

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Christopher Rance (Applicant)
AND Christchurch City Council (Respondent)
REPRESENTATIVES Jeff Goldstein, Counsel for Applicant
Susan Hornsby-Geluk, Counsel for Respondent
MEMBER OF AUTHORITY James Crichton
INVESTIGATION MEETING Christchurch
6, 7 and 8 June 2006
18 July 2006
DATE OF DETERMINATION 14 August 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Mr Rance, alleges that he was disadvantaged by an unjustifiable action or series of actions of his employer, Christchurch City Council (the Council), that the Council failed to provide him with a safe workplace, and that the Council breached the terms of his employment agreement.

[2] The Council resists each of those claims maintaining there has been no disadvantage to Mr Rance, that the Council has provided a safe workplace to him and that it has complied with his employment agreement.

[3] Mr Rance is an engineer who joined the Council's employment in 1985. In December 2000, he was appointed a team leader in the Greenspace Unit of the Council.

[4] In the middle of 2003, there was a restructure of the area in which Mr Rance worked. Part of that restructure involved individual staff of the Council completing a questionnaire known as an Occupational Personality Questionnaire (OPQ). The analysis of the questionnaire completed by Mr Rance (and presumably others), resulted in the provision of a report, or perhaps more accurately two reports, one of which went to the Council and one of which went to Mr Rance.

[5] These reports were not simply two copies of the same document but actually had different material in them.

[6] Mr Rance's evidence is that he had a personal interview with the project assessor who *determined, from my responses, that I was exhibiting a potentially dangerous level of stress. This was discussed with me in some detail during the feedback session. The final reports do not contain this in depth discussion.*

[7] Notwithstanding that, Mr Rance goes on in his evidence to quote from a section of the version of the report about him which was provided to the Council.

[8] The passage that he quotes refers to *a considerable level of general anxiety, a strong tendency to hide his emotions from those around him, and that as a consequence others do not appreciate the high levels of anxiety that he is experiencing.*

[9] Mr Rance says that he gave copies of the OPQ report to his immediate manager, Ms Greenup and to the human resources person responsible for his unit, Ms Blake.

[10] In not much more than a year after those events, Mr Rance's evidence is that he was working three jobs, his own job and two other positions which he was covering, one because of a prolonged period of ill health as the result of a motor accident and the other simply a long standing vacancy.

[11] The Council denies that Mr Rance was being asked to cover three positions. It acknowledged that there were vacancies, noted that this was an endemic problem in the sector right across the country, noted that it was doing everything it reasonably could to fill vacancies, noted that Mr Rance's own time sheets do not show any appreciable increase in hours, and noted that Mr Rance had not, according to the Council, raised his anxiety about workloads at that point.

[12] Towards the end of calendar 2004, Mr Rance's evidence is that he again raised *the increased pressure on me* with his immediate manager, Ms Greenup. She proposed that there be a sideways shift into the planning team by way of a secondment.

[13] Ms Greenup did not have the authority to approve this secondment of her own motion, although the evidence suggests that the proposal was discussed by Ms Greenup's team at one of its regular meetings on 25 November 2004.

[14] According to a handwritten note taken from Ms Greenup's diary and on which she gave oral evidence, on 2 December 2004 Ms Greenup spoke with her manager, Ms Parfitt. I reproduce below what the relevant portion of her note says in full:

2. *Immediate staff concerns. I raised this. Said there was now urgency around relieving Chris R (Mr Rance) of his TL (team leader) role and giving him a less demanding role. Moving him would also have benefit to Richard (a reference to Richard Holland of the Planning Team) as C (Mr Rance) could give LD (land drainage) advice there. ... * Jane's (Ms Parfitt) response:- put together a quick A4 proposal so she can authorise the secondments.*

[15] I note for the sake of completeness that the partial quotation I have just included in this determination refers, in the middle section which I omitted, to other staffing arrangements.

[16] The proposal generated by Ms Greenup in fact was two A4s. In her memorandum dated 7 December 2004, Ms Greenup identifies briefly three issues, sets out the relevant provision from the collective employment agreement relating to secondments and then makes three recommendations for Ms Parfitt to approve. One of those recommendations is that Mr Rance be immediately seconded to the planning team to provide land drainage advice in respect of planning and subdivision.

[17] Ms Parfitt responded promptly on 13 December 2004 and declined the recommendations ostensibly on the basis that the proposal was actually a restructuring of the Greenspace Unit by agreement of the affected staff and that that did not comply with the Council's policies and procedures.

[18] Returning again to Ms Greenup's diary, there is a note for 13 December 2004 of her discussion with Ms Parfitt on receipt of Ms Parfitt's memorandum to which I have just referred. The text of the diary entry is as follows:

I read Jane (Ms Parfitt's) memo in her presence. I then told her 'this means that we will not be able to give land drainage advice to environmental services unit for subdivision applications'. She clearly did not know this and became uncertain. She said HR did not like secondments as there have been problems with them in the past. Jane then asked why Chris Rance couldn't give this land drainage advice now. I explained that Chris had a big responsibility running the GUMS team and that he was not happy in the role and was becoming stressed by having to do Owen Southern's job in Owen's absence and that no he couldn't take on a third role. Seconding him to Richard's team (Ms Greenup's proposal) would be a good solution. She still would not change her position on this and promised that Jacqui Matheson would come up with a solution (in the New Year). Jacqui would get in touch with me.

[19] Ms Parfitt on the other hand was adamant that Ms Greenup had never told her that Mr Rance was stressed and that the only discussions she had ever had with Ms Greenup about Mr Rance were in respect of the wider issues of resourcing. Critically, in relation to Ms Greenup's proposal of 7 December 2004, Ms Parfitt said that there was *no compelling reason to accept the recommendations in the 7 December memorandum*. She went on to say that she did not see the recommendations as *fixing anything*. Throughout her evidence, she was adamant that not only did Ms Greenup never tell her that Mr Rance was stressed, but also she denied that Mr Rance had ever told Ms Greenup that he was stressed either. She was adamant that Ms Greenup had always talked about resourcing but that *Ms Greenup gave me no cause to believe there was a stress issue (in relation to Mr Rance)*.

[20] When Mr Rance was told by Ms Greenup that the proposed secondment had not been approved by Ms Parfitt, there was apparently an intimation that Mr Rance could make an *informal* change until a full review of the proposed restructure was complete. Mr Rance's evidence is that he was told that that full review could be complete by the end of January 2005 (in effect, six weeks after he was told the secondment proposal had failed).

[21] It seems that, for whatever reason, that review certainly did not take place during that timeframe and when Mr Rance returned from annual leave in mid-January, he says he was told that if he wanted to move to the planning section as previously proposed in the secondment suggestion, he would effectively have to apply for a position there and be appointed on merit.

[22] The evidence suggests that Mr Rance certainly considered this option but in the result seems to have decided against making application, partly because he felt that the scope of the job was far greater than he (or perhaps anybody else) could cope with and partly because, despite the greater scope, it was sized as a smaller role than the one he presently occupied.

[23] Roughly contemporaneously with these events, Mr Rance received an email from his manager, Ms Greenup, dated 13 January 2005 concerning a meeting between Ms Matheson, the new Human Resources Manager for the City Environment Group of the Council and two members of Mr Rance's staff.

[24] The evidence shows that Ms Greenup received the email from Ms Matheson about 1.30 on 12 January. At about 8am on 13 January she emailed it to Mr Rance with a covering email of her own asking him to contact her to discuss it. Then half an hour later Ms Greenup emailed Ms Matheson and indicated that she *required the complaints to come directly from the two staff members, in writing, as required under E10 in the agreement* (that is the relevant clause of the collective employment agreement).

[25] The original email from Ms Matheson had simply sought to draw to Ms Greenup's attention the fact that these two staff members were unhappy about the way that Mr Rance had managed their salary review and proposed that Mr Rance be given *feedback* on the proper way to deal with this sort of situation so that there were no difficulties in the future.

[26] Ms Matheson's evidence was that the staff concerned never wanted to complain in a formal sense.

[27] Clearly though, formal complaint or not, Mr Rance was seriously destabilised by the issue. He received the email from his manager, at around 8am on 13 January 2005 as I noted above, and within three hours of the receipt of that email, he was emailing his manager in the following terms:

I am feeling pretty uptight about the events of this morning and feel I need a bit of time out to reflect on this and the implications – I would like to take tomorrow off, i.e. take the normal 3½ hours work time as leave.

All seems a bit counter-productive really!

[28] I note for the sake of completeness that Mr Rance's reference to taking the normal 3½ hours work time as leave is a reference to the fact that by this stage in his service with the Council, he had negotiated special working hours on Fridays such that he would work from 7.30am until 11am.

[29] Ms Greenup responded to that email in the following terms:

I am truly sorry that this incident has been so demoralising when you have had so much to contend with (including Owen's absence). Feel free to take leave on Friday but also come and see me if that will help.

[30] The reference to Owen's absence is a reference to the absence on sick leave of Mr Owen Southern who was on extended sick leave because of injuries sustained in a motor accident.

[31] Mr Rance's evidence at this point is that although he readily acknowledges that his manager dealt with this *complaint* in a *decisive* manner, he still says *the whole issue played on my mind and added to my deep concerns about my role and future. Over the next few days I had virtually no sleep and felt increasing anxiety.*

[32] On 24 January 2005, Mr Rance went to see his general practitioner, Dr McKay. Dr McKay reports that Mr Rance was extremely stressed and *feeling overworked* and that she offered the prospect of time off work on the grounds of ill health which Mr Rance indicated he would think about.

[33] Mr Rance suffered a complete breakdown on 26 January 2005 (two days later). He describes *uncontrolled weeping, feelings of impending doom and irrational behaviour*. The onset of this breakdown happened at home and naturally enough Mr Rance's wife was very anxious about him and insisted that he not go to work. He rang Ms Greenup and she instructed him to obtain further medical advice. He saw Dr McKay again that day and as a consequence of that and subsequent visits to his general practitioner, remained away from the workplace until 9 January 2006.

[34] During the period of almost a year while Mr Rance was absent from the workplace, the Council endeavoured to keep in touch with him through its Health and Safety Adviser, Ms McFarlane who it is common ground made contact with Mr Rance every month to six weeks.

[35] There were some differences between Mr Rance and the Council during this period, perhaps to some extent exacerbated by Mr Rance's ill health. On the one hand, Mr Rance felt that he was being ignored by the Council while on the other hand he seemed reluctant to engage with some members of the Council's management including in particular Ms Matheson.

[36] As Mr Rance's absence from the workplace stretched on, the Council seems to have become increasingly frustrated at its inability to get some sense of how long Mr Rance was going to be absent from work. Mr Rance considered that the Council had made the decision towards the latter part of 2005 to try to terminate his employment rather than continue to promote his rehabilitation.

[37] Since 9 January 2006, Mr Rance has been back at the Council working in a new role at a lower salary than he previously enjoyed because of the lessened responsibilities of the new role.

Issues

[38] The first issue that needs to be addressed is an analysis of the legal position.

[39] Next, I intend to analyse the extent to which Mr Rance fulfilled his legal obligations to notify the Council of his situation and then to consider the extent to which (if any) the various significant Council officers knew or ought to have known of Mr Rance's position.

[40] I propose to consider the extent to which the Council was told of Mr Rance's condition and/or the extent to which the Council knew or ought to have known of it against the backdrop of the three significant triggers or weigh stations to Mr Rance's breakdown, namely:

- (a) The OPQ report;
- (b) The secondment proposal;
- (c) The HR *complaint*.

[41] Finally, I intend to review the medical evidence.

The legal position

[42] The effect of a combination of statutory enactments, in particular the Health and Safety in Employment Act and a succession of decided cases, both in this country and in overseas common law jurisdictions, is to create an obligation on employers to protect their employees from harm in the workplace; harm is defined as including *physical or mental harm caused by work related stress*: Health & Safety in Employment Act.

[43] That then might be appropriately identified as the first principle of the relevant law.

[44] If that is the first principle, then the second principle is that an employer is only obligated to protect employees from harm (including mental harm occasioned by workplace stress) if the employer knows about the harm or ought reasonably to know about it.

[45] I consider the third principle established by decided cases and the relevant statutory enactments holds that it is not necessary for an employee to prove that work was the sole cause of their ill health; all that is required is compelling evidence that work is a *material* factor: *Attorney-General v. Gilbert* [2002] 1 ERNZ 31 (CA).

[46] The fourth and final principle which I discern from the relevant law that is applicable to the instant case is the principle that work that is inherently stressful does not attract the requirement that the employee must notify the employer of his ill health: *Whelan v. Attorney-General* [2004] 2 ERNZ 554.

Did Mr Rance notify the Council?

Introduction

[47] Mr Rance said that by his words or deeds it should have been abundantly clear to the Council that he was unwell by reason of workplace stress and/or overwork generally.

[48] However, Mr Rance candidly admits that he never said that he was *unwell* and that he did not *go around telling everyone that he was losing his marbles*. Mr Rance agreed that he put on a *pretty stoic face at work*.

[49] So the question is, how was the Council to know that Mr Rance was unwell when he himself concedes that he would never have used those words explicitly and would never have discussed his emotional state at work?

[50] Mr Rance says that over time, he would have made clear to his immediate manager, Ms Greenup, the stressors for him in the workplace and she clearly responded to his concerns in a positive and helpful way. It is useful to look at those exchanges in the context of the three *tipping points*.

The OPQ Report

[51] This report was prepared in the middle of 2003. There were, as I mentioned earlier, two versions of the report but clearly what seems to have particularly troubled Mr Rance was the discussion with the facilitator that went with the report. There is no record of that discussion but Mr Rance's evidence is clear that that discussion identified that he was *exhibiting a potentially dangerous level of stress*.

[52] I am inclined to accept Mr Rance's evidence about that discussion because what he does next is consistent with a discussion of that sort. He gives a copy of the OPQ Report to his manager and also to the human resources person who was then attached to the unit.

[53] The human resources person just referred to was Ms Blake and her evidence before the Authority was that she had read the OPQ Report and was working with Mr Rance's immediate manager, Ms Greenup, to find a solution to *his ever increasing workload* right up until the point at which she left the human resources position in November 2003.

[54] Ms Blake also gave evidence that she had received representations from one of Mr Rance's staff, Mr Rillstone, who said that he was *concerned about Chris' [Mr Rance's] wellbeing*. Mr Rillstone, in his evidence, went on to say that he spoke to Ms Blake and told her that *I believed*

Chris wasn't coping well and I had concerns for his health. On occasions he would become very red in the face and breathed heavily and appeared short of breath.

[55] Mr Rillstone goes on to say that shortly before Christmas 2004, he raised with Ms Greenup his continuing concern about Mr Rance's health. He said it was *widely known around the unit that Chris was stressed* Mr Rillstone recalls also having a conversation of this nature with Ms Matheson at around the same time, although Ms Matheson has no recollection of that conversation.

[56] Even if I am mistaken in preferring Mr Rance's evidence of the undocumented discussion with the facilitator at the time the OPQ Report was prepared, there seems little doubt that Mr Rillstone was concerned about Mr Rance's health and sufficiently anxious to discuss the matter with Ms Blake who remembers being given that message, that Ms Blake was herself concerned about Mr Rance's health and that the evidence suggests that Mr Blake, Mr Rillstone and Ms Greenup had some discussion about Mr Rance's health in the spring of 2003 and before Ms Blake left her human resources role in November 2003.

[57] Turning now to consider what Ms Greenup recalls of that period, first her evidence is straightforward that she remembers Mr Rillstone telling her that he was concerned about Mr Rance's health and she referred to a diary entry to that effect on 21 December 2003.

[58] However, before that had happened, Ms Greenup's evidence is that on receipt of the OPQ Report which she dates as 27 May 2003, she read the report and then spoke to Mr Rance. Her evidence was that during that conversation and as a result of her own observations, Mr Rance noted that he found managing people difficult and giving and receiving criticism was difficult.

[59] Ms Greenup said that she raised with him at that point that she was willing to move him to try to deal with some of those stressors and Ms Greenup further says that she got permission from her then manager to do that. However, Mr Rance decided not to accept that offer to move because, certainly on Mr Rance's own evidence, at that point in time, he was not stressed.

[60] However, from Ms Greenup's point of view, she noted that there was *a flag with her* that when there were staffing issues involving Mr Rance, she needed to watch the situation carefully.

[61] Ms Greenup says that by the beginning of the New Year (2004) she had a new manager, Ms Parfitt and her diary indicates that she had a discussion with Ms Parfitt on her key performance indicators on 27 April 2004. Ms Greenup says that she discussed with Ms Parfitt on that occasion the shortage of land drainage engineers and the effect on, amongst other people, Mr Rance of that generic fact. She also discussed a serious issue about her own health the previous year and she says that she indicated to Ms Parfitt that she was watching the effect on Mr Rance of this generic shortage but nothing more than that.

[62] On 3 August 2004, Ms Greenup's diary indicates that she had another meeting with Ms Parfitt revolving around urgent recruitment issues and as I have already noted, on 13 August 2004, Mr Rance applied for and was granted an alteration to his work hours so that, while he continued to work the normal span of hours, he compressed them into 4½ days so that he could finish at 11am on Friday mornings.

[63] Less than a month later, on 12 September, Mr Southern, a senior member of Mr Rance's team, had his serious motor accident and the following day Ms Greenup met with Ms Parfitt and indicated to her the consequences of the Southern accident in terms of workload.

[64] Ms Greenup's evidence is that from October 2004, she *started to monitor things (in relation to Mr Rance) more closely*. This was because, with Mr Southern's motor accident, there was a

reduction in the resource but of course no reduction in the demand. The position was especially critical in respect of land drainage issues.

[65] Ms Greenup's diary records that on 1 October 2004 she told the human resources team that Mr Rance's area was under-resourced and on 4 November there was a site visit of four hours' duration wherein Ms Greenup, Ms Parfitt, Mr Rillstone and Mr Rance visited various sites around the city that the team was involved with and discussed, according to Ms Greenup, the resourcing issues and their impact *first hand*.

[66] On 16 November, according to Ms Greenup's diary, Ms Matheson from human resources attended Ms Greenup's team leader meeting where the lack of human resources in her team was discussed and Ms Greenup says that Ms Matheson emailed her to indicate that she would *follow up* on resourcing.

The secondment proposal

[67] On 2 December 2004, Ms Greenup had a further *one on one* meeting with her manager, Ms Parfitt and she says that on this occasion she indicated to Ms Parfitt that it was now urgent to immediately relieve Mr Rance of his team manager role and that Ms Parfitt said to her to put something together on *a quick A4* and Ms Parfitt would *sign it off*.

[68] As I have already noted, this A4 proposal was ultimately turned down by Ms Parfitt and her evidence is that at no stage did she appreciate that there was any urgency in a human sense about the suggested change in Mr Rance's work arrangements.

[69] Ms Parfitt was also very clear in her evidence that she did not consider she had ever been told that Mr Rance was stressed and indeed she went further and indicated that she did not consider that Mr Rance was in fact stressed.

[70] On the face of it, this is an extraordinary contention because, given the hierarchical nature of the organisation and the fact that Ms Parfitt would have had very little to do with Mr Rance at all in a direct sense, one might ask how she could make such an observation honestly.

[71] I think the explanation is simply that she was so sure that she had not been told by Ms Greenup that there was a problem with Mr Rance's stress that, notwithstanding the evident difficulty in the relationship between Ms Parfitt and Ms Greenup, Ms Parfitt simply could not conceive of circumstances where Ms Greenup knew that a member of her team was stressed (and dangerously so) and did not pass it on to her.

[72] Ms Parfitt's explanation for the rejection of the December proposal to second Mr Rance is at least partly encapsulated by her observation while giving evidence that she and Ms Greenup were *talking past each other*. As I have already noted, Ms Parfitt says that she had no apprehension that there was a serious health issue with Mr Rance and therefore that there was some urgency attaching to the secondment proposal.

[73] Ms Greenup says that she had been talking to Ms Parfitt all year about the growing crisis in resourcing and that from October of that year she was monitoring Mr Rance's situation very closely and she says making appropriate observations both to Human Resources and Ms Parfitt. Ms Greenup sees her discussion with Ms Parfitt on 2 December 2004 as pivotal to a resolution of the problem that she perceived. However, neither Ms Parfitt nor Ms Matheson, the General Manager of Human Resources, have any recollection of having been told in explicit terms, that Mr Rance had a problem.

[74] Ms Greenup acknowledges that she did not say in her December 2004 memorandum that Mr Rance was stressed. She said in answer to my question about that issue, that she had already told Ms Parfitt that he was stressed and therefore she did not need to put it in writing. But that answer is inconsistent with her earlier testimony that she would never have used expressions such as: *Chris [Mr Rance] is suffering from workplace stress*. In answer to a question from counsel for Mr Rance, she said that she did not refer to Mr Rance's stress in the December document because she wanted to *preserve his dignity* (referring to Mr Rance).

[75] On another occasion, again in answer to questioning from Mr Rance's counsel, Ms Greenup said that she was prepared to say privately that Mr Rance was stressed but as there had been no investigation about his stress in a human resources sense, she did not think it appropriate to use that descriptor in written communications.

[76] My assessment of Ms Greenup's evidence is that she relies very strongly on context for conveying her message and she seemed reluctant to clearly articulate her apparent conclusion that Mr Rance was stressed. Put into her context, the conclusion that Mr Rance was ill becomes almost self-evident but I do not think that the evidence supports a conclusion that any of the other senior managers at the Council with whom Ms Greenup interacted received the message that she says she was endeavouring to transmit.

[77] It follows that when Ms Greenup put up her December 2004 proposal to second Mr Rance, Ms Parfitt turned it down not on the footing that it was the wrong thing to do but rather that the process was mistaken and that there needed to be more human resources input.

[78] Again, this was another example of missed opportunities to communicate because Ms Greenup assumed that her proposal to second Mr Rance would be the subject of a three-way discussion between her, Ms Parfitt and Ms Matheson before matters were taken any further.

[79] In the result, all that happened was that Ms Parfitt spoke to Ms Matheson, there was no discussion between Ms Greenup and Ms Matheson, and the proposal was turned down.

[80] But it was turned down on the basis that Ms Parfitt believed that Ms Matheson would progress a restructuring proposal which would address similar aims but might come out looking differently.

[81] The paper trail suggests that Ms Matheson was endeavouring to engage that strategy after the holiday break in mid-January 2005 by which time of course it was too late for Mr Rance because by 26 January he was starting long-term sick leave.

[82] I do not think that any of the principal actors in this unhappy saga were activated by bad faith or impure motives. I do think there were elements of poor communication and I think Ms Greenup contributed to that by her apparent diffidence about using the appropriate language to describe what she says she believed about Mr Rance's health.

[83] I also think that the self-evidently poor relationships between, for example Ms Greenup and Ms Blake on the one hand and Ms Parfitt and Ms Matheson on the other, did nothing to help Mr Rance's cause. Clearly, had the message got through that Mr Rance was ill and needed help, I am absolutely satisfied from the evidence I heard that the Council's organisation would have immediately taken appropriate steps to protect Mr Rance from further harm. The fact that the message did not get through meant that Mr Rance suffered a period of ill health which in my view was preventable harm.

The human resources “complaint”

[84] Mr Rance seems to have been, as it were, *pushed over the edge* by this complaint and his distress about the way it was handled. Clearly, the issue of itself is of no moment.

[85] I have already described the email exchange between Mr Rance and his manager, Ms Greenup, in relation to this issue. I am absolutely satisfied that that email exchange evidences both Mr Rance’s distress and Ms Greenup’s acknowledgment of that distress.

[86] I do not think that it takes us very far, or indeed is in any overall sense helpful, to dwell on whether Ms Matheson is right to allege that Ms Greenup was trying to escalate the issue into a formal complaint or the other way round. All that really matters is that by the time these events happened, Mr Rance’s own evidence suggests that he was struggling to cope and his response to what he himself acknowledges was a small issue suggests a complete absence of an ability to keep matters in perspective.

The Council’s officers and their state of knowledge

[87] All the Council’s officers (with the exception of Ms Greenup who no longer works for the Council), maintain that they knew nothing of Mr Rance’s stress until his breakdown on 26 January 2005.

[88] Ms Parfitt alleges that Ms Greenup was not aware that Mr Rance was ill and that is why Ms Greenup burst into tears when Mr Rance rang on that day to indicate that he was seriously unwell. I think quite the reverse is the case. I think Ms Greenup burst into tears because she realised that, despite her efforts to protect Mr Rance and to restructure his work routines to protect him, she had in fact failed and her worst fears were now realised.

[89] Certainly the Council’s witnesses all confirmed that there were resourcing issues in the Greenspace unit and acknowledged that there were difficulties across the local government sector in hiring engineers and planners but no one understood that Mr Rance was ill, that he was suffering from workplace stress or even that he was carrying a load which was greater than was reasonable in all the circumstances.

[90] The Council’s witnesses referred to Mr Rance’s timekeeping which indicated that his hours in 2004 were not greatly exceeding his hours in 2003 when on his own admission he was not stressed. However, Mr Rance’s explanation for that is that his timekeeping was not accurate and it was not simply about the quantity of work but also about the pressure that he was working under.

[91] In contradistinction to Mr Rillstone who was a work colleague of Mr Rance’s but like Ms Greenup had left the Council to work elsewhere, Mr Brent Smith, who was another team leader reporting to Ms Greenup, gave evidence that it was not widely known that Mr Rance was stressed, that he did not remember talking about Mr Rance as having a problem with stress, and that he was not aware himself that Mr Rance was stressed.

[92] Ms Matheson, who was the Human Resources Manager for the City Environments Group, was appointed in October 2004. She impressed me as an honest and truthful witness. I accept her evidence that she has no recollection of being told that Mr Rance was overworked or stressed or likely to suffer a breakdown.

[93] She made the point that she herself suffers from depression and that she would be most unlikely as a trained human resources person to simply ignore warning signals if there had been any.

[94] She spoke about a difficult relationship with Ms Greenup and given that, it seems unlikely that Ms Greenup would have taken Ms Matheson into her confidence. Indeed, Ms Matheson was clearly somewhat surprised that Ms Greenup floated her December 2004 proposal to Ms Parfitt without getting Human Resources' input into that proposal beforehand.

[95] As I have already noted, Ms Greenup was equally put out that there was no three-way discussion between herself, Ms Parfitt and Ms Matheson before that proposal was rejected. This might well be seen as another example of people talking past each other.

[96] Ms Matheson said that she found working with Ms Greenup *challenging* and felt that there was an issue in Ms Greenup's area with *the whole engagement with human resources*.

[97] Both Ms Greenup and Ms Blake allege that Ms Matheson was difficult to get to meetings and that she would commit to a meeting and then not turn up. Ms Matheson says that she was busy and so did from time to time appear at meetings late, but that the reason she did not attend the team meetings of Ms Greenup's team was that nobody invited her.

[98] Ms Matheson said that after the December 2004 proposal was rejected by Ms Parfitt, she, acting on Ms Parfitt's instruction, endeavoured to engage with Ms Greenup to get an alternative proposal up and running but she was not able to engage with Ms Greenup and before there was any prospect of that being remedied, first Mr Rance left on sick leave and then Ms Greenup began her exiting of the organisation.

[99] I accept the evidence of the Council's witnesses that they were not told about Mr Rance's descent into ill health. I believe that the evidence supports the conclusion that they were either not told at all, as I think is the position with Ms McFarlane and perhaps with Ms Matheson, or what they were told was not sufficiently graphic to make them realise that there was in fact a developing health issue with Mr Rance as I believe was the situation with Ms Parfitt.

[100] The circulation of the OPQ Report might have assisted the Council to identify that Mr Rance was a possible candidate for a stress-related illness had it been more widely disseminated. Certainly Mr Tonner knew about the report and had read it in relation to Mr Rance, but he is adamant that nobody told him about Mr Rance's health.

[101] Ms Parfitt and Ms Matheson both joined the organisation **after** the OPQ Report was disseminated and so probably were not exposed to its conclusions at all.

The medical evidence

[102] Mr Rance was seen by his general practitioner, Dr McKay, by Mr Alan Prosser, a clinical psychologist at the behest of the Council, by Dr Alma Rae, a psychiatrist on referral from Dr McKay, by Dr Stoner, a psychiatrist, and Dr Floyd, an occupational physician at the behest of the Council.

[103] Dr McKay gave evidence that she had looked after Mr Rance for many years and that there was no evidence of psychiatric illness prior to 2005. She was quite categorical that she regarded the acute depressive illness that Mr Rance suffered as directly attributable to his employment. In her first report, Dr McKay says this: *His diagnosis is depression with anxiety and it seems to me to be a direct consequence of his stressful work environment.*

[104] Then, later on, Dr McKay has this to say: *I think there is no doubt that his working environment and the treatment that he felt he received at the hands of his employer and senior managers at the City Council contributed almost completely to the breakdown of his mental health*

this year ... This year [2005] he has felt disenfranchised and unsupported by his peers and has certainly found the whole environment at the Council to be hostile to work in.

[105] Mr Prosser's role was essentially, to use his words, *to assist [Mr Rance] in moving himself to a position where he was able to make a decision about whether he returns to work or resigns from the Council.* It follows that Mr Prosser did not express a view about causation in respect of Mr Rance's illness.

[106] Dr Rae was the psychiatrist Dr McKay referred Mr Rance to. Dr Rae was very clear in her conclusions. She says: *Mr Rance's depression is entirely the result of his work environment. ... The workplace became a condition stimulus for intolerable levels of stress, distress and anxiety and he has therefore been unable thus far to contemplate a return. I do not believe any pre-existing factors have contributed to his illness ... There do not appear to be any personal factors of a pathological or undesirable sort that have contributed to his illness.*

[107] In giving her oral evidence, Dr Rae remained unequivocal in her stance that the workplace was the cause of Mr Rance's ill health. She was quite unapologetic about not considering other factors as relevant to Mr Rance's depression.

[108] According to Dr Rae, *in the vast majority of cases there is a very clear view of why the depression occurred and it is almost never that one cannot identify a particular cause.*

[109] That view is not supported by Dr Stoner, the psychiatrist that Mr Rance was referred to by the Council. Dr Stoner characterised Dr Rae's determination to see the workplace as the sole cause of the depression as *an unusually bold statement.*

[110] Dr Stoner went on to say that if Mr Rance were identified as having one cause for his depression that would make him a most unusual patient and would not be his (Dr Stoner's) view of the causes of Mr Rance's illness.

[111] In Dr Stoner's view, the cause of depression is *invariably multi factorial.* Dr Stoner thinks that Mr Rance's depression falls into this multi factorial category. He identifies a number of factors which he thinks are relevant including, in no particular order, some of the medications which Mr Rance was taking for other ailments, his brother's terminal illness and perhaps other family issues as well.

[112] Dr Floyd, the occupational physician, also expressed some doubt about Dr Rae's categorisation of Mr Rance's depressive illness being solely caused by workplace issues. Dr Floyd also made the observation that it is difficult for employers to assist employees if employees do not *put their hand up* and say they are having problems.

Applying the law

[113] If the first principle I have discerned from the relevant law is that employers have an obligation to protect their employees from work-related stress, then that principle casts a general onus on the Council to ensure that its systems of work, its aspirations in terms of the physical production of work from its staff and its human resourcing are all so constituted as to ensure that employees are stimulated without being subjected to pathological stress.

[114] However, if that general obligation is to be turned into a particular obligation pertinent to the present matter, then either the Council must have knowledge of Mr Rance's health circumstances and the work environment which is likely to impact on those health circumstances, **or** the work that Mr Rance is doing is deemed to be *inherently stressful.*

[115] It is appropriate that I deal with the effect of principle four relating to the inherently stressful nature of the work. I do not consider that the evidence discloses that Mr Rance was doing inherently stressful work. In my opinion, the case law strongly suggests that there are some classes of occupation which, by virtue of their particular challenges, are inherently stressful. An example of such an occupation is social work.

[116] I acknowledge that the case law allows the possibility that work that is not inherently stressful but which is being provided by the employer in such quantity that an employee may become significantly stressed, does bring fundamentally less stressful work within the ambit of the *inherently stressful* principle.

[117] Counsel for Mr Rance invites me to reach that conclusion in the instant matter. I decline to do so. I do not think that it is reasonable to compare the pressures, for instance on front line social workers with an increase of work of a professional engineer in a large local authority. Accordingly, I reject the suggestion that Mr Rance was, by virtue of doing more work than might otherwise be expected, doing inherently stressful work.

[118] It follows that the issue I must now consider is whether the Council knew about the significant harm or ought to have known about it. For reasons which I have articulated earlier in this determination, I have already reached the conclusion that the evidence strongly suggests that the Council knew or ought to have known of the significant harm that Mr Rance was facing.

[119] In reaching that conclusion, I am relying on the evidence from Mr Rance which I accept that he, at various times, told his immediate manager, Ms Greenup, that he was under pressure, suffering from overwork, seeking to reduce hours, wanting to change direction within the Council to get away from the sort of pressure that he was presently under, not coping with the leadership role in his present job, effectively seeking to move sideways into a project management role, and generally asking for help.

[120] Ms Greenup, Mr Rance's immediate supervisor, may not have been as explicit as she might have been in conveying that message further up the Council's hierarchy, but the fact that she clearly knew and gave evidence that she knew of Mr Rance's distress is in my opinion pivotal.

[121] I accept Ms Greenup's evidence that she knew perfectly well that Mr Rance was in difficulty, that she endeavoured to do something about it over a lengthy period of time and my conclusion is that when Mr Rance finally suffered his health collapse, she realised that she had ultimately been unsuccessful in protecting her staff member.

[122] No doubt it would have been helpful to the Council if Ms Greenup had been more explicit about her growing anxiety. However, I do not find that it is necessary that an employer receive explicit notification using the appropriate terminology. In my opinion, all that is required is that an employee use their best endeavours to notify the employer that they are having difficulty and where the evidence suggests that the employer has received that message and endeavoured to do something about it as is manifestly the case in the instant proceedings, then I think the matter is put beyond doubt.

[123] That conclusion is further supported in my view by the effect of principle three which it will be recalled simply confirms that it is not necessary for an employee to prove that work was the sole cause of the health collapse; all that is necessary is that work be a material factor.

[124] All of the medical advice that I have heard in this matter would accept that the workplace stressors were a material factor.

Determination

[125] I find that the applicant, Mr Rance, has a personal grievance by reason of a disadvantage he has suffered as a consequence of an unjustified action by his employer. Mr Rance also claims that the Council has failed to provide him with a safe workplace and the Council has breached his employment agreement. All three causes of action rely on the same facts and it will be sufficient for our purposes to apportion the remedies that Mr Rance is entitled to in relation to the personal grievance.

[126] Mr Rance seeks the sum of \$50,000 as compensation under s.123(1)(c)(i) of the Employment Relations Act 2000. Such a sum falls well outside the parameters for awards made by the Authority.

[127] The purpose of compensation is to put the successful party back in the position they were in prior to the events complained of. I consider a more modest award is appropriate in all the circumstances; I award Mr Rance the sum of \$12,500.

[128] In addition, I accept Mr Rance's submission that the effect of the personal grievance that he has suffered is to cause the diminution of his sick leave and annual leave over the period that he was absent from work as a consequence of ill health. In that regard then, I direct that counsel are to confer and identify the sum lost by Mr Rance as a consequence of the extensive sick leave that he has taken and the smaller amount of annual leave that he has taken.

[129] Once counsel have quantified these amounts, they are to agree either that those entitlements which Mr Rance had but was caused to use are restored to him or, in the alternative, the quantification is to be reduced to money value and a gross sum paid to Mr Rance equivalent to the money value of those entitlements.

[130] Mr Rance has returned to work at the Council in a lesser position. The financial consequences of that change equate to, in round figures, \$20,000 per annum.

[131] The medical advice suggests that Mr Rance will recover fully from his depression in due time and on that footing I consider I am entitled to assume that Mr Rance could once again aspire to a position within the Council which would attract a salary equivalent to the one he used to enjoy, at some point in the short future.

[132] Accordingly, I award Mr Rance the sum of \$20,000 gross as reimbursement of wages lost as a consequence of the ill health that he has suffered, such amount being equivalent to the shortfall for a period of one year. This calculation, of course, assumes that Mr Rance will be able to aspire to a more senior position in 12 months' time.

[133] Although I have accepted the thrust of Mr Rance's submissions as to remedies, I was not moved by his claim for a very large award of compensation for two reasons.

[134] The first is that I consider that the other heads of remedy go a significant distance in putting Mr Rance back in the position that he would have been in were his work not to have caused his ill health.

[135] The second reason is that I think the evidence amply discloses that although Mr Rance has effectively had to put his life on hold for 12 months while he wrestled with his illness, during that period, in my view, the Council did all it reasonably could to ameliorate his suffering.

[136] In that regard, I make clear that I do not accept Mr Rance's evidence that the Council behaved inappropriately during that period; I think it did what it could to address his issues in the context of dealing with an employee who, by his own admission, was less than straightforward to deal with as a consequence of his illness.

Summary

[137] I have made the following orders:

- (a) Compensation under s123 (1)(c)(i) of the Employment Relations Act 2000 in the sum of \$12,500;
- (b) The parties' counsel to confer and quantify the value of sick leave for the period 26 January 2005 to 9 January 2006 and annual leave for the period 9 January 2006 to 17 April 2006 and then develop an agreed basis for reimbursing those amounts to Mr Rance either in kind or money value;
- (c) Lost wages in the sum of \$20,000 gross.

Costs

[138] Costs are reserved.

James Crichton
Member of Employment Relations Authority