

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 109  
5364192

BETWEEN

SUSAN STEADMAN  
Applicant

A N D

CANTERBURY  
EMPLOYERS' CHAMBER OF  
COMMERCE INC  
Respondent

Member of Authority: James Crichton

Representatives: Jeff Goldstein, Counsel for Applicant  
Peter van Keulen, Counsel for Respondent

Investigation meeting: 8 October 2012 and 21 March 2013 at Christchurch

Date of Determination: 14 June 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Ms Steadman) alleges that she has been unjustifiably dismissed from her employment by constructive dismissal, that the respondent employer (the Chamber) failed to meet its good faith obligations and that the Chamber breached express terms of her employment agreement by failing to provide a safe workplace. Those claims are resisted in their entirety by the Chamber.

[2] Ms Steadman commenced working for the Chamber on 30 September 2010 as its Training and Development Manager. There was a written employment agreement executed between the parties. Ms Steadman had various staff reporting to her.

[3] On 20 February 2011, Ms Steadman fell off a horse, suffered a blow to her head and was later diagnosed with post-concussion syndrome. There was a period of reduced hours of work recommended by Ms Steadman's doctor following the injury

although the Chamber contends that it had "*limited information*" in respect of the effects of that injury.

[4] In any event, the devastating Christchurch earthquake occurred on 22 February 2011 as a consequence of which the Chamber's business premises were no longer able to be occupied. Temporary work premises were established at the home of the Chamber's chief executive officer, Mr Peter Townsend.

[5] There were space constraints at the temporary office accommodation. Ms Steadman was given the opportunity of working from home. However, she maintains that the Chamber failed to adequately judge her capacity for work after her horse riding accident; conversely the Chamber maintained that it was unclear about the limitations on Ms Steadman's ability to work.

[6] There were disputes between Ms Steadman and the Chamber about the work environment at the temporary offices, both in terms of health and safety and in terms of the provision of a work area for Ms Steadman.

[7] Concurrently with this, Ms Steadman was experiencing difficulties with one of her direct reports. Ms Steadman regarded that person as insubordinate and Ms Steadman's position is that the Chamber took no constructive steps to resolve that issue. The Chamber has a different view.

[8] Ms Steadman made various complaints about the work environment but says that these complaints were dismissed by the Chamber.

[9] There was a meeting between the parties on 5 July 2011, ostensibly to seek to address the issues between the parties. A transcript of that meeting has been provided to the Authority. Ms Steadman alleges that the understandings reached at that meeting were not properly enacted by the Chamber and the Chamber resists that claim. More broadly, Ms Steadman contends that in the management of her horse riding injury, the Chamber failed to follow its own injuries management and rehabilitation policy.

[10] Ms Steadman resigned her employment on 8 August 2011. A personal grievance was promptly raised and the matter proceeded to the Authority in the usual way.

**Issues**

[11] The Authority needs to first consider the factual matrix, make findings of fact and then assess whether those findings give a cause of action.

[12] On that basis then, the Authority needs to consider the following issues:

- (a) The horse riding accident and its rehabilitation;
- (b) The complaints about health and safety;
- (c) The relationships with colleagues
- (d) The end of the relationship.

**The horse riding accident and its rehabilitation**

[13] On 20 February 2011, Ms Steadman fell from a horse and was knocked unconscious. She returned to work the next day but became ill and returned home. She was at home when the earthquake struck on 22 February 2011.

[14] As a consequence of that catastrophic event, the Chamber arranged for the bulk of its staff to work from their homes, where those homes were not badly damaged. This arrangement included Ms Steadman. In the immediate aftermath of the earthquake, the Chamber was making what preparations it could to ready Mr Townsend's home (Holmwood Road) as the Chamber's office.

[15] Ms Steadman went to her general practitioner on 28 March 2011 to discuss rehabilitation from the horse riding injury. This appears to be the first occasion that Ms Steadman sought advice on the matter.

[16] The Authority is satisfied on the evidence that the first occasion the Chamber knew anything about Ms Steadman's horse riding accident was immediately after Ms Steadman's medical appointment on 28 March 2011 when the evidence is plain that Ms Steadman reported to her manager, Ms Watson. Ms Watson remembers being told that Ms Steadman had fallen from a horse prior to the earthquake but had only just been to the doctor. Ms Watson remembers being told that Ms Steadman was suffering from concussion (not post-concussion syndrome) and that Ms Steadman had been put off work for one week.

[17] It may seem surprising that Ms Steadman sought no medical advice prior to 28 March 2011, over four weeks after the horse riding accident. This may be a function of the general confusion in Canterbury after the earthquake or a consequence of the injury but nothing turns on the delay.

[18] What is clear is that as soon as the Chamber was advised, Ms Watson, the general manager of the Chamber, notified Mr Townsend, the chief executive officer and the person responsible for payroll and subsequently notified Ms Steadman's team of her absence.

[19] Ms Steadman returned to the doctor again on 4 April 2011 and was diagnosed with post-concussion syndrome. A medical certificate was provided, the effect of which was that Ms Steadman was put on reduced hours of 2 hours a day for four weeks and could then return to normal work. It is plain that this arrangement was accommodated by the Chamber. Effectively, Ms Steadman would monitor the work of her team in the time that she was allowed to work and set priorities.

[20] The information provided to the Chamber was anything but fulsome. On 2 May 2011, there is an email from Ms Watson to Ms Steadman which provides relevantly: "*Assume you are back on board this week? ...*". Ms Steadman responded to indicate that she was not back, indeed had been signed off work until 9 May 2011 at which point there was to be a further review. That review on that date resulted in an increase in Ms Steadman's working hours from two to three per day for four days and a fifth day of four hours, the latter to be worked in the Christchurch office. There was to be another review two weeks after that. Like the consultation on 4 April 2011, this consultation resulted in the provision of a medical certificate to the Chamber.

[21] Again, the Authority must note that it is apparent from the email traffic from Ms Watson to Ms Steadman that the Chamber has insufficient information on the prognosis to make credible business decisions. An email dated 9 May 2011 from Ms Watson to Ms Steadman sent at 6.14pm asks what hours the doctor had increased Ms Steadman's work periods to and indicating that the Chamber "*may need to look how we can cover depending upon the hours that you are able to do*". A meeting is suggested and that suggestion is responded to positively by Ms Steadman and then in a further email from Ms Watson timed at 7.04pm, Ms Watson again raises concerns about "*resource constraints*" and asks Ms Steadman how long the reduced hours are likely to be in place.

[22] The idea of a meeting was progressed and it took place on 11 May 2011. The Authority is satisfied on the evidence that at that meeting Ms Watson proposed what she called “*some temporary management cover*” by assigning a team member to the caretaker management role while Ms Steadman recovered. That proposal was specifically rejected by Ms Steadman in her email of 13 May 2011. Instead, Ms Steadman produced a schedule of training priorities in lieu of alternative management. That schedule was informed by an exchange between the general manager and Ms Steadman around the extent to which the general manager was having to support Ms Steadman’s team in her absence.

[23] Ms Steadman had a further meeting with her general practitioner on 23 May 2011 which resulted in her hours being increased again and a further medical certificate being provided to the Chamber, and another meeting between Ms Steadman and Ms Watson on 24 May 2011 in which they collaboratively worked out how to continue with the management of Ms Steadman’s continued absences. The tone of these emails is positive and mutually supportive.

[24] After the 23 May 2011 review with the general practitioner, where Ms Steadman’s hours were increased to five hours per day five days per week, the review of that decision on 8 June 2011 resulted in no increase in hours. Subsequent medical certificates issued in August 2011 and Ms Steadman resigned her employment on 10 August 2011 giving a month’s notice.

[25] The Authority is satisfied that the Chamber was always starved of information about what could reasonably be expected of Ms Steadman from a medical point of view. It is true that Ms Steadman provided medical certificates as and when they were made available to her but it is apparent from the contemporaneous email traffic that the Chamber was always expecting that Ms Steadman would be cleared to return to full time hours. At no point was the Chamber made aware, as Ms Steadman seems to suggest, that her medical adviser was proposing “*a gradual return to work programme*”.

[26] The exchanges about Ms Steadman’s return to work were piecemeal and completely unstructured and effectively driven by Ms Steadman’s various attendances at the doctor. The Chamber was put in a reactive rather than proactive position by this process.

[27] It is of course possible for the Chamber to have insisted on a full medical assessment of its own and, with the benefit of hindsight, that would have been sensible. But the evidence from the Chamber suggests that it was always expecting Ms Steadman to attend the next doctor's appointment and be cleared for normal duties. It had no idea that she was as unwell as she plainly was. Clearly Ms Steadman knew more about her health than the Chamber and the Authority is satisfied that Ms Steadman had a duty, as part of the good faith obligation, to make it plain to the employer that she was really struggling.

[28] That point aside, the Authority is satisfied that the Chamber did everything it could within the terms of the information it had at its disposal to respond appropriately to Ms Steadman's needs and to support her appropriately and adequately as she recovered from her injury. The email exchanges between Ms Steadman and Ms Watson over the period in question suggest a collaborative, team approach to resolve the management challenges left by Ms Steadman's continued absence and there is nothing in those exchanges which suggests anything other than a cooperative approach being taken by both women to the needs of the other.

[29] The contention that Ms Steadman makes that she was expected to undertake a full time role during this period is rejected by the Authority as entirely without evidential support.

[30] Ms Watson's oral evidence is much preferred by the Authority on this aspect and Ms Watson's evidence is amply supported by the email exchanges between the two women over the relevant period. Those email exchanges, which the Authority has highlighted above, refer to two substantive discussions where the effects of Ms Steadman's continuing absence were discussed as well as the continuing email exchanges between the two women over the whole period. It is apparent to the Authority that Ms Watson effectively managed Ms Steadman's team, made suggestions to Ms Steadman about additional support (which Ms Steadman refused), accepted that Ms Steadman would work primarily from home notwithstanding the challenges that that would pose, reallocated areas of work and worked collaboratively with Ms Steadman to ensure that she was comfortable with the arrangements.

[31] The Authority also accepts the evidence for the Chamber that it received "*conflicting messages*" from Ms Steadman during her rehabilitation from her injury.

On the one hand, it is clear on the evidence before the Authority that Ms Steadman was working reduced hours and needed to find collaborative solutions with the Chamber about how to manage the work flow, and on the other, Ms Steadman was complaining about the loss of her management status. In an email from Ms Steadman to Ms Watson dated as early as 9 March 2011, Ms Steadman was complaining about the position in the following terms:

*I do seriously need to re-establish my manager status, which was pretty much taken away when my staff were delegated alternative roles in the wake of the earthquake.*

[32] The Authority pauses to observe that one of the overarching considerations in this whole case is the effect of the Christchurch earthquake. It is simply nonsensical to expect anyone involved in such a traumatic event to operate on a “*business as usual basis*” and the Authority’s conviction from the evidence that it heard was that that was precisely what Ms Steadman was expecting from the Chamber whereas the converse was absolutely untrue. In the Authority’s considered view, the Chamber did everything it could to try to manage Ms Steadman’s personal needs while continuing to provide its members with some sort of service in the most difficult circumstances.

[33] During the course of this extremely difficult transition from disaster to some fledgling attempts to try to return to normality, Ms Steadman quite properly took responsibility for the activities of her team and in particular for their failures. There is clear email traffic to support this assessment. However, in the evidence she gave to the Authority, it was apparent that she blamed the Chamber for somehow not fulfilling its part of the bargain. In fact, the Chamber had done everything it reasonably could to shed her work, to provide her with appropriate support, particularly by Ms Watson herself fulfilling part of her role, by offering her additional management input (an offer which was turned down) and by encouraging Ms Steadman to continue to monitor the performance of her staff by setting weekly tasks. All of that seems to have been accepted at the time but is now presented somehow as if it was evidence for the view that the employer was trying to unreasonably put demands on Ms Steadman.

[34] Ms Steadman complains that the Chamber failed to follow its own Injuries Management and Rehabilitation Policy and in particular failed to prepare a Rehabilitation Action Plan. It is apparent on the evidence that there was no written Rehabilitation Action Plan prepared. The Chamber says this is essentially because of

the limited and progressive nature of the information being provided to it and the inherent challenges of operating in the post-earthquake environment.

[35] No doubt with the benefit of hindsight, confronted with an employee getting regular medical certificates extending her part time status, the Chamber might well have sought its own independent advice which in turn would have led to the generation of a formal written plan. But in the Authority's judgment, it would be wrong to contend that because there is no document that the Chamber can produce called a Rehabilitation Action Plan, no such plan exists.

[36] The Authority accepts the Chamber's evidence that the plan was a fluid creation which responded appropriately to the paucity of information that both parties were grappling with.

[37] In the particular circumstances of the case, the Authority is satisfied that it was enough for the Chamber to simply react to the information that it was provided with by Ms Steadman after her various visits to her general practitioner. That was in fact the only information that either party had at its disposal. It is true that the Chamber could have sought its own medical advice and as the Authority has already observed, with the benefit of hindsight that would have been an appropriate thing to do. But in the particular circumstances of Canterbury post-earthquake, it would be wrong of the Authority to impose a council of perfection on an employer which in the Authority's judgment was doing its very best in exceptionally trying circumstances.

[38] Moreover, Ms Steadman indicated to the Chamber that she was being referred to a neuro psychologist for assessment and that that information would inform the prognosis. Of course, by the time that report was available, Ms Steadman had resigned her employment.

[39] In summary then, the Authority has not been persuaded that the evidence supports Ms Steadman's contention that she was unjustly or unfairly treated by the Chamber during her rehabilitation from injury. The Authority is obligated to consider the employer's actions in the light of the circumstances at the time and it is the Authority's considered opinion that this employer did its level best to provide an appropriate level of care and support for a returning employee given the amount of information that was available to both parties and the extraordinary and unique environment in which these events were set.

[40] Indeed, the Authority accepts as a reasonable assessment of the position the following statement from Mr Townsend's evidence:

*It is my sincere belief that we made every accommodation possible to provide a supportive working environment for Sue. We put her welfare ahead of any concerns we might have had with respect to her performance and we were overtly flexible and supportive in accommodating her particular needs after her accident and with respect to her admission that she was finding it very difficult to cope with her work. Despite the fact that we were in a state of relative upheaval in a post-earthquake environment, and that there were unusual and extraordinary circumstances relating to our working environment I believe we have acted in an exemplary fashion in looking after Sue's interest in every way we possibly could have ...*

### **The complaints about health and safety**

[41] Ms Steadman says that the Chamber failed to provide her with a safe workplace. Her very first point in her brief of evidence under this head is a criticism of the Chamber for using Mr Townsend's home as a temporary office facility. Ms Steadman says that that decision "... *did not appear to take into account the health and safety implications*".

[42] She then goes on to list the alleged deficiencies such as no emergency management plan, no detailed structural survey, hazardous working environment because of power cabling creating tripping hazards, people working on top of each other and so forth, no real consideration around the mental wellbeing of staff, and the suggestion that staff were "*highly vulnerable to an unacceptable degree*" working in that environment at the time of the 13 June 2011 earthquake.

[43] Again, the Authority feels obliged to refer to the context in which this series of complaints must be considered. The Christchurch earthquakes of 22 February 2011 devastated the city and wrote off or rendered uninhabitable a large chunk of the central business district including the building from which the Chamber operated. Given the nature of the organisation, it was imperative that the Chamber continued to operate and continued to provide service to its members, notwithstanding the devastation of the city and the significant loss of life. The Chamber made that decision and through the good offices of Mr Townsend, was able to continue operating immediately after the earthquake by taking up "residence" in his home.

[44] In the Authority's opinion, it would be unjust and unreasonable to apply a usual standard to the circumstances of this Canterbury employer seeking to continue

to look after its members immediately after the earthquakes. The Authority's obligation then is to assess what the Chamber did not by the test that would apply in normal circumstances but by what is reasonable given the circumstances the employer found itself in at the time. That in effect is what the test for justification in s.103A of the Employment Relations Act 2000 (the 2000 Act) requires the Authority to do in evaluating whether an employer's action was justifiable or not. While not strictly on point in a health and safety context, it nonetheless provides a useful framework for the consideration of the issues.

[45] That overarching point aside, the Authority is also not persuaded that the particulars of Ms Steadman's complaint are all made out. Certainly it is true that much of the work in this regard was not attended to until after the 13 June earthquakes; in the circumstances Canterbury was in at the time, that does not seem particularly surprising. It is the case, however, that a building survey was done after the 13 June earthquakes and the steps identified to ameliorate any safety issues were promptly attended to. The Chamber points out that even if it had sought to try to address the matter prior to June 2011, in all probability it would have been unable to find anybody to do the work.

[46] It is acknowledged that the working arrangements at Holmwood Road were less than ideal, but it is not accepted by the Chamber that they were hazardous. For the record, the Authority does not believe they were hazardous either based on the evidence it heard. The ugly reality is that everybody working in post-earthquake Christchurch was working in less than ideal conditions, in cramped environments, sharing offices, sharing space with other businesses or entities, working around power cables, desks and other impediments. The Authority is not persuaded that it should apply a test to this employer that would reflect the realities pre-earthquake. The Authority's obligation must be to take into account all of the circumstances and by doing that allow some latitude.

[47] Furthermore, the Authority does not accept Ms Steadman's claim that there was "*no real consideration given to the mental wellbeing of the staff*". The Authority was presented with a wealth of material from the Chamber which suggested that the Chamber's principal focus was on the emotional wellbeing of staff and everything the Authority heard from the Chamber's witnesses suggested that the overall focus was on trying to keep the entity running while looking after each other.

[48] Amongst other things, counselling support was arranged for staff (contrary to the evidence offered by Ms Steadman) and as soon as more suitable commercial premises could be arranged after the earthquake, they were. Given that post-earthquake Christchurch was full of entities where staff were forced to work from home because there were no safe downtown facilities, a category which included the Authority itself, the fact that the Chamber has a facility, albeit a less than ideal one, put it ahead of the game.

[49] It follows from the foregoing observations that the Authority is not persuaded that the physical environment provided by the Chamber after the earthquake was fundamentally unsatisfactory as a temporary office facility. The Authority needs to deal now with the various complaints that Ms Steadman made about particular aspects of that environment and the responses of the Chamber.

[50] Ms Steadman's evidence about raising matters of concern seems to dwell on her impression of the unsatisfactory response from the Chamber. She alleges she was told to "*get real*" by a colleague and that criticism of inadequate working conditions was not tolerated by Ms Watson. Ms Steadman maintains that Ms Watson said in effect that if anyone wanted to leave as a consequence of the poor working conditions they should get on with it. Ms Watson denies that comment absolutely, denies the contention that she resented criticism of the work space and maintains that whenever an issue was raised by a staff member, whether Ms Steadman or someone else, it was dealt with to the best of the Chamber's ability, having regard to the difficulty of doing anything in Christchurch at that time, if it involved outside agencies. For the record, the Authority prefers Ms Watson's recollection of events to Ms Steadman's.

[51] Both parties acknowledge that Ms Steadman had some interest in and knowledge of health and safety matters and one of the matters about which there is common ground is that Ms Steadman was asked to put together a workplace hazard and risk assessment schedule. Despite her interest in the area, Ms Steadman did not think she had the necessary skills or experience to carry out that task and so she delegated it. For present purposes, the point the Authority seeks to make is that the evidence before it does not suggest that the Chamber had closed its mind to health and safety issues in the workplace, was aware that there were issues, did its very best to address them, and when particular matters were raised, the evidence is that the

Chamber responded appropriately, consistent with its ability to perform in the very difficult post-earthquake environment in Christchurch.

[52] Ms Steadman maintained that *“the biggest issue for me with health and safety was that when I tried to raise my specific issues for discussion, I was severely knocked back and denied an opportunity to discuss them ...”*. The Authority does not accept that the evidence discloses anything of the kind. Ms Watson’s evidence, which the Authority prefers, is that the Chamber did everything it reasonably could to ensure a healthy and safe workplace within the confines of what was possible in post-earthquake Christchurch. Her evidence is also that complaints from staff were dealt with to the best of the Chamber’s ability. Moreover, Ms Watson maintained that because of Ms Steadman’s interest in and knowledge of health and safety matters, she sought to involve Ms Steadman in that aspect, insofar as her hours of work permitted. Lastly, Ms Watson denied absolutely resisting Ms Steadman’s desire to get involved in health and safety matters and maintained that quite the reverse was the position.

[53] Indeed, if the Authority wanted to summarise its conclusion about this particular head of claim, it could do well to use the following words which come from Ms Steadman’s own brief referring to the Holmwood Road situation as:

*... far from ideal, but better than nothing after the earthquake. We all had to accept compromises, but this set up went on until September, when we finally moved offices.*

[54] Of course by September, Ms Steadman had left the organisation; and, for the sake of completeness, the Authority notes that Ms Steadman was offered the opportunity of office space in The Hub, a commercial facility erected by one of the banks on a temporary basis to provide urgently needed commercial space. Ms Steadman turned down the opportunity to move.

[55] The Authority’s conclusion is that the allegation that the Chamber failed to provide adequate facilities which were healthy and safe is not made out. The Authority has not found Ms Steadman’s evidence on this aspect credible and prefers the evidence advanced by the Chamber. Further, the Authority considers it must assess the Chamber’s performance as a good employer against the challenges of the physical limitations of the Canterbury environment at the time. It follows that it would not be appropriate, in the Authority’s view, to judge the Chamber’s

performance by the standards that ought to apply where there has been no natural disaster to cope with.

### **The relationships with colleagues**

[56] There are two relationship issues that the Authority wishes to comment on under this head. The first is the difficult interpersonal relationships between Ms Steadman and another of her team, Helen Mason. It seems apparent that the two women did not get on. Ms Steadman regarded Ms Mason as insubordinate. The Authority cannot make judgments about the relationship itself; the Authority has not heard evidence from Ms Mason and in any event the issue for determination by the Authority is the approach taken by the Chamber to Ms Steadman's complaints about Ms Mason.

[57] The essence of Ms Steadman's complaint is expressed in the following excerpt from her evidence:

*Helen's insubordinate behaviour to me was never addressed and issues were left unresolved. ... The unwillingness for the Chamber to even attempt resolution was deeply undermining.*

[58] Ms Watson, in her evidence to the Authority, acknowledged that there was an issue between the two women but concluded that it was not all one sided. She said there were problems with Ms Steadman's management style and that it was not just Ms Mason who had difficulty with it. She described Ms Steadman's style as dictatorial rather than leadership based. Again, the Authority has the benefit of considering the extensive email traffic that has been made available. It is apparent that Ms Watson did her level best to explain to Ms Steadman how to improve her engagement with Ms Mason. The matter was discussed at a meeting on 20 June 2011 and followed up in a subsequent email on 22 June 2011.

[59] As the Authority has noted, the relationship between Ms Steadman and Ms Mason was not ideal but the evidence that the Chamber ignored Ms Steadman's concerns about that is simply not before the Authority. Indeed, the evidence before the Authority suggests that when Ms Steadman complained about the issue, she got prompt attention from Ms Watson and got some suggestions from Ms Watson about how to seek to engage with Ms Mason, particularly as performance appraisals were coming up and Ms Steadman, as Ms Mason's manager, would have to preside over Ms Mason's performance appraisal process. The Authority is satisfied that the

Chamber did everything it reasonably could to address Ms Steadman's concern about this unsatisfactory relationship.

[60] As a subset of Ms Steadman's concern about her unsatisfactory relationship with Ms Mason, Ms Steadman raised issues about wider difficulties with her whole team. The evidence before the Authority suggests that she had been concerned, from as early as March 2011, about her management authority and she specifically raised the issue again in an email dated 16 June 2011. There was a brief email exchange and subsequently a meeting took place between Ms Watson and Ms Steadman. The evidence suggests that the outcome of that meeting was positive.

[61] The essence of the complaint from Ms Steadman was that she was being undermined by Ms Watson and thus losing her management authority. But as Ms Watson pointed out in her email response (and in her evidence to the Authority), given the reduced hours that Ms Steadman was working (and perhaps particularly the fact that she spent only half a day a week co-located with her team), it was inevitable that her staff would seek guidance elsewhere. In particular, they seemed to seek guidance from Ms Watson who was there.

[62] In all the circumstances then, the Authority is not persuaded that the Chamber failed in its obligations in respect of Ms Steadman's relationships with colleagues.

### **The end of the relationship**

[63] The final stanza of the employment relationship seems to have commenced about the time of Ms Steadman's performance appraisal on 29 June 2011. The personal appraisal was conducted by Ms Watson whose recollection of the meeting is quite different from Ms Steadman's recollection. Ms Steadman said that the performance appraisal "went very badly" that she left in tears and felt bullied. Ms Steadman set out her impressions of that meeting in her email of the following day. That email is roundly critical of Ms Watson in terms of the way she conducted the performance appraisal and includes the following paragraph:

*I would like the organisation to acknowledge and respond the growing stress I am suffering and which you are obviously aware of, as a result of many aggravating factors, such as my current work organisation, and which I believe is exacerbated by the absence of a rehabilitative return to work programme following my head injury. I feel there is now a major breakdown of trust in our relationship*

*Leanne, particularly after yesterday. I am no longer happy about discussing such issues directly with you, without support.*

[64] Ms Watson's evidence of the meeting is quite different. While she acknowledged in her evidence that Ms Steadman became tearful during the meeting, she attributes that to the particular context which was Ms Steadman talking about difficulties in her personal life and being concerned about not being able to control those aspects. Ms Watson remembers Ms Steadman telling her that Ms Steadman was "*failing*".

[65] Both women agree that there was part of the discussion taken up with health and safety with Ms Watson recalling that Ms Steadman was musing about the possible risk to other employees in the then current environment and Ms Watson encouraging Ms Steadman to focus on identifying particular issues that needed addressing rather than expressing generalised concerns. Conversely, Ms Steadman remembers being criticised for continuing to raise health and safety issues and Ms Watson claiming that Ms Steadman was the only staff member raising health and safety concerns.

[66] Ms Watson also remembers talking about the significant amount of time she had invested in meeting with Ms Steadman to deal with her issues and noting that she needed to spend some time with other staff.

[67] However, Ms Watson's evidence is that the meeting, in her judgment, was fundamentally positive, that she reassured Ms Steadman that she was not failing but that she encouraged her to be specific about the concerns that she had rather than to raise generalised issues. Ms Watson says that she was shocked by the follow up email that she got from Ms Steadman, both because it suggested that Ms Steadman was "*not coping*" but also because it appeared to be "*an attack on me*".

[68] Ms Watson referred the issue to her manager, the chief executive officer, Mr Townsend. Between them, they agreed that both of them should meet with Ms Steadman and the agreed meeting took place on 5 July 2011. Both parties agree that the meeting was a positive one and Ms Steadman said after the meeting that she "*felt more optimistic*".

[69] Certainly, the transcript of the meeting made available to the Authority suggests a positive tone. In the early part of the meeting, Ms Steadman carefully sets out the nature of the impairments to her functioning that the head injury had caused.

She emphasises that, given her cognitive functioning impairment, it is easier for her to work at home where there are no interruptions and she notes correctly that the strategic part of her role is able to be done well in that environment but that the management of the team part is less successful because she is remote from the team. Those observations are accepted unreservedly by both Mr Townsend and Ms Watson.

[70] Then Ms Steadman goes on to explain how she had actually been pushing the boundaries of her doctor's medical certificate by working longer in the office to try to improve the management part of her work. The Chamber representatives note that presumably that breached the terms of her medical certificate and therefore jointly they should not let that happen again.

[71] Then Ms Watson asks Ms Steadman if she has any suggestions to improve the management part of her role. Ms Steadman says that the key is communication and notes that when she is in the office she has good communication with her team but is not getting quality work done on her own. Mr Townsend then suggests that when Ms Steadman is in the office that time "*is structured as a team catch up morning, for example*". Ms Steadman agrees.

[72] Then the parties discuss which day of the week would be best and agree to earmark a computer for Ms Steadman to use on that day. They agree that Ms Steadman should attend at the office on a Monday morning and according to Mr Townsend "*we can make sure you have got resources available on a Monday morning*" . *I mean I am happy to vacate my office if there is no other alternative*". And "*... then you can spend the Monday morning working with your team ... and then spend the rest of the week working from home ...*". Ms Steadman says "*that sounds very workable*" and then "*that sounds pretty wonderful*".

[73] They then go on to talking about goal setting between Ms Steadman and Ms Watson and they decide when they will meet. They agree to set up an agenda on the previous Friday for the following Monday and then review that the Friday following for the next Monday and so on.

[74] Then there is a brief discussion about how Ms Steadman is paid and whether the payroll person needs to see her medical certificates (Ms Watson says she will keep them). Then there is a discussion about which buildings are coming down as a

consequence of the earthquakes, followed by some observations about the future of the Holmwood Road site.

[75] The meeting concludes with Mr Townsend saying it has been a good meeting from his perspective and both Ms Watson and Ms Steadman agreeing. Mr Townsend then says that the important issue is to get Ms Steadman into “*a predictable routine and that can assist you with your progress (to get well)*”.

[76] The Authority has dwelt on the 5 July 2011 meeting in some detail because it seems clear that Ms Steadman was troubled by the 29 June 2011 meeting with Ms Watson and, far from ignoring the matter, the Chamber acted promptly to try to redress Ms Steadman’s concerns and, in the Authority’s opinion, did so in the 5 July meeting as the lengthy observations above suggest.

[77] There is nothing in the transcript which suggests any residual unhappiness on the part of Ms Steadman or any unwillingness on the part of the Chamber to address concerns that she raised. Indeed, the solution that the Chamber promulgated and which Ms Steadman readily accepted is transparently sensible; that is that Ms Steadman needs to get into a regular routine which will not only assist her to fulfil her obligations but will also assist in her recovery from the accident.

[78] The evidence before the Authority suggests that the plan which was sketched in the 5 July 2011 meeting became a reality in the subsequent weeks of July 2011 but that Ms Steadman resigned her employment on 10 August 2011 barely a month after the July meeting. That resignation was expressed in generous terms about the support that Ms Steadman had received from the Chamber and there was no suggestion in it that her resignation was not freely given.

[79] The events that happened after resignation are relevant also. Ms Watson became concerned about some aspects of Ms Steadman’s performance, raised them with Ms Steadman during the notice period and that clearly had a deleterious effect on the relationship between the two women.

[80] Further, during August, Ms Steadman finally attended at the neuro psychologist although the report did not issue until 3 October 2011. The report was commissioned by ACC as part of its statutory obligations. It is not appropriate to dwell on the neuro psychology report as it was not available to the employer and played no real part in the dispute between the parties. What is interesting about the

report though is the contention made by the report's author that in effect Ms Steadman sought to influence the result by demonstrating impairment by a lack of effort during the testing process.

[81] The report writer is quite clear about Ms Steadman's behaviour and mentions it throughout the report on a number of occasions. For instance, in the third paragraph on p.3 is the following passage:

*Unfortunately testing cannot confirm if an injury was sustained, or if so, the extent and nature of it, because Mrs Steadman deliberately under performed on tests. This means that the scores that were obtained are invalid and conclusions cannot be drawn from them.*

[82] While as the Authority observes, the importance of this material is limited as it post-dates the end of the employment, it is in the Authority's opinion relevant and capable of being taken into account in assessing issues around credibility.

[83] Of course, Ms Steadman denies the allegation of deliberately trying to "fix" the result of the test. But, the report writer is very clear and as the Authority has already mentioned, makes the point on a number of occasions throughout the report that the evidence is that Ms Steadman deliberately under performed.

[84] Although not strictly in place in terms of the chronology, a further issue which troubles the Authority and goes to Ms Steadman's credibility is her behaviour in respect of a possible witness, Ms Barkway. Ms Barkway was a former staff member of the Chamber reporting to Ms Steadman. She eventually left the employment of the Chamber but became a contractor to the Chamber, at least on an occasional basis. Ms Barkway was approached by Ms Steadman's counsel to give evidence. Ms Barkway's response was to say that her evidence, if given, might not assist Ms Steadman.

[85] Ms Steadman then sought to claim that Ms Watson had interfered with the witness to ensure that she did not give her testimony. The Authority spoke personally to Ms Barkway and was absolutely satisfied that Ms Watson had done nothing of the kind. The allegation that a witness has been suborned is a very serious one to make and in the Authority's opinion the allegation, given that it has not a shred of credibility, reflects poorly on Ms Steadman's general credibility and believability.

**Determination**

[86] The Authority is not persuaded that Ms Steadman has demonstrated she has a personal grievance by reason of having suffered a constructive unjustified dismissal. Of the three usual grounds for constructive dismissal, there is no evidence she was offered the choice of “*resign or be dismissed*”, nor is there any evidence of a course of conduct with the dominant purpose of coercing a resignation. That leaves a breach of duty as the basis for any finding of fault.

[87] The Authority is not persuaded there has been any breach of duty. The position might have been different if the employment relationship had terminated after the 29 June 2011 performance appraisal meeting and Ms Steadman’s evidence had been preferred. But even if there were grounds at that point (and the Authority is not satisfied that there were because of its preference for the evidence of the Chamber), any concern must evaporate after the 5 July 2011 meeting which had both a cordial and supportive tone on the one hand, and seemed to set out to diligently resolve Ms Steadman’s issues on the other.

[88] What is more, the terms of Ms Steadman’s resignation included a glowing thank you for the support that she had received from the Chamber so there is nothing in the surrounding circumstances to support Ms Steadman’s claim.

[89] Finally, the Authority would observe that while the relationship deteriorated somewhat post-resignation, by then the die was cast as a matter of law and in any event, the Authority is not persuaded that any of the employer’s behaviour was repudiatory in tone.

[90] The Authority turns now to the alleged breach of the duty of good faith. Nothing in the evidence supports the view that the Chamber breached its duty and that claim must fail. In any event, it appears to be pleaded as part of the constructive dismissal allegation.

[91] Next, the Authority must deal with the alleged breaches of implied and express terms. For reasons which the Authority has already analysed, it has not been persuaded there is any breach of express or implied terms of the employment. In particular, the Authority is satisfied the evidence does not support Ms Steadman’s claim that she was provided with an unsafe workplace.

[92] Dealing finally with the contention that Ms Steadman suffered stress attributable to the Chamber's actions or inactions, the Authority is satisfied that there is insufficient evidence to support the view, either that Ms Steadman suffered from stress or indeed that that stress, if present, was caused by work.

[93] The medical evidence is equivocal at best. All of it relies on self-reporting. Credibility is an issue. Ms Steadman is said to have deliberately falsified tests by the neuro psychologist and she alleged that a witness had been "got at" by Ms Watson when there was not a skerrick of evidence to support that contention. Accordingly, the Authority concludes there is no credible basis for finding Ms Steadman suffered from stress. Even her own contemporaneous evidence is almost bereft of the suggestion that she was suffering stress. The only significant exception to that is the email dated 30 June 2011 which followed the performance appraisal that Ms Steadman was upset by. But any reasonable analysis of the period immediately after that email was sent must reflect on the transcript of the 5 July 2011 meeting which appears to have repaired any outstanding issues.

[94] But even if it is not accepted that there is no evidence of stress, equally, the Authority is satisfied there is insufficient evidence to link any possible stress to the employer in a causative way. As the Authority has been at pains to labour during this determination, these were extraordinary times in Christchurch. The sheer number of significant earthquake events in the Christchurch area from 4 September 2010 have the potential to make any individual stressed. Over the period of the issues in contention, there were several thousand earthquakes. Further, it is common ground that Ms Steadman had post-concussion syndrome and the symptoms of that condition include stress. This is primarily because of the effect on cognitive functioning creating distress in the patient because of their inability to perform normal tasks. Moreover, there is clear evidence that there were personal issues affecting Ms Steadman and it is perfectly plausible for those to be stressful in themselves. Finally, there is some evidence of another medical condition suffered by Ms Steadman which might also contribute.

[95] In the end, there is simply insufficient evidence to identify stress as being present or even if stress is found, there is insufficient causative link to the Chamber to make it justiciable.

[96] It follows from the foregoing analysis that Ms Steadman's claims are rejected by the Authority.

**Costs**

[97] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority