

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 417
5354715

BETWEEN CHRISTINE STEWART
Applicant
AND THE COMMISSIONER OF POLICE
Respondent

Member of Authority: K J Anderson
Representatives: F Wood, Counsel for Applicant
K Sagaga, Counsel for Respondent
Investigation Meeting: 12 June 2012 at Rotorua
Submissions Received: 28 June 2012 and 19 July 2012 for Applicant
17 July 2012 for Respondent
Date of Determination: 26 November 2012

DETERMINATION OF THE AUTHORITY

Introduction

[1] The applicant, Ms Christine Stewart, resigned from her employment on 7 July 2010. Ms Stewart claims that her resignation was, in fact, an unjustifiable constructive dismissal. She asks the Authority to find that she has a personal grievance and award the remedies of reimbursement of lost wages and compensation.¹

[2] The respondent, The Commissioner of Police (the Police) denies the claims of Ms Stewart and says that the resignation was not a constructive dismissal as it was not brought about by a breach of duty by the employer.

[3] The Authority heard evidence from Ms Stewart. For the Police, there is evidence from Inspector Timothy Anderson, District Manager, Mr Ross Dickinson,

¹ For completeness, I record that the wage arrears claim, relating to the difference in remuneration between Band B and Band C of the salary scale, was withdrawn at the investigation meeting.

Employee Practices Manager, Inspector Edward van den Broek, Ms Jenni-Lee Reardon, Staff Welfare Officer, and Mr Kevin Taylor, Human Resources Manager. Numerous documents have been provided by the parties along with comprehensive closing submissions. All of the available material has been closely considered by the Authority, albeit it may not be specifically referred to in this determination.

Background

[4] Ms Stewart was a long serving employee with the New Zealand Police, having commenced her employment on 1 July 1992 as a result of the merger with the Ministry of Transport. From 10 October 2002 to 7 July 2011, Ms Stewart was employed in the non-sworn role of Intelligence Support Officer (ISO) at the Rotorua Police Station. In the role of ISO, Ms Stewart provided specialist support to the Police Intelligence Unit including: collecting, collating, processing, storage, retrieval and dissemination of information for intelligence purposes. Ms Stewart reported to Sergeant Cassidy, the Area Intelligence Supervisor of the Criminal Intelligence Section.

Issues arising in 2009

The complaint of inappropriate accessing of information

[5] In a letter dated 27 July 2009 from Senior Sergeant Mick Lander, Ms Stewart was advised that a complaint had been received via the Independent Police Conduct Authority relating to: “[...inappropriate accessing of information held by the Police National Intelligence Application (NIA)]”. Ms Stewart was advised of the identity of the two complainants and that in accordance with the Independent Police Conduct Act 1998, Senior Sergeant (S/S) Lander was required to investigate the complaint.

[6] An investigation meeting took place with S/S Lander on 31 July 2009. Ms Stewart was accompanied by a New Zealand Police Association representative. The matters that were discussed at the meeting are recorded in the *Statement of: Christine STEWART*. This document (dated 31 July 2009) is signed by Ms Stewart and S/S Lander. Relevant to the complaint, the statement records that Ms Stewart was asked if she knew a Mr [G]².

² In order to protect the privacy of certain individuals who are not involved in the proceedings, letters of the alphabet (not relevant to their actual names) are used.

[7] Ms Stewart acknowledged that she knew this person through a common interest in horse racing.

[8] Ms Stewart informed that she had received a phone call from Mr G who asked her to check if there were “any issues” regarding a Mr [N] who was in a relationship with a female employed by Mr G. Ms Stewart subsequently did conduct a check via the NIA and discovered that Mr N was wanted on a Warrant to Arrest. Ms Stewart then contacted the Taupo Police and informed that Mr N was in their area.

[9] In response to an inquiry from S/S Lander, Ms Stewart says that she did not pass any information to Mr G. Ms Stewart was also asked if Mr G had ever phoned her or talked to her about Police checks on his employees. Ms Stewart records in her statement: “*It is possible.*” She then mentions that the access records show that she “queried” a person named [V]³.

Outcome of the investigation into the complaint of inappropriate accessing of information

[10] Following the interview with Ms Stewart, a report dated 26 August 2009 was completed and forwarded by S/S Lander to the Rotorua Police Area Commander. Among other matters, the report contains the following information:

On 23 July 2009 (a week before meeting with Ms Stewart) S/S Lander interviewed Mr G who said:

- (i) that he rang Ms Stewart to check on Mr N.
- (ii) that Ms Stewart told him that Mr N was wanted by the Police for questioning.
- (iii) that Ms Stewart advised him that Mr N should not be driving farm vehicles;
- (iv) that on the basis of the information received from Ms Stewart, the offer of employment he had made to Mr N was withdrawn.
- (v) that the Taupo Police subsequently arrested Mr N.
- (vi) that Mr N was the only person who he had asked to be checked using the Police.
- (vii) that V was a person that was employed at the farm prior to 2009.

[11] Under the heading “*Investigation Outcome*” S/S Lander concluded (at para 8.4):

³ It was subsequently revealed that V was a person employed by Mr G

I believe a case has been clearly established that STEWART did pass on police-held information from the National Intelligence Application (NIA) to [Mr G] and that [Mr G] had thereby acted on this information and withdrawn his offer of employment, and further to this, communicated the information to other persons which has resulted in the arrest of [Mr N] from the farm.

And at para 8.5:

I believe STEWART has lied during the investigation meeting by claiming that she passed no information to [Mr G] at all.

[12] The report then sets out the section on confidentiality as contained in the applicable Code of Conduct. S/S Lander then states at para 8.8:

It is clearly established that the Code of Conduct has been breached by STEWART by her accessing and divulging/releasing confidential information to [Mr G].

And at para 8.9:

Using any Police database for unauthorised purposes and using the Police computer system for unauthorised or personal purposes are considered to be serious breaches of the Code of Conduct.

[13] S/S Lander then makes an **Investigation - Outcome Recommendation** that:

- 9.1 Christine STEWART works in the area of intelligence collation and promulgation.
- 9.2 While the release of information is a serious breach of the Code of Conduct, I consider the circumstances regarding STEWART'S breach to be non-malicious and not for personal gain.
- 9.3 It is my recommendation that Christine STEWART be issued a formal warning for this breach of the Code of Conduct.

I submit this file for your comment and forwarding to the Officer in Charge: Professional Standards, Bay of Plenty District Headquarters.

[14] The Rotorua Area Commander, Mr Bruce Horne, received the report prepared by S/S Lander and in a *REPORT FORM* dated 12 September 2009, he records:

I support Snr Sgt LANDERS findings. His conclusions are logical & supported by evidence. The concern in this case is that a Police employee has

- (i) breached police rules around use of NIA.
- (ii) lied to a police investigator in an attempt to correct her wrongdoing.

[15] The Report Form is handwritten and difficult to decipher but it concludes that consideration should be given to whether the actions of Ms Stewart amount to misconduct or serious misconduct.

The second investigation

[16] It appears that running parallel to the matters set out above; a further investigation into the actions of Ms Stewart regarding her work performance was being conducted. Via a letter from S/S Lander dated 18 August 2009, Ms Stewart was informed that he was investigating an allegation relating to her “inappropriately using the Police computer system”. Ms Stewart was advised that this investigation had been commenced after a review of her internet usage had been generated from Professional Standards, Bay of Plenty District Headquarters. Ms Stewart was invited to attend an investigation meeting on 21 August 2009.

[17] In this matter, similar to the previous investigation, Ms Stewart and S/S Lander signed a comprehensive written statement: regarding the matter under investigation, the general tenor of the questions put to Ms Stewart and her response. Ms Stewart was presented with three Excel email files showing her internet usage, sites visited and times of the day that the internet information was accessed. In particular, S/S Lander queried Ms Stewart’s internet usage on 9 July and 14 July 2009. Among other matters, Ms Stewart was also asked about her internet access to particular sites for the months of May and June 2009.

[18] A second investigation meeting took place on 10 September 2009 and the conduct of it is recorded in a further signed statement of the same date. Ms Stewart was asked to clarify the “project work” that she had been involved with that required particular internet usage on 9 and 14 July 2009, and access to the Trade Me website. An explanation was also sought in regard to Trade Me access on 22 and 29 May 2009 as well as Ms Stewart’s access to the E-Bay website.

[19] Upon the completion of his investigation into Ms Stewart’s internet usage, S/S Lander prepared a report. It is dated 29 September 2009 and addressed to the Rotorua Area Commander. Under the heading **Investigation Summary**, S/S Lander records that:

There are two main points that have arisen out of the investigation.

- There is a common thread amongst all of the internet usage looked at over the three month period, being a large amount of work time being attributed to accessing equestrian related sites.
- The second issue identified is the accessing of restricted auction sites during work time with evidence of this access also relating to personal options being conducted.

I interviewed Ms STEWART on two separate occasions relating to the material supplied, and the resulting investigations into that material. Ms STEWART clearly stated a knowledge and understanding regarding Police policy and instructions relating to use of Police computers for personal use. Further to this, Ms STEWART clearly acknowledged that access to approved sites such as Trade Me is restricted access, and was only to be used for work purposes.

The summary of my interviews with Ms STEWART was that I found I had cause to question her honesty and integrity, regarding her answers to my questions and explanations for her internet access. I found her explanations to be vague and attempting to trivialise where the personal access was clearly divulged. Some of the explanations provided were blatantly dishonest.

[20] S/S Lander concluded his report by stating:

I consider that Ms STEWART has clearly breached the “acceptable use policy” relating to the Police computer systems, and that there are further employment related issues relating to productivity and furthermore, honesty and integrity.

I submit this file for your comment, and forwarding to the O/C Professional Standards, BOP DHQ, for their assessment and further actioning.

Actions following the completion of the two reports

[21] Mr Ross Dickinson is an Employee Practices Manager based at the Bay of Plenty District Headquarters in Rotorua. The evidence of Mr Dickinson is that he received S/S Lander’s first investigation report (26 August 2009) on or shortly after 21 September 2009. After reviewing the file, he concluded that the report was “ready” for submission to Police National Headquarters for consideration. Mr Dickinson subsequently also came to the same conclusion in regard to the second investigation report (29 September 2009) and on 14 October 2009, he emailed the two investigation reports to Police National Headquarters (PNHQ) for consideration. Mr Dickinson received an email from PNHQ on 15 October 2009 advising that the two reports

would be referred to the National Disciplinary Committee (NDC) for determination as to seriousness in regard to the actions of Ms Stewart.

[22] On 3 November 2009, the NDC concluded that the two matters involving Ms Stewart should be treated as possible serious misconduct and that a disciplinary hearing should take place.

Notice of serious misconduct

[23] On 6 November 2009 Mr Dickinson wrote to Ms Stewart informing her that:

On 31 July 2009, 21 August 2009 and 10 September 2009 you attended investigation meetings in relation to two employment inquiries concerning your alleged conduct, namely that you:

- accessed the NIA records of Mr N for unauthorised purpose and provided that information to a person who is [un]authorised to receive it; and
- accessed the NIA records of other persons including Mr V for unauthorised purpose; and
- during the three months of May to July 2009 accessed internet equestrian related sites and Trade Me a considerable number of times for unauthorised purpose.

This alleged behaviour breaches the Code of Conduct, specifically the principles of:

- Honesty and Integrity;
- Loyalty, Good Faith and Professionalism;
- Confidentiality.

Following the investigation, the matter was referred to the Assistant Commissioner to assess whether or not the matter may amount to serious misconduct and should be referred to a Disciplinary Hearing. A Disciplinary Hearing is convened when the conduct in question could potentially seriously undermine or damage Police's trust and confidence in the employee.

The Assistant Commissioner has reached the view that your alleged conduct may amount to serious misconduct and has therefore instructed that a Disciplinary Hearing be convened. A person will be appointed to undertake that hearing shortly. Contact will be made with you or your representative within 28 days of their appointment being confirmed to set a date for the hearing.

[24] Ms Stewart was provided with a copy of all the information that was provided to the person undertaking the disciplinary hearing and she was encouraged to seek

advice/representation. Ms Stewart was also provided with a fact sheet that comprehensively explains the disciplinary hearing process.

[25] On 20 November 2009, Ms Stewart was advised of the identity of the independent consultant provisionally appointed to conduct the disciplinary hearing.

[26] On 1 December 2009, the independent consultant, Ms Stewart's representative, Mr Graham McKay, Police Association Field Officer, and Mr Dickinson participated in a conference call. Mr McKay advised that he would be arguing that the investigations conducted by S/S Lander were flawed due to the lack of proper disclosure.

[27] The evidence of Mr Dickinson is that subsequent to Mr McKay raising the issue of proper disclosure, he reviewed the files and the circumstances of the two investigations. Mr Dickinson attests he found that the investigation into the complaint of misuse of the NIA had been treated as a standard Police investigation of a complaint, whereby the rules for disclosure are significantly different to those which apply to an employment investigation. The candid evidence of Mr Dickinson is that under the new Code of Conduct, a risk had been identified associated with the use of Police Officers, whom were more used to applying the rules associated with a Police investigation, as opposed to applying a process associated with an employment investigation.⁴

[28] Upon making this discovery in regard to the incorrect procedure adopted by S/S Lander, Mr Dickinson contacted Mr McKay and proposed two alternatives; either:

- (a) the two investigation reports be withdrawn and new investigations be conducted by Mr Dickinson; or
- (b) if Ms Stewart agrees that she has not suffered any disadvantage due to inadequate disclosure prior to the investigation meeting, then the matter proceed to the disciplinary hearing as is.

⁴ Mr Dickinson informed that action had been taken to ensure this risk does not occur with subsequent investigations.

[29] Mr McKay subsequently informed that Ms Stewart wished to proceed with option (a), that is, that the two investigation reports would be withdrawn and new investigations would be conducted.

The new investigations

[30] On 21 January 2010, Mr Dickinson wrote to Ms Stewart and advised that a new investigation meeting was required and that he would meet with her and Mr McKay on 4 February 2010. Ms Stewart was informed that the meeting would address two matters (in summary):

- (a) The accessing of internet sites by Ms Stewart during working hours on the Police computer in the three month period May to July 2009; and
- (b) The complaint received that Ms Stewart had inappropriately accessed NIA records.⁵

[31] A meeting duly took place with Mr Dickinson on 4 February 2010. The evidence about this meeting is somewhat sparse but it seems that the explanations that Ms Stewart provided to Mr Dickinson were similar to those that she gave at the two investigation meetings conducted by S/S Lander.

[32] The evidence of Mr Dickinson is that following the investigation meeting on 4 February 2010, relevant to the access of the NIA information, he confirmed that Ms Stewart had rung the Intel Sergeant at the Taupo Police Station and advised him of the whereabouts of Mr N. Subsequently, a Senior Sergeant, who lives nearby the farm where Mr N was believed to be residing, visited the farm and spoke to Mr G. Mr Dickinson says that during the discussion with Mr G the Taupo Senior Sergeant told Mr G why Mr N was wanted by the Police. Mr Dickinson attests that he arrived at the conclusion that there was “insufficient certainty” that Ms Stewart had “in fact” improperly provided Mr G with information about Mr N; sourced from the National Intelligence Application.

[33] In regard to the allegation that Ms Stewart had been involved with excessive personal use of the internet, Mr Dickinson arrived at the same conclusions as S/S Lander had in the earlier investigation.

⁵ Both of these matters have been previously canvassed and set out earlier in this determination.

[34] However, while S/S Lander had included in his report some concerns about Ms Stewart's integrity and honesty, Mr Dickinson says that he did not have the same concerns. Mr Dickinson concluded that the matter of Ms Stewart's internet usage should properly be dealt with as a performance issue rather than possible misconduct under the Code of Conduct.

[35] Mr Dickinson says that there was no evidence of Ms Stewart having been previously spoken to or performance managed in regard to the internet access issue. Mr Dickinson explained that a basic premise of the Code of Conduct is that performance issues should, in the first instance, be dealt with by performance management.

Completion of the investigation reports

[36] The evidence of Mr Dickinson is that it became apparent to him by early April 2010 that he was not going to be able to complete the investigation reports before travelling overseas for eight weeks during May and June 2010. Mr Dickinson says that he spoke with Mr McKay and advised him that he could inform Ms Stewart, that in regard to the allegation of the misuse of the NIA, Mr Dickinson had come to a different conclusion to the earlier report; and that there was another source by which Mr G became aware of the information pertaining to Mr N. Mr Dickinson had concluded that this diminished the evidence against Ms Stewart, and on balance, Mr Dickinson had concluded that Ms Stewart did not improperly disclose information from the NIA to Mr G.

[37] Mr Dickinson also informed Mr McKay that in regard to the allegation of excessive use of the internet by Ms Stewart, he had come to the same conclusion as the earlier report of S/S Lander, but would recommend that it should be dealt with as a performance issue, rather than as possible misconduct.

[38] Upon the completion of his leave, Mr Dickinson returned to work on 28 June 2010. He says that it was his intention to complete his investigation reports regarding the matters pertaining to Ms Stewart. However, on 15 July 2010, he became aware of the resignation of Ms Stewart and put the reports to one side, pending confirmation of her intention to resign. Mr Dickinson says that some weeks later, when it was clear that Ms Stewart was not going to return to work, he discontinued his investigations and closed the files.

[39] The final outcome was that the matter of the allegation regarding Ms Stewart's use of the NIA information was returned to an Inspector for closure and consequent reporting to PNHQ and the Independent Police Conduct Authority. The file regarding the excessive use of the internet remains with Mr Dickinson.

Issues leading to the resignation of Ms Stewart

[40] At about the time that Mr Dickinson was on leave for eight weeks; with the consequence that his investigation reports were not completed, Inspector Edward van den Broek (who at the material times was Acting Inspector) was relieving in the Area Tactical Response Manager role, effective from March 2010. The evidence of Inspector van den Broek is that from March (apparently about the beginning of relieving in the role of Area Tactical Response Manager) he received complaints from various staff members regarding the behaviour of Ms Stewart in the workplace.

[41] The complaints included an allegation that staff did not pass on information to Ms Stewart because they did not trust her with it. There was a complaint, or complaints,⁶ that Ms Stewart was loud when having conversations with other people in the work group and this was annoying and disturbing to other staff in the open plan workplace. Inspector van den Broek says he spoke to Ms Stewart on one occasion about having her radio volume too loud and when he asked her to turn it down, she responded by saying: "no, its not your office, go away". Inspector van den Broek also says that it was inappropriate for Ms Stewart to be wearing earplugs when working as she could not carry out her duties effectively. Finally, Inspector van den Broek says that he observed Ms Stewart arriving late to work and spending excessive amounts of time on her lunch and coffee breaks.

[42] The evidence of Inspector van den Broek is that around early May, he spoke to Sergeant Cassidy about the behaviour of Ms Stewart and Sergeant Cassidy, also expressed concerns about her conduct. However, while Sergeant Cassidy was Ms Stewart's immediate supervisor, and had been for some time apparently, there is no evidence of him ever raising any concerns with her. Inspector van den Broek says that at about the same time, he spoke to Detective Inspector Tim Anderson, District Manager Criminal Investigations, about concerns relating to Ms Stewart.

⁶ The details do not appear to have been provided to Ms Stewart.

Informal performance meeting – 10 May 2010

[43] The evidence of Inspector van den Broek is that because of the number of complaints he had received about the behaviour and performance of Ms Stewart, he decided to have a “low level discussion” with her to look at how “we could work together going forward”.

[44] On 10 May 2010 Ms Stewart was requested to attend a meeting with Inspector van den Broek. Sergeant Cassidy was also present. Ms Stewart says that she was summonsed to the meeting, inferring that she was a less than willing participant, but that remains inconclusive.

[45] The evidence of Inspector van den Broek is that he raised the following issues with Ms Stewart:

(a) ***Inaccurate data entry***

[46] Inspector van den Broek says that there had been “issues” about the accuracy of the data entry carried out by Ms Stewart. In particular, Ms Stewart was made aware of a recent incident where a Rotorua Police staff member was incorrectly linked as a partner of a high profile Mongrel Mob member residing in Rotorua. It was alleged that Ms Stewart had incorrectly entered data that linked the staff member to the Mongrel Mob and the staff member had asked Ms Stewart to correct it. The response of Ms Stewart is that prior to the meeting she was not aware that this issue was going to be raised. But in any event, she says that the information entered had been provided to her by a senior Detective. The information was that a vehicle belonging to a staff member had been linked to a gang address. Ms Stewart says that the staff member had contacted her to try and have the entry edited, but it was not appropriate for her to do so and she had previously raised her concerns about this with Inspector van den Broek (then a Senior Sergeant). The evidence of Inspector van den Broek is that Ms Stewart did not raise this matter with him. But under cross examination, Inspector van den Broek conceded that Ms Stewart may have raised this issue with him prior to the meeting on 10 May 2010.

[47] My observations are that it is more probable than not that the matter had been raised with Inspector van den Broek and that his initial denial of such was somewhat evasive.

[48] Ms Stewart says that she did not inaccurately enter data into the Police database, rather she simply entered the information that was given to her by a senior Detective and it was not her place to question the information as it was provided. It seems to me that this is probably correct, but I am not required to make a definitive finding about that. Nonetheless, relevant to Ms Stewart's claims before the Authority, I am inclined to accept her evidence whereby she attests that her explanation about the data entry allegation was not listened to. I also accept Ms Stewart's evidence that during her service with the Police she made "thousands" of data entries and that only one (misconceived) matter was raised with her.

(b) *Work group leaders had expressed concerns about Ms Stewart's credibility*

[49] This was the second matter that was raised with Ms Stewart. Inspector van den Broek says he explained to Ms Stewart that work group leaders at the Rotorua Police Station had expressed concerns about her credibility within her role. Inspector van den Broek says that he conveyed to Ms Stewart that there was a reluctance to provide information to the Rotorua Intel group because of Ms Stewart's involvement. But it seems that Inspector van den Broek never provided any specific examples of this reluctance, who had expressed the concerns about Ms Stewart's credibility, or indeed any specific explanation at all.

(c) **Internet access – Code of Conduct investigation**

[50] Inspector van den Broek raised the matter of the investigation that was taking place in regard to the alleged excessive use of the Police internet for private purposes. His evidence is that he advised Ms Stewart that his understanding of the investigation was that it was near completion and that it may be with the Bay of Plenty District Commander at that time. Inspector van den Broek says that he informed Ms Stewart that he had concerns about her ability to carry out her duties when she was excessively accessing the internet for private purposes during working hours.

[51] Given that the evidence of Mr Dickinson is that he did not have concerns about Ms Stewart's integrity and honesty, and that the matter of internet access should, in the first instance, be dealt with by way of performance management, and that this had been conveyed to Ms Stewart's representative some time in April 2010, it seems odd that Inspector van den Broek should have taken the stance that he did on this matter. This is particularly difficult to understand, given that Inspector van den

Broek and Mr Dickinson are both based in the Rotorua District Headquarters at Rotorua. Nonetheless, it is possible that the two men had not had any discussion about this matter and so Inspector van den Broek was not fully aware of the stage Mr Dickinson's investigation had reached.

(d) *Intel policy and Intel restructure*

[52] Inspector van den Broek also discussed with Ms Stewart the new Intel policy and restructure that was being introduced around the country. His evidence is that he advised Ms Stewart that she may not have the necessary higher security clearance, as part of the new policy, to enable her to continue in her current role.

[53] The evidence of Ms Stewart is somewhat different. She says that Inspector van den Broek told her that he had been informed by Inspector Tim Anderson, a District Manager, that she would not receive the necessary security clearance as part of the new Intel policy and that because of this; her current role would be compromised. The evidence of Inspector Anderson about this is that prior to the meeting on 10 May 2010, he discussed with (then Senior Sergeant) van den Broek the impact of the "pending" employment investigation regarding Ms Stewart's use of the internet for private purposes, in the context of the new requirement for all Intel employees to obtain a high security clearance, as compared with the normal security clearance that applies to all Police employees.

[54] Inspector Anderson says that the decision as to whether or not an employee would obtain the requisite high security clearance would be made by an external agency; the Secret Intelligence Service (SIS). The SIS would request information as to whether the Police had the "utmost" confidence in the employee, particularly in relation to handling extremely sensitive information.

[55] The further evidence of Inspector Anderson is that at the time, he was aware of the two pending employment investigations involving Ms Stewart and on the basis of this knowledge, he recalls saying something to Inspector van den Broek "along the lines" that Ms Stewart would not get the security clearance if he [Inspector Anderson] was her supervisor. Inspector Anderson says that he advised Inspector van den Broek prior to the meeting on 10 May 2010 that Ms Stewart "may" not be able to get a high security clearance as the definitive decision was to be made by the SIS. It is the evidence of Inspector Anderson that if the allegations against Ms Stewart, relating to

the two investigations, were substantiated, it would have been “unlikely in the circumstances” that Ms Stewart would obtain a high security clearance because the Police would not have the “utmost” confidence in Ms Stewart to handle extremely sensitive information; albeit the Police could still have sufficient confidence in her in relation to day-to-day policing information.

[56] Finally, two other matters were discussed at the meeting: the offer, and alleged refusal of training options, and that Ms Stewart should move into a vacant Records Clerk position.

Letter dated 10 May 2010

[57] The matters that were discussed at the meeting on 10 May 2010 were recorded by Inspector van den Broek in a letter (of the same date) to Ms Stewart. The letter, at the second bullet point, appears to confirm Ms Stewart’s view that her explanation about the alleged inaccurate data entry was not considered. Indeed, there is no record at all of anything that Ms Stewart may have said.

[58] In addition to the evidence regarding most of the relevant matters that were discussed at the meeting (as set out above) Inspector van den Broek records that

Lastly, training options have previously been offered to you which you have refused, limiting your ability for advancement and increased skills within the Intel Group.

As a result of these issues, I have asked you to move into the vacant Records Clerk job because it is a position that you have held previously and that also allows you to still work closely with your colleagues in the Intel office due to the environmental location of the office. I also want to highlight that the change will not affect your salary.

I am aware that this discussion has caused you emotional stress and I sympathise with you that I have placed you in that position. However, this is a discussion that I have had to have with you and I hope that you will view this positively and take up the offer that has been placed in front of you. With the Intel review and the subsequent fallout of that you may find that your position in the Intel office may be compromised in the future which may involve you being moved from the office due to other issues such as security clearances.

[59] In regard to the offer of training opportunities referred to by Inspector van den Broek, Ms Stewart says that the last opportunity that she had for further training was four years previously, but her personal situation at the time was such that she could

not take up the opportunity. In regard to the Records Clerk position, Ms Stewart says that at the meeting on 10 May 2010 it was clear to her that it was not an offer for due consideration; rather it was “a directive” and she believes she had no option but to take it. The evidence of Ms Stewart is that at the conclusion of the meeting, she was “upset and furious” about what had occurred and she had threatened to resign.

[60] The evidence of Ms Stewart is that she perceived the letter from Inspector van den Broek to contain a “clear threat” that if she did not take the Records Clerk position, she would be removed from her ISO role following the pending review, because she would not have the necessary security clearance.

Sick leave

[61] The evidence of Ms Stewart is that she was upset and distressed after the meeting on 10 May 2010 and she was feeling extremely stressed and anxious. As a consequence, she could not face going back to work because of the “personal attack” on her professionalism. Ms Stewart was diagnosed by her doctor as having work related stress and she was placed on sick leave for a month - from 12 May 2010.

[62] While on sick leave, Ms Stewart met with the Welfare Officer from District Headquarters, along with Sergeant Cassidy. It was suggested that Ms Stewart should attend counselling. Ms Stewart also says that the Welfare Officer was going to put in place a return to work strategy whereby she would return to work on a gradual basis. However, Ms Stewart says that she never heard anything further from the Welfare Officer.

[63] The evidence of the Staff Welfare Officer, Ms Jenni-Lee Reardon, is that following a request from Sergeant Cassidy, she met with Ms Stewart on 26 May 2010, along with Sergeant Cassidy. Ms Reardon says that she offered, but did not recommend (as Ms Stewart says), the opportunity for Ms Stewart to attend counselling and referred her, under the Police Trauma Policy, to a Police psychologist. Ms Reardon attests that the period of counselling was a matter between Ms Stewart and the psychologist. Ms Reardon also says that she indicated to Ms Stewart that she should make further contact with her if she required further assistance; but she never heard any more from Ms Stewart. Ms Reardon also says that she tried to contact Ms Stewart after the meeting on 26 May 2010, in order to check on her progress, but her call was not returned by Ms Stewart.

Return to work

[64] Ms Stewart returned to work on Wednesday, 9 June 2010. On Monday, 14 June, she was informed by Sergeant Cassidy that Inspector van den Broek wanted to see her. Ms Stewart says that she informed Sergeant Cassidy that she was not prepared to meet with Inspector van den Broek without someone present with her. The evidence of Ms Stewart is that Inspector van den Broek then came out of his office and put a letter into her in-tray and said to her: *This is what I wanted to see you about.*

[65] Ms Stewart says that the attitude of Inspector van den Broek towards her was “hostile and aggressive”. He denies this and says that he gave her a letter and advised her that it contained the issues he wished to discuss. The evidence of Inspector van den Broek is that he had participated in a discussion with Ms Stewart’s representative on 14 May 2010, after the meeting that had been held a few days earlier. Inspector van den Broek says that as a result of some concerns raised by Ms Stewart’s representative, relating to the meeting on 10 May 2010, it was agreed that the performance issues relating to Ms Stewart would be dealt with in accordance with the performance management policy, and this would be led by him. Inspector van den Broek says that he had assumed that this would have been conveyed to Ms Stewart by her representative and that he would have also reassured her that the meeting held on 10 May 2010 was “an informal performance discussion” and that it was not intended to force her out of her current role.

[66] Regrettably, the Authority has not heard from Ms Stewart’s representative or Sergeant Cassidy, as her direct supervisor. But I must say that I do not find the evidence of Inspector van den Broek to be very convincing in regard to the tenor of the meeting on 10 May 2010; or its purpose.

The letter dated 14 June 2010

[67] The letter informs that Ms Stewart is invited to attend a performance meeting on 22 June 2010 to discuss:

Professionalism

- You take an excessive amount of time on breaks.
- You have been observed leaving work early and recording a full day’s work.

- You are loud and disruptive in your office causing other members to be distracted from their work.
- It has come to our attention that you purport to represent yourself as a ‘voice’ of the Police in the community that you live.
- You often listen to music using earplugs.

Accountability for performance

- You have been inaccurate in your NIA data entering of Intel notings.
- Failure to take up further training opportunities.

[68] Ms Stewart was also informed that the meeting would be attended by Sergeant Cassidy and she was encouraged to bring a representative or support person if she wished. The letter then proceeds to inform Ms Stewart that:

The enclosed documents provide information about the process to be used and make it clear that if your performance is not satisfactorily improved within a given period of time and after all agreed training and support has been provided, the performance matter may become subject to the progressive disciplinary process. Please contact either myself or the BOP VHQ HR group if you have any questions regarding the process.

A position description is enclosed. Please note that the position description is entitled ‘Intelligent Support Assistance’ (ISA) rather than ‘Intelligent Support Officer’ (ISO). Your current position description is an ISO but this will change under the new Intel structure to the ISA position.

[69] Finally, Ms Stewart was informed that she could find the performance management policy and the Code of Conduct on the internet and that:

The main objective of the meeting is to have a full and frank discussion about the issues, and together find the best way to resolve them. I welcome your full participation at the meeting.

[70] The evidence of Ms Stewart is that she saw this letter as “another attempt” by Inspector van den Broek to “intimidate” her. Enclosed with the letter was a job description for the role of ISO (Ms Stewart’s current position) and also a job description for the new position of Intelligent Support Assistance (ISA). Ms Stewart says that she had not been consulted, nor had she been provided with any information in regard to the ISA position and the change involved.

[71] The further evidence of Ms Stewart is that Inspector van den Broek was aware that she had just returned from sick leave due to work related stress. At the end of her shift on 14 June 2010, Ms Stewart went home and was again placed on sick leave. Ms Stewart attests that:

I was extremely stressed and anxious about what had happened and felt sick to my core. In my view the letter and intended performance meeting was designed to intimidate me further and force me to resign.

Resignation

[72] As a result of Ms Stewart being on sick leave, the meeting scheduled for 22 June 2010 did not take place, and in fact, Ms Stewart did not return to work, as on 7 July 2010, she resigned.

[73] The evidence of Ms Stewart is that she decided that:

I had reflected about what had occurred over the past ten months or so and I felt I was being bullied and forced out of my position. The Police hierarchy had adopted a view about me which was totally false and unfair and I was never really given a proper opportunity to respond to the issues they raised. I believe that the essential trust and confidence in the relationship had been completely destroyed by their actions.

My last ten months with the Police was in stark contrast with my previous 23 years I had had with the Police. I had enjoyed my roles, and more latterly the ISO position and I know I was good at my job. I believe the fact that I had challenged the Police hierarchy in relation to the first investigation had a bearing on their subsequent conduct to force me out of the ISO position.

[74] Ms Stewart's letter of resignation to Sergeant Cassidy informs that:

After 23 years service I wish to tender my resignation from NZ Police effective immediately. I have been placed in a situation where I am compelled to take this course of action due to the enduring stress created by the actions of my employer. I feel there has been a breach of duty by my employer in that there has been serious damage to the employment relationship of confidence and trust between my employer and myself.

The action of my employer was a breach of the contractual provisions of the Collective Employment Agreement and the Code of Conduct. This breach has led to my resignation and consequential constructive dismissal. The lodging of an employment relationship problem and/or personal grievance will follow.

[75] Subsequent to Ms Stewart presenting her resignation, there were some discussions between Mr Dickinson and Ms Stewart's representative, apparently with the intention of exploring other options rather than Ms Stewart resigning. However, Ms Stewart says that by then she considered that the trust and confidence necessary in the employment relationship had been completely destroyed by Police management. Ms Stewart says that:

For my own health and well being, I could not return into an environment where my superiors had concluded (quite wrongly) that I could not be trusted and had lied to them. I did not even have the benefit of a written report or statement which vindicated my actions that I could rely on to show them that they had been wrong.

[76] Finally, in regard to Ms Stewart's evidence, she provides the following summary:

I had enjoyed my job with Police and I fully expected I would continue to work with the Police for years to come. However, following the NIA investigation and the internet investigation, both of which were flawed, there was a significant change in the Police management's attitude towards me. I believe that following both of those investigations the dye was cast and I was treated as a person who could not be trusted any longer. Nothing I did or said appeared to have any impact. I believe the respondent then embarked on a course of action to make me leave my current position and take a demotion or resign. I was not prepared to take a demotion, but I did resign. I could no longer face the constant harassment and bullying I felt I was being subjected to in my role as ISO.

Analysis and Conclusions

[77] The primary issue for the determination of the Authority is: ***Was the resignation of Ms Stewart on 7 July 2010, in reality, a constructive dismissal?***

[78] In summary, it is submitted for Ms Stewart that her argument that the resignation is a constructive dismissal, is based on the following conduct by the Police:

- (a) An unfair investigation process into allegations of unauthorised access to NIA and alleged excessive internet usage. Those investigations were flawed (which appears to have been accepted by the respondent) and

they irreparably changed management's attitude towards Ms Stewart;

- (b) The flawed investigations led to an erosion of trust and confidence in the employment relationship;
- (c) The attempt by the Police to unilaterally change the terms and conditions of Ms Stewart's employment and to force her out of the ISO position;
- (d) A prolonged and sustained period of harassment and bullying by her managers.

[79] Conversely, it is submitted for the respondent that:

- (1) Ms Stewart resigned from the New Zealand Police of her volition. She resigned while performance matters had not been resolved. She resigned while two employment investigations against her had not been completed. She resigned while a restructure was in process.
- (2) The Police deny that Ms Stewart was constructively dismissed from her employment with the New Zealand Police.

The Law

[80] Ms Stewart's argument that she was constructively dismissed substantially rests on the premise that there was a breach of express and implied terms of her employment agreement, or in other words, a breach of duty by the employer.

[81] Therefore, as was stated by the Court of Appeal in *Auckland Electric Power Board v. Auckland Local Authorities IUOW*⁷:

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 a breach of duty by the

⁷ [1994] 1 ERNZ 169 (CA)

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.

[82] Applying the above dicta of the Court of Appeal to the circumstances of Ms Stewart, the first question is: ***Was the resignation caused by a breach of duty on the part of the Police?***

[83] The submissions for Ms Stewart rely on several examples of behaviour by the Police management that, it is argued, the Authority should take into consideration in determining whether there was a breach of duty by the employer.

The outcome of the two investigations conducted by Senior Sergeant Lander

[84] The first two investigations relating to the alleged inappropriate use of NIA information (the NIA investigation) and Ms Stewart's alleged excessive use of the internet for private purposes were conducted by S/S Lander. It is argued that the two investigations were flawed with the outcome being that the reports issued were damning of Ms Stewart. This is because not only did S/S Lander consider there was substance to the allegations, he went further and concluded that Ms Stewart had lied during the NIA investigation by claiming that she did not pass any information on to the person who had requested that she do a check on the relevant individual.

[85] In regard to the internet access investigation, S/S Lander concluded that some of the explanations provided by Ms Stewart were "blatantly dishonest".

[86] S/S Lander forwarded his two reports (26 August 2009 and 29 September 2009) to Inspector Horne and Inspector Sparrow respectively. It is argued that Inspector Horne concluded that Ms Stewart lied to a Police investigator (S/S Lander), but this is not really correct. In the *Report Form* dated 12 September 2009, Inspector Horne does not appear to personally reach any conclusions about Ms Stewart. Rather, he simply, albeit unquestionably, supports S/S Lander's findings in regard to Ms Stewart. Firstly, breaching the rules regarding the use of NIA, and that Ms Stewart lied to a Police investigator.

[87] Inspector Horne then submits these findings for consideration by EPM as to whether the above two matters amounted to misconduct or serious misconduct.

[88] Nonetheless, it seems that Inspector Horne implicitly accepted the findings of S/S Lander without question as to how they were arrived at and, more importantly, without inquiry into whether Ms Stewart had been given the opportunity to respond to these findings. Therefore, as far as Ms Stewart was concerned, the Police records showed a finding that she had: breached the rules in regard to her use of the NIA system and lied to a Police investigator. Furthermore, it had been accepted that she had done so, up to the level of Inspector within the Rotorua Police contingent.

[89] The second report, relating to internet usage, was forwarded by S/S Lander to Inspector Sparrow. In his *Report Form* dated 29 September 2009, Inspector Sparrow concluded that:

After reading her statements, I am left in no doubt that her answers are less than vague and I question her ability to stay in her current role.

[90] It appears that Inspector Sparrow also unreservedly accepted the conclusions of S/S Lander without further inquiry. Indeed, I have to say that the Report Forms submitted by Inspector Horne and Inspector Sparrow are remarkably sparse handwritten documents and while their overall purpose and intent has not been fully explained, one would have expected to see something a bit more substantial when the potential for serious disciplinary action is involved.

[91] But in any event, in addition to the conclusions confirmed by Inspector Horne, Inspector Sparrow was also questioning the ability of Ms Stewart to remain in her current role. Following the involvement of Mr Dickinson, the two reports prepared by S/S Lander were subsequently withdrawn and Mr Dickinson reached some different conclusions, following the conduct of his two investigations.

[92] However, as submitted for Ms Stewart, the fact remained (and still does for that matter) that two senior Officers of the Rotorua Police had recorded their conclusions that Ms Stewart could not be trusted and she was a liar and not suitable to remain in her current role. More importantly, Ms Stewart was never given the opportunity to rebut the serious conclusions that had been reached by senior officers of the Rotorua Police.

The change of management's attitude towards Ms Stewart

[93] It is submitted for Ms Stewart that Inspector van den Broek and Inspector Anderson held a common view that Ms Stewart could no longer be trusted and could not remain in her current role. In support of this proposition is the evidence that the two men had concluded, prior to the meeting that took place on 10 May 2010, that Ms Stewart would most probably not get the necessary security clearance required for the pending restructure. The attention of the Authority is also drawn to the statement contained in Inspector van den Broek's letter dated 10 May 2010, whereby he states that:

Fourthly there is a new Intel policy coming into place soon, part of which addresses the security clearance of Intel staff. It has already been highlighted to me by Inspector Anderson from Bay of Plenty District Headquarters that you will not receive the necessary clearance as part of that policy to enable you to carry on in your current role.

[94] The matter of Ms Stewart's excessive personal use of the internet has been referred to in the submissions for her. Largely in the context that Ms Stewart was the only person to have her internet usage monitored. It has not been revealed how Ms Stewart's personal internet usage was revealed and without actual knowledge of this, it is difficult to conclude that Ms Stewart was "unfairly targeted" because of the earlier NIA access investigation. Nonetheless, it is established that Ms Stewart had never been spoken to before or cautioned about her internet usage, nor had there been a general instruction issued to staff reminding them of the reasonable use policy.

The attempt to unilaterally vary Ms Stewart's terms of employment

[95] It is submitted for Ms Stewart that the actions of her employer, in regard to the conduct of the meeting on 10 May 2010, were designed to force her to accept a unilateral variation to her employment and accept the role of Records Clerk. I find that there is force in that submission. Ms Stewart was requested to attend the meeting at short notice without any inkling of what was to be discussed. While Inspector van den Broek has attempted to portray the context of the meeting as "low level" and designed to "look at working together going forward", it was clearly something else altogether. Indeed, rather than an informal meeting, Ms Stewart found herself facing several allegations; including revisiting the two investigations that were currently with Mr Dickinson.

[96] Effectively, Ms Stewart was told that there were concerns about her overall performance and then informed that, effectively, she was no longer considered to be suitable to retain her current position; and that she should take up the role of Records Clerk.

[97] It is submitted for the Police that the meeting on 10 May 2010 was conducted fairly, but even if this is found by the Authority not to be so, the subsequent discussion between Inspector van den Broek and Mr McKay, on 14 May 2010, clarified how the various matters would be managed in future. Unfortunately, the damage had already been done and Ms Stewart had been affected to such an extent that she required some time off on sick leave.

The actions of the employer upon Ms Stewart's return from sick leave

[98] It is submitted for Ms Stewart that it was not appropriate for her to have been required to address the purported performance issues so soon after her absence on sick leave. I accept that there is some merit in this submission, particularly given that Ms Stewart was being asked to once again address some of the issues that had led to her having to take sick leave. There is also merit in the argument advanced for Ms Stewart that it would have been more appropriate to have firstly involved Mr McKay, as the employer was aware that he was acting on behalf of Ms Stewart and furthermore, Inspector van den Broek had been challenged by Mr McKay in regard to how matters had transpired at the meeting on 10 May 2012.

[99] In addressing the matter of whether the resignation of Ms Stewart was caused by a breach of duty on the part of her employer, I find that there were several actions by the Police that can be seen as breaches of duty, at least in a cumulative sense; leading or contributing to the resignation of Ms Stewart. The breaches of duty are:

- (a) Firstly, at the time that Ms Stewart resigned, her personal record showed that conclusions had been reached by S/S Lander that Ms Stewart had lied to him (as the Police investigator) and then later, she had been "blatantly dishonest". These allegations were also accepted by Inspector Horne and Inspector Sparrow, with the latter questioning whether Ms Stewart should remain in her current role. And despite the fact that Mr Dickinson concluded otherwise as an outcome of his investigations, those allegations were never retracted or

removed from Ms Stewart's record. Not even during the period following Ms Stewart presenting her resignation and subsequently being asked to reconsider. Furthermore, Ms Stewart was never given an opportunity to rebut the conclusions arrived at by S/S Lander and subsequently accepted by Inspectors Horne and Sparrow.

- (b) Secondly, I conclude that there was a concerted effort on the part of Inspector van den Broek to make life difficult for Ms Stewart. It appears that Ms Stewart had an unblemished record as a long serving employee and while her actions in regard to the requirement for the two investigations in question cannot be considered faultless, it seems that a raft of faults suddenly arose and Ms Stewart was confronted with these on 10 May 2010, without any prior warning. Furthermore, it seems that her explanations were treated with little regard by Inspector van den Broek, especially the matter of the data entry issue.
- (c) Thirdly, and probably the most relevant matter, is the fact that Ms Stewart was informed, in less than subtle terms, that she was not able to remain in her current position and that she should accept the position of Records Clerk.
- (d) Finally, almost immediately upon Ms Stewart's return from sick leave, she was required to address the performance concerns again. This was despite the fact that her representative, Mr McKay, had raised concerns about how Ms Stewart had been treated earlier and despite the fact that she had never been presented with any specific details of the matters that were purportedly of concern. On its own this last matter could be given less weight, but coupled with the other matters set out above, it can logically be seen as the last straw on Ms Stewart's back.

[100] I find that upon consideration of all of the circumstances leading up to the resignation of Ms Stewart, that the above actions were of such a cumulative nature, they led to a substantive breach of the employer's duty to treat Ms Stewart in a fair and reasonable manner.

[101] Having reached this finding, the next question that must be answered is:

Was the breach of duty by the employer of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would resign?

[102] I find that the cumulative actions of the employer were of sufficient seriousness to make it reasonably foreseeable that Ms Stewart would resign. Effectively, Ms Stewart had been told that her employer no longer had trust and confidence in her to carry out her duties and that she was a security risk and should move into a lesser position. Ms Stewart was never given a fair opportunity to rebut what were very serious allegations. Viewed objectively, it should have been foreseeable by the employer that Ms Stewart was left with little option but to resign.

[103] It follows that I must conclude that the resignation of Ms Stewart was in reality, a constructive dismissal, and the dismissal was unjustifiable. Ms Stewart has a personal grievance.

Remedies

[104] Having found that Ms Stewart has a personal grievance, pursuant to s.123 (1) of the Employment Relations Act 2000 (the Act):

Where the Authority or the Court determines that an employee has a personal grievance, it may, in settling the grievance, provide for one or more of the following remedies ...

[105] Included in the remedies available is reimbursement of wages and compensation for humiliation, loss of dignity and injury to feelings. Then, at s.128(2) of the Act, if the Authority determines that an employee has a personal grievance and there has been lost remuneration because of the grievance, the Authority:

... must, whether or not it provides for any of the other remedies provided for in section 123 order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to three months' ordinary time remuneration.

(a) *Reimbursement of lost wages*

[106] Ms Stewart has not quantified her loss of wages and the statement of problem and the closing submissions for her are silent in regard to any loss incurred as a result of the termination of her employment. When asked at the investigation meeting about her attempts to mitigate her loss of income, Ms Stewart's answers were inconclusive and vague. Ms Stewart said she "looked at the papers" and also the *Seek* website to see if there were any jobs. Ms Stewart also mentioned letting it be known she was

looking for work by “word of mouth” but she didn’t apply for any positions. Ms Stewart also informed that from the beginning of September 2010, she started an equine massage business and is still involved with this on a part-time basis; but there is no information available in regard to the income of the business.

[107] As has been correctly submitted for the respondents, there is an onus on Ms Stewart to mitigate her losses and establish this in evidence. The obligations of a dismissed employee, in relation to a loss of earnings, was explained by Chief Judge Colgan in *Allen v Trans Pacific Industries Group Limited (trading as “Medismart Limited”)*⁸ as follows:

[78] [... dismissed employees are not only under an obligation to mitigate loss but to establish this in evidence if called upon. This will require, in practice, a detailed account of efforts made to obtain employment including dates, places, names, copies of correspondence and the like. If alternative employment is obtained, details of this will also need to be retained for the hearing including dates of employment, amounts paid and reasons for ceasing employment.

[108] The *Allen* judgment was referred to by Judge Ford in *Radius Residential Care v McLeay*.⁹ He stated that:

It is up to the employee in an unjustified dismissal case to produce the evidence to prove any loss of income.

The same applies in relation to the obligation to mitigate loss. The Court [Authority] should not be left to speculate or guess. The paucity of evidence produced by the defendant on these topics has not persuaded me that she did take adequate steps to mitigate her loss. She has failed to produce any of the evidence identified by Chief Judge Colgan required to substantiate a loss of earnings claim.

[109] And so it is with the circumstances pertaining to Ms Stewart. Unfortunately, there has been no evidence produced by her that would satisfy the requirements of *Allen*; hence I am left to decline to make any award of reimbursement under this head.

(b) *Compensation*

[110] In her brief of evidence Ms Stewart seeks an award of \$15,000 for humiliation, loss of dignity and injury to feelings but she has given little evidence as to why an award of this amount should be made by the Authority.

⁸ [2009] 6 NZELR 530 (EmpC)

⁹ [2010] NZEmpC 149 at para [51]

[111] Furthermore, the submissions for Ms Stewart do not make any reference at all to the matter of remedies. Therefore, I am left with my observations of Ms Stewart at the investigation meeting when she recounted the various events that led to her resignation and of course, her associated evidence about the eventual termination of a long period of service with the Police. While I found Ms Stewart to be somewhat stoic, I accept that she was affected to the extent that an award of compensation in the sum of \$12,000 is appropriate.

[112] Then, pursuant to s.124 of the Act, I am obliged to consider the extent to which the actions of Ms Stewart contributed towards the situation that gave rise to the personal grievance. I conclude that Ms Stewart did contribute towards the situation that led to her resignation in that while it was accepted that the two investigations undertaken by S/S Landers into Ms Stewart's actions were flawed, because of the methods he adopted, the investigations undertaken by Mr Dickinson confirmed S/S Lander's conclusions in regard to excessive personal use of the internet by Ms Stewart. Also the fact that the two investigations were required, and some of the pertinent findings, suggests that Ms Stewart's use of the internet and the NIA, was less than appropriate and certainly matters that warranted appropriate performance management and examination of possible security breaches.

[113] Taking all factors into account, I conclude that it is appropriate to reduce the above sum by 25% making an award of the sum of \$9,000 pursuant to s.123(1)(c)(i) of the Act.

Determination

[114] For the reasons set out above, I find the resignation of Ms Stewart was a constructive dismissal and the dismissal was unjustifiable. Pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000, The Commissioner of Police is ordered to pay to Ms Stewart the sum of \$9,000.00.

Costs

[115] Costs are reserved. The parties are invited to resolve this issue if they can, taking into account the overall outcome.

In the event that a resolution cannot be reached, the applicant has 28 days from the date of this determination to file and serve submissions. The respondent has a further 14 days to respond.

K J Anderson
Member of the Employment Relations Authority