

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Pania Sigley (Applicant)  
**AND** Hauora Whanui Ltd (Respondent)  
**REPRESENTATIVES** Clayton Luke for Applicant  
Bryce Quarrie for Respondent  
**MEMBER OF AUTHORITY** Janet Scott  
**INVESTIGATION MEETING** 9 & 10 November 2004  
**DATE OF DETERMINATION** 24 February 2005

**DETERMINATION OF THE AUTHORITY**

**Employment Relationship Problem**

Ms Sigley submits she was unjustifiably disadvantaged in her employment and constructively dismissed. To remedy her alleged grievance she seeks lost remuneration, loss of benefits, compensation under s.123(c)(i) and costs.

The respondent denies the applicant's claims.

**Background**

Hauora Whanui Ltd (HWL) is a division of Ngati Hine Health Trust Board (the Trust) - a community services organisation which delivers health, housing, education and other services in the Tai Tokerau region Northland i.e. Whangarei northwards. The Trust delivers its services through five limited liability companies one of which is HWL. HWL is the organisation through which the Trust delivers medical services to the community.

Ms Sigley commenced employment with HWL in April 2001. She was engaged as PA to Geoff Kivell the then General Manager of HWL. At the time of Ms Sigley's appointment the Trust was in the process of negotiating the purchase of a local medical practice. That purchase process was completed, I understand, in April of 2001. For some months the previous owner of the business acted as a locum GP but subsequently it became necessary for Dr Kivell to take over as GP at the medical centre. Ms Sigley followed him and her role evolved.

In 2001 Ms Sigley was appointed to the position of Acting Coordinator, Medical Services. She was appointed to the role on a permanent basis in June 2002.

The development and delivery of medical services to this community at this time was the subject of explosive growth and fundamental change as the delivery of services under a s.88 contract with the

DHB gave way to &/or coexisted with a Kaupapa Maori Medical Services (KMMS) contract and the development of outreach services and subsequently led to the PHO structure for the delivery of medical services.

Dr Kivell was a key player in the strategic development of the health services provided by Ngati Hine Trust. In line with this role he left his position as Medical Services Director at KMC in September/October 2002. The clinical oversight role he had provided to doctors in the service was farmed out and the administrative/management aspects of his role were taken up by a Ms Tipoki who had, I understand, a wider role to manage a number of the service arms of HWL including nursing, dental, disability support services as well as medical services.

In January 2002 Ms Sigley had become aware that her brother was suffering from a very serious and life-threatening illness. This was the cause of personal stress and worry for Ms Sigley and her family for a whole year culminating in her brother's death in January 2003.

The beginning of 2003 also saw the medical receptionist and administrative support worker depart from the medical practice. In April the locum resigned her employment citing a lack of administrative and other support. This exacerbated the difficulties faced by Ms Sigley. In addition to her own full time role she was faced with training and supporting a new medical receptionist, supporting the administrative function of the medical centre and she was concerned with issues associated with identifying and replacing the locum doctor (always a difficult task).

Ms Sigley, who I accept was a passionate and dedicated employee, became increasingly concerned about the lack of management support she received in her role and commenced to write (on three occasions between January 2003 and May 2003) to the General Manager of HWL articulating her concerns under a number of heads. When she received no meaningful response and support for her role she resigned her employment on 29 May 2003.

During her notice period the employer made strenuous efforts to persuade Ms Sigley to change her mind. Changes were implemented in the administration and management of HWL medical services and Ms Sigley was offered a restructured role and an increase in her salary. Ms Sigley declined the new role and confirmed her resignation. She left the organisation at the end of June 2003.

## **Legal principles**

The applicant bears the onus of proving (on the balance of probabilities) that the termination was, as matter of law, a dismissal and not a resignation. *NZ Amalgamated Engineering etc IUOW v Ritchies Transport Holding Limited* [1991] 2 ERNZ 267.

In *Wellington Clerical Workers' Union v Barraud & Abraham Ltd* [1970] 70 BA 347, Horn SM (as he then was) held that:

*“An apparent resignation can also amount, notwithstanding the words used, to a dismissal. For example, if the employer's actions or words oblige or strongly tend to induce an employee to proffer a resignation, the result can still be a dismissal in reality.”*

In Western Excavating Ltd v Sharp [1978] 1 All ER 713 at 717 per Lord Denning MR, Lawton and Everleigh LJJ concurring it was held that:

*“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct which he complains of; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”*

For Ms Sigley to establish that her resignation was in fact and law a dismissal she needs to show there was a breach of duty by the respondent of such magnitude that it entitled her to terminate the contract of employment.

In Auckland Shop Employees IUOW v Woolworths (NZ) Ltd [1985] ACJ 963 the Court of Appeal held that constructive dismissal included, but was not limited to, cases where:

- (i) *An employer gives an employee a choice between resigning or being dismissed;*
- (ii) *An employer has followed a course of conduct with the dominant purpose of coercing an employee to resign;*
- (iii) *A breach of duty by the employer leads an employee to resign.*

In Auckland Electric Power Board v Auckland Local Authorities Officers Union [1994] 1 ERNZ 168 Cooke P in delivering the judgement of the Court of Appeal stated:

*“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 the 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 words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach. As to the duties of an employer, there are a number potentially relevant in this field. How some should be defined precisely is a matter no doubt still open to debate: see the discussion in the Auckland Shop Employees case. But in our view it can now safely be said in New Zealand law that one relevant implied term is that stated in the judgment of the Employment Appeal Tribunal, delivered by Browne-Wilkinson J, in Woods v W M Car Services (Peterborough) Ltd quoted in the Auckland Shop Employees case. As the Judge put it:*

*In our view it is clearly established that there is implied in a contract of employment a term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Courtaulds Northern Textiles Ltd v Andrew [1970] IRLR 84. To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it: see British Aircraft Corporation Ltd v Austin [1978] IRLR 322 and Post Office v Roberts [1980] IRLR 347. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed: Post Office v Roberts."*

However, case law also dictates that it is necessary to be satisfied that the conduct complained of is repudiatory in nature and not simply inconsiderate behaviour which causes the worker unhappiness. Such circumstances were discussed by Judge Williamson in Wellington etc Clerical Workers IUW v Greenwich [1983] ACJ 965:

*"It is essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the borderline which separates inconsiderate conduct causing unhappiness or resentment to the employee from dismissive or repudiatory conduct reasonably sufficient to justify termination of the employment relationship".*

Ms Sigley is also claiming that her resignation was a necessary response (to avoid ongoing harm) to the stress/damage to her health which flowed from the respondent's neglect of the serious administration/management issues which faced the medical practice where she was employed as the Medical Services Coordinator. Therefore, the case law that has emerged in Gilbert v Attorney-General in respect of the Chief Executive Officer of the Department of Corrections [2000] 1 ERNZ 332 (EC) and Attorney-General v Gilbert [2002] 1 ERNZ 31 (CA) is relevant to my considerations in this case.

It is now well established, I submit, that the employer had a duty implied in law to maintain a safe workplace and was required to take all reasonable care to avoid exposing Ms Sigley to unnecessary risk to her physical and psychological health. What are the practical implications of these implied duties? The findings in the Employment Court's decision on Gilbert are relevant:

*"Even if I accept the defendant's argument that the three disputed propositions advanced by the plaintiff as distinct implied terms of Mr Gilbert's contract are not such, I do conclude that they contain criteria in assessing the scope of the established implied obligations the existence of which the defendant admits. **In this case, considerations of volume, character, nature, or circumstances of the work the plaintiff was required to perform, of the employer's dealing with workplace health and safety issues, and the provision of a working environment and management processes that did not cause unreasonable and undue stress to the plaintiff, are all elements in assessing whether it conducted itself in a manner calculated or likely to destroy or seriously damage the parties' relationship of trust, confidence and fair dealing.** Such considerations are also material in assessing, in this case, whether the employer breached the statutory duty and other express terms of the plaintiff's contract." p.378 (emphasis mine).*

The following, more general, statement of the Court of Appeal in the above matter also informs my thinking here.

*[83]...an employer does not guarantee to cocoon employees from stress and upset, nor is the employer a guarantor of the safety or health of the employee. Whether workplace stress is*

*unreasonable is a matter of judgement on the facts. It may turn upon the nature of the job being performed as well as the workplace conditions. The contractual obligation requires reasonable steps which are proportionate to known and avoidable risks”*

## **The Evidence**

### **Ms Sigley’s Role**

Ms Sigley’s job description describes her role.

#### General description

*The purpose of this position is to coordinate the daily operational activities for the medical services to provide high quality services to both patients and staff. This includes management of administration staff, finances, standard of services, keeping staff informed and actively encouraging continuous quality improvement.*

The above general description does not adequately describe the scope of Ms Sigley’s role which went well beyond the coordination of an established medical practice. The job description expands to describe the specific functions of the position which makes clear the start up and development aspects of the position.

Ms Sigley’s duties required her to develop and maintain infrastructure and administration processes for a system of outreach clinics and for quality management and staff development to meet the service specification of Kaupapa Maori Medical Services. She was also required to coordinate the operations of the medical centre (including staff logistics) and was in addition charged with setting up and maintaining a continuous quality improvement programme and the coordination of all invoicing (and tracking) in relation to medical services contracts.

### **Ms Sigley’s Communications**

On 22 January 2003 Ms Sigley wrote to the General Manager of HWL – Erima Henare. She outlined her concerns at the lack of management support she was receiving (in particular from Ms Tipoki) in managing the practice with insufficient administrative support, where a new locum had to be oriented and at a time when she was grieving and exhausted as a result of her brother’s death. She advised she was seriously considering her future with HWL and sought a meeting with Mr Henare.

On 5 May 2003 Ms Sigley again wrote to Mr Henare saying it had been a battle over the last three months to keep up her own work, train and supervise an insufficiently qualified medical receptionist as well as to cover the administrative assistant’s role – a position which had not been replaced after the administrative assistant had left in February. She advised she felt overwhelmed “*resulting in a situation she could no longer cope with*”. She reported negatively on the support she was receiving from her immediate manager (Ms Tipoki).

Ms Sigley also advised she did not wish to continue as a backup receptionist and that she was looking for a bigger challenge in the organisation. She requested an appointment be made to the administrative assistant’s position and that a review be undertaken of her role in the organisation and her future development together with a salary review.

On 15 May 2003 Ms Sigley again wrote to Mr Henare. By now the lack of administrative support had led to a locum resigning and leaving. Ms Tipoki had agreed to locate a new locum but Ms

Sigley was unhappy with progress on this and overall with the lack of management support the medical centre was receiving. She expressed concern that the medical centre was in a state of crisis and requested Mr Henare to attend a meeting on 22 May at the centre to try and resolve the matters of concern.

In this letter Ms Sigley expressed appreciation for the support given to the Centre by Ms Tipoki. She told the investigation meeting that she was trying to be diplomatic.

In addition to the above communications directed to Mr Henare, Ms Sigley was emailing Ms Tipoki and Dr Kivell on day to day concerns regarding the medical centre and blind emailing these communications to Mr Henare.

## **Response**

Mr Henare accepted he did not formally reply to Ms Sigley's written communications of 22 January and 5 and 15 May. He explained his role was focussed on the macro management issues facing the organisation. He was also closely involved in pressing Ngati Hine's interests with the Waitangi Fisheries Commission.

The evidence reveals that over the period of January 2003 – May 2003 Mr Henare's actual response to the voiced concerns of Ms Sigley was to on the one hand to press Ms Tipoki to deal with the issues affecting the medical centre including the wider issues relating to the financial viability of the clinic. He described himself as a "*scratched cd*" in his entreaties to Ms Tipoki to face up to and deal with the issues facing the medical centre. On the other hand Mr Henare sympathised with Ms Sigley regarding her concerns relating to Ms Tipoki's performance as a manager and suggested to her that she must take a part in educating her manager on the needs of the medical service.

The evidence revealed that Ms Tipoki was suffering from illness over the time in question. That was not widely known in the organisation. The evidence suggests too that Ms Tipoki's job size was large. She told the investigation meeting that she confided details of her illness and issues regarding her job size to Mr Henare and believed she had his support and understanding on this and that he specifically agreed to take some responsibility for dealing with the issues being raised by Pania Sigley.

## **Ms Sigley's Resignation**

By 29 May Ms Sigley had seen no meaningful response to her communicated concerns and on that day she communicated her resignation to Mr Henare – giving one month's notice effective from 27 June. Ms Sigley cited as the reason for her resignation her disappointment "*at the lack of decision making, management support and the lack of recognition, from the organisation, on the daily challenges we are facing at the practice.*"

## **Response**

Mr Henare who had been forewarned of Ms Sigley resignation by one of the Centre's doctors emailed her on 29 May as follows:

*"A little bird told me that a letter is on its way. I can guess what it will say and I have to say I don't blame you.*

*However, I would still be interested in talking with you next week about this. I had hoped that someone would help you but clearly she hasn't to the point of immense frustration. See how you feel after the weekend and then give me a call to arrange a meeting if you wish".*

At the Investigation Meeting Mr Henare was questioned about this email and asked if he believed the organisation had let Ms Sigley down. He responded he did not "*resile from feeling that way – yes*".

## **Events Post Resignation**

It was Mr Henare's evidence that prior to Ms Sigley's resignation a decision had been taken by him to restructure the organisation. The proposal for restructuring entailed, among other things, the shifting of a significant amount of the administrative tasks from the medical centre to Corporate Services. This would relieve the medical centre of much of its administrative work load.

It was Mr Henare's evidence that Ms Sigley was resistant to this proposal. She wanted the medical centre to be an autonomous organisation.

In the event the restructuring proposal was not formalised until after Ms Sigley had handed in her resignation. After she handed in her resignation Mr Henare rang her and advised her he would not accept her resignation and he undertook to meet with her to further discuss the situation.

A meeting was held with Ms Sigley on 9 June. She was advised of the restructuring of HWL and offered a new position (in an acting capacity initially) at an increased salary. While she was still to report to Erina Tipoki, Ms Tipoki's position had been carved up and new appointments made to relieve her of a considerable portion of her previous responsibilities. (She would now be responsible only for the management of nursing, dental and medical services – having been relieved of responsibility for mental health, alcohol and drug and disability services).

Ms Sigley's job description was changed to the extent that all medical services staff would now report to her.

On 10 June Ms Sigley wrote to Mr Henare declining the new appointment. The only reason cited as to her reasons for declining the position at this time related to the benchmarking of the new position to that of administrative team leader which Ms Sigley saw as very different role to that of a medical centre practice manager. She confirmed her resignation. Mr Henare responded accepting her resignation.

On 18 May Ms Sigley again wrote to Mr Henare to clarify her reasons for resigning. At this time she advised her resignation "*was forced on her by the breaches of her employment contract and the reasons for complaint that I have previously brought to your attention, and have not been addressed*" (*sic*).

Ms Sigley also expanded on her reasons for not accepting the new position being:

- The fact the position would continue to report to Erina Tipoki
- The failure to fill the administration support position at the medical centre (a position which she believed remained justified).
- The failure of the executive to visit and observe the operations of the medical centre.
- The failure of the proposal to address assurances given to her by Ms Tipoki of financial support towards her graduate Diploma in Health Management.

- The fact the written offer of appointment did not reflect a promised level 5 delegated authority.
- The lack of management recognition of her skills and the work she had put into the development of the medical services.

## **Position of the Parties**

Ms Sigley told the Authority that she believes that from mid January 2003 HWL was in breach of her employment contract in that she was required to perform duties outside of her job description and HWL did not provide a reasonable level of support or take reasonable measures to ensure her work environment was healthy and safe from the adverse effects of an unfair and unreasonable level of stress. The actions of HWL deeply undermined the trust and confidence she had in it as an employer. It was, she submitted, at this time that she began to suffer from stress and anxiety and suffered physical symptoms including loss of sleep.

Mr Henare recognised that Ms Sigley was carrying out some duties that went beyond her formal job description but he submitted that she had never indicated that she was unwillingly carrying out these duties. The Authority was also told that Ms Sigley had a tendency to take on responsibility for the work of others rather than to delegate tasks to where they belonged. This had been raised with her in performance appraisals – that as a matter of personal development she needed to improve on her time management and to delegate where appropriate.

Submissions made to the Authority for the respondent also pointed to the fact that apart from advice in January 2003 that Ms Sigley was exhausted following the death of her brother no advice was ever received from Ms Sigley that she was suffering from work related stress which might lead her to resign. Neither was there any reference to stress related issues being behind the reasons for her dismissal at the time of her resignation or in the subsequent communications which confirmed her resignation and explained the reasons she did not take up the new position offered to her.

Issue was also taken with the fact that while Ms Sigley voiced dissatisfaction with aspects of the support she was receiving in her position she also sent some mixed signals – asking for a more challenging role and an increase to her salary. It was also noted that while she complained about the lack of support she was receiving from Ms Tipoki on the other hand she had - in another communication to Mr Henare - expressed appreciation for the support she had received from Ms Tipoki.

## **Discussion and Findings**

The presentation of Ms Sigley's claim has been greatly complicated by the way it has been framed - as an unjustified disadvantage claim/constructive dismissal and even in the alternative (if I understand the situation correctly) as an unjustified dismissal arising from a redundancy situation. All these claims arise from the same set of facts.

As the Authority Member charged with considering this matter I am treating the matter as a constructive dismissal claim.

## Findings

Ms Sigley was a passionate employee and competent in her role. With appropriate management support and structure around her she performed well and the evidence shows that in all probability she had a good future with the Trust. Her departure was, I believe, a loss to HWL. Given HWL's strenuous efforts to dissuade her from following through with her resignation I am sure her value to the organisation was well recognised.

HWL was, during Ms Sigley's tenure, growing exponentially. As part of this growth a run down medical practice had to be brought up to speed to deliver a quality medical service to a scattered and disorganised client base through contractual arrangements that were themselves rapidly changing. Practice management at the time Dr Kivell and Ms Sigley moved to the medical centre was described to me as "*crisis management*." It is to the credit of all concerned that HWL which was administering \$6m worth of contracts in August 2001 was in late 2004 administering \$12m worth of contracts. A positive outcome of the expansion in medical services to the region has been a significant reduction in admissions to Bay of Islands Hospital.

Ms Sigley made significant contribution to the development and day to day running the Kawakawa Medical Centre. If she had any failings it was a tendency to take on tasks that should have delegated to others and management problems that should have been escalated to her manager and left there to be dealt with. To some extent Ms Sigley cannot be blamed for this as she had always been encouraged to identify the problem and to propose solutions. However, her narrow focus on the management/delivery of GP services and her exposure to individual doctor's philosophies of medical management did not give her the big picture focus necessary for entirely effective problem solving. This may have prevented her from seeing the solutions offered to her by HWL (in an attempt to dissuade her from following through with her resignation) in a positive light.

After Dr Kivell left the medical practice Ms Sigley's direct report was Ms Erina Tipoki. Ms Sigley's evidence was that Ms Tipoki did not visit the Centre, appraise herself of the operational/management issues facing the Centre or respond to management issues escalated for her consideration and attention.

From January 2003 onwards the medical centre was faced with the departure of reception/administrative staff at short notice. Ms Sigley found herself covering for admin/reception staff at the time she was suffering bereavement as result of her brother's death. Later she found it necessary to take time out from her own job to train/supervise a new staff member who was, in Ms Sigley's view, not appropriately qualified for the role to which she was appointed. Ms Sigley was aggrieved she had not been more closely consulted with respect to that role. The operational problems faced by Ms Sigley were exacerbated in April when the current locum resigned citing a lack of support for her role. This added to the Ms Sigley's concerns. While Ms Tipoki agreed that she would find a replacement locum Ms Sigley saw no progress on this front and this added to her perception that she was overburdened and unsupported in her role as the medical services co-ordinator for the medical practice.

There was a wholly inadequate response by senior management of HWL to operational issues facing the medical centre. Ms Sigley was essentially left to box on as best she could carrying much of the administrative work associated with the practice, the provision of training and supervision of a new medical receptionist and the management/provision of weekend administrative support for medical personnel. She also involved herself in addressing the problem of finding a new locum for the practice despite having been advised that Ms Tipoki would arrange a new locum. She did this because she did not see any action from Ms Tipoki on this front. This was all in addition carrying out her own responsibilities which had a strong development focus (over and above the day to day

tasks associated with running a medical practice). At the same time she was grieving for the death of a close member of her family.

There was some criticism of Ms Sigley's tendency to overburden herself and to take on work that was the responsibility of others. It was not open to HWL, I find, on the one hand to rely, in an operational sense on Ms Sigley's overdeveloped sense of duty to the organisation and her willingness to take more and more on herself to ensure the centre remained operational and on the other hand to criticise her for these qualities and her dedication after she arrived at the position of being unable to cope any longer and when her pleas for help had fallen on deaf ears over a long period.

I do not consider the blame for the failure to address the issues facing the organisation can be laid at any one person's door. Undoubtedly Ms Tipoki did not respond entirely appropriately to concerns escalated to her for attention. However, her illness and the breadth of her position are factors which militate against laying at her door total responsibility for the failure to address the operational difficulties faced by the medical centre.

The organisation as a whole let Ms Sigley down. That she would come to the point where she could no longer continue without the appropriate management support/personal authority to ensure the medical centre remained viable and able to deliver a credible and safe service was inevitable on the facts and foreseeable. That this is the case is clear on the documentary evidence and the oral evidence associated with Mr Henare's email to Ms Sigley on 29 May "*A little bird told me a letter is on its way. I can guess what it will say and I have to say I don't blame you*". Mr Henare's response to my question as to whether this indicated a belief by him that the organisation had let Ms Sigley down was that he did not "*resile from feeling that way – yes*".

## Conclusion

It is my conclusion that Ms Sigley was constructively dismissed from her employment. The lack of management support and the failure to address serious operational issues faced by the medical centre led to Ms Sigley being required to carry responsibility for the development and maintenance of medical services and the associated administration that was burdensome and beyond that that she could be fairly expected to shoulder. That Ms Sigley would resign because of the respondent's breach of duty was foreseeable as the evidence shows.

However, while I accept the respondent was in breach of its duty to Ms Sigley to ensure her workload was reasonable and that she suffered some inevitable stress as a result I do not find that work induced stress induced Ms Sigley to resign. Ms Sigley resigned because of the failure of HWL management to address the operational concerns she had raised for action over a period of months. Nowhere leading up to her resignation or over the month when working her notice did Ms Sigley raise work related stress as an issue.

On this last point I note that the giving of notice and working out of that notice is sometimes fatal to a finding of unjustified constructive dismissal. I do not find that to be the case here. There were close personal/community relationships at play here and those deeper relationships remain unbroken.

## **Determination**

Ms Sigley was constructively dismissed and she has a personal grievance against her former employer Hauora Whanui Ltd.

## **Remedies**

The organisation's failure to address the operational difficulties facing the medical centre - concerns which were communicated to it by Ms Sigley over a lengthy period is regrettable and I have found it was in breach of its duty to her. This led to her resigning her employment.

However, in this case there is an absence, I find, of many of the aggravating features that commonly attend dismissals. Ms Sigley was a valued member of the staff of HWL. This was never in doubt and was made extremely clear to Ms Sigley following her resignation when the organisation made strenuous attempts to dissuade her from carrying through with her notice of resignation.

At play here were wider issues of an overstretched management coping with an organisation facing exponential growth. Unfortunately, too I find that Ms Sigley sent some very mixed signals in her communications to Erima Henare – signals which diluted the overall message of dissatisfaction communicated by her and which may have lulled him into thinking she was in fact coping. It did not help that Ms Sigley was going around her direct manager with blind emails to Mr Henare. The issues should have been directed to Ms Tipoki and cc'd openly to Mr Henare if no appropriate responses were being received from Ms Tipoki.

It is also apparent from Ms Sigley's communications relating to her decision not to take up the new position offered to her that she did not seriously reflect on the opportunity that was being made available to her. The restructuring clearly reduced the management burden on Ms Tipoki. Ms Sigley gave no cognisance to the increased focus Ms Tipoki could bring to her management role in respect the provision of medical services. Neither did Ms Sigley accept that the burden of administration would be greatly reduced with the transfer of administrative tasks to corporate services. I am inclined to accept the submission of the respondent that Ms Sigley was precipitate in her rejection of the new role offered to her. She also failed to appreciate that she was being offered increased responsibility in respect of medical centre staffing – something she had long sought.

To be entirely fair to Ms Sigley I note there had been no consultation with affected staff regarding the restructuring. Had there been appropriate consultation<sup>1</sup> Ms Sigley may have seen the offer differently.

While Ms Sigley resignation was unequivocal and there was no requirement on her to accept the position offered – her precipitate rejection of the role does impact on the mitigation of her prospective loss. This is not a situation where relationships were such that they had been irrevocably destroyed by the respondent's breach of duty.

## Lost Remuneration

Having regard to my overall findings and the above considerations I direct the respondent to pay to Ms Sigley three months lost remuneration.

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<sup>1</sup> . The respondent's attention is drawn to the good faith provisions of the Act (s.4) which require it to consult with employees over changes that affect employees' employment.

Compensation under s.123(c)(i)

I accept the respondent's breach of duty caused distress to Ms Sigley but I have found her resignation was not induced by work related stress or the fear of illness brought on by work related stress. In all the circumstances of this case I direct the respondent to pay to the applicant the sum of \$5000 under this head.

Other claims

The respondent is directed to pay Ms Sigley for the hours worked by her on 9 & 15 January 2003 and 15 & 16 March 2003.

I am not satisfied there was a continuing contractual obligation on the respondent to reimburse Ms Sigley for her Diploma studies and I decline to make an award in this regard.

**Costs**

Costs are reserved. The parties are directed to attempt to resolve the question of costs between them. If they cannot do so they are to file and serve submissions on the subject and the matter will be determined.

Janet Scott  
Member of Employment Relations Authority