkins seeks a penalty has not been made out.

[82] Finally, Ms Perkins seeks a penalty for the Trust's failure to provide wage and time records when requested. I accept the Trust was slow to provide the requested records but it did so 6 months (or thereabouts) before Ms Perkins lodged her statement of problem with the Authority. No claim for wages was made and there is no evidence Ms Perkins was paid incorrectly. I am not satisfied there are sufficient grounds to support an order for the purpose of punishing a wrongdoing. I am unwilling to impose a penalty in these circumstances.

Order

[83] Beardmore Family Trust No 2 is to pay Ms Victoria Perkins \$750 as compensation pursuant to s 123(1)(c)(i) for a personal grievance comprising of an unjustified suspension.

Costs

[84] Costs are reserved.

Note: This determination has been issued outside the timeframe set out at s

174C(3)(b) where the Chief of the Authority has decided exceptional circumstances exist.¹⁴

Michele Ryan

Member of the Employment Relations Authority

¹⁴ [Employment Relations Act 2000, s 174C\(4\)](#)

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