

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 245
5354181**

BETWEEN ROTE RIGGS
 Applicant

AND FOODSTUFFS (AUCKLAND)
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Norman Riggs, Advocate for Applicant
 Kathryn Beck, Counsel for Respondent

Investigation Meeting: 21 June 2012 At Auckland

Submissions received: 29 June 2012 from Applicant
 29 June 2012 from Respondent

Determination: 23 July 2012

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Rote Riggs, claims that she has been unjustifiably constructively dismissed by the Respondent, Foodstuffs (Auckland) Limited (Foodstuffs).

[2] Specifically Ms Riggs claims that her constructive dismissal arose as a result of bullying and harassment on the part of the management team, culminating in cross-training affecting her position, and as a result of which she felt she had been left with no other choice but to resign.

[3] Ms Riggs also claims that she was unjustifiably disadvantaged in her employment as a result of bullying and harassment on the part of the management team.

[4] Foodstuffs claims that Ms Riggs voluntarily resigned her position and denies that Ms Riggs was constructively dismissed; or that she was bullied and harassed during the course of her employment.

Issues

[5] The issues for determination are whether:

[6] Ms Riggs voluntarily resigned her employment or was constructively dismissed by Foodstuffs;

[7] Ms Riggs was unjustifiably disadvantaged in the course of her employment by bullying and harassment on the part of the management team at Foodstuffs.

Background Facts

[8] Ms Riggs commenced employment with Foodstuffs in 2003, initially on a casual basis, then moving to permanent employment and being appointed as Goods Inward Administrator in October 2008.

[9] Ms Riggs was employed in accordance with an individual employment agreement (the Employment Agreement) signed by Ms Riggs and Foodstuffs on 29 October 2008. Clause 9 of the Employment Agreement entitled 'Employee Duties' stated:

- a.) *It shall be part of the ordinary duties of the employee to do any job within their capability anywhere on the employers premises but at no less than the ordinary rate of pay for their designated job.*

[10] Clause 24 of the Employment Agreement referred to the "Employee Handbook". The Employee Handbook stated at clause 10 that Foodstuffs was: "... committed to providing an environment which is free of harassment and discrimination", and explained that the employee should seek help in the case of bullying or harassment from: "*your manager, or a member of the Executive Team*".

[11] Ms Riggs confirmed at the Investigation Meeting that she had read the Employment Agreement and the Employee Handbook and had understood clauses 9a and 24 of the Employment Agreement and clause 10 of the Employee Handbook.

Events prior to February 2011

July 2008

[12] Ms Riggs said that in July 2008 an employee had tried to commit suicide. Ms Riggs said she had learnt about the suicide attempt from another employee, who had also informed

her that some members of the management team, including Mr Sean Grey, Distribution Manager, had been laughing about the incident.

[13] Ms Riggs said she had felt incensed by this information and she had gone to the management office to berate those involved. Ms Riggs said that when she had arrived at the office she had seen members of the management team inside the office laughing, but she had not challenged them at that point. Ms Riggs said she had berated management team members afterwards and stated this was the starting point for the harassment of her.

[14] Mr Grey explained that the employee who had tried to commit suicide had had special needs, and he and Mr Roy Antunovich, Operations Manager, had spent a significant amount of time working with this employee's mother and the family to ensure the employee's well-being and subsequent recuperation both prior to, and following, the suicide attempt.

[15] Both Mr Grey and Mr Antunovich said that all the Foodstuffs employees had been deeply distressed to hear about the suicide attempt, and they personally had not laughed about the incident, nor had they been aware of any employees, including those in the management team, laughing about it.

[16] Moreover both Mr Grey and Mr Antunovich said Ms Riggs had not made a complaint to them about management team members acting inappropriately in connection with the suicide attempt, and that had she done so, they would have taken action in respect of the complaint.

Employment of Ms Riggs' Son

[17] Mr Grey said on 14 October 2008 Ms Riggs had approached him and discussed some personal issues she had been having with her son, and had asked if he would consider offering her son employment at Foodstuffs.

[18] Mr Grey explained that at this time Foodstuffs did not endorse the employment of family members on the basis that this had caused difficulties in the past, and Mr Antunovich had given him direct instructions not to employ family members of employees.

[19] Mr Grey said that he had however decided to employ Ms Riggs' son despite Mr Antunovich's instructions to the contrary, on the basis that he had felt it was more important for him to help Ms Riggs with her problems with her son.

[20] Mr Grey said he had subsequently explained to Mr Antunovich the reasons why he had not followed his instructions regarding the non-employment of family members on this particular occasion, and Mr Antunovich had agreed to support his decision.

[21] Mr Antunovich confirmed that this had been the case, and that he personally had offered EAP support to Ms Riggs; however she had declined this.

Disciplinary meeting in October 2009

[22] Ms Riggs said that on 1 October 2009 she had been invited to a disciplinary meeting in connection with an allegation of 'unauthorised possession of DC Warehouse stock'. The allegation was that Ms Riggs, in breach of company policy, had given chocolates to an employee from another department.

[23] Ms Riggs said she had considered that she was being accused of theft, and said she had been informed by her Team Leader that Mr Antunovich wanted to conduct the disciplinary meeting.

[24] Mr Antunovich said he had not been involved in the disciplinary meeting which had been handled by Ms Riggs' then Team Leader, Mr Tuna Otahiva. Mr Antunovich said he had not informed Mr Otahiva that he had wanted to be involved in the process; and nor would he have done so on the basis that Foodstuffs' common practice in matters of a minor nature was for the supervisory staff to deal with these.

[25] The disciplinary form which is dated 15 October 2009, and signed by Mr Otahiva and Ms Riggs, records that Ms Riggs received a first warning. Ms Riggs had written in the section of the form for the employee's response:

I agree and accept my performance & conduct in regards to this warning is noted and apologise for creating and putting myself in this position to getting my 1st warning.

[26] Ms Riggs said that following this disciplinary incident her relationship with the management team deteriorated further and she had consulted both her doctor and her pastor.

Cross-Training

[27] Ms Riggs explained that cross-training was the process whereby employees learnt the processes involved in the positions undertaken by other employees. Ms Riggs said cross-training was a continuous process and affected the Goods Inward area in addition to the other areas in Foodstuffs.

[28] Mr Grey said that on or about October 2010 he had met the Distribution supervisory team and informed them that there had been a directive to cross-train across the Distribution

Centre. Mr Grey said he had explained that the cross-training would achieve two purposes: firstly that of providing cover for busy periods and absenteeism, and secondly to meet Foodstuffs objectives of OFI (Opportunities for Improvement).

[29] Mr Grey said he had further explained that the cross training exercise to be undertaken in February 2011 would affect both the Goods Inward team and the Gilmours' Bulk Store (Gilmours) as the cross-training would be within the Goods Inward team itself and with Gilmours employees.

[30] Mr Malo Fata, No 2IC Inwards Goods and Ms Riggs' Team Leader supervisor, said that in October 2010 he had, as instructed by Mr Grey, updated his team of the changes planned. Mr Fata said he had explained that Gilmours, which was located at a separate site location, and the Inwards Goods Distribution Centre, would come under one roof, and had briefed his team about the decision to have some employees commence cross-training in due course.

[31] Mr Grey said that on 30 November 2010 he had noticed that Ms Riggs was looking unhappy and he had asked her if she had wanted to talk. Mr Grey said they had gone outside the building for a walk. Mr Grey said he had asked Ms Riggs how she had felt about the changes and in particular the cross-training to be undertaken and she had replied that she felt her job was being taken away from her.

[32] Mr Grey said he had explained the reasons for the cross-training, and Ms Riggs had responded that she fully understood why it was necessary. Mr Grey said he had reassured Ms Riggs that her job was secure, that the management team considered she was doing a '*great job*', and that the changes would be temporary in nature.

[33] Mr Grey said Ms Riggs had commented to him that she had felt: "*as if her world was falling apart around her*", and they had discussed some personal issues Ms Riggs was experiencing. Mr Grey said their conversation had concluded by his reassuring Ms Riggs that she could speak to him, or to Mr Antunovich, at any time, for which Ms Riggs had thanked him.

[34] Mr Antunovich said Mr Grey had informed him about this conversation with Ms Riggs and his understanding from this was that the basis of Ms Riggs concerns was personal. Mr Antunovich said Mr Grey had also told him he had offered Ms Riggs EAP assistance at this time.

[35] Towards the end of January 2011 Ms Riggs said that her doctor had recommended that she take the month of February off work and she had been issued with a medical certificate to that effect which stated the reason as being: “*stress and anxiety related to work issues*”.

[36] Ms Riggs said that she had not presented the medical certificate to Foodstuffs and she had not taken any time off work.

[37] Mr Antunovich said that had Foodstuffs been aware of the medical certificate and the advice from her doctor received by Ms Riggs, it would have ensured that Ms Riggs had not attended for work.

[38] Mr Fata said, following the Christmas and Waitangi Day holiday periods, he had considered the time was right to start the cross-training exercise, and so at the team-briefing on 8 February 2011, he had advised his team that the cross-training would take place on Monday 14 February 2011. Mr Fata said he had stressed that the changes would be temporary and were being made only for training purposes.

[39] Ms Nicola Clay, Hoist Shipment Supervisor, explained that she had gone to the Inwards Goods area on 8 February 2011 to discuss an issue concerning a systems failure. When she had arrived in the Goods Inward area Ms Clay said that the team briefing had been in progress and, as she knew it would not take long, she had joined the group and waited until it finished.

[40] Ms Clay explained that she was familiar with the cross-training concept, and had undertaken cross-training herself on several occasions, a process she considered to be positive and constructive. Ms Clay said that she had always resumed her normal duties following period of cross-training.

[41] Ms Clay said she heard Mr Fata explain about the cross-training which was to take place the following week as a result of which Ms Amelianne Nomotu would cross-train with an employee from Gilmours, and Ms Riggs would cross-train with another member of the Inwards Goods team. Ms Clay said that although she could not hear what they were saying, it was clear that Ms Riggs and Ms Nomotu were not happy about the proposal.

[42] Mr Fata said that Ms Nomotu and Ms Riggs had been unhappy because they had thought the changes were permanent, however he had assured them that it was cross-training and would only be a temporary change. Mr Fata said Ms Nomotu had asked him if he would

confirm this in writing, to which he had agreed; however Ms Riggs and Ms Nomotu had resigned before he had an opportunity to do so.

[43] Ms Riggs said that she and Ms Nomotu had been unhappy at the team briefing as Mr Fata had not explained that the proposed changes were for cross-training purposes only, and that when she had spoken at the meeting, one of the other employees had told her to 'shut up and do as she was told'. Ms Riggs stated that this was the reason she had become upset.

[44] Ms Nomotu said she had been upset by the change which had been announced without warning and she did not want to work at the Gilmours site, so she had immediately tendered her resignation in writing by email to Mr Andrew Mitchell, at that time Auckland Distribution Centre Manager.

[45] Ms Nomotu said Ms Riggs had come to see her and she had explained that she had resigned. Ms Riggs said she had copied Ms Nomotu's resignation email and sent her resignation to Mr Mitchell also.

[46] Mr Mitchell said he had checked his emails at approximately 7.59 a.m. on 8 February 2011 and had been concerned to find the two emailed resignations. Mr Mitchell said he had immediately telephoned Mr Antunovich to find out what had occurred, but receiving no answer, he went to find Mr Antunovich in the warehouse area.

Meeting on 8 February 2011

[47] Mr Mitchell said Mr Antunovich had been updating him on what he understood had occurred when Ms Riggs and Ms Nomotu approached them, said they had just resigned, and asked for a meeting with him (Mr Mitchell).

[48] Mr Mitchell said he had asked Mr Antunovich to join them and they had gone to his office where Ms Nomotu had explained that not wanting to work at the Gilmours site had been the reason for her resignation.

[49] Mr Antunovich said Ms Riggs had stated that she believed she and Ms Nomotu were the only two employees affected by the cross-training proposal, however Mr Mitchell had explained that cross-training was a directive from him and it would be happening throughout the Distribution Centre.

[50] Ms Nomotu said at this point she had decided that there was no point in continuing the meeting, and left the meeting.

[51] Mr Antunovich said he had asked Ms Riggs why she had not spoken to anyone prior to resigning and she had explained that this was because Mr Fata was too new to his role, Mr Grey did not like her, she could not trust him (Mr Antunovich), and Mr Mitchell was always too busy.

[52] Mr Mitchell said he had not accepted Ms Riggs' comments about him as he had seen Ms Riggs most mornings and had spoken to her regularly. Mr Antunovich said he had asked Ms Riggs why she did not trust him, and she had commented that he had been 'out to get her' since he had signed the disciplinary letter in October 2009.

[53] Mr Mitchell said Ms Riggs had made it clear that she had not been happy about the cross-training proposal, and therefore he had explained to her about the reasons behind cross-training and the benefits to all employees in having a wider range of skills than just those pertaining to their own roles.

[54] Mr Antunovich said it had been made clear to Ms Riggs during the meeting that the cross-training would be for a limited period only, and he had pointed out that she was not required to do anything which was outside her role description, nor would she have to physically move outside her working area.

[55] Mr Mitchell said that although Ms Riggs appeared to understand the requirement for Foodstuffs to implement cross-training, she had still confirmed that she wished to resign.

[56] At that point Mr Mitchell said he had accepted Ms Riggs resignation on the basis that she had already considered the matter, had made her decision and could not be influenced otherwise. Mr Mitchell stated that had Ms Riggs wanted to have withdrawn her resignation, he would have been happy to accept this; however she had not done so.

Determination

Did Ms Riggs voluntarily resign her employment or was she constructively dismissed by Foodstuffs?

The Law

[57] A constructive dismissal occurs where an employee appears to have resigned, but the situation is such that the resignation has been forced or initiated by an action of the employer.

[58] The starting point for any enquiry into whether or not there has been a constructive dismissal relies upon establishing the terms of the employment agreement and whether there had been a breach of the terms of that contract serious enough to warrant the employee leaving the employment of the employer.¹

[59] As set out in *Auckland etc Shop Employees etc IUOW v Woolworths (NZ) Ltd*² there are three fundamental situations in which a constructive dismissal claim may arise:

- a.) An employee is given a choice between resigning and being dismissed;
- b.) There has been a course of conduct followed by the employer with the deliberate and dominant purpose of coercing the employee to resign;
- c.) There had been a breach of duty by the employer which causes an employee to resign.

[60] In this case Ms Riggs is claiming that there has been a course of conduct followed by Foodstuffs towards her which has involved bullying and harassment of her, and this has led to a breach of duty on the Foodstuffs' part to provide her with a safe working environment.

[61] In *Auckland Electric Power Board v Auckland Provincial Local Authorities Officers IUOW Inc*³ the Court of Appeal said regarding the correct approach to constructive dismissal:⁴

- i) *In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other*

¹ *Wellington Road Transport etc IUOW v Fletcher Construction Co Ltd* (1983) ERNZ Sel Cas 59, as referred to in *Wellington etc Clerical etc IUOW v Greenwich* (1983) ERNZ Sel Cas 95 [1983] ACJ 965 (at pp 112-113; p 985)+

² (1985) ERNZ Sel Cas 136; [19785] 2 NZLR 372

³ [1994] 1 ERNZ 168

⁴ *Ibid* At p 172

words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

Breach of duty on the part of the employer causing the resignation

[62] There are a number of instances alleged by Ms Riggs to have constituted bullying and harassment during the course of her employment, and some instances which are pertinent to the relationship between the parties during the course of Ms Riggs' employment.

(i) Incident in July 2008 following an attempted suicide by an employee

[63] Ms Riggs said that the incident in July 2008 when she had allegedly berated members of the management team for laughing about an employee's suicide attempt was the commencement point for the bullying and harassment treatment she received.

[64] However I find that there is no evidence to support Ms Riggs' contention that the incident occurred, nor had Ms Riggs made management in the form of Mr Grey or Mr Antunovich aware of her concerns at that time.

[65] I find it significant in this respect that Ms Riggs had read and understood clause 10 of the Employee Handbook which directed an employee concerned about bullying or harassment to seek help from their manager, or another member of the management team. However Ms Riggs had made no complaint at that time

[66] I also accept Mr Grey and Mr Antunovich's evidence that they had been deeply upset by the suicide attempt and had worked closely with the employee's family to ensure the employee's recuperation and well-being, and that they would have taken immediate action had they been made aware of such a complaint.

(ii) Employment of Ms Riggs' son

[67] The offer of employment to Ms Riggs' son by Mr Grey occurred following a conversation with Mr Grey on 14 October 2008. This conversation took place on 14 October 2008, and resulted in Mr Grey making the offer of employment in direct contradiction of Mr Antunovich's instruction that no such offers were to be made to family members of employees.

[68] Mr Grey said, and Mr Antunovich agreed, that he had supported Mr Grey's decision. I find such actions indicate that contrary to Ms Riggs' assertion that she had been subjected to bullying and harassment since July 2008, in fact she had been a member of staff valued by Mr Grey sufficiently for him to disregard his manager's direct instructions, and also valued

sufficiently by Mr Antunovich for him to support this decision when made aware of it by Mr Grey.

[69] I find that these actions indicate a constructive and supportive employment relationship at this point and my observation is upheld by the appointment of Ms Riggs to the position of Inwards Goods Administrator with effect from 20 October 2008.

(iii) Disciplinary Meeting October 2009

[70] Although Ms Riggs said that in relation to the incident concerning her unauthorised possession of stock, she considered she had been accused of theft, the manner in which Foodstuffs conducted the disciplinary meeting in October 2009 confirmed its contention that this was a minor matter involving a breach of the company policy: it was handled by Ms Riggs' Team Leader and not by a senior member of the management team, and the outcome was a first written warning.

[71] Moreover I find that Ms Riggs had not complained about how she had been treated in respect of this incident, but in fact had accepted the warning at the time and apologised for her action.

(iv) Cross-Training

[72] Cross-training was a continuous and familiar concept to Foodstuffs employees. Ms Riggs confirmed that it was a process she understood and had undertaken on previous occasions. Ms Riggs confirmed at the Investigation Meeting she had been supportive of the cross-training process.

[73] Mr Fata had informed Ms Riggs and the other members of the Inwards Goods team in October 2010 about the impending cross-training in February 2011. Mr Grey, having noticed Ms Riggs looking unhappy in November 2010, had taken her aside to discuss the changes and the impending cross-training exercise. During this conversation Mr Grey had reassured Ms Riggs that her job was secure and she was valued by the management team.

[74] Mr Grey considering that some of Ms Riggs' concerns were personal in nature, had offered her EAP support.

[75] I find that contrary to Ms Riggs' view that she was being bullied and harassed, Mr Grey's actions were indicative of a supportive employer who valued Ms Riggs as an employee and wished to assist her with not only time and consideration, but with practical help.

[76] Foodstuffs was unaware of the medical advice which Ms Riggs had received at the end of January 2011, because Ms Riggs had not presented it with the medical certificate with which she had been issued. I accept that had Foodstuffs been aware of Ms Riggs medical situation, it would not have allowed her to continue working at that time. I find that Foodstuffs cannot be criticised for not taking action when it had not been made aware of the medical advice Ms Riggs had received.

[77] The cross-training to be undertaken by Ms Riggs in February 2011 I accept was to have been temporary in nature, and it did not involve Ms Riggs moving location or even her desk.

[78] I do not find that there had been bullying and harassment in the treatment of Ms Riggs by Foodstuffs such as to result in a breach of its duty to provide Ms Riggs with a safe working environment. On the contrary, I find that Ms Riggs had been provided with a supportive management team who valued her as an employee.

Was a breach reasonably foreseeable?

[79] I have not found that there was such a breach. However for the sake of completeness I shall address the question of whether the breach was sufficiently serious to make it reasonably foreseeable by Foodstuffs that Ms Riggs would not continue to work under the prevailing conditions.

[80] Ms Riggs' resignation was directly linked to the implementation by the Inwards Goods team of cross-training. This was not a new initiative, but a process which had been undertaken by Foodstuffs in all departments over a significant period of time. It was a process Ms Riggs had experienced in the past, and of which she was supportive.

[81] Although Ms Riggs had informed Mr Grey that she had considered "*her world was falling apart around her*" Mr Grey had attributed this comment as relating to Ms Riggs' personal situation and not to the cross-training exercise.

[82] I consider that this was a reasonable conclusion to be drawn by Mr Grey in light of (i) the fact that cross-training was a continuous process across all areas in Foodstuffs so the conditions of it were familiar to all employees, (ii) Ms Riggs' had previous experience of cross-training, and (iii) the reassurances he had given her that her job was secure..

[83] Ms Riggs would have been aware, having read and understood clause 9 of the Employment Agreement, that Foodstuffs had a contractual entitlement to undertake cross-training. Moreover I consider that Ms Riggs was aware that cross-training was temporary in nature and that she would resume her normal duties subsequently, points which were reiterated and confirmed to her at the meeting with Mr Mitchell and Mr Antunovich on 8 February 2011.

[84] I do not find that Foodstuffs would have been aware that Ms Riggs considered either that she had been bullied and harassed, indeed I have found that she had not been, or to have foreseen in all the circumstances that the cross-training imitative would have caused Ms Riggs to resign from her employment.

[85] I find there was no notification from Ms Riggs to Foodstuffs at any time prior to her resignation that she regarded the actions of the management team to amount to a serious breach of duty towards her, and there is no evidence to substantiate that there was a breach sufficiently serious, nor to make it reasonably foreseeable by Foodstuffs that Ms Riggs would not be able to continue to work under the prevailing conditions.

[86] I determine that Ms Riggs was not constructively dismissed by Foodstuffs, but resigned from her employment voluntarily.

Was there an obligation on Foodstuffs to dissuade Ms Riggs from resigning?

[87] An employee is usually entitled to resign from their employment on a unilateral basis. The Employment Agreement under which Ms Riggs was employed made provision for this at clause 25 which states: *“The employment shall be weekly and the employment may be terminated by a weeks notice of dismissal by the employer or a weeks notice of resignation by the employee.”*

[88] The Employment Agreement also makes provision for the situation in which the agreed notice is not provided: *“Where the employment is without the requisite notice, one weeks wages shall be paid or forfeited as the case may be.”*

[89] The agreement of the employer to such unilateral notice is not required; the employee responsible for the unilateral act, in this case resignation, is simply telling the employer what is going to happen. As observed by the then Chief Judge Goddard in *Stiffe v Wilson & Horton*:⁵

⁵ 5/12/00 AC 94/100, AEC 106/00 at para 21

- i) *Where either party to an employment agreement gives notice, it is well settled that the contract will terminate according to the tenor of that notice. It is not open to either party to withdraw or vary that notice without the consent of the other.*

[90] There is no obligation on the employer to dissuade or attempt to dissuade the employee from leaving, although they may choose to do so. An employee who has voluntarily resigned has not been dismissed.

[91] Ms Riggs' resignation was closely aligned to the company's requirement for cross-training. Cross-training was a practice well-known to Ms Riggs and which she stated she supported. Cross-training was allowable within the scope of Ms Riggs' employment agreement, it was to be temporary in nature, and Ms Riggs had been assured by Mr Grey in November 2010 that her job as Inwards Goods Administrator was secure.

[92] The employees in the Inwards Goods area had been notified about impending cross-training exercise which was to take place in early 2011 during October 2010. Moreover the announcement of the cross-training exercise which was to commence on 14 February 2011 had been made on 8 February 2011, one week earlier. There was consequently ample time for Ms Riggs to raise her concern about it with members of the management team prior to 14 February 2011, however she chose not to do so and to resign instead.

[93] In this situation I consider that Mr Mitchell and Mr Antunovich were reasonably entitled to conclude Ms Riggs had considered the matter and reached a firm decision to resign. Although Foodstuffs might have advised Ms Riggs to reconsider her resignation decision overnight, and this might be considered best practice, the fact that they did not do so is neither unlawful nor an unjustified act towards Ms Riggs.

[94] I do not find that there was an obligation on Foodstuffs to dissuade Ms Riggs from resigning.

Was Ms Riggs unjustifiably disadvantaged in the course of her employment by bullying and harassment on the part of the management team at Foodstuffs?

[95] I have not found that Ms Riggs was bullied or harassed by the management team at Foodstuffs.

[96] I consequently find that there has been no unjustifiable action and determine that Ms Riggs has suffered no unjustifiable disadvantage.

[97] I am unable to assist Ms Riggs further.

Costs

[98] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

Eleanor Robinson
Member of the Employment Relations Authority