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Walker v Procure Health Limited [2012] NZEmpC 90 (15 June 2012)

Last Updated: 19 June 2012

IN THE EMPLOYMENT COURT AUCKLAND

[\[2012\] NZEmpC 90](#)

ARC 72/09

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

BETWEEN VICKI JANE WALKER Plaintiff

AND PROCARE HEALTH LIMITED Defendant

Hearing: 14, 15, 16, 19, 20 and 21 September 2011 and 7, 8, 9, 10 and 24

February 2012 (Heard at Auckland)

Appearances: Vicki Jane Walker in person assisted by Robert Hillier (support person)

Richard Harrison, counsel for the defendant

Judgment: 15 June 2012

JUDGMENT OF JUDGE A D FORD

Introduction

[1] Between August 2005 and December 2007 the plaintiff, Ms Vicki Walker, was employed by the defendant (ProCare), initially for a short time as Management Accountant and then as the company's Financial Controller. On 18 December 2007, her employment was terminated for alleged "incompatibility". Ms Walker issued proceedings in the Employment Relations Authority (the Authority) claiming that her dismissal was unjustified. The Authority, in a determination^[1] dated 13 August 2009, upheld Ms Walker's claim and awarded her loss of wages of approximately \$2,600

and compensation for non-economic loss in the sum of \$11,500.

[2] Ms Walker subsequently filed proceedings in this Court challenging the whole of the Authority's determination electing a full hearing of the entire matter (a hearing de novo). In paragraph 208 of her second amended statement of claim Ms Walker stated: "while I accept the ultimate finding by the ERA [the Authority] and much of his reasoning, I do not accept some of his findings in relation to me". By way of relief she now seeks loss of earnings in the sum of \$30,000 and compensation "of not less than \$50,000" in respect of non-economic loss together with costs, disbursements and interest.

[3] Having been successful before the Authority, Ms Walker's decision to challenge the Authority's determination de novo was a high-risk step to take. It opened the way for the defendant to reassert its claim that the dismissal was justified. No stone was left unturned by either party as each sought to justify their respective stance. The hearing, which occupied 11 sitting days, resulted in a transcript of almost 1,000 pages and the production of several bundles of voluminous documentation. Virtually every aspect of Ms Walker's 28 months with ProCare was resurrected and critically analysed.

[4] The amended statement of claim is unnecessarily prolix and instead of simply being confined to the facts upon which the claim is based, as the regulations require, it contains constant references to evidentiary matters and matters of belief along with controversial assertions which should properly have been the subject of final submissions. However, no objection was taken by the defendant to the pleadings and I accept that it is proper to allow some leeway given the fact that, at all material

times, Ms Walker was acting in person. In an interlocutory judgment dated

1 August 2011,^[2] I recorded that the barrister who had represented Ms Walker before

the Authority had ceased to act for her.

[5] Both the pleadings and the evidence dealt with a plethora of different incidents which in the end culminated in a ‘perfect storm’ type scenario resulting in Ms Walker’s dismissal. There were never any issues about Ms Walker’s performance. From all accounts she was a competent financial controller but from

an early stage there were rumblings of discontent about various aspects of her

communication style. It appears, however, that these concerns did not manifest themselves in any sustained way until the latter half of 2007. I will need to deal with those issues but first I should explain more about the historical background to the case and the personalities involved.

The background

[6] The Court was told that ProCare was established in 1995. It is a primary health organisation providing general medical, psychology, psychiatric and telephone nurse triage services across the greater Auckland area. The organisation currently supports more than 2,000 general practitioners and general practice staff in serving the health needs of the community. The shareholding in the company is restricted to some 600 practising general practitioners. The governing body of ProCare is currently a 10-member board of directors made up of general practitioners representing the interests of the membership and certain independent commercial directors. The Chief Executive Officer at all material times has been Mr Ronald Hooton. Mr Hooton was appointed CEO on 31 October 2005. Prior to that he was the Chief Information Officer with the New Zealand Defence Force.

[7] Ms Walker joined the finance section of ProCare on 31 August 2005 as the Management Accountant. She was responsible for producing budgets and monthly financial statements for three of the seven commercial arms of the company, namely, ProCare Psychological Services Ltd, Homecare Medical Ltd and Clinical Assessments Ltd. As Management Accountant she reported directly to Mr Steven McLean, ProCare’s Chief Financial Officer. At the time of Ms Walker’s appointment the Finance Department was made up of Mr McLean as CFO, Mr Peter Kendall, Financial Accountant and Ms Marie Duncan as the Administration Manager. There were also three support accounts clerks who reported to Mr Kendall but nonetheless remained a resource to Ms Walker. Responsibility for the seven subsidiary companies was divided between Ms Walker and Mr Kendall. Ms Walker was responsible for the three companies identified above while Mr Kendall had responsibility for the remaining four subsidiaries.

[8] Mr Kendall resigned in August 2006. Ms Walker took over parts of his role and eventually, in November 2006, she became Financial Controller.

Mr Mark Paynter was recruited in August 2006 to replace Mr Kendall and he took over Mr Kendall’s position of Financial Accountant. The distribution of workload was then spread between Ms Walker and Mr Paynter, both of whom reported to Mr McLean. Ms Walker had responsibility for three and a half sets of accounts (the three commercial companies and the expenditure cycle for ProCare) and Mr Paynter had responsibility for the other three and a half sets of accounts (the three network companies and the income cycle for ProCare). Both had the support of the three accounts clerks: Ms Eulene Goddard, Ms Olivia Nordstrom and Ms Wendy Yu.

[9] Ms Walker had previously enjoyed a long working association with Mr McLean going back in excess of 20 years and he specifically recruited her to work for ProCare. She had previously worked with Mr McLean in accountant/financial type roles at the Sheraton Auckland Hotel and Towers, Diagnostic Medlab, Stigma Pharmaceuticals, Zuellig Pharma and at the Hyatt Regency. One of the allegations that subsequently assumed some significance was that Mr McLean was overly protective of Ms Walker. I will need to return to this matter.

[10] The evidence was that Mr Paynter suffered from a medical condition described as “Attention Deficit Disorder”. He did not give evidence before me but from all accounts he was a very capable accountant although his condition obviously gave rise to certain challenges from time to time and it appears that he needed to be on constant medication. ProCare was fully aware of Mr Paynter’s condition at the time of his recruitment and for that reason they vetted him very carefully. On

24 August 2007, Mr Paynter suffered a breakdown at work and that incident assumed some significance in the narrative.

[11] Another person who figures prominently in the evidence was Ms Sandra Scott. Ms Scott was employed by ProCare between December 2005 and April 2009 as personal assistant to Mr Hooton, the CEO. Ms Scott had previously worked for Mr Hooton for some four years in the Air Force at Ohakia and at Defence Headquarters at Wellington. Although initially Ms Scott and Ms Walker appeared to enjoy a congenial association with Ms Scott staying some weekends at Ms Walker’s home at Huia, it was clear from the evidence that as time went on their relationship became more and more acrimonious.

[12] Another important witness, who did not come into the picture until August 2007, was Mr Geoffrey Smith. Mr Smith was and still is employed by ProCare as Senior Manager, People and Culture.

The incidents

[13] As indicated above, the evidence before the Court canvassed numerous work incidents during Ms Walker's tenure with ProCare. Some were more significant and relevant than others. While I propose to refer to a number of these incidents, it is important to bear in mind that the test for determining whether a dismissal or other action by an employer is justifiable is the test for justification set out in [s 103A](#) of the [Employment Relations Act 2000](#) (the Act). As the test then stood, it involves the Court making an objective assessment on all of the evidence as to whether the dismissal 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 actions occurred.

[14] I will now refer briefly to the six principal incidents dealt with in the evidence which related to the introduction of the Great Plains Purchase Order Processing System; the Penny Smythe incident; the "shouting emails"; the 2007 audit; Ms Duncan's personal grievance and the "cry for help" email.

The Great Plains Purchase Order Processing System (POPS)

[15] In April 2006, ProCare introduced a new internal control system relating to purchase ordering. The system was referred to throughout the evidence as POPS and, for ease of reference, I will continue to refer to it by that acronym. Ms Walker was tasked with implementing POPS. In her evidence, Ms Walker claimed that the introduction of POPS was strongly opposed by managers in the organisation who believed that it constrained them unduly in their operational activities. She was critical of Mr Hooton and Mr McLean for failing to take action to enforce compliance against managers who "were continually breaching policy, and in some cases were behaving in ways that could be deemed fraudulent."

[16] ProCare's take on Ms Walker's introduction of POPS is summed up in a passage in Mr Hooton's evidence which follows on from a claim he made that

Ms Walker had built a fortress around Finance and had unnecessarily raised stress and tension levels:

15 One of the earlier issues to contribute to a division between Finance and other managers within the organisation was the implementation of a purchase order process system, referred to as POPS. Ms Walker was tasked with the implementation of this system. The technical implementation of the programme was satisfactory, however the processes Ms Walker developed were oriented towards optimising Finance and overly complex for the remainder of ProCare. One of the noticeable problems was that rather than servicing the organisation, Finance became the central focus and was starting to be seen as something of an ogre. Also, the introduction and change of management process, in particular training and support for staff, was poorly executed by Ms Walker. All of this led to tensions with other staff who in turn would receive derogatory responses from Ms Walker.

[17] A number of emails were produced relating to the introduction and operation of POPS. Two in particular, which Ms Walker produced, were highlighted in the course of the evidence. In the first, Mr Ken Leech, Chief Information Officer at ProCare, responded to an email from Ms Walker dated 25 May 2006 seeking "feedback regarding your experiences to date working with POP". Ms Walker forwarded the response from Mr Leech to Mr McLean leaving him to deal with Mr Leech, commenting: "He is just raising the same 'crap' over and over again and it doesn't matter how many times it is all explained to him (not by me anyway)."

[18] The second email was one dated 16 June 2006 from Ms Walker to Mr McLean (copied to Ms Penny Smythe the Human Resources Manager, and one other) which related to staff feedback at a POPS refresher course. In the first part of the email, Ms Walker is highly critical of Ms Scott for what she (Ms Walker) perceived to be an undermining of the POPS system in front of other administrative personnel at the meeting. The email concluded:

I also find it entirely unacceptable that a team member of Sandra's level made comments such as these (among many others all on the same track) in front of the Administration staff who are being asked to "buy in" to POP.

At Sandra's last comment (beneath the Manager's noise level), I became aggressive myself as for me that comment was the final straw.

The meeting was entirely a waste of time due to two individuals (Chantelle and Sandra) who refused to stop their attack of me and their perceptions of the rollout. I found myself in the position of constantly having to defend myself. However, for obvious reasons Chantelle was controllable whereas Sandra was not.

[19] For her part, Ms Scott explained in evidence that she had used a similar system to POPS in her previous employment and initially Ms Walker was appreciative of the assistance she was able to give to other staff on its use but later, “her attitude changed and she saw my help as an interference”. Ms Scott told the Court:

11 At a time when I felt I still had a reasonable relationship with Ms Walker, I approached her with what I thought was a constructive comment about her communications including pointing out how she could better structure her emails. I suggested that she put the desired outcome or deadline at the start of the emails rather than at the end, because her emails were so long, full of policies and procedures justifying her request or simply offensive to the recipient that staff would not read them completely. I know some staff just deleted them without even opening them. Ms Walker ignored my suggestions and to my knowledge never made any change to her communication style.

12 It did not help our working relationship when I did offer suggestions to Ms Walker around her communication style or other ways that she could be more “user friendly” within the organisation. Ms Walker’s attitude to me only got worse, and she saw me as someone who was “meddling” in the organisation and I was subjected to a number of hurtful claims that she continues to make in this proceeding.

[20] Ms Walker’s principal allegation in relation to the implementation of POPS is

perhaps best summed up in her submission:

Any internal control that reins in Managers accustomed to making their own decisions is not welcome. Conflict between Finance and other sections was therefore inevitable and needed to be competently managed by Senior Managers. It was not.

[21] While Mr McLean acknowledged that the operation and reporting requirements of POPS had their challenges, he told the Court that they were “no more than would be expected of an organisation of ProCare’s size.” He also claimed that Ms Walker did have the support of the senior management team of ProCare in the implementation of the POPS system.

The Penny Smythe incident

[22] Mr McLean also referred in his evidence to an incident involving Ms Walker and Ms Smythe, ProCare’s Human Resources Manager, which occurred on

18 December 2006. Mr McLean said:

12 I am aware that there were a number of personal issues that occurred during 2006 which Ms Walker told me of, and in my view, these issues probably contributed to the deterioration in her behaviour towards some colleagues and management. It appeared to me that these issues were always near the surface during her workday, and consequently would lead to friction with some staff. An example of this is when Ms Walker had a heated argument with Penny Smythe, a fellow employee, in December 2006.

[23] The incident referred to was described in detail in a five and a half page complaint made by Ms Walker to Ms Smythe’s manager at the time. I do not intend to cite the whole of the complaint but as it also involved Ms Duncan, who later figures prominently in the narrative, it deserves more than a passing reference. At the time, Ms Duncan was sharing an office with Ms Walker. Ms Walker began her report by confirming that she had been organising a Christmas luncheon for the Finance and Administration Team for 18 December 2006 but within five minutes of her arrival at work that particular day she learned of three cancellations. She then commented to Ms Duncan and another employee, “I bet that Penny Smythe will also cancel because she always does”.

[24] In her letter of complaint, Ms Walker recorded in the form of a transcript what happened next:

Penny Smythe entered my office:

Penny: Good, while the three of you are here I’ll let you know that

unfortunately I am unable to make lunch today.

Vicki: No worries Penny, I already had you down for a cancellation. Penny: Why? How did you know?

Vicki: Because historically that is what you always do. You always end up cancelling.

Penny: What do you mean? I actually find that highly offensive. Do you

even want to know the reason why I can’t attend?

Vicki: Well only if you want to tell us. I’m sure you have a good reason.

Penny: That is just so rude. And you know what? I’m glad I’m not going

now.

At this stage Penny left the office. I shrugged and turned back to my computer to continue working. I realized that I had obviously offended Penny and knew that I had spoken flippantly (at worst). I intended to send Penny an email to apologise for offending her but did not get the chance because in less than a minute Penny was back in my office.

Penny: I wanted to come back and apologise for saying that I'm glad I'm not going to lunch. I realized that this comment makes me rude as you are and puts me on your level and I certainly do not want to be like you are.

Vicki: Penny I am very sorry that I have offended you. That was not my intention. I do apologise.

I believe that at this point, I began to try to explain to Penny that I was only speaking what I perceived to be the truth and that she does (in my experience) always end up cancelling at the last moment but that I really had no problem with it. However while I was mid stream speaking to Penny, Marie Duncan, who has been harbouring resentment towards me for sometime now, verbally attacked me.

Marie: Just shut up Vicki, Just shut up Vicki, SHUT UP. You always speak to people badly. I'm sick of you and I'm sick of sharing this office with you. I'm going home.

I made no response whatsoever to Marie. A little later on (following the incident) Marie phoned me to apologise to me for speaking to me out of turn. I was highly distressed at this time and said to Marie that it was too late and that I was on my way home. Before I hung up, I told her I would speak to her later.

Ms Walker's report of the incident continued in a similar vein. It is not clear what, if any, action was taken in respect of the complaint. Ms Smythe did not give evidence. The Court was told that she left ProCare in early 2007.

[25] In reference to the Penny Smythe incident, Mr Hooton said in his evidence:

21 This incident also gave rise to a complaint from Marie Duncan, who as a consequence approached Mr McLean and asked for a separate office. Ms Duncan was to refer to this in her later complaint about Ms Walker's behaviour. The incident was sparked by comments that were unfortunately not atypical of Ms Walker; rude and derisive remarks that were unnecessary and in this case sparked a conflict between the two.

22 This incident was a flashpoint of what had been an increasing problem with Ms Walker. This was also causing a breakdown in working relationships with those staff with whom she had issue or managers

outside of the Finance team whom she considered to be

[uncooperative].

[26] As a result of the incident described, Ms Duncan was relocated to another part of the office. In her evidence, Ms Duncan told the Court that she had started with ProCare in February 2005, initially on a short-term contract setting up contracts for various services but then she was offered a permanent position as the Administration Manager. In that role she had responsibility for payroll, reception and all facilities. Like Ms Walker, she reported directly to Mr McLean. Ms Duncan now resides in Christchurch and is retired but she still carries out casual work for ProCare on a part-time basis one day a week. In reference to the period in 2006 when she shared an office with Ms Walker, Ms Duncan described Ms Walker's manner at times as "quite confrontational". She also described Ms Walker as having "a very strong personality" – a description that was accepted by Ms Walker. Ms Duncan continued in her evidence:

6 Ms Walker would belittle other staff members to a point that they were afraid of her. I often found myself as the gatekeeper, staff would approach me and ask me questions so they wouldn't have to speak to Ms Walker. This was especially the case with the POPS system, fearful, of an outburst against them staff would approach me with their queries and I would try and assist them where I could.

7 While Peter Kendall was employed in the Finance Department as the Financial Accountant, Ms Walker was very vitriolic in her comments about him. She openly referred to him as "*that thing there*", his office being to the side of our office. Ms Walker also referred to Steven McLean as "*that thing there*" as well.

8 Ms Walker's behaviour was very erratic and sometimes I felt unsafe, anger just seemed to flow from her at times and she would go into rages in the office we shared, slamming stuff around her desk and the office. Ms Walker would fly into a rage, saying things like "*I'm so angry I'm going to commit homicide*" and similar type comments. Sometimes these were directed at those she had a particular issue with or on other days she just seemed to hate everyone.

[27] In her cross-examination of Ms Duncan, Ms Walker challenged her description of their relationship in 2006. While Ms Duncan acknowledged that they had had "a lot of fun and it was very collegial", she did not resile from her evidence about Ms Walker's treatment of other staff explaining:

I was concerned about you. You know I was concerned about you and I tried to help you.

...

Speaking to you and saying on several occasions you shouldn't be speaking to people like that. Whether I was your supervisor or not I was speaking out of common humanity. I was very concerned about you and I was concerned about the fact that you were speaking so badly about other people. I didn't like being in an office with someone who referred to that person over there, that person there. I found it upsetting. We did have fun Vicki we had a lot of fun and we also, the relationship deteriorated very badly. I had spoken to Steven McLean about it and it did break down beyond repair once you had an altercation with Penny Smythe in your office.

[28] Unfortunately, at the end of her evidence Ms Duncan had to return to Christchurch in order to attend to her husband who was suffering from a medical condition and the Court did not have the opportunity to question her. I record, however, that I found her to be an impressive witness who gave her evidence in a thoughtful and considered way. I have no doubt that she would have carried out her duties in an entirely professional manner. In his evidence, in answer to a question from the Court, Mr Hooton made the observation, "I hold Ms Duncan in high regard. She is a mature, very capable calm individual and she fits beautifully with the rest of the organisation..." Those remarks did not surprise me.

The "shouting emails"

[29] In his final submissions Mr Harrison, counsel for ProCare, submitted:

70. The separation of the Plaintiff and Marie Duncan was then accompanied by the Plaintiff adopting an unpleasant and quite hostile approach to Ms Duncan, where every little mistake was highlighted and overstated, while attempts to de-escalate their email exchanges were met with further hostility such as in the "shouting email exchange.

The shouting email exchange referred to occurred in early April 2007, although there were numerous other emails of a similar nature produced in evidence which Ms Walker had sent to various staff members.

[30] On 10 April 2007, there had been a seemingly innocuous exchange of emails between Ms Walker and Ms Duncan relating first to "Access to the Payroll Office" and then to "PO Accruals". In the exchange relating to the accruals Ms Walker had at one point used red font and a series of exclamations marks. Ms Duncan

responded that, "Red, and multiple exclamation marks comes across as shouting". In

her email in response, which she also forwarded to Mr McLean, Ms Walker said:

Well very sorry but I was unaware of that being the rule for the whole world.

It's like body language – open to different perceptions in my opinion.

My exclamations below are actually indicating my complete surprise and confusion of your allegation that I was shouting at you. Again in my world, it isn't shouting.

Perhaps we should put out a document of email rules. What supposedly means what so these type of miscommunications do not occur in the future. For me red highlights indicate communication NOT to be missed. It has NEVER been shouting. Same as typing in Capitals.....in my world it isn't shouting – it is highlighting an important point.

I have answered your question below re the blue bins. I will highlight the answer in pink for you. Can you please answer mine re the formats

– in the red font.

Thank you.

[31] In the same context, reference was also made by Mr Harrison to another email Ms Walker produced which she had sent to Mr McLean about the same time which, counsel submitted, highlighted in her own evidence the conflict that surrounded her. In the email in question, which was dated 6 April 2007, Ms Walker expressed criticism about the CEO before concluding:

I sincerely hope that I am not, once again, unfairly criticised about my interpersonal skills. This type of criticism is unable to be quantified or really defended as it is subjective and emotive. I have an ongoing problem with 3 women in this organisation and for that I hold the organization responsible. Had action been taken on my behalf, I would have had no reason to lose my patience. Outside of these 3 women, I have reasonable relationships with everybody else (Sandra excluded). I have the Finance team's respect and they have been far happier and more productive under my management than they have been in the past and on my part, I really appreciate my team's efforts to perform and meet the deadlines required of us.

Thanks. Vicki

The 2007 audit

[32] In many ways, August 2007 was a watershed month in the chronology of events. In her closing submissions, Ms Walker stated:

The month of August 2007 would have to go down as one of the worst of my working career. The Auditors arrived during the first week of August while I was still working on the Jun07 year end accounts, the Jul07 accounts, the COA project, finalising the 2007 – 2008 budgets and assisting the external accountants with the statutory accounts. I was also maintaining my “day job”.

In her evidence in relation to this time period, Ms Walker had stated:

82 I cannot emphasise enough the strain on the ProCare Finance team when they are expected to produce seven sets of accounts, deal with auditors and with Christmas Gouwland regarding the statutory accounts with absolutely no give on deadlines or on other requirements associated with our daily roles.

[33] In his evidence, Mr McLean told the Court:

13 Ms Walker became less and less accessible during 2007, working from home on occasion (primarily to minimise disruption on budget preparation), and by August 2007 Ms Walker would arrive at work and immediately shut the door to her office, and make herself available to staff and the auditors only for a very limited time each day. Most of her communications to other staff were by email. This led to frustrations for staff as well as the auditors.

Ms Walker denied that she had become less and less accessible but she agreed that she worked from home as much as she could for the reason stated by Mr McLean.

[34] In reference to the August audit, Mr Hooton told the Court:

41 ProCare’s annual audit was undertaken in August 2007. The auditors met with the ProCare Audit and Risk Committee after completing the process and advised the committee that it had been the worst audit that they had ever been involved in. The auditors cited [uncooperative] behaviour on the part of Ms Walker to the point where she appeared to deliberately withhold information and obstruct the process.

[35] Although that evidence was hearsay and Ms Walker denied the allegations, it was not challenged in any serious way and the evidence was consistent with the follow-up action taken by the ProCare Audit and Risk Committee in immediately initiating an independent review by Grant Thornton of the ProCare Finance Team to look at a number of issues including the relationships between managers and the Finance Team.

Ms Duncan’s personal grievance

[36] On 10 August 2007, Ms Duncan (with a support person) met with Mr McLean and raised several concerns including the problem she had in working with Ms Walker. She told the Court, “It seemed to me that Mr McLean was avoiding dealing with Ms Walker’s behaviours”. On 13 August 2007, Ms Duncan had a meeting with Mr Hooton who she said she found more supportive. He indicated that he did not want her to leave the company. Later that same day she had a further meeting with Mr McLean. She continued in evidence:

18 I felt at this time that Mr McLean was protecting Ms Walker and refusing to deal with the issues around her behaviour. I found Mr McLean himself to be a warm and collegial manager, but for whatever reason he would not address the issues with Ms Walker. This is why I went to see an employment lawyer, Mr Ashley Sharp. Mr Sharp then wrote to ProCare lodging a personal grievance on my behalf.

19 I wanted to be able to go about my duties, including payroll, without being bullied and harassed by Ms Walker nor having to be around when she did it to others. ...

[37] On 21 August 2007, Ms Duncan, through her lawyer, lodged a personal grievance claim against ProCare in relation to the behaviour of Ms Walker and Mr McLean.

The “cry for help” email

[38] On Sunday, 26 August 2007, Ms Walker sent a seven-page email to Mr McLean, Mr Geoff Smith, who had just started with ProCare, and six other staff members, including two senior managers. In her cross-examination of Mr McLean, Ms Walker put it to the witness that the email was “a cry for help”. That seems a reasonable description. The email was sent out on the Sunday following Mr Paynter’s breakdown on Friday, 24 August 2007. In the email, Ms Walker covered a number of matters and was highly critical of the “undocumented” system she and Mr Paynter had inherited from Mr Kendell back in August 2006. She referred to the finance system in place at that time as a “shambles”. Early in the email, under the heading “Undue Stress”, Ms Walker referred to her current health problems.

Undue Stress:

I would also like to advise you of my current health as a direct result of the stress and pressure I have been under now for many months. The meeting on Friday, 24 August where the CEO advised us of his requirement for Finance to produce the August 2007 accounts outside of the timeframes in the distributed timetable has distressed me to the point where I have been unable to sleep, developed diarrhoea and a severe migraine. What is of greater concern to me is that I have now had two major anal bleeds in the past week. The first occurred at work on Wednesday the 22 August. The second bleed occurred on Saturday the 25 August. This has happened to me before and it is always a symptom of undue stress. I hope to find time to see my doctor this week. I will be providing her with a copy of this document.

[39] Ms Walker concluded her email in these terms:

Sandra Scott's opening line at the very first Finance Steering Group Committee meeting was to state that Finance is an underperforming department because we do not meet the CEO's criteria of producing Financial reports within 6 days and that as a result of this, the CEO has to work till midnight each month to prepare Board reports. She stated very clearly how unacceptable it is that the CEO has to do this. These comments were said in front of the group. The following day I sent an email to Steven and to Catherine Abel-Pattinson advising them of my distress and requesting a meeting.

I have had undue pressure placed on me for months and now about the 6 day issue. The stress and fear this causes me is immeasurable.

Regards

Vicki

[40] In his examination-in-chief, under the heading "Attempts to Address Behaviours", Mr Hooton, in evidence which I accept, made reference to the stress levels and workload Ms Walker spoke about:

23 While Ms Walker paints a picture of managers and others outside of Finance as being [uncooperative] and undermining of what Finance was trying to do, the approach being used by Ms Walker was creating a schism within the organisation. It may have been well-intentioned, but it got peoples' backs up or alternatively, they were nervous of any interaction and would try to go around her. This way of operating also increased stress levels and tensions both inside and outside the Finance Team. The stress levels and workload that Ms Walker talked of in her evidence was, to a certain extent, created by her approach.

Action taken by ProCare

[41] Evidence was given about various initiatives taken by ProCare to try and address the divisions that had been created between the Finance Team (principally

Ms Walker) and other parts of the ProCare operation. These initiatives commenced with the appointment to management in August 2007 of Mr Geoffrey Smith.

Appointment of Senior Manager, People and Culture

[42] On 21 August 2007, Mr Smith took up a position with ProCare titled, Senior Manager, People and Culture. Ms Smith told the Court that he had been made aware during the recruitment process by both the Chairman and CEO of the company that his primary task was to assist in improving the organisation's staff culture and leadership. He had previously carried out similar HR-type work for other larger organisations such as the Canterbury Area Health Board, Western Bay Health (Tauranga), Counties-Manukau District Health Board and the National Heart Foundation. Mr Smith continued in evidence which I accept:

3 The CEO briefed me on the issues he felt were having a negative impact on the 'culture' of the organisation. In particular he identified considerable discord between individuals in the Finance section which in turn was impacting on the wider organisation and affecting working relationships.

4 Because he wanted me to make my own assessment of the issue, the CEO arranged for my office to be located amongst the Finance staff on the 1st floor, so I would be exposed directly to their interpersonal interactions and other staff within the organisation.

5 Soon after I started I had discussions with Ms Walker around issues within the Finance Team. She was very forthright in her views about where the problems lay and gave me email information to read. She believed that the stress created for herself and the Finance Team was due to staff who were either [uncooperative], disliked her, or both. I was told in no uncertain terms that the problems rested with others who were out to get her including those identified in the emails she gave me.

...

7 This information offered by Ms Walker and my initial observations of the interaction with other staff indicated that there was a real issue with Ms Walker's communication style and behaviour. I also noticed that Ms Walker was surrounded by conflict, but did not seem to see her own role in this. Ms Walker did not seem to appreciate the effect of her communication style, whether this be the way she interacted face to face or by email.

[43] Mr Smith told the Court about his reaction to the "cry for help" email. He said that he contacted Ms Walker and arranged a time to call her on the evening of

Monday, 27 August 2007. In evidence which again I accept, Mr Smith said he told Ms Walker that ProCare would pay for her to have two days' leave on account of her stress and that he offered to make available independent counselling through EAP and the company would arrange and pay for her to see her doctor to determine the nature of her illness and for the doctor to recommend to the company what might be done to help restore her to full health. The witness continued:

26 I also advised Ms Walker in the conversation that ProCare would provide and pay for psychological services if she felt that might be helpful in dealing with her stress. Ms Walker's response was to refuse all help and take responsibility for managing her own health. Despite my attempts to persuade her that such an approach was clearly not working, that we should get some professional diagnosis and guidance on how to help, Ms Walker steadfastly refused.

[44] Ms Walker made notes of her telephone conversation with Mr Smith which were produced in evidence but Mr Smith said that the notes strongly favoured "her responses in the conversation" and did not show "the detail of the concern expressed about her well being and the support ProCare would provide for her". I accept that Mr Smith did express the concern and offer the support he gave evidence about on oath. Mr Smith did not, however, challenge the last part of Ms Walker's record of the conversation which dealt with a meeting Ms Walker was proposing to have arising out of Mr Paynter's breakdown. Mr Smith suggested that she cancel the meeting or at least ensure that he was present because he considered in her "current state of mind she was not in a position to be running a meeting and advising anybody". Ms Walker's record continued:

VW: Well I will certainly be speaking to my team and I am quite entitled to do so.

GS: What you intend to talk to them about.

VW: I intend to talk to them about the ongoing abuse we receive from ProCare. Finance Bashing has been going on for a long time in this organisation. And they were all traumatised by Mark's breakdown and I intend to talk to them about that.

GS: No you won't. You do not have the skills to be counselling people regarding Mark. These people have already been debriefed.

VW: I didn't say I would be counselling them Geoff, I just want to ask them if they are OK. I care about them and as their Manager, I want to know that they are OK.

GS: Now other members of staff have also advised me that you have contacted them and were quite concerned and they felt quite uncomfortable that you contacted them.

VW: Yes that's right Geoff, I am attempting to get support for the Finance Team. The Finance Bashing has to stop. My team and I have had enough.

GS: Look I am asking you to let me handle this. I am asking you for your trust. Give me some time and if you don't believe I am handling it to your satisfaction or if you think I am full of shit..... whatever, then you can decide to take other action at that point but please let me try to get this sorted and place your trust in me.

VW: Well Geoff I have to say that I am extremely nervous about placing my trust in you. My past experience tells me that people in your role normally are not there for the people and are actually only there for the organisation. However, I will give you my trust Geoff.

GS: And I shall honour it Vicki.

VW: I hope you do Geoff. Thank you for your time tonight.

The mediation

[45] Another initiative taken by ProCare was to arrange a mediation (the mediator arrived on the premises on the evening of 4 September 2007) to deal with the personal grievance claim Ms Duncan had initiated against both Mr McLean and Ms Walker and a letter which Ms Scott had sent to Mr Hooton about Ms Walker's behaviour. In reference to the Duncan personal grievance, Mr Smith explained, "in essence the grievance was directed at Ms Walker's behaviour and that this was being supported (or not prevented) by Mr McLean." In evidence which I accept, Ms Scott explained the reasoning behind her letter

to Mr Hooton:

20 The letter I wrote to Ron Hooton dated 20 August 2007 was to bring the issue concerning Marie Duncan to his attention, as well as the wider issues around Ms Walker's behaviour and its effect on the work environment as I felt it was getting out of hand. It was very unpleasant for myself and others to have come to work and be exposed to rude and sometimes hostile conduct from Ms Walker. I was not alone in this view.

[46] Ms Scott told the Court that her letter of 20 August 2007 was not a formal complaint but simply a letter which she considered that she, as personal assistant to the CEO, had a responsibility to send to Mr Hooton. Then on 3 September 2007, Ms Scott made a formal complaint about the statements Ms Walker had made about

her in the concluding section of her "cry for help" email (at [39] above). Ms Scott said:

... And I actually didn't see why I had to put up with this sort of behaviour. Particularly when the stuff was untrue. So I formally complained to Mr Hooton in writing and that I wanted something done about it since the matters were untrue.

[47] Mr Smith explained in evidence, which I accept, how the reference to mediation was handled:

15 I discussed the matter of these complaints with Ron Hooton and we agreed to liaise with the individuals concerned and suggest an independent/qualified person to mediate a resolution rather than follow an investigative strict disciplinary type process. We liaised with Ms Duncan's lawyer and Sandra Scott; they were prepared to engage in the mediation process and put aside the grievance and complaint to try and find a workplace solution. I also discussed the proposal with Ms Walker and advised her that we were trying to de-escalate the matter and seeking the services on an experienced mediator to try and resolve differences.

16 ProCare engaged the services of Keith Handley, who came well recommended as someone who could assist with finding a resolution to these working relationship problems. Mr Handley had only recently left the mediation service of the Labour Department, and with a background in human resources, we considered this to be a positive move.

...

19 Mr Handley did ask whether Vicki Walker had received a copy of the complaints, and at that stage we had not provided these to her. Mr Handley said that he would need to have copies of this documentation and that he would give these to Ms Walker as part of the process. We followed his advice and understood that he would make available to Ms Walker the complaints and other information relevant to the process.

20 Keith Handley arranged to meet with the staff members individually and obtain their agreement to the mediation process. He spent in all about five days at ProCare, meeting with those involved and going back and forwards between the parties. After spending two days meeting with people individually, he then arranged to meet with all of them in the same room, and then came back again for another two days of individual meetings. ProCare met the cost of Mr Handley which in total came to \$10,000.

21 At the completion of the mediation process, Mr Handley reported back verbally to Ron Hooton and me. There was no written report. Mr Handley said that he felt that enough had been done to work through the complaints and resolve them moving forward, that

Marie Duncan had agreed to park her personal grievance and Sandra Scott her complaint to see whether the process would work. The reality was that this was at best a shaky peace which, while shelving the grievance and complaints against Ms Walker, did not succeed in addressing the interpersonal relationships that existed between the staff.

22 The situation was impacting not only on the staff at the centre of the conflict, but also the wider operation of ProCare. The discord in and around the Finance Team and its impact on others within the organisation was serious. ...

[48] On 17 October 2007, Mr Hooton wrote to Ms Walker confirming the outcome of the personal grievance lodged by Ms Duncan. He advised:

Following a process of mediation which involved your participation, a resolution has been reached with Marie to the extent that she has agreed to suspend her personal grievance. A range of actions have been agreed with Marie that include a change in role and reporting line, and the implementation of policy relating to staff harassment. Marie has reserved the right to reinstate her grievance should this become necessary in the foreseeable future.

Thank you for your participation in the mediation process. I am hopeful that this matter will not require any further action.

The independent Grant Thornton review

[49] Mr Hooton explained in evidence how, after receiving the critical annual audit report in August 2007 referred to above, ProCare's Audit and Risk Committee decided to commission an independent review in order "to get a better understanding of

where the problems lay". He described the "problems" he was referring to as "the level of animosity towards management from Finance". Mr Hooton continued:

45 James Sclater of Grant Thornton undertook the review for ProCare, he was provided with terms of reference on 3 September 2007. The review involved field work by way of interviews and working through management accounts and relevant documentation. This review was being underway at the same time as the mediation. These processes were effectively all being undertaken at considerable time and costs; in part to find a resolution to the breakdown in working relationships.

46 Ms Walker was clearly ill disposed towards the review and within the Finance Team told them that their jobs may be under threat from a review of this nature. Instead of supporting these initiatives, she appeared to interpret them as an attempt by myself and Mr Smith to undermine her and have a go at Finance. We were now being seen as the enemy.

[50] In his report dated 26 September 2007, Mr Sclater identified problem areas in relation to what he referred to as the "Finance Function". In general, he found that in terms of technical ability, and accuracy of information, Finance was performing at a "satisfactory level". At the same time he identified two main problem areas relating to the operation of the Finance Function which he identified as "Lack of Communication Skills" and "Lack of Management Skills within the Finance Function". In relation to the communication skills problem, Mr Sclater noted:

There is a distinct lack of ability of the Finance Function to communicate with the other divisions within ProCare. A large amount of the communication is currently undertaken by email which is often direct, impersonal and inflammatory. There are often occasions where members of the Finance Function are unavailable with a "closed-door" approach also compounded by the working hours of members within the team.

In relation to the management skills problem, Mr Sclater noted that:

... there is a lack of communication and leadership skills with in the Finance Function. The skills are desperately needed to improve the operation of that function within ProCare. There is a significant amount of conflict, stress and tension between members of the Finance Function and the other operating divisions.

[51] The Grant Thornton report was produced in evidence and Mr Sclater was called as a witness by Ms Walker. Mr Sclater had not provided a written brief of his evidence and Ms Walker had to be reminded by the Court more than once that she was not permitted to cross-examine her own witness. Through her questioning, Ms Walker endeavoured to establish that Mr Sclater's report was "highly biased and unbalanced" in that he did not include comments made by Finance section personnel. She queried how he could provide a balanced opinion in regard to the communication issue if he had only reviewed the Finance Function. She also alleged that, "Mr Sclater's report was the reason why I was demoted..."

[52] For the record, I do not accept Ms Walker's strong criticisms of the Grant Thornton report. Mr Sclater told the Court that he is a chartered accountant with a BCom and ACA qualifications. Currently he is a professional company director. He explained that he had been instructed to review the performance of the Finance Function only and, "having interviewed 14 people across the firm it was very clear as outlined in my report what the problems were". Mr McLean, the Chief

Financial Officer, met with Mr Sclater at the commencement of his review and later provided Mr Sclater with his detailed observations on his draft report before the report was released in its final format. I am satisfied that Mr Sclater carried out his task in an independent and totally professional manner.

The remedial action plan

[53] Following on from receipt of the Grant Thornton report, Mr Hooton and Mr McLean met to discuss a range of possible options Mr Sclater had put forward for resolving the issues he had been tasked with investigating. They then provided a joint report to ProCare's Audit and Risk Committee which was considered at a meeting of the committee on 10 October 2007. The committee agreed to put in place a remedial action plan which was summarised by Mr Hooton in his evidence in these terms:

- (a) Address leadership concerns by Mr McLean have Finance staff reporting to him and not Ms Walker.
- (b) Establish a Finance working group which was one of the suggestions of the Grant Thornton report.
- (c) Put processes in place to re-orientate the Finance department towards being a service function within the ProCare business, this was around re-establishing relationships with managers and business units.
- (d) Engage a business analyst with finance expertise who would help with reducing pressures between the Finance Team and business units as well as training and implementing the use of POPS and the Great Plains software.
- (e) Change the monthly reporting requirements to the first Tuesday of each month, extending the timeframe for Board reporting by two weeks.

[54] Mr Hooton explained that the thrust of the remedial action plan was to breakdown the "them and us" situation which

had developed between the Finance Team and other parts of the ProCare operation and to address the style of Ms Walker's communication which Mr Hooton said "had become quite negative and at times abusive". In this part of his evidence, Mr Hooton made the following observation about Mr McLean:

While I appreciated in the past that Mr McLean had to some extent protected

Ms Walker given their previous associations and that he did not entirely

agree with the Grant Thornton report, he was on board with the recommendations in our joint report and committed to them.

[55] Mr McLean told the Court about Ms Walker's reaction to the remedial action

plan:

In October 2007, the results of the Grant Thornton review were discussed with the Audit & Risk Committee of ProCare, together with a remedial plan. When this plan was discussed with Ms Walker, she stated that she considered she had been demoted and humiliated, and left the office. This was the third occasion in approximately four weeks that she had threatened to leave the office in a tantrum. The following day Ms Walker took sick leave, and she returned to work following the weekend. For the remainder of her time at ProCare Ms Walker completed her work, but the atmosphere between us was particularly tense.

[56] In his evidence relating to the remedial action plan, Mr Smith told the Court that Ms Walker did not attend the meeting of Finance staff called to discuss the plan. He continued:

As Ms Walker had up until that point asserted that she was ill because of work stress, I believed that removing some responsibilities and providing assistance, without any loss of rank, privilege or salary, would be a welcome intervention. I saw this as a way of improving working relationships both within and outside the Finance team and de-escalating conflict with this level of support. I was wrong. This only seemed to fuel Ms Walker's antagonism and she saw the action plan as a demotion despite her assertion that her previous workload and responsibilities were causing her to be ill. It was a "no win" situation for us as far as Ms Walker's view of management, ProCare and those staff with whom she was in conflict.

[57] One of the proposals in the remedial action plan was to engage Mr Warrick Aim as an independent consultant on a contract basis to assist the Finance Department in meeting its reporting deadlines. In his evidence in relation to the appointment of Mr Aim, Mr McLean said:

His appointment was a direct result of the Grant Thornton report, and the term of his engagement was for the period late October 2007 to late February

2008. In view of the departure of Mr Paynter and Ms Walker in December

2007, Mr Aim took over the production of the monthly accounts in respect of four of the companies – accounts for the other three companies had, since

October 2007, been prepared by Tess Alvarez. Mr Aim continued to work

for ProCare on a contract basis until a replacement Financial Controller was appointed.

[58] For her part, Ms Walker claimed in evidence that through the remedial action plan Mr Hooton, Mr McLean and Mr Smith sought to demote her:

127. I believe that it was in these sessions the three of them agreed to demote me. They claimed that Finance was too small a section to have a second layer of management and that all Finance team members would report directly to CFO.

Further on in her evidence Ms Walker said:

146. I believe it was always the intention of the CEO and the SMPC [Mr Smith] to replace me with Warrick Aim. Mr Aim was brought on about five weeks before I was sacked. This gave him time to pick my brains and get a handle on the business.

[59] I do not accept Ms Walker's allegation that Mr Hooton, Mr McLean and Mr Smith were seeking to demote her nor do I accept her allegation that it was always the intention of Mr Hooton and Mr Smith to replace her with Mr Aim. It is clear, however, from her correspondence that from the very outset Ms Walker had formed an adverse view about Mr Aim. Before she even knew Mr Aim's correct first name, for example, Ms Walker made negative comments about him. In an email to Mr McLean dated 17 October 2007, she began: "I am highly concerned about you bringing this Geoff man in". The reference to "this Geoff man" was clearly a reference to Mr Warrick Aim. Further on in the same email Ms Walker said:

Can I ask you this. Why are you considering this man? Is it for political reasons and to placate Geoff and Ron or do you really think he is the best man for the job?

If you answer truly and if the answer is political reasons then please reconsider before taking this potential stoolie into our department as we have already suffered terribly at the hands of Ron, Geoff, Sandra, Marie..... and others.

I am satisfied that Mr Aim was appointed pursuant to the proposal in the remedial plan (see [53] above) as a financial expert who would be able to assist in reducing some of the perceived pressures on the Finance Team.

Working relationship with Ms Walker

[60] In a passage of his evidence which was unchallenged, Mr Hooton said:

57 I arranged to meet with Ms Walker on 18 October 2007 in order to discuss the changes with her and also the areas of concern around her response to the auditors, communications and behaviours that I saw at the core of these problems for the Finance team. The proposed recommendations included removing the direct reports from

Ms Walker and having them report in to Mr McLean. I saw this as removing a possible stress point as well as giving Mr McLean greater day to day control. It also required “buy in” from Ms Walker and a change in behaviour and approach, especially to those outside Finance.

As it turned out, the proposed meeting for 18 October 2007 did not proceed. Ms Walker emailed Mr McLean the previous day advising that she was going to see her doctor and would not be at work on that day.

[61] Mr Hooton then went on to refer to several emails dated around this time period, which Ms Walker had included in her evidence, which he said gave an idea “of what her behaviour was like to those of us with whom she considered to be ‘the enemy’.” In an email to Mr McLean dated 12 October 2007, Ms Walker said in part:

The reason why Ron and Geoff went for Finance and tried to stitch you up is because they perceive you (as [others] do – including the [Colleens] of this world) as weak and indecisive. That is why they felt they could attack you on Leadership. That is why they attacked you full stop. And they believe that is why I get away with “murder”.

[62] In another email to Mr McLean dated 15 October 2007, Ms Walker commented:

Does it not therefore make sense that the Board is also watching YOU, to see if you have the balls to take control back of the Finance Function and to call the shots according to what is best for the organisation as a whole (and for your team) as opposed to keeping the peace with RH [Ron Hooton]. Keeping the peace with RH is a proven failed technique.

[63] On 17 October 2007, Ms Walker emailed Mr McLean asking to be briefed on the meeting scheduled with Mr Hooton for the following day. In the email she comments:

Best you brief me on what is to be discussed because I need to prepare myself to listen to bullshit without losing my temper with the perpetrator of the greatest crime since the Holocaust.....that would be the CEO.

[64] Ms Walker accepted that some of her email comments were not politically

correct and she accused Mr Hooton of being “selective in his quoting” of her emails.

The involvement of the lawyers

[65] On Friday, 19 October 2007, Mr Hooton received a telephone call from a barrister, Mr Dan Gardiner, who confirmed that Ms Walker had sought his advice “regarding some employment issues”. Mr Gardiner requested Mr Hooton to schedule a meeting with Ms Walker with himself in attendance as a support person to address the matters that were to be covered at the meeting that had been scheduled for 18 October 2007. That meeting was then rescheduled for 24 October 2007. Mr Gardiner wrote to Mr Hooton on 22 October 2007 confirming his instructions and on 23 October 2007 a letter was sent to Ms Walker signed jointly by Mr Hooton and Mr McLean confirming the three matters to be discussed at the meeting arranged for the following day:

Changes that ProCare proposes to make to structures in the Finance

Team which may affect part of your responsibilities within ProCare.

Your conduct during the recent audit.

Concerns regarding the way in which you communicate with other staff.

The meeting duly took place on 24 October 2007. Those in attendance were Mr Hooton, Mr McLean, Mr Smith and Ms Walker with Mr Gardiner as her support person.

[66] On 26 October 2007, Mr McLean wrote to Mr Gardiner summarising the outcome of the meeting. Mr Gardiner responded with a two and a half page letter on

31 October 2007 followed up by a 10-page written submission on 1 November 2007. In his evidence, Mr Smith accurately summarised the outcome:

35 The meeting with Ms Walker on 24 October 2007 was not able to resolve any of these matters. As can be seen by Mr Gardiner's letter of 1 November 2007 the concerns were not accepted by Ms Walker. In summary Ms Walker:

Took issue with the auditors' feedback about her being uncooperative and cited workload over the period of the audit as an issue along with Mr Paynter's emotional episode that may have affected the auditors' view. Ms Walker also asserted that some of the auditors' requests were for erroneous data.

Rejected the communication concerns, comparing Ms Walker's role to that of the IRD in terms of the public at large, while analysing in detail the sample of emails as to which overall she saw no issue. According to Ms Walker, the problem was with the recipients.

Sought to revisit the complaints that had been the subject of a mediation process with Marie Duncan and Sandra Scott – seeking copies of the original complaint, mediator's report and other information so that she could respond.

Sought a bonus payment of between \$10,000 - \$15,000.

[67] In a letter dated 7 November 2007 to Mr Gardiner, Mr McLean made the point that ProCare had been deliberately trying to deal with the issues in a non-disciplinary context and Ms Walker's intention to try and reopen the complaints that had been the subject of a mediation would be provocative and would "escalate feelings beyond where they were when the complaints were initiated." In the same letter, Mr McLean reaffirmed a proposal previously made to Ms Walker by Mr Smith on behalf of ProCare to obtain medical advice and offer counselling. Mr Hooton explained in evidence the reasoning behind this proposal:

The reasons for this were two-fold; first of all, Ms Walker had been raising work stress and her state of health around the office which she blamed on ProCare. The second was the concern that I have already touched on, that is trying to understand whether her behaviours were in any way linked to a health or medical condition, be this psychiatric or otherwise. I felt as a good employer that we should pursue this despite Ms Walker's insistence that she would take care of this herself.

[68] Mr Gardiner responded to Mr McLean's proposals in a lengthy letter dated

21 November 2007. Mr Gardiner confirmed that Ms Walker wished the complaints by Ms Duncan and Ms Scott to be reopened for formal investigation. Mr Gardiner also made it clear that Ms Walker rejected ProCare's proposal for a medical consultation and a psychiatric assessment. He considered the suggestion "misplaced" and advised that Ms Walker was conscious of the need to safeguard her health and said, "This is evidenced by her attending her doctor in her own time." In the same letter, Mr Gardiner also responded to other issues and concerns that had been raised by ProCare.

[69] In his evidence, Mr Hooton explained how he saw the situation at the end of November 2007:

80 What was increasingly evident from our meetings, Ms Walker's responses and from her ongoing behaviours, was that she was becoming increasingly defiant towards myself and others outside of the Finance team. I detected that this was also the case for Mr McLean who had previously supported her and perhaps even covered for her, but was now also bearing the brunt of her anger.

81 It is impossible to operate an organisation under these conditions and I knew that the decision was going to have to be made about Ms Walker's ongoing employment. The defiance was not only directed towards myself and other members of the senior management team, but also other staff who she saw as being [uncooperative] or in our camp.

82 We consulted with our legal counsel and decided to embark on a formal process. This was intended to assess whether Ms Walker's ongoing employment with the organisation was tenable. In discussions with Mr Smith and Mr McLean, ProCare instructed Mr Harrison to write a letter regarding the employment issues which, by this stage, had been well canvassed with Ms Walker and her counsel. What we indicated in this formal process was that we were looking to assess the viability of continuing Ms Walker's employment due to incompatibility, for us this best described a breakdown in working relations which was carrying around us.

[70] In a letter dated 30 November 2007 to Mr Gardiner, Mr Harrison on behalf of ProCare initiated a formal process to review Ms Walker's employment on the grounds of incompatibility. He recorded the non-disciplinary approaches ProCare had embarked upon to try and resolve the problems and then provided examples of incidents that had given rise to concern over Ms Walker's behaviour and communications. Mr Harrison's letter concluded:

I should point out that it is not the intention of this process to carry out an inquiry into every individual complaint to assess whether or not it has merit. This is to misunderstand the matter at issue; my client is now required to consider whether there is incompatibility and, if so, whether it is tenable for your client to continue her employment at ProCare.

It is proposed we meet on Thursday, 6 December 2007 commencing 9 am at ProCare. If your client wishes to respond to the actual complaints, then it would be helpful to receive these responses in writing in advance of the meeting. It would be helpful to address your client's view of the compatibility issue and her working relationships with other staff. You are also invited to make proposals about a way forward as an alternative to termination of employment. Any suggestions or submissions will be fully considered before any final decisions are made.

Please advise whether or not the meeting time and date is suitable to you and your client.

[71] The proposed meeting actually took place on 13 December 2007. Mr Gardiner provided a detailed written response to each issue which largely reiterated the points he had made in earlier correspondence. Mr Hooton was unable to attend that meeting. Those present were Mr Gardiner, Ms Walker, Mr Harrison and Mr Smith. Mr Smith gave evidence about the meeting and its aftermath which, in her evidence Ms Walker "Denied", but in the absence of evidence to the contrary, I accept. Mr Smith said that he tried to make it clear to Ms Walker, "that the purpose of the exercise was not to go through each particular point blow by blow, but to look to the bigger picture and some acknowledgement of the need to address these working relationship issues. Instead, the response was a mixture of criticism of ProCare's lack of policies, actions taken by management and rejection of any incompatibility problem." Ms Walker was stood down on full pay after that meeting.

[72] On 17 December 2007, Mr Gardiner wrote to Mr Harrison confirming that at the meeting on 13 December 2007 it had been stated that "senior management at ProCare could not work with Ms Walker who seems incapable of appreciating how her abrasiveness causes difficulties at ProCare." Having noted the views of senior management on the compatibility issue, Mr Gardiner proceeded in his letter to provide Ms Walker's response to Ms Duncan's and Ms Scott's complaints. Ms Walker's employment was terminated on 18 December 2007.

[73] Both Mr Smith and Mr Hooton gave evidence, which I accept, about their decision to terminate Ms Walker's employment. Prior to the dismissal they both reviewed the responses and feedback they had received. Mr Hooton explained the position that had been reached:

94 It was evident to me that we were at complete loggerheads. I could not see any way through this impasse. Ms Walker did not accept there was an issue with her communication style or the way she related to people, including the complainants, and was not going to change. What I had tried to get across in my meetings and through the correspondence was that irrespective of what justification Ms Walker may give to her actions, we were looking for a commitment to change.

95 This also meant a commitment to co-operating with management as well as colleagues. There was no doubt that working and personal relations between individuals had broken down and nobody disputed this. In each case, Ms Walker was the common denominator.

96 I was also experiencing the behaviours first hand, Ms Walker was very antagonistic to my position; seeing myself, Mr Smith and more lately Mr McLean as "the enemy".

97 I decided that the situation had reached a point where Ms Walker could not continue in our employment. I was not prepared to further risk the well being of the organisation which was under considerable stress by this point. I could not see any other option that would involve Ms Walker continuing with us. I believed that the defiance we were seeing would only increase and attempts at reconciliation had failed.

98 I instructed Mr Harrison to advise of this decision, this is set out in a letter dated 18 December 2007. As can be seen from this letter, we paid Ms Walker the equivalent of one months' pay in lieu of notice in addition to outstanding annual leave to which she was entitled.

[74] Mr Hooton told the Court that Ms Walker's departure "brought about stability and calm". He said:

The environment at ProCare settled down quite noticeably from the commencement of 2008. The atmosphere around the office improved and the relief for a number of staff was evident.

[75] Towards the end of the hearing, Ms Walker asked the final witness, Mr Smith, "... if other people couldn't work with me, wouldn't cooperate with me how did I continue to produce 7 sets of financials, month in, month out, on time?" In his answer, Mr Smith noted that when Ms Walker was a financial controller she had her own office and locked that office. He then made the further point:

Now the financial controller is in an open-plan office sitting amongst her team. As is the payroll and administration manager. In those days we had a head count of 80 today we have a head count of 205. In those days we had

650,000 enrolled patients. These days we've got 850,000 enrolled patients. In those days we had 170 practices. These days we have 205 and we have the same number of finance staff. And I say that because it simply illustrates with the same resource we are producing a significantly bigger business. We are producing the results.

The law

[76] As noted in [13] above, the test for determining whether a dismissal is justified is set out in s 103A of the Act. In terms of the wording of the section as it stood at the date of the dismissal in this case, the statutory test requires the Court to consider on an objective basis 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 occurred.

[77] The courts have long recognised that there may be occasions, albeit relatively rare, when it will be appropriate for an employer to terminate an employment relationship on the grounds of incompatibility. The authorities were considered in *Mabry v West Auckland Living Skills Homes Trust Board (Inc)*.^[3] In that case, Judge Travis summarised the relevant principles confirming that the onus was on the employer to justify the dismissal by establishing that irreconcilable incompatibility

existed; that the irreconcilable breakdown in the employment relationship was attributable wholly or substantially to the employee and that the employer had effected the dismissal in a procedurally fair manner.

[78] Mr Harrison accepted the requirement that serious incompatibility must exist and that the employer must act fairly but he took issue with the statement of Judge Travis in *Mabry*^[4] that: "The incompatibility had to be largely the employee's fault ...". Mr Harrison contrasted that statement with the approach taken by this Court in *New Zealand Fire Service Commission v Reid*^[5] and by the Authority in *Ngata-Aerengamate v The Attorney General*^[6] and *Camuzano v Western Bay Dental*

Care Ltd,^[7] which he submitted "does not require the apportionment of blame or fault,

akin to a disciplinary inquiry and findings."

[79] The issue was not referred to by Ms Walker in her submissions but, with respect, it appears to me that Mr Harrison may be reading too much into the reference by Judge Travis to the concept of "the employee's fault". In the brief passage cited, Judge Travis was simply confirming that the Tribunal in that case had correctly formulated the principles to be considered when determining whether a dismissal on the grounds of incompatibility was justified. At para [19] of his

decision, Judge Travis recorded that the Tribunal had stated:

Secondly, that in reaching that point (the conclusion that there was serious incompatibility) was the process used fair to the Applicant bearing in mind that in respect to incompatibility there is unlikely to be any single or multiple incident of related misconduct but rather evidence of a snowballing effect in respect to incompatibility issues over a reasonable period of time.

In other words had the situation been reached where a decision to dismiss, because of an irreconcilable breakdown of trust and confidence in the employment relationship, became an option available to a fair and reasonable employer and where the concepts of fairness applied to both employee and employer.

Finally was the decision to [dismiss] on such grounds brought about by conflict generated mainly by the employee or by the employer.

Given that context, it is clear that in stating the "incompatibility had to be largely the employee's fault", Judge Travis was doing no more than confirming the requirement that the employer had to be able to establish that the employee was substantially responsible for the irreconcilable breakdown that had developed in the employment relationship.

[80] The requirement that the employee must be shown to have been substantially responsible for the irreconcilable breakdown had earlier been confirmed by the Court of Appeal in *Reid v New Zealand Fire Service Commission*.^[8] Mr Reid had been a professional fire-fighter for more than 22 years and from all accounts he had been a competent fire-fighter but he had also been, as this Court had found, "at the centre of a substantial and sustained level of conflict".^[9] Evidence had been produced about a considerable number of incidents of conflict that had developed between Mr Reid and his employer including a dispute over Mr Reid's strong resistance to a proposal by his employer to have him undertake a psychological assessment. The Court of Appeal noted^[10] the different approaches that had been followed by the Tribunal and this Court, commenting:

It is convenient here to describe the essential difference between the Tribunal's approach and that of the Court. The Tribunal had tended to focus on individual incidents of conflict between Mr Reid and his employer and individual procedural steps, whereas the Court stood back and took a broader view of the whole employment relationship. The Tribunal focused more on whether Mr Reid's conduct could be described, in relation to discrete incidents, as misconduct. The Court, in looking at the matter more broadly,

came to the view that this was "an unusual and rare case in which an employer may justify dismissal of an employee because of an irreconcilable breakdown of trust and confidence in the employment relationship". The Judge contrasted such a case with the more usual basis for dismissal, namely "What is known colloquially as serious misconduct". He pointed out that in contractual terms an irreconcilable breakdown of trust and confidence could equally be described as a fundamental breach of contract.

[81] The Court of Appeal found no error of law in the Judge's reasoning. In terms

of fault, the Court of Appeal concluded:

There can be no doubt that the facts fully justify the conclusion that Mr Reid was substantially responsible for the irreconcilable breakdown. That is a necessary dimension, for an employer could not be justified in dismissal on this basis if it was itself substantially the cause of the breakdown. Similarly, there could be no dismissal on this basis, unless the facts were entirely convincing, as, in our view, there are in this case.

Discussion

[82] In my view, the present case falls within that category of the unusual and rare case contemplated by the Court of Appeal in *Reid*. Rather than focusing on the individual incidents and areas of conflict between Ms Walker and ProCare identified in the evidence, I propose to take a more holistic approach to the whole of the employment relationship in assessing whether the employer has established the necessary elements justifying the dismissal in terms of the statutory test in s 103A of the Act.

Was there irreconcilable incompatibility?

[83] On this issue, Mr Harrison submitted:

50 It is submitted that the evidence given before the Court over the course of 10 days supports the description of a war zone. During 2007 there were factions, conflict between staff and increasing antagonism towards management. For some individuals on the periphery it was unpleasant, for those in the middle of the fray it was unsustainable. The one area of agreement between the parties is there was serious incompatibility/disharmony.

[84] Counsel highlighted one part of his cross-examination where he had put it to

Ms Walker that the situation was not salvageable. The exchange continued:

Q. Answer the question, so in the circumstance, given that he [Mr Hooton] was handling it in the way he was it was not salvageable in your opinion?

A. No, not unless Mr Hooton became a competent CEO and handled it in a fair manner.

Q. Because by the time of this process that we're dealing with where you had engaged Mr Gardiner, it's fair to say that you were not, that the conflict had extended to Mr Hooton and Mr Smith hadn't it, from your point of view?

A. In my view Mr Hooton was leading the group of people who were harassing me and that included Mr Smith, certainly.

Q. So am I to understand from that answer that you agree that the conflict by the time of this process from your point of view had extended to Mr Smith and Mr Hooton?

A. I didn't perceive it as conflict, I perceived it as harassment.

Q. So they were harassing you?

A. Mr Smith was certainly harassing me and so was Mrs Scott.

Q. And what about Mr Hooton?

A. Mr Hooton was behind the scenes directing the others.

[85] Mr Harrison highlighted the strong language used by Ms Walker in the documentation produced and in her evidence in support of his submission that the work relationship had "irretrievably broken down". In a letter to Mr McLean dated

25 October 2007, Ms Walker concluded:

Please remember that none of this was necessary and it was brought about by a PA – not by me. Finance was a very very happy, well functioning and performing department. Ron Hooton wanted to take us down. Ron Hooton pulled out all stops to do so. Ron and Geoff are even more dangerous to you now Steven. They have even less respect for you now than they did when Ron started the ball rolling back in August. Why? Because they have seen that you did not stand by your right hand man and therefore played into their hands. Ron on the other hand goes to Board meetings and lies for Sandra. **Our enemies** have achieved the following: ...

(emphasis added)

[86] Mr Harrison asked Ms Walker in cross-examination about the use of the term

"our enemies":

Q. And then you say “our enemies have achieved the following” and you go through six bullet points of what your enemies – so who are our enemies?

A. Um basically Mr Hooton an incompetent CEO, Mr Smith a human resources manager that set about to harass finance from the day he started and Ms Scott and Ms Duncan.

[87] In her submissions, Ms Walker accepted that there was “serious dysfunction”

at ProCare but she contended that it had existed prior to her time:

I submit that serious dysfunction was present when I began my tenure and that throughout Mr Hooton’s management, the dysfunction did not subside. I would go further to say it grew.

[88] Ms Walker claimed, “My story remains a simple story. In the ProCare Finance Section we did our jobs and we did our jobs well”, in spite, as she put it, of accounting issues inherited from predecessors; dysfunction that existed in the wider organisation and “the attacks we were subjected to from some Senior Managers and Ms Sandra Scott”.

[89] Ms Walker made extensive submissions on the various incidents of conflict that had been dealt with in the evidence, in essence inviting the Court to conclude that in each case others, but not herself, had been at fault. Her theory was that “initially Mr Hooton and Mr Smith were gunning for Mr McLean” but later “Mr Hooton shifted his focus from both Mr McLean and me to me only”. She continued:

I submit that my dismissal was a concerted effort by Mr Hooton and his puppet, Mr Smith. I submit that Mr McLean overestimated his ability to control Mr Hooton and Mr Smith once he started signing letters that were, in my opinion, authored by Mr Smith.

In this context, Ms Walker referred to Mr Hooton, Mr Smith and Mr McLean as “the sacking team”.

[90] For the reasons stated above, I am satisfied that the employment relationship had become seriously incompatible and that incompatibility was irreconcilable. As indicated, I do not intend to go into any further detail in relation to the individual incidents leading up to the dismissal but, looking at the matter globally, I found the evidence of the existence of irreconcilable incompatibility quite overwhelming. Mr Harrison submitted that, “No organisation could withstand this type of disharmony”. I accept that assertion.

Was Ms Walker substantially responsible for the irreconcilable breakdown?

[91] Most of my conclusions in relation to the issues touched upon under the previous heading “*Was there irreconcilable incompatibility?*” have equal application to any consideration of Ms Walker’s role in the events leading up to the irreconcilable breakdown in the employment relationship. Ms Walker did call evidence on her behalf some of which, from two members of her finance team in particular, was totally supportive but much of that dealt with the rights and wrongs of specific historical incidents. None of Ms Walker’s witnesses had the same level of exposure to the rapidly deteriorating breakdown, as from around August 2007, in Ms Walker’s working relationship with senior management as did the ProCare witnesses, nor did the evidence have the same degree of objectivity. Nevertheless, I have taken all of the evidence into account in my overall assessment of these critical issues.

[92] As noted above at [42], when he first joined ProCare in August 2007, Mr Smith in his role as Senior Manager, People and Culture, was tasked with investigating the discord between individuals in the Finance section which in turn was impacting on the wider organisation and affecting working relationships. I was impressed with Mr Smith’s evidence and I found it significant, given his extensive background in human resources work, that within a very short time he was able to conclude that there was a real issue with Ms Walker’s communication style and behaviour. As Mr Smith expressed it:

I also noticed that Ms Walker was surrounded by conflict, but did not seem to see her own role in this. Ms Walker did not seem to appreciate the effect of her communication style, whether this be the way she interacted face to face or by email.

[93] Ms Walker’s response to this evidence was to liken Mr Smith to the “elephant in the china shop”. She was highly critical of his placement within the Finance section at a stressful period of time and she told the Court:

One could be forgiven for thinking that Mr Smith was conducting an experiment in much the same way psychological researchers back in the

1950s conducted experiments that were unethical and caused much damage

to the human participants involved in the research.

[94] I do not accept these strong gratuitous comments. In my view Mr Smith was going about his task in a professional and objective manner. His problem was that Ms Walker readily identified him as being in Mr Hooton’s camp and that made him part of the “enemy”. In my view, Mr Smith had accurately analysed the situation. Ms Walker was indeed surrounded by

conflict but could not see her own role in this, nor could she seem to appreciate the adverse effects her communication style was having on the running of the company.

[95] In evidence and submissions Ms Walker complained about a number of matters such as the continual stress of her job; her alleged harassment by Mr Hooton and Mr Smith; her alleged demotion following on from the Grant Thornton report; the request for her to undergo a medical assessment and counselling and the alleged unsatisfactory outcome of the mediation dealing with the complaints made by Ms Duncan and Ms Scott. It is significant, however, that although she was represented by an experienced barrister, no disadvantage grievance claims were raised in respect of any of these issues.

[96] I have earlier referred to the long employment association between Ms Walker and ProCare's Chief Financial Officer, Mr McLean. Understandably perhaps given that personal background, I am satisfied that to a certain extent Mr McLean was overly protective of Ms Walker in the face of increasing criticism about her communication style. That close relationship ended quite dramatically, however, in October 2007 when Mr McLean came to realise that Ms Walker was not prepared to compromise on any of the recommendations of the Audit and Risk Committee arising out of the Grant Thornton report. Mr McLean told the Court:

When the Audit and Risk Committee met on the 10th of October to discuss the Grant Thornton report and the remediation plan which came out of that meeting meant that I was compromising on some of the issues, recommendations that I had made in my response to the Grant Thornton report but I don't think Ms Walker was capable of compromising in the manner that I was and therefore the relationship began to change.

[97] A little later in his evidence Mr McLean confirmed that he was disappointed in Ms Walker's reaction. It was at that point that he began to realise that there may have been substance in some of the earlier criticisms he had heard about her. In her evidence in relation to these developments, Ms Walker described Mr McLean's behaviour as "Machiavellian" and a "betrayal".

[98] Although some responsibility for the irreconcilable breakdown in Ms Walker's employment relationship can perhaps be attributed to Mr McLean in not recognising the problem earlier, I see that more as a delaying factor rather than a causal element. In other words, Mr McLean's failure to recognise the incompatibility problem earlier in time did not of itself contribute to the problem. It simply allowed the unsatisfactory state of affairs to fester for longer than it should have done. In my view, it can fairly be said that Ms Walker alone was substantially responsible for the irreconcilable breakdown in her employment relationship with the company.

Was Ms Walker treated in a manner which was procedurally fair?

[99] I have outlined above the action taken by ProCare to try and resolve the issues involving Ms Walker. These steps were taken in a timely manner. They commenced with the appointment of Mr Smith in August 2007 to the position of Senior Manager, People and Culture with the primary task of assisting to improve the organisation's staff culture and leadership. ProCare then decided to convene a mediation by appointing a professional mediator to try and resolve the complaints made by Ms Duncan and Ms Scott in a non-disciplinary manner. About the same time, the company commissioned an independent review of the Finance Function by Mr Slater of Grant Thornton. Finally, following on from receipt of the Grant Thornton report, the Audit and Risk Committee established and sought to introduce a remedial action plan designed, in part at least, to alleviate the stress Ms Walker continually complained about.

[100] Each of the proposals introduced by ProCare were proactive and responsible. Unfortunately, they were not seen that way by Ms Walker who continued to take an aggressive and uncompromising approach to any action taken or recommended by management. In his submissions, Mr Harrison highlighted some of the resulting conflicts. He referred, for example, to Ms Walker's steadfast refusal to accept ProCare's offer, through Mr Smith, to provide and pay for psychological services following on from her "cry for help" email. As counsel stated:

It is, as Mr Smith refers to in his evidence, a "no win" situation for the Defendant. On the one hand it is presented with extreme claims about stress and health issues, on the other the Plaintiff takes offence at the Defendant's approaches to try and arrange health assessments, psychiatric or otherwise.

[101] I agree with that submission. The "cry for help" email and its distribution was an extraordinary communication which certainly warranted Mr Smith's genuine concern about Ms Walker's health and well being. His proposal, under which ProCare would provide and pay for a comprehensive professional health assessment, was in my view an entirely reasonable response.

[102] There was also undisputed evidence about an agreement Mr Smith had reached with Ms Walker soon after his appointment to assist her with her communication style in obtaining compliance from staff who were late with their claims and in making her email correspondence less confrontational. It is not necessary for me to refer to the details of the agreement but it involved developing an instruction tab on the spreadsheets used by staff making claims and it included helpful information about email etiquette. The evidence was that Ms Walker later chose to ignore the agreement and, as Mr

Harrison expressed it, did so “in a defiant way” with a response that “was not only dismissive, but was quite acerbic”.

[103] In relation to the mediation convened to deal with the complaints made by Ms Duncan and Ms Scott, it was not in dispute that ProCare retained Mr Handley, an experienced mediator, to try and resolve all the issues between the two complainants and Ms Walker in a non-disciplinary manner. In my view that was a reasonable approach because they were all senior staff members and at the end of the day they still had to work with each other. Ms Walker subpoenaed Mr Handley as a witness but, after hearing legal argument, I ruled that under s 148 of the Act, Mr Handley was precluded from giving evidence about any aspect of the mediation process. Nevertheless, in his final submissions Mr Harrison, accurately in my view, summed up Ms Walker’s approach to the mediation:

100. The Plaintiff’s view of the mediation appears to be that Mr Handley supported her view of the complaints and through her counsel later described it as inconclusive. This misses the point of the exercise entirely. There was no investigation of the complaints themselves, but rather time spent with individuals to try and find a way that they could work together in the same organisation without it becoming

destructive. The understanding being that the Plaintiff would modify her behaviour in areas such as her communications, while the complainants themselves would put aside their issues to see if this would work.

101. It didn’t work and if anything, the Plaintiff’s approach became even more confrontational. ...

[104] Mr Harrison then went on to provide examples of Ms Walker’s negative

reaction to the mediation which included reference to an email dated

10 September 2007 which she circulated to the entire Finance team which read:

Dear Finance

Until further notice my door will be closed. But not to Finance staff. As always please just come on in if you need my assistance.

Regards

[105] I accept Mr Harrison’s submission that this email, which was sent “hard on the heels of the mediation which was supposed to have brought about a truce”, showed that:

The Plaintiff’s response, rather than to look for compromise, change her behaviour or reduce tension, was to build a fortress around herself and members of the Finance team.

[106] The independent review of the Finance Function carried out by Mr Sclater and the introduction by the Audit and Risk Committee of the remedial action plan which followed on from the receipt of the Grant Thornton report were further positive initiatives taken by ProCare to try and address the serious ongoing divisions between the Finance Team and other parts of the ProCare operation. I am satisfied that these divisions were principally the result of Ms Walker’s communication style. The initiatives failed. Again, Mr Harrison in his submissions accurately encapsulated Ms Walker’s reaction:

105. Consistent with the Plaintiff’s approach to offers of support around her communication style, health and mediation, the Plaintiff’s response to the remedial plan was also antagonistic. Mr McLean identified her response at this time as the point at which their working relationship broke down.

106. The Plaintiff simply did not accept the remedial plan and saw this as

the CEO and “the enemy”, as winning. When it was first outlined to

the Plaintiff, the reaction was uncompromising. She walked out of Mr McLean’s office and later emailed him on the 17 October 2007, to advise that she was taking time out to see her doctor. ...

The formal process

[107] By the end of October 2007, it had become clear to ProCare senior management that, in spite of the initiatives the company had taken to try and resolve the incompatibility issues involving Ms Walker, they were not making any progress. About that same time Ms Walker instructed counsel and the more formal process which I have outlined above involving meetings and exchanges of correspondence was set in place. Through her counsel Ms Walker reaffirmed her uncompromising stand and unwillingness to compromise on the issues which the company was trying desperately to resolve. It was clear that she was not prepared to change her behaviour in any way. The problems identified, in Ms Walker’s mind remained the entire fault of others.

[108] In the letter of 30 November 2007 (at [70] above) ProCare through counsel gave Ms Walker a final opportunity to address the core issues around her behaviour and communications. It was made clear in that letter that the issue was whether the incompatibility involving Ms Walker had reached the stage that it was no longer tenable for her to continue in employment at ProCare. Ms Walker's counsel was invited to address the compatibility issue and her working relationships with other staff and to make suggestions or submissions as to how they might be able to go forward but, as Mr Harrison expressed it in relation to the subsequent meeting and further correspondence, there was "not one glimmer of hope".

Conclusion

[109] For the reasons I have referred to at some length, I have concluded that ProCare has succeeded in establishing that there was an irreconcilable breakdown of trust and confidence in the employment relationship which was substantially caused by Ms Walker's uncompromising and largely irrational behaviour. No organisation could function efficiently against the background of such a sustained level of conflict. The initiatives taken by ProCare to try and resolve the impasse and the procedural processes followed were in my view reasonable and fair. I am satisfied

that in terms of the s 103A test of justification, the dismissal in this case was justified. Accordingly, Ms Walker fails in her claim.

[110] As the successful party, ProCare would normally be entitled to an award of costs but the Court has a discretion in relation to costs and in the exercise of that discretion the overriding principle must always be in the interests of justice. In his final submissions, Mr Harrison noted that the plaintiff's case had focused on stress within the Finance Team in having to meet financial deadlines and he confirmed that in their evidence Messrs Hooton, McLean and Smith, quite responsibly, did not disagree that there was pressure on the organisation brought about by its rapid growth. I have noted that Ms Walker did not at any stage raise a disadvantage grievance in relation to the stress she complained of and, in my view, she did not help herself by rejecting ProCare's reasonable proposal to undergo a comprehensive professional medical assessment. Ms Walker preferred to be guided by her own medical adviser. No medical evidence was called before me but I can indicate now that, if the Court is required to make an award of costs, it may be appropriate to call for the production of any relevant medical evidence that may be available. I would hope that the parties will be able to reach agreement in relation to costs, but if that does not prove possible then leave is reserved for Mr Harrison to file a memorandum within 28 days of the date of this judgment and Ms Walker will have a like time in which to respond.

A D Ford

Judge

Judgment signed at 10.30 am on 15 June 2012

[1] AA 276/09.

[2] [2011] NZEmpC 95 at [8].

[3] [2001] NZEmpC 224; (2002) 6 NZELC 96,573.

[4] At [36].

[5] [1998] NZEmpC 57; [1998] 2 ERNZ 250 (EMC).

[6] AA 85/01, 17 July 2001.

[7] [2011] NZERA Auckland 198.

[8] [1999] NZCA 348; [1999] 1 ERNZ 104 (CA94/98).

[9] [1998] NZEmpC 57; [1998] 2 ERNZ 250 at 255.

[10] At 107.