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## Stiekema v Centurion Management Services Ltd AA 377/07 (Auckland) [2007] NZERA 871 (3 December 2007)

Last Updated: 23 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 377/07 5085554

BETWEEN	JACKY STIEKEMA Applicant
AND	CENTURION MANAGEMENT SERVICES LIMITED Respondent

Member of Authority: Marija Urlich

Representatives: Ashley Sharp, for Applicant Andrew Clemow, for Respondent

Investigation Meeting: 10 and 11 October 2007

Determination: 3 December 2007

### DETERMINATION OF THE AUTHORITY

#### Employment Relationship Problem

[1] Mrs Stiekema was employed as the Trust Account Manager for Centurion Management Services Limited, a company which administers bodies corporate. She was employed in this role from late March 2003 until her resignation on 5 March 2007. Mrs Stiekema held a position with a high degree of trust and responsibility. She reported directly to the Financial Controller, Colin Craig, one of three directors of the business. There is no dispute that Mrs Stiekema was a hardworking and dedicated employee.

[2] Mrs Stiekema says her resignation was brought about by the unreasonable and unfair actions of Centurion. She says her resignation amounts to an unjustified constructive dismissal. In the alternative, Mrs Stiekema says Centurion's actions unjustifiably disadvantaged her in her employment. The actions of the employer which are in question are the requirement to attend weekly devotions, the manner in

which a disciplinary investigation into Mrs Stiekema's actions was conducted and the outcome of that disciplinary investigation.

#### Principles and issues

[3] In deciding whether the circumstances of this case gave rise to a constructive dismissal I am guided by the principles enunciated by the Court of Appeal in *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW* [1994] NZCA 250; [1994] 1 ERNZ 168 where, at page 172, they said:

*In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach. As to the duties of an employer, there are a number potentially relevant in this field. How some should be defined precisely is a matter no doubt still open to debate: see the discussion in the *Auckland Shop Employees* case. But in our view it can now safely be said in New Zealand law that one relevant implied term is that stated in the judgment of the Employment Appeal Tribunal, delivered by Browne-Wilkinson J, in *Woods v W M Car Services (Peterborough) Ltd* quoted in the *Auckland Shop Employees* case. As the Judge put it:*

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

*"We regard this implied term as one of great importance in good industrial relations . . ."*

[4] If I find this was a constructive dismissal, whether it was justified must be determined in accordance with [section 103A](#) of the [Employment Relations Act 2000](#) which provides:

### **103A Test for justification**

*For the purposes of [section 103\(1\)\(a\)](#) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.*

[5] Applying these principles to this case, the issues for the Authority to determine are:

- (i) was there a breach of duty by Centurion to Mrs Stiekema?;
- (ii) If so, was that breach sufficiently serious to make it reasonably foreseeable that Mrs Stiekema would resign as a result?;
- (iii) If so, did Mrs Stiekema actually resign as a result of that breach?; and
- (iv) If Mrs Stiekema was constructively dismissed, were the actions of Centurion those which a fair and reasonable employer would have taken in the circumstances?

[6] Mrs Stiekema's alternative claim is that the disciplinary process and penalty she was subject to unjustifiably disadvantaged her in her employment. The disciplinary process found Mrs Stiekema's actions amounted to serious misconduct and she was issued with a final written warning with stipulations. If it is necessary to consider this alternative claim then the Authority must apply the test set out in [section 103A](#) and consider whether these actions were what a fair and reasonable employer would have done in the circumstances at the time the disciplinary action was taken.

[7] It was held in *Air New Zealand Ltd v Hudson* [2006] NZEmpC 46; [2006] 1 ERNZ 415 para 132:

*The section does not differentiate between aspects of the [disciplinary] process but, because it refers to the employer's actions, the test for justification applies at all stages including the employer's decision that misconduct has occurred and the employer's decision to [take disciplinary action].*

*Each of these stages is open to scrutiny although this is not to be done in a mechanical way as it is recognised that the lines between each stage are often blurred.*

[8] Also in the alternative Mrs Stiekema asks the Authority to consider the requirement to attend devotions and whether this amounts to an unlawful discriminatory practise.

## **What happened?**

[9] In late December 2006 Mrs Stiekema had a conversation with Leesa Bird, Centurion's Office Manager, in the doorway of Ms Bird's office. Mrs Stiekema spoke with Ms Bird about a fellow Centurion employee, Stewart Ashworth, moving to a contracting role. Mrs Stiekema told Ms Bird that she understood Mr Ashworth had been forced into becoming a contractor because he had refused to attend the weekly devotional sessions at which Mr Craig preached. Mrs Stiekema told Ms Bird that she did not think it was right that staff should be required to attend devotions and that she could not understand how Mr Craig could preach to staff while engaging in fraudulent transactions. Ms Bird said she understood attendance at devotions could be required by Centurion. Ms Bird also said that she would be very concerned if what Mrs Stiekema said about fraudulent activity was true.

[10] Ms Bird asked Mrs Stiekema if she wanted her to speak to Mr Craig about her attendance at devotions and the alleged fraudulent activity and Mrs Stiekema said no because she was concerned about losing her job.

[11] Ms Bird found these allegations concerning. Her concerns were enforced when shortly after her discussion with Mrs Stiekema she was approached by another employee who said Mrs Stiekema had made allegations of fraudulent activity by Mr Craig. Ms Bird then raised her concerns with Mr Craig and Steve Plummer, another director of Centurion, at the Friday management team meeting held that same week.

[12] I asked Mrs Stiekema if she was surprised that Ms Bird went against her express wishes and spoke to Mr Craig about the alleged fraudulent transactions. Mrs Stiekema said she was because the conversation was, in her words, *office talk*.

[13] Mr Ashworth gave evidence to the Authority. He said he was not forced into accepting a contractor role, which being a contractor suits him better than being an employee and that he proposed becoming a contractor as a solution to the attendance at devotion issue. I accept that Mr Ashworth's request to cease attending devotions was amicably resolved with Centurion.

[14] On their return from the Christmas/New Year break Mr Craig and Mr Plummer undertook an investigation into the issues raised by Ms Bird. For this purpose they prepared a series of questions which were put to staff members who worked with Mrs Stiekema<sup>1</sup>. The questions did not identify Mrs Stiekema. The staff members were interviewed individually. The first question was whether any staff member had ever suggested that Centurion may have been involved in improper financial transactions. Four staff members said Mrs Stiekema had told them that either the company or the directors were committing fraud or theft. The other staff said they had not heard any such comments. The questions then elicited the details of what Mrs Stiekema had said and if her comments had given rise to any concerns as to the integrity of the company, its staff or directors. The respondent staff said the comments had raised questions in their minds.

[15] Mr Craig said following these interviews he felt Mrs Stiekema had a case to answer. On 1 February 2007 he met with Mrs Stiekema to arrange a time to meet with her to discuss the allegation. He outlined the allegation, advised her the matter was serious and could place her employment in jeopardy and that she could bring someone to the meeting with her. They agreed to meet the following morning at 10am.

[16] Mrs Stiekema was shocked and upset. She said she was unsure if Mr Craig was alleging that she was involved in fraudulent activity or that she had made allegations of fraud. Mrs Stiekema says the email from Ms Bird confirming the meeting *...to discuss alleged allegations of fraud* added to her confusion and distress.

### **(i) first disciplinary meeting**

[17] Mrs Stiekema attended the disciplinary meeting the following morning supported by her husband. Mr Craig and Mr Plummer attended for Centurion.

[18] Mrs Stiekema was given an agenda setting out the investigation to date, the allegation and the questions Centurion wished to put to her. The document begins:

## **Disciplinary Matter: Allegation Relating to Rumours**

1 With the exception of one staff member with whom Mrs Stiekema had a poor relationship.

**(Review with Jacky Stiekema 2nd Feb 2007)**

### **Background:**

*There have been rumours that Centurion management may have engaged in fraudulent or improper transactions. This is obviously a most serious matter. Management have investigated the rumours.*

*The result of the investigation is that it appears that these rumours have originated from Jacky Stiekema (employed by Centurion as their Trust Account Manager). As a result this meeting is necessary to conclude the investigation on this matter and provide opportunity for Jacky to respond to the allegation.*

*After Jacky has had opportunity to respond Management will consider the issue and make a decision on what further action will be taken.*

[19] Mr Stiekema sought to clarify the possible outcome of the meeting. The parties agreed that the meeting was part of an investigation which could lead to disciplinary action but that any such action would not be taken at the conclusion of that meeting.

[20] Mrs Stiekema confirmed that she had raised the issue of fraud or improper transactions with Mr Plummer on a number of occasions and with Ms Bird. She said that the amount of Centurion's annual power invoice to bodies corporate which it administers had been joked about. She said she had raised her concerns with senior staff in a genuine effort to alert management to issues which she saw as irregularities. Mrs Stiekema said she was too embarrassed to raise the issues directly with Mr Craig, to whom she directly reported, or the auditors who audited the accounts annually. Mrs Stiekema said that in raising these concerns she had no intention of damaging the company's reputation and she did not raise her concerns with other staff or clients. Mrs Stiekema then outlined her concerns.

[21] Mr Craig told Mrs Stiekema that he had already interviewed staff, that her answers did not correlate with the information he had received and that those discrepancies were significant. Mrs Stiekema said that perhaps her conversations with Mr Plummer had been overheard by the other staff because these discussions had been raised in the open office.

[22] Mrs Stiekema then asked if she would be suspended. Mr Craig said no and that Mrs Stiekema could take some leave if she wished. The meeting ended with Mr Craig advising they would need to give further consideration to the issues and clarify the different information received.

[23] Mr Craig and Mr Stiekema took notes of the meeting. Later that day Mr Craig provided draft minutes to Mrs Stiekema to comment on. Mr Stiekema provided Mr Craig with his typed minutes on 7 February 2007 with a covering letter pointing out the discrepancies; that the meeting should be headed disciplinary meeting not investigation meeting and that this should be recorded along with Mrs Stiekema's agreement to continue with the meeting on that basis.

[24] On 8 February 2007 Mr Craig wrote to Mrs Stiekema rejecting the minute amendments proposed by Mr Stiekema, advising that a further meeting would be held, that it was likely that a decision would then be made and confirming that leave would be available if Mrs Stiekema wished to have time off.

[25] Mr Stiekema replied on 11 February 2007 requesting that his minutes be kept on file per [Privacy Act 1993, section 6](#) principle 7(3) and asking that matters be progressed as quickly as possible. This was a proper request which Centurion was lawfully required to comply with.

[26] Mr Craig continued his investigation. He met individually with the four staff who had said Mrs Stiekema had made comments to them alleging fraudulent activity by the directors. He put to them Mrs Stiekema's comment that they may have overheard her conversations with Mr Plummer or Ms Bird. They all said Mrs Stiekema had told them directly, more than once, that she was concerned about fraud or stealing by the directors and/or staff.

[27] Mr Craig also discussed with Mr Plummer Mrs Stiekema's comment that she had raised her concerns with him. Mr Plummer said Mrs Stiekema had never raised such concerns with him. He said Mrs Stiekema had asked about the invoicing of electricity for the administered bodies corporate but that she had never made an allegation

of fraudulent activity by Mr Craig. Mr Craig accepted Mr Plummer's

explanation. As a consequence of Mrs Stiekema's comments Mr Plummer withdrew from any further involvement in the investigation of the disciplinary allegations.

[28] Mr Craig wrote to Mrs Stiekema on 15 February 2007 inviting her to a meeting the following day to answer questions and provide further comment. Attached to this document was a summary of the investigation to date, the information received and the questions to be put to her.

## **(ii) second disciplinary meeting**

[29] This disciplinary meeting was held on 15 February 2007. Mrs Stiekema attended with her husband and counsel. She provided a letter setting out her detailed response to the allegations. The meeting adjourned for Centurion to consider her response. In the letter Mrs Stiekema raised two personal grievances; the first concerns the manner in which the disciplinary investigation had been conducted and alleged that the outcome of the disciplinary process had been predetermined, the second concerned the requirement to attend Thursday devotions.

[30] Mrs Stiekema took sick leave from 15 February 2007.

[31] Centurion's lawyers responded to Mrs Stiekema's written response of 15 February 2007 on 16 February 2007 denying the suggestion that the outcome of the disciplinary investigation was predetermined, advising that that outcome would be considered over the weekend and that Centurion was willing to attend mediation.

## **(iii) deliberation**

[32] Mr Craig and Mr Plummer considered the material gathered through the investigation and concluded that Mrs Stiekema had spread rumours of fraud:

- (i) five staff members said she had spoken with them about fraud or theft being committed by the directors;
- (ii) Mr Craig and Mr Plummer did not accept that Mrs Stiekema was afraid to speak with Mr Craig about this matter because in the past she had not been afraid to voice her opinion; and

(iii) Mrs Stiekema had not attempted to raise her concerns through other means readily available to her eg, a third party, the auditors, a letter or email to Mr Craig or another director.

[33] Having concluded serious misconduct had been made out Mr Craig, Mr Plummer and Mrs Helen Craig (the third director of Centurion) meet the following day and over the weekend to discuss what disciplinary action would be appropriate to take against Mrs Stiekema.

[34] On 21 February 2007 Mr Craig wrote to Mrs Stiekema advising that the allegation against her had been upheld:

*I can now report back on the conclusions we have reached after investigating the matter of whether or not you have made allegations that the company or its staff/directors have committed theft/fraud.*

*It is our belief, based on what evidence we have and taking into account what answers you have given, that you have spoken to some staff members and stated that the company or its staff/directors have been involved in fraud.*

*In our view this constitutes a breach of contract and serious misconduct. I note your contract provides that the employer may terminate the contract forthwith and without notice if "the employee has been guilty of conduct tending to bring themselves or the employer into disrepute". Making statements alleging fraud/theft is in our view conduct tending to bring the company into disrepute.*

[35] The disciplinary action taken (as detailed in the letter) was a final written warning with stipulations that Mrs Stiekema attend a regular meeting with Mr Craig to table concerns and that she undertake part-time tertiary study in accounting with the cost to be met by Centurion.

[36] On 23 February 2007 Mrs Stiekema's lawyer wrote to Centurion's lawyer reiterating her personal grievances and requesting that Mrs Stiekema be excused from attending devotions. By facsimile dated 26 February 2007

Centurion's lawyer replied that these matters could be discussed at mediation (the organisation of which was in train) and sought details of Mrs Stiekema's ill health (a medical certificate had been provided that day).

[37] Further correspondence, along with a letter from Mrs Stiekema's doctor, was provided by 1 March 2007. Centurion was invited to comment on the doctor's letter which advises Mrs Stiekema was suffering from work related anxiety and depressed mood and concludes:

*In my opinion returning to the exact same work condition that apparently led to the anxiety with depression would be detrimental to her health and wellbeing.*

[38] By email dated 1 March 2007 Centurion's lawyer wrote to Mrs Stiekema's lawyer asking whether the medical certificate meant Mrs Stiekema would not be returning to work on 7 March 2007, which had been stated on the last medical certificate, if so when she would be likely to return to work, that a work related stress condition would require a specialist medical opinion and that steps Centurion had taken to minimise Mrs Stiekema's stress could be discussed at mediation.

[39] On 5 March 2007 Mrs Stiekema wrote to Mr Craig resigning from her employment with Centurion giving four weeks notice in accordance with the terms of her employment agreement. This letter outlines:

- (i) Mrs Stiekema's disappointment and surprise that Centurion would respond to the stress issues by asking when she would return to work before the issues between them were resolved;
- (ii) Those issues are her continued attendance at devotions and Mrs Stiekema's belief that she would not be excused from attending;
- (iii) Her concern that Mr Plummer had denied she had raised her concerns with him, that he had taken no steps to address her concerns and was now too embarrassed to speak to her, the requirement that staff must formally apply for leave for minor absences such as doctor's visits;
- (iv) She had worked very hard for Centurion but could see no point in returning to such a work environment when it impacted negatively on her health;
- (v) That she would return to work out her notice as soon as she had received a medical clearance from her doctor.

[40] On 7 March 2007 Centurion's lawyers wrote to Mrs Stiekema's lawyer confirming Mrs Stiekema's resignation had been received, that it had not been sought but was accepted, that a medical clearance had also been received advising that Mrs Stiekema would be returning to work the following day, seeking written confirmation from her doctor that returning to work would not be detrimental to her health and dealing with some termination of employment housekeeping matters.

### **Was Mrs Stiekema constructively dismissed?**

[41] A termination of employment brought about by a resignation can amount to a constructive dismissal if it falls within one or more of the following categories:

- (a) the employee is told to resign or be dismissed; or
- (b) the employer follows a course of conduct with the deliberate and dominant purpose of coercing an employee to resigning; or
- (c) a breach of duty on the part of the employer caused the resignation, and the breach was sufficiently serious to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing<sup>2</sup>.

[42] Mrs Stiekema's resignation does not amount to an unjustified constructive dismissal. She had not yet received a response to the issues raised by way of personal grievance, the parties had agreed to attend mediation to discuss those concerns and Centurion's inquiry as to a likely return date set no conditions and was reasonable given Mrs Stiekema had already been on sick leave for two weeks and her doctor had provided a medical certificate saying she was suffering from work related stress.

[43] Though the conduct and outcome of the disciplinary process breached the employment agreement with Mrs Stiekema (this is discussed in more detail below) these breaches were not so serious as to be reasonably foreseeable that Mrs Stiekema would resign. That this is the case is supported by Mrs Stiekema confirmation of the

employment agreement in the personal grievance letter.

*2 Auckland Shop Employees IUOW v Woolworths (NZ) Limited* [1985] 2 NZLR 372; *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW* [1994] 2 NZLR415[1994] NZCA 250; , [1994] 1 ERNZ 168

## **Was the written warning justified?**

[44] The process undertaken by Centurion to investigate and deliberate over the allegations against Mrs Stiekema was flawed:

- (i) Mr Plummer's involvement in the deliberation as to whether serious misconduct had been made out and penalty;
- (ii) Mrs Craig's involvement in the penalty deliberations; and
- (iii) The extra-contractual stipulations.

[45] Mr Plummer properly stepped down from the investigation of the allegations against Mrs Stiekema after she, by way of response to the allegations, said she had raised her concerns with Mr Plummer on a number of occasions over a number of years and that he had engaged in office banter about Mr Craig's alleged activities. However, Mr Plummer continued his involvement with the deliberations as to whether Mrs Stiekema's actions amounted to serious misconduct and penalty. These deliberations included a consideration of whether Mrs Stiekema had repeatedly raised her concerns about fraudulent activity with Mr Plummer and joked openly in the office with him about this issue when Mr Plummer had denied that this had occurred. Centurion cannot demonstrate that it gave this aspect of Mrs Stiekema's response to the allegations an unbiased consideration.

[46] Mrs Craig's involvement in the penalty deliberations also raises a serious flaw in the process. It is a fundamental element of a fair process that Mrs Stiekema should be able to address the decision makers directly. This did not occur and is another area of vulnerability in Centurion's disciplinary process.

[47] The stipulation that Mrs Stiekema attend part-time tertiary study fell outside the terms of the employment agreement between the parties. Clause 11 of Mrs Stiekema's job description provides:

### ***11 Ongoing professional development***

#### *Specifics 11a Build on skills existing*

#### *11b Courses, training sessions*

[48] The requirement to attend tertiary study goes beyond the ongoing professional development required in the job description. I accept the motivation behind the stipulation was to develop Mrs Stiekema's skills in an area the decision-makers thought she could benefit from however, this stipulation was not within the ambit of the employment agreement.

[49] These flaws are significant and vitiate the investigation process and its outcome. Mrs Stiekema has a personal grievance for unjustified action causing disadvantage.

### **Devotions**

[50] [Section 105\(1\)\(c\)](#) of the [Employment Relations Act 2000](#) provides that religious belief is a prohibited ground of discrimination.

[51] Mrs Stiekema's job description provides:

#### ***10 To be involved in team events***

#### *Specifics ...*

#### *10b Attend weekly devotional meeting (Must attend, participation voluntary)*

[52] Centurion staff are required to attend a weekly team meeting. Part of that meeting is devotional and usually involves a staff member preaching on a bible passage followed by a period of discussion or reflection. Not all staff

have a provision in their employment agreements that they must attend devotions as Mrs Stiekema did. Centurion's position is that the devotions are a component of the weekly staff meeting and as such attendance is required but participation is voluntary. The devotion or attendance at devotions is not strictly a work task.

[53] Mrs Stiekema embraced the weekly devotions and fully participated<sup>3</sup> until June 2006 when a bible passage selected by Mr Craig referred to a person of short stature and he preached that physical shortness was a consequence of the sin of forebears. A close family member of Mrs Stiekema's is not tall and she took Mr Craig's alleged reference as a personal attack.

### 3 Her son led two devotional sessions

[54] Mr Craig denies that he preached physical shortness was a consequence of the sin of forebears. He said in evidence that it is not his belief and that the bible passage the subject of the devotion in question does not refer to shortness as a consequence of sinfulness.

[55] During the investigation meeting I was referred to the bible passage in question<sup>4</sup>. It does not directly refer to short stature being a consequence of sinfulness.

[56] Following the devotion in question Mrs Stiekema was very upset and sought the counsel of a colleague, Mr Paul Crew. They went out for coffee and discussed Mrs Stiekema's concerns. Mr Crew gave evidence to the Authority. He said Mrs Stiekema spoke with him about her concerns, he acknowledged that she was upset and advised her to raise her concerns with Mr Craig. Mrs Stiekema did not speak with Mr Craig about her concern about that particular devotion.

[57] At a later date Mrs Stiekema was approached by Ms Bird following a devotion she (Ms Bird) had taken. Ms Bird had observed that Mrs Stiekema had not participated in the devotion. Mrs Stiekema told Ms Bird that Centurion may be able to force her to attend devotions but could not make her participate. Ms Bird accepted that not participating was Mrs Stiekema's choice.

[58] In December 2006 Mrs Stiekema spoke with Mr Plummer and Mr Craig about Mr Ashworth's request to be excused from devotions. She told them that she did not think compulsory attendance at devotions was right because it was contrary to Christian beliefs of tolerance and voluntary participation. Mrs Stiekema is a Christian. Mr Craig told Mrs Stiekema that Centurion had a legal opinion that it could require staff attendance at devotions but could not require participation. She told them she thought this was wrong.

[59] I find that the first time Mrs Stiekema raised a concern about her own attendance at devotions was on 15 February 2007, the day she left the workplace. On Mrs Stiekema's evidence alone she does not aver that she asked to be excused from devotions or refused to attend. She raised her concerns with Mr Plummer and Mr

### 4 Luke 19:1-10

Craig about Mr Ashworth and was told that Centurion had a legal opinion that staff could be required to attend devotions but could not be required to participate. She told them that she thought this was wrong. Mrs Stiekema did not say she would not attend or that she did not want to attend devotions. This is significant.

[60] Mrs Stiekema says that telling Ms Bird that she could be forced to attend devotions but would not participate was sufficient to draw her objection raise this issue with the employer. I do not agree. Her statement to Ms Bird was a statement of the contractual situation between the parties. There is no evidence that Mrs Stiekema had sought to withdraw from devotions and been required to attend.

[61] Mrs Stiekema did not return to work after 15 February 2007. I accept Mr Clemow's submissions that in these circumstances Centurion did not have an opportunity to address her concerns and no disadvantage arose to because she was not required to attend devotions after she raised her objection.

[62] The evidential basis for a personal grievance for unjustified action causing disadvantage in relation to the contractual requirement to attend devotions has not been made out.

[63] If the evidential basis in respect of raising an objection to attendance at devotions had been made out then I would have difficulty accepting that Centurion could compel staff to attend devotions, even if that employee was not actively participating, if attendance at that religious practise was contrary to the employee's own religious

belief<sup>5</sup>. Such a finding in relation to Mrs Stiekema would require evidence that attendance at devotions was contrary to her own religious belief. No such evidence was provided.

## Remedies

[64] Mrs Stiekema has established a personal grievance for disadvantage in relation to the warning issued in February 2007. She is entitled to a consideration of remedies sought which are limited to compensation for hurt and humiliation consequent to the disadvantage suffered.

<sup>5</sup> *PMP Print Ltd v Barnes* 28/9/04, D King (member), AA317/04

[65] Mrs Stiekema gave evidence of the anxiety the warning caused her which is supported by the medical certificate from her doctor.

[66] I set Mrs Stiekema's award at \$6000.

## Contribution

[67] Having made an award I must consider whether Mrs Stiekema contributed to the circumstances which gave rise to her personal grievance<sup>6</sup>.

[68] Mrs Stiekema accepted that she spoke with Ms Bird about unspecified allegations of fraud or theft by Mr Craig in the door way of Ms Bird's office and that she told Ms Bird that she did not want the issue taken any further. She described her comments to Ms Bird as *office talk*. Rumour is *general talk or hearsay of doubtful accuracy, a current but unverified statement or assertion*<sup>7</sup>. The discussion with Ms Bird could reasonably be characterised as spreading rumours; serious allegations were made without any reasonable foundation.

[69] On Mrs Stiekema's evidence alone she accepts that she spread the rumour of improper financial transactions. This is inappropriate conduct for any employee, let alone one who holds a trusted and responsible position within the financial administration of the business.

[70] Mrs Stiekema also said that Mr Craig's alleged actions were openly joked about in the office. This is at odds with Mrs Stiekema's claim that she was very concerned about Mr Craig's alleged actions and was trying to act on her concerns in a responsible manner.

[71] Mrs Stiekema's claim that she was too intimidated by Mr Craig to raise her specific concerns about the accounts with him is inconsistent with her conduct over Mr Ashworth's attendance at devotions. She spoke directly with Mr Craig about her

<sup>6</sup> Section 124 [Employment Relations Act 2000](#)

<sup>7</sup> Oxford Concise Dictionary

concern and told him (on her evidence) that she thought it was wrong that he could make staff attend devotions.

[72] It became clear during the course of the investigation meeting that the allegations of fraudulent activity and theft had no reasonable basis. Mrs Stiekema accepted the explanations which were provided on Centurion's behalf.

[73] It is appropriate that the remedies are reduced by 50%.

## Costs

[74] Costs are reserved. If the parties cannot resolve this issue themselves application may be made to the Authority to set a timetable. Such application should be made within 28 days of the date of this determination.

Marija Urlich

