IN THE EMPLOYMENT COURT
CHRISTCHURCH

[2015] NZEmpC 181
EMPC 295/2014

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	ALLIED INVESTMENTS LIMITED Plaintiff
AND	SHARON GUISE Defendant

Hearing:	22, 23 July and 23 September 2015 (heard at Christchurch)
Appearances:	S Langton, counsel for plaintiff R Boulton, counsel for defendant
Judgment:	16 October 2015

JUDGMENT OF JUDGE A D FORD

Introduction

[1] The plaintiff, Allied Investments Limited (Allied), is a national security company providing security services to clients throughout New Zealand. One of its clients is the Christchurch Polytechnic Institute of Technology (CPIT). At all material times, the defendant, Ms Sharon Guise, was employed by Allied as a full-time security guard working on a static roster at the CPIT campus. In this respect, the case is slightly unusual in that it involves what is commonly known as a tripartite employment arrangement. In previous documentation, Allied has been described as Allied Security Limited but, by consent, the name has been corrected in the intitulment to this judgment.

[2] On 17 December 2012, CPIT advised Allied that Ms Guise was no longer to work on its site. This case concerns the events that then unfolded once Ms Guise

was informed of that decision. Ms Guise pleads that she was told by Allied that she would be stood down for two weeks without pay and then re-employed as a casual part-time employee. She claims to have been told that there was no other alternative work available over the Christmas period as the Christmas rosters had already been completed and she further claims that Allied would not allow her to access her outstanding holiday pay or lieu pay on the grounds that she was not on holiday.

[3] Ms Guise alleges that she needed her holiday pay to support herself over the Christmas holiday period and, in the circumstances, she had no option but to resign. She forwarded an email to Allied the following day resigning from her employment with immediate effect. Her resignation was accepted and she was paid out her holiday pay entitlement.

[4] Allied's account of the discussions resulting in Ms Guise's resignation is different. Allied pleads that Ms Guise was advised that it would find a permanent placement for her as soon as possible but this would not likely be until after the Christmas break; that she could undertake casual work in Queenstown between Christmas and New Year and that she would be able to take her accrued holiday leave over the Christmas period.

[5] Resolution of those disputed factual issues will be a crucial aspect of this judgment.

[6] Subsequently, Ms Guise issued proceedings in the Employment Relations Authority (the Authority) claiming that she had been subjected to an unjustified constructive dismissal. In a determination dated 13 October 2014, the Authority upheld her claim awarding Ms Guise $4,911.76 on account of lost wages resulting from the dismissal; $4,000 compensation for humiliation, loss of dignity and injury to feelings and a further sum of $594.75 for what was described as "outstanding payment in lieu of public holidays".[1] The Authority rejected a further claim by Ms Guise for a penalty on account of Allied's alleged failure to act in good faith.

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1 *Guise v Allied Security Ltd* [2014] NZERA Christchurch 159 at [47].

[7] Allied then issued proceedings in this Court challenging by way of de novo challenge the whole of the Authority's determination. In response, Ms Guise filed a statement of defence in which she raised an affirmative defence renewing the claims she had made before the Authority, including her claim for a penalty and for pay allegedly owed to her for working on public holidays.

[8] The issue regarding the claim for a payment in respect of public holidays worked by Ms Guise was resolved by the parties during the course of the hearing and does not, therefore, need to be addressed in this judgment.

Background

[9] The services Allied provide were described in evidence as the provision of "security personnel to patrol clients' sites so as to ensure the clients' premises are safe and secure." At the time of the incidents involved in this case, Allied had approximately 400 employees nationally with some 25 permanent security guards working in the Christchurch area at five different client sites.

[10] Before the major earthquake in Christchurch in February 2011, Ms Guise worked as a nurse-aid for Ali's Home Healthcare in Christchurch. She told the Court that she lost her job as a result of the earthquake and was unemployed for a period. Later in the year, when she was working at an event in her capacity as a volunteer with St John, she was approached by a Mr Morris Allingham, Allied's then Christchurch Area Manager, who offered her an employment opportunity.

[11] Ms Guise commenced her employment with Allied on 17 November 2011 under an individual employment agreement. She had no previous experience in the security industry but she suspected that she was hired based on her affiliation with St John as that required her to have a police clearance at all times. Ms Guise commenced working at the Progressive Enterprises Limited (PEL) site where PEL's grocery items were stored and dispatched. She was not given any training prior to starting her role but another security guard showed her what she was expected to do during her shifts.

[12] There were no performance issues during the time Ms Guise worked at the PEL site but in August 2012 she made a complaint to Allied of sexual harassment by other Allied staff. It is not necessary for me to go into the details of the complaint but within a week, and before the complaint was investigated, Ms Guise, at her own request, was offered a transfer to the CPIT site. She was given training for the CPIT role during the course of two shifts which she estimated would have taken approximately 17 hours.

[13] Ms Guise explained to the Court some of the differences between her work at the two sites. Whereas her tasks at the PEL site involved checking the security and loads of the trucks as well as their arrival and departure times and undertaking regular security rounds of the site, her role at CPIT was quite different. During her shifts at CPIT, the sites were accessed by lecturers, tutors, and students who came from a diverse set of cultures. In unchallenged evidence, Ms Guise told how some of the staff and students were often rude to her and she found that frustrating. She felt that she had not been trained adequately to handle those types of situations but when she complained to her supervisor, Mr Scott Bailey, he advised her that she would just have to accept that the client, staff and students were entitled to treat the security personnel as they liked.

[14] Mr Bailey was based in Christchurch. Allied's South Island Manager at the time was Mr Matthew Black who was based in Dunedin and the company's New Zealand Operations Manager, Mr Christopher McDowall, was based in Hamilton. Allied's contact person at CPIT was Mr Tony Burling-Claridge who had been CPIT's Security Manager/Custodian since 2008. Mr McDowall told the Court that CPIT had no security staff of its own but the security portfolio fell under Mr Burling-Claridge's management. Mr Black confirmed in evidence that Mr Bailey was Allied's CPIT site manager.

[15] There were no performance issues involving Ms Guise insofar as she was concerned and, shortly before the events in question, she had been given reason to understand that both Allied and CPIT were completely satisfied with her work. In November 2012, Ms Guise had applied for some extra hours that were available at

the CPIT sites. When the hours were given to somebody else she emailed Mr McDowall on 7 November 2012:

> Hi Chris
>
> I want to know why i can't have Karls hours when two weeks ago you said i could?
>
> I dont feel that its fair giving them to the new guard, especially when i have been doing extra hours since Karl left.
>
> Do you have a problem with the way i do my job?
>
> Regards
>
> Sharon

[16] Mr McDowall replied the same day:

> no completely the opposite, the client has requested you remain on your current shifts as your presence on those shifts has ceased a whole lot of issues that had been occurring previous
>
> Regards
>
> Chris McDowall

[17] Before turning to the events of 17 December 2012, it is timely to explain more about the relevant contractual provisions relating to the employment relationship between Allied and Ms Guise.

Contract and Employment Agreement

[18] The contract between Allied and CPIT, dated 1 August 2008, was produced in evidence. The relevant provisions, which are found in Appendix 2, provide:

> 10.1 The contractor must ensure that the Reputation and character of each respective Security Officer/Guard be beyond reproach, and that they possess the appropriate skills, training and licence to enable them to meet the CPIT staffing criteria.
>
> …
>
> 10.6 [The contractor must not] employ on CPIT Campuses any person CPIT has asked to be replaced, and Also not transfer or move any employee of the Contractor established as a guard at CPIT to any other site without prior consultation with CPIT.

[19] In reference to this particular provision, Mr McDowall said in evidence:

> 4. This type of clause is typical of contracts we enter into with clients because clients want to ensure that they have absolute control over who does and does not look after security on their premises.

[20] The individual employment agreement between Allied and Ms Guise was dated 18 November 2011. The relevant provision in that agreement, which this case actually centres around, was cl 17.1 which provided:

> **17. Termination by Client and Frustration of Contract**
>
> 17.1 The employee acknowledges that the client may request the employer cease provision of the services of the employee at anytime.
>
> If requested to cease supply of the employee's services the employer will act reasonably to assist the employee in finding alternative work with the employer where practical.
>
> The employer or employee may decide to end the employment at this point as they decide. If the employment is terminated this will be effective immediately and clause 16(1-8) may not apply at the employer's sole discretion.
>
> *If no alternative work is available and the employee is not terminated the employee will remain as an employee of the employer and move to the employment "on a casual basis" and may be offered work on a time by time arrangement.*
>
> *The employer will not be liable for any wage or salary payments nor any termination payments as above clause 16(1-8).*
>
> Payment for wages and salary will be on a work performed basis at all times and if no work is performed no payments will be made nor required.
>
> (Emphasis added)

[21] Ms Guise began working at CPIT on 8 August 2012. She told the Court she worked, on what she referred to as static roster, five days a week. On Mondays she worked between 5.00 pm and 1.00 am at the Madras Street site; on Thursdays and Fridays she worked between 4.30 pm and 11.30 pm (the location was not stated in evidence) and on Saturdays and Sundays she worked between 5.00 am and 5.00 pm at the Sullivan Avenue Campus. Under the employment agreement Ms Guise's pay week ran from Monday to Sunday.

CPIT Staff Christmas Party

[22] Ms Guise told the Court that on 10 December 2012 she received a phone call from the Regional Manager, Mr Black. He advised her that a complaint had been made about her work. The allegation was that she had locked some people out of a building during the Christmas function. Ms Guise said in evidence that she explained to Mr Black that she had been acting on the instructions of Mr Robin Masters who had previously been employed by Allied but now worked for CPIT. Mr Masters had instructed her to lock a door to one of the buildings that allowed direct access from Organs Road. Ms Guise said she later unlocked it at the request of a staff member but she refused to leave it unlocked because it would have allowed access to people off the street straight into the building. Ms Guise said that Mr Black told her that she should not have listened to Mr Masters as Mr Masters did not work for Allied. Ms Guise responded that she felt she had to listen to Mr Masters as he was the client representative on site at the time. Mr Black reiterated that in future she did not have to listen to Mr Masters. Ms Guise said that her conversation with Mr Black that day was the only discussion she had regarding that particular incident.

[23] As was the case with much of the evidence, Mr Black's account of the incident was quite different. He told the Court that the first he heard about this matter was in a telephone conversation he had with Mr Burling-Claridge on 17 December 2012. Mr Black said that Mr Burling-Claridge told him that Ms Guise had refused to re-open toilets she had locked during their CPIT staff Christmas party and her actions had forced the staff to walk in heavy rain to another building in order to use alternative toilet facilities.

[24] When that proposition was put to Ms Guise in cross-examination by Mr Langton, counsel for Allied, Ms Guise strongly denied that she had cut off access to the toilets. She stated:

> I disagree with that. They had access to toilets. There was no – they didn't need to go across in the pouring rain to the other building. The building they were in had toilets that they could access from the inside of the building so they didn't have to go out in the rain.

[25] Ms Guise was adamant that the phone call she received from Mr Black about this incident occurred on 10 December 2012 because the CPIT Christmas function had taken place on Friday, 7 December. I will need to return to this matter. I now turn to outline the principal events in this case which occurred on 17 and 18 December 2012.

17 and 18 December 2012

Ms Guise's version of events

[26] Ms Guise told the Court that at 3.30 pm on Monday, 17 December 2012, 90 minutes before she was due to commence her 5.00 pm shift; she received a telephone call from Mr Black. She said Mr Black advised her that she had been removed from the CPIT site and when she asked why, he responded "client frustration". Mr Black refused to elaborate on that explanation apart from saying that "this was in the contract". Ms Guise said that she was never provided with any information as to why CPIT had requested her removal from the site until the proceedings in the Authority.

[27] Ms Guise explained in evidence that she asked Mr Black if she could work elsewhere and he responded that the Christmas rosters had already been completed and that there was no work anywhere else. He explained that she was to be stood down for two weeks and she would then be re-employed on a casual basis. Mr Black told her that if a full-time job came up, she would be considered for the position. Ms Guise continued in evidence:

> 28. … I asked if I could have my lieu days paid out and Mr Black said I couldn't. I then asked if I could have my holidays paid out but again Mr Black said I couldn't. Mr Black said "you are not on holiday, you have been removed from site".

[28] The next part of Ms Guise's evidence is quite crucial:

> 29. By this time I felt I had no choice but to resign, I said to Mr Black "so I will have no hours, no job and no money, you leave me no choice but to resign, it is 8 days till Christmas, what am I supposed to do". Mr Black responded that I would need to resign in writing and give two weeks notice. I advised I couldn't give two weeks notice as I needed money, I asked if the two weeks could be waived and

Mr Black advised that I would need to email Mr McDowall to resign and ask for the two weeks to be waived.

30. I was on the phone to Mr Black for about 10 minutes in total and the extent of the conversation is as detailed above. I was told I was removed and would be stood down for two weeks and then would be retained as a casual. I was not given any explanation, when I asked to go to a different site I was told there was none available, when I asked to have holidays or lieu days paid out to help me over the two week period I was refused.

31. Immediately after this conversation I threw the phone down. I was crying and confused about what had happened and very worried about my future. No job, no money, I did not know what I would do.

32. After this conversation I left home and went to my friend Karen Blough's house. I told her everything that had happened and stayed overnight as I was very upset.

33. I rang Mr Black again the next day, 18th December 2012 to try and discuss the issues. I asked again why I had been stood down, what was the client frustration. He just kept saying "it is in the contract". I said can you explain to me what client frustration means. The conversation just went round in circles. I asked about my holiday pay again but he said if I resigned the holiday pay would not be paid out until the following week. The week of 25th December 2012. I ended up saying "I am hanging up the phone now" and I hung up the phone.

34. After this telephone conversation I emailed my resignation on the understanding that the Plaintiff would then have to pay me my holiday pay and lieu days which would provide me with income over the Christmas Holidays.

[29] In her resignation email, timed at 12.25 pm on Tuesday, 18 December 2012, Ms Guise said:

Hi Matt,

As a follow up to our conversation earlier here is my resignation.

I, Sharon May Guise, hereby resign, effective immediately from Allied Security

Kind regards

Sharon M Guise

[30] Mr Black responded immediately in an email timed at 12.29 pm:

Sharon you need [to] acknowledge there is a 2 week notice period in your resignation letter. I'll then ask my manager if it's ok to [forego] that

[31] Ms Guise then send a further email timed at 12.41 pm:

> I hereby resign my position as a security guard for allied security
> I wish this to be effective immediately and acknowledge there is a two week notice period and ask for this to be waived

Allied's version of events

[32] Mr Black told the Court that on 17 December 2012 he received an email from Mr Burling-Claridge at CPIT requesting that Ms Guise be removed from the CPIT campus due to a complaint Mr Burling-Claridge had received from his staff. The email timed at 4.18 pm read:

> Hi Matthew,
> As below you can see that even with extensive encouragement she still maintains an intractable stance, that does not suit our campus staff or Students.
> I would rather you employed her elsewhere in a more suitable place than have her here at CPIT any longer.
> We hope her replacement here will be easier to work with.
>
> Thanks
> Tony

[33] That email was referring to an attachment from Mr Burling-Claridge to Mr Bailey, Allied's Site Manager at the CPIT campus. That email read:

> Sorry Scott,
>
> But it looks as if she is towards the end of her stint at CPIT.
> Her general arrogance towards staff and students has caused a number of upsets and now she appears to be into your staff as well.
> Not quite the relationship we would engender between all staff, and contractors at CPIT
>
> Tony

[34] Mr Black's evidence was that after he received the email from Mr Burling-Claridge he called Mr McDowall to discuss the issue. Mr McDowall instructed him to contact CPIT to see if there was any possibility of Ms Guise remaining on site over the Christmas period. Mr Black called Mr Burling-Claridge but the latter was adamant that Ms Guise could not return to the CPIT site, referring to previous complaints regarding Ms Guise's behaviour which he claimed had not been rectified. Mr Black said that in this regard, Mr Burling-Claridge referred to both the incident during the CPIT staff Christmas party (referred to above) and

another complaint to the effect that Ms Guise had "been witnessed" having verbal arguments with another Allied security guard whilst on duty.

[35] Mr Black continued in evidence:

> 9. Post confirmation from CPIT that there was no possibility of Ms Guise returning to the CPIT site, I had a further discussion with Mr McDowall. We discussed alternative roles for her and the fact that there was nothing in Christchurch over Christmas. I said I had some people going to Queenstown and would see if she wanted to go there. I telephoned Ms Guise to advise her of the removal request. I had several conversations with Ms Guise and Mr McDowall during the afternoon of 17 December 2012.
>
> 10. I clearly explained to Ms Guise Mr Burling-Claridge's reasons for the removal request and the right CPIT had to state who worked on their campus.
>
> 11. Ms Guise argued that CPIT had no right to remove her and simply would not accept what I was informing her of.

[36] Mr Black said that during the course of one of the telephone conversations, Ms Guise admitted refusing to unlock nearby toilets when specifically requested by CPIT staff, confirming to him that she witnessed administration staff "walking in the heavy rain to access toilets in another part of campus". He said that Ms Guise insisted on meeting with the client to argue her case but he told the Court that he explained to Ms Guise that this was not needed as she had admitted "the very actions our client had requested she be removed for, and that any investigative or disciplinary action required is between Ms Guise and Allied Security, not CPIT."

[37] Mr Black said that he told Ms Guise that there were no full-time vacancies to which she could be redeployed in Christchurch but he offered her casual employment in Queenstown as he had Christchurch staff heading there for work. Mr Black said that Ms Guise did not accept the Queenstown option but demanded all her holiday pay be paid out as she was quitting. Mr Black said that he asked Ms Guise to take time to think over her options. He said that after checking with Mr McDowall he told her that if she really wanted to resign then they could consider an immediate termination but Allied would require such a request to be made in writing. Mr Black confirmed receiving Ms Guise's email resignation on 18 December 2012.

The 16 December incident

[38] Mr Black said in cross-examination that after he received the initial email from Mr Burling-Claridge requesting Ms Guise's removal from the CPIT site, he telephoned Mr Burling-Claridge to clarify exactly what had happened. Mr Black said that Mr Burling-Claridge explained that he had received an email from a staff member complaining about an altercation the staff member had witnessed. Mr Burling-Claridge forwarded a copy of the email in question to Mr Black who relayed its contents to Mr McDowall. The email, dated Sunday,16 December 2012 at 1.01 pm stated:

> **Subject: Shit storm at sully**
>
> Sorry for emailing you on such a fantastic day but a shit storm has arisen. I am currently sitting here as I write this email and listening to two of the guards having a screaming match in the staffroom. They have been exchanging harsh words and profanities and it is not acceptable if any staff were to walk into the staffroom and here that then Allied would look like a pack of knobs for want of a better word. I would really like this dealt with as it is unprofessional and immature.
>
> I think it is time that the female guard be removed off site as she is the one stirring up the other guards. I may be stepping over the line by saying that but I do not want the place that I work at to be a haven of anger.

[39] Ms Guise never received a copy of this email. The guard involved in the verbal altercation with Ms Guise on 16 December 2012 did not give evidence in the case and so I will refer to him simply as Mr L. Ms Guise was told by Mr Black in their telephone conversation on 17 December 2012 that Mr L had made a complaint but she was given no particulars. In an email to Mr Black dated 19 December 2012 she stated:

> Hi Matt
>
> I still require the information about why CPIT removed me from site and a copy of [Mr L's] complaint for my records
>
> Did Chris approve waiving the two week notice?
>
> Regards
>
> Sharon M Guise

[40] In evidence, Ms Guise explained that she had trained Mr L to do his job and had been noticing that when she came on shift after him he had often failed to do the lock-up properly. After a verbal altercation with him on 9 December 2012, Ms Guise reported the incident to her Supervisor, Mr Bailey. In unchallenged evidence Ms Guise said that Mr Bailey responded that he would "let higher management know as he had been having issues with (Mr L) and he wanted him removed." Those other issues included Mr L leaving the site to go home without telling anyone about it. In his evidence, Mr Black confirmed that subsequently Mr L was dismissed by Allied in relation to another incident.

Constructive dismissal

[41] The legal principles relating to constructive dismissal are well established and were not in dispute. In *Auckland Etc Shop Employees Etc IUOW v Woolworths (NZ) Limited*, the Court of Appeal stated that constructive dismissal included, but was not limited to, cases where:[2]

> a) An employer gives the employee the choice of resignation or dismissal;
>
> b) An employer follows a course of conduct with the "deliberate and dominant purpose" of coercing an employee to resign;
>
> c) A breach of duty by the employer leads an employee to resign.

[42] The present case is concerned with the third category in which it is claimed that the employee resigned as a result of breaches of duty by the employer. In reference to this category of case, the Court of Appeal in *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* stated:[3]

> In such a case as this we consider that the first relevant question is whether the resignation has been caused by breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not

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2 *Auckland Etc Shop Employees Etc IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372, (1985) ERNZ Sel Cas 136 (CA) at 139.

3 *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415, [1994] 1 ERNZ 168 (CA), at 172.

> be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

[43] If, after applying the above principles, the Court concludes that there has been a constructive dismissal, it must then determine objectively whether it was justifiable in terms of the statutory test of justification under s 103A of the Employment Relations Act 2000 (the Act). To this end, the employer must satisfy the Court that its actions were in accordance with what a fair and reasonable employer could have done in all the circumstances at the time.

[44] In reference to the concept of breach of duty, this Court noted in *Rodkiss v Carter Holt Harvey Limited*[4] the Court of Appeal's observation in *Auckland Electric Power Board* that there were a number of duties of an employer which were potentially relevant in this field and specifically affirmed the application of the implied term that "employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."[5]

[45] In *Hamon v Coromandel Independent Living Trust,* Judge Perkins correctly confirmed that the duty of trust and confidence the Court of Appeal referred to in *Auckland Electric Power Board* is now encapsulated in s 4(1)(a) of the Act which requires the parties to an employment relationship to deal with each other in good faith.[6] Section 4(1A)(a) specifically provides that such a duty "is wider in scope than the implied mutual obligations of trust and confidence". Section 4(1A)(b) requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative."

[46] Against that background, I now turn to consider the two questions posed by the Court of Appeal in *Auckland Electric Power Board*, namely, whether it can be said, after examining all the circumstances, that Ms Guise's resignation was caused

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4 *Rodkiss v Carter Holt Harvey Ltd* [2015] NZEmpC 34 at [89]

5 *Woods v WM Car Services (Peterborough) Ltd* [1981] ICR 666 at 670 cited in *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc*, above n 3 at [172].

6 *Hamon v Coromandel Independent Living Trust* [2014] NZEmpC 54 at [49].

by breach of duty on the part of Allied and, if so, whether, having regard to the seriousness of the breach, a substantial risk of resignation was reasonably foreseeable.

Discussion

The issues

[47] In her closing submissions, after correctly referring to the principles applicable to cases of constructive dismissal, Ms Boulton, counsel for Ms Guise, went on to describe Allied's first breach of duty as a breach of the employer's various obligations under s 103A of the Act. However, s 103A(1) sets out the test of justification in determining whether an employee has been unjustifiably dismissed or unjustifiably disadvantaged in terms of s 103(1)(a) and (b) of the Act. As Mr Langton correctly submitted, s 103A is only engaged if the employee was, in fact, dismissed. It has no application in determining whether or not an employee was constructively dismissed.[7]

[48] Ms Guise pleaded that she was constructively dismissed for the following four reasons, or alleged breaches of duty:

(a) Allied did not provide her with any specific information about why she was being stood down from the CPIT site;

(b) Allied took no steps to protect her position at the CPIT site and failed to alert her that the incident regarding the locking of toilets was not resolved;

(c) Allied denied her any opportunity to protect her employment at CPIT or on other client sites;

(d) Allied suspended her without pay or access to any paid leave in the absence of any fair procedure and in breach of statutory obligations and contractual obligations forcing her to resign in order to access her holiday pay.

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[7] At [43] above.

[49] In response, Mr Langton submitted, on behalf of Allied, that it did not breach any duty to Ms Guise but at all times acted in accordance with the terms of the employment agreement; it was not reasonably foreseeable that Ms Guise would have resigned as a result of any breach and even if it was reasonably foreseeable that Ms Guise would have resigned she did not, as a matter of fact, resign as a result of any breach of duty but rather because she had secured alternative employment. Mr Langton further submitted that as Ms Guise disagreed with the proposal to change her employment status from weekly employment to casual employment, that amounted to a dispute between the parties, which should have been dealt with on that basis rather than as a claim of constructive dismissal.

The tripartite employment arrangement

[50] As noted earlier, this case involves a tripartite employment relationship but it is equally important to note that this factor does not relieve an employer from its statutory obligations under the Act. Indeed, s 238 specifically prohibits any form of contracting out. Section 3(a) of the Act confirms the object of the Act is "to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship". Of particular relevance to the present case is s 3(a)(i) of the Act which recognises the employment relationship must be built on trust and confidence and good-faith behaviour and s 3(a)(ii) which confirms that the Act acknowledges and addresses the inherent inequality of power in the employment relationship. That inherent imbalance in an employment relationship is even more pronounced in a tripartite employment situation, such as the present, where the employer's client is able to exclude the employee from the workplace without any accountability to the employee. In such a situation, the Court must take appropriate steps whenever necessary to safeguard the objects of the Act so as to preserve their integrity.

[51] Tripartite employment arrangements have come before this Court in other cases. Thus, in *G & H Trade Training Limited v Crewther*, the appellant company operated trade training establishments and trainees and apprentices were referred to the company by Skill New Zealand as well as by Work and Income New Zealand

(WINZ).[8] The appellant received a confidential facsimile from WINZ complaining that the respondent, one of its carpentry teachers, had asked some trainees to obtain drugs for him. The respondent was informed of the allegations against him and subsequently denied them. He asked for details about the complaint but he was given no further information on the grounds that WINZ imposed strict privacy protection. The respondent was suspended and later dismissed. The Court upheld a finding by the Employment Tribunal that the respondent had been unjustifiably dismissed. Former Chief Judge Goddard held that before taking action to suspend, the employer should have summoned the respondent (with a support person) to a meeting and he should have been informed of the allegations and given proper opportunity to respond. Chief Judge Goddard stated:[9]

> Employers are entitled to sympathy when they are placed in the position by a third party, effectively saying that a particular employee is unacceptable or will not be permitted onto the site where it is under the third party's control (although that was not the case here). Rather WINZ was using its economic power to dictate in effect that the respondent should be dismissed. Just the same, it was not open to the appellant first to suspend and later to dismiss the respondent in the circumstances and in the way that it did.

[52] In the more recent decision of *Workforce Development Limited v Hill*, this Court was also concerned with a tripartite employment relationship.[10] Mrs Hill was employed by Workforce as a tutor providing literacy and numeracy tuition to prisoners pursuant to a contractual arrangement Workforce had with the Department of Corrections. A provision in Mrs Hill's employment agreement recognised that the Department of Corrections was able to withdraw her access to its sites if she was found to be in breach of any of its rules or policies and if there was no other position for her then she was liable to have her employment terminated. A postcard was intercepted addressed to a prisoner from Mrs Hill. It appeared that Mrs Hill had sent other correspondence to the same prisoner and prison management considered that the communications raised serious safety concerns. The Department of Corrections carried out a thorough investigation into the incident, which included a meeting with Mrs Hill and her support person, following which it withdrew her access to all prison sites. Workforce attempted to arrange a meeting with Mrs Hill to discuss other

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8 *G & H Trade Training Ltd v Crewther* [2002] 1ERNZ 513 (EmpC) at 513.
9 At [39].
10 *Workforce Development Ltd v Hill* [2014] NZEmpC 174.

options but she was unwell and in the end she presented written submissions in response. Ultimately, Mrs Hill's employment was terminated and she issued proceedings claiming that she had been unjustifiably dismissed.

[53] In dismissing her claim, Judge Inglis noted that Mrs Hill had been given details of the complaint made against her and the opportunity, which she took up, of making submissions on her own behalf (with a support person) to Corrections in the course of its investigation. In the meantime, Mrs Hill had been suspended on full pay. Judge Inglis noted that it was Workforce's actions and omissions as employer that were relevant and she found that in the final analysis the company had provided information and support to Mrs Hill during the course of the Department's investigation and taken steps to ensure that it followed the process set out in the contract. In response to an argument advanced by Workforce that, because the employment agreement had been effectively frustrated, there was no dismissal and s 103A of the Act had no application, Judge Inglis relied on s 238 of the Act, stating:[11]

> I would, however, have had difficulty accepting these propositions. Parties to an employment relationship are not permitted to contract out of their statutory obligations, including the procedural requirements relating to fair process and their mutual obligations.

[54] Neither the *G & H Trade Training* or *Workforce Development* cases involved constructive dismissal but the good faith obligations in an employment relationship remain the same regardless of how a termination is ultimately brought about.

The alleged breach of duty

[55] Miss Boulton's principal submission was that cl 17.1 of the employment agreement was harsh and oppressive and breached the principles of natural justice as well as the employer's duty of good faith under s 4 of the Act. In this regard, counsel stressed that under cl 17.1 as it stood, the client could request the employer to cease the supply of the employee's services at any time and there was no obligation on the employer to carry out an investigation or provide the employee with any information or opportunity to respond to such an ultimatum.

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[11] *Workforce Development Ltd v Hill*, above n 10, at [57].

[56] I perceive Ms Boulton's submission in this regard to be the type of breach of duty contemplated by the Court of Appeal in the *Auckland Electric Power Board* case when it stated that an employer has an obligation not to act in a manner likely to destroy or seriously damage the relationship of trust and confidence; the obligation now embodied in the duty of good faith under s 4 of the Act. The thrust of Ms Boulton's submission was that, in breach of those obligations, Allied carried out no investigation into the two incidents that allegedly caused CPIT to demand Ms Guise's removal from the site and Ms Guise was given no opportunity to have any input into the CPIT decision before it was acted upon by her employer.

[57] Allied's principal witness, Mr Black, stated in cross-examination that CPIT could request a guard to be removed from its site without needing to satisfy Allied that the guard had done something wrong but he admitted that he still needed to get information from Ms Guise as to her version of events. As Mr Black explained it, if he found upon enquiry that the matter was not as serious as CPIT understood it to be then he would have gone back to Mr Burling-Claridge, who he described as a "reasonable man", and CPIT would have reconsidered the position. Mr Black said:

> It is all about gathering information and having that information accurate information before you make a decision.

The Christmas party

[58] The first allegation related to the incident described above under the heading "CPIT Christmas party" which took place on 7 December 2012. Allied pleads in its statement of claim that Ms Guise was requested by CPIT staff to unlock a door to enable them to access toilets during a staff function and Ms Guise refused to unlock the toilets. Mr Black's evidence was that this incident was raised with him for the first time by Mr Burling-Claridge on 17 December 2012 and he raised it with Ms Guise in his telephone conversation that day. As noted above, he said that Ms Guise admitted refusing to unlock the toilets when specifically requested by CPIT staff. Mr Black added that when, in the course of the telephone conversation, Ms Guise insisted on meeting with CPIT to argue her case, Mr Black explained "this was not needed as she had admitted the very actions our client had requested she be removed for, and that any investigative or disciplinary action required is between Ms Guise and Allied Security, not CPIT."

[59] Ms Guise's version of that incident is quite different. She said, "It wasn't about unlocking the toilet. It was about unlocking a door." Ms Guise was adamant that the only conversation she had with Mr Black about the incident took place on 10 December 2012 and it was not discussed in the telephone conversation of 17 December. Ms Guise said that she gave Mr Black the brief explanation in [22] above and she was given no indication the matter was serious or that her job was in danger.

[60] I accept what Ms Guise told the Court about this matter. Mr Black stated in his evidence that the incident was investigated by Allied's Site Manager, Mr Bailey, but Mr Bailey was not called as a witness in the case and Mr Black sounded extremely vague about the nature of Mr Bailey's investigation and when it was carried out. There was no documentary evidence confirming that Mr Bailey had carried out any such investigation. In short, I do not accept that the incident was investigated by Mr Bailey nor do I accept that the matter was raised by Mr Black in his telephone conversation of 17 December 2012. I do not accept that Ms Guise was ever given proper opportunity to fully explain and present her side of the story.

The verbal altercation

[61] The second allegation directed at Ms Guise related to the verbal altercation she had been involved in with Mr L on 16 December 2012, which was overheard by a CPIT staff member. Ms Guise was aware, because Mr Black told her in the telephone conversation on 17 December 2012, that Mr L had made a complaint about the matter but she was never given any details or shown a copy of the complaint. When she asked Mr Black why she had been removed from the CPIT site, he simply responded, "client frustration". Again, I accept Ms Guise's evidence in relation to this matter. It is in part confirmed by her email to Mr Black dated 19 December 2012 in which she states: "I still require the information about why CPIT removed me from site and a copy of [Mr L's] complaint …".

[62] Ms Guise impressed me as a conscientious and responsible individual. I strongly suspect that had this matter, and the Christmas party incident, been properly investigated then the facts disclosed would have given Mr Black the type of evidence he had in mind when he spoke about going back to Mr Burling-Claridge and inviting

him as a "reasonable man" to reconsider the position. Because there was no investigation, however, and Ms Guise was never given proper opportunity to have an input into the allegations made against her, this did not happen. To that extent Allied was in breach of the principles of natural justice and its good faith obligations under s 4 of the Act.

The suspension/stand-down

[63] Ms Guise also pleaded a breach of duty on the part of Allied in the way that it suspended her employment without pay or access to any paid leave, forcing her to resign in order to access her holiday pay. Mr Langton submitted that she was not suspended but she was moved from being a weekly employee to a casual employee in accordance with the passage in cl 17.1 of her employment agreement highlighted in [20] above. Mr Langton further submitted that Mr Black offered Ms Guise the opportunity to take leave with pay as well as casual employment in Queenstown over the Christmas period.

[64] Although cl 17.1 of the employment agreement does not specifically refer to "suspension", the practical effect of its implementation in Ms Guise's case was that her regular employment ceased and she had no income over the pending Christmas holiday period. Her employment status changed to that of a casual employee and she was told that after the Christmas break she "may be offered work on a time by time arrangement". To that extent, her position was not dissimilar to the situation she would have been in had she been suspended without pay.

[65] In *G & H Trade Training Ltd* Chief Judge Goddard, when commenting on the respondents suspension stated:[12]

> In relation to the suspension, it is well settled that being suspended from employment is a devastating experience and, even when it is necessary, it should be handled in a humane way. It is also settled that there should be some inquiry into the question whether a suspension is necessary and the employee should be given an opportunity to argue that he or she should not be suspended or should be suspended on pay and on other proper conditions.

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[12] *G & H Trade Training Ltd v Crewther*, above n 8, at [39].

[66] I have made comment above about the fact that the Court did not hear evidence from Mr Bailey who was Ms Guise's Supervisor at the CPIT site. What is also somewhat mystifying is why Mr Bailey was not designated the task by Allied of dealing with Ms Guise following receipt of the CPIT direction excluding her from the site. The evidence was that Ms Guise was preparing to leave home to commence her shift on the afternoon of Monday, 17 December 2012 when she received a telephone call from Mr Black in Dunedin advising her that she had been removed from the site. Ms Guise was shocked and angered at the news. It is difficult to imagine a more heartless approach in an employment setting. If the situation had been properly handled, Ms Guise should have been informed of the CPIT decision at a face-to-face meeting with her supervisor, Mr Bailey, and together they should then have had the opportunity, in a timely way, to engage with each other and try to reach agreement on a way forward. As it was, however, without having any input into the situation, Ms Guise was effectively told over the telephone that she was stood down from her employment without pay and without any immediate prospect of work.

[67] I accept Ms Guise's version of the discussion she had with Mr Black that day. I do not think that Mr Black was being misleading. He appeared, as Ms Boulton described it, to be "an honest but mistaken witness". On the other hand, it was clear from Ms Guise's evidence that her conversation with Mr Black remained indelibly fixed in her mind. She had been told that she was to be stood down for two weeks without any pay and then, in terms of her agreement, she would be employed on a casual basis and may be offered work on a time by time arrangement. When she asked whether she could go to a different site, Mr Black told her that there was none available and when asked if she could take holiday or lieu days paid out to help her over the next two weeks, her request was declined. As Ms Guise summed it up in her evidence, "So I will have no hours, no job and no money, you leave me no choice but to resign, it is 8 days till Christmas, what am I suppose[d] to do."

The Queenstown option

[68] Mr Black gave evidence that he offered Ms Guise casual employment over the Christmas period in Queenstown. This was denied by Ms Guise but, as Mr Langton correctly submitted, Mr Black was not challenged in his evidence on this point by Ms Boulton. Mr Black now resides in Canada and his evidence was

taken by video link-up but Ms Boulton had ample opportunity to challenge him about the offer of work in Queenstown. It was unsatisfactory for her to seemingly accept what he said in evidence and then simply state in her closing submissions, "The defendant states that this offer never occurred."

[69] Admittedly, Ms Boulton did challenge Mr McDowall in cross-examination about the Queenstown offer and put it to him that Ms Guise would say in her evidence that the Queenstown position was never offered to her. Ms Guise was also cross-examined on the issue by Mr Langton and denied ever having a discussion with Mr Black about Queenstown.

[70] After careful consideration, I accept Ms Guise's evidence that she was never offered a position in Queenstown. I am particularly influenced in this regard by her own evidence on the subject and the evidence before the Court from Ms Guise's close friend, Ms Karen Blough. Ms Blough filed a brief of evidence dated 24 June 2015 in which she confirmed that Ms Guise came to her house on the day she was removed from the CPIT site. She said that Ms Guise was "very confused as to why she had lost her job" and she was so upset that "she stayed overnight at my house so she would not have to be alone." Ms Blough went on to state:

> 8. I am aware that Allied Security Ltd told the Court that they offered Sharon alternative work in Queenstown. I am very shocked to hear this as I know if this had been true Sharon would have mentioned that to me. Even if she had not wanted to do it, she would have still told me, that is the type of relationship we have.

[71] Counsel for Allied accepted Ms Blough's brief of evidence without her having to be called to confirm her evidence orally. In other words, her evidence was unchallenged. This seems to cancel out the criticism of Ms Boulton's failure to challenge Mr Black's evidence on the topic. In all events, I prefer Ms Guise's evidence over Mr Blacks.

[72] In her cross-examination of Mr Black, Ms Boulton pointed out to the witness that, after Ms Guise was removed from the CPIT site, Allied still had the same number of jobs to fill and the same number of staff, albeit that Ms Guise could not work at the CPIT site, and she asked Mr Black whether he had considered simply

swapping Ms Guise with a guard from another site. This appeared to the Court to be a practical available option and I must say that I was not impressed with the explanation Mr Black attempted to give as a reason for not implementing such a simple swap option. Mr Black said that he had not considered swapping Ms Guise with a guard from another site because when that option was put to Ms Guise she had said, "no way, I want my pay I am not going to another site." I regret that I found this explanation unconvincing and I do not accept it. Ms Guise had demonstrated in the past that she could easily and quickly be trained to work on a different site.

Other employment

[73] Ms Guise told the Court that she commenced employment in a casual role with another company, Triton Security, on 19 December 2012. She was closely cross-examined by Mr Langton on this issue and it was pointed out to her that the Triton Security pay records, which were produced in evidence, stated that she worked for Triton from 17 December 2012 until 28 July 2013. Mr Langton, therefore, put it to Ms Guise that she did not resign from her employment with Allied until she had another job to go to.

[74] At first blush that proposition would seem to have some force but it was categorically rejected by Ms Guise. Ms Guise explained that 10 minutes after her telephone conversation with Mr Black on 17 December 2012, when he informed her that she was removed from the CPIT site, she telephoned Mr Greg Head of Triton Security and asked him if he had any jobs. After some discussion he told her that he had a position and he asked her to come into the office on 19 December 2012 and sign the contract. Mr Langton asked Ms Guise why she rang Triton Security and she explained that she had approached them for a position earlier in the year. She told the Court that she was offered and accepted an employment agreement with Triton Security when she called to see Mr Head on 19 December 2012 and she commenced working for the company immediately. She ended up working for Triton Security until the end of July 2013 on a casual basis but the company no longer exists.

[75] I accept Ms Guise's evidence in relation to Triton Security. I find that the wage records produced are not conclusive evidence of her start date. What they

show is that her first pay was for the period ending 30 December 2012. Mr Head, who apparently now lives in Australia, may well have noted 17 December 2012 as the start date because that was the day Ms Guise telephoned him and was offered and accepted the job. She certainly wasn't working for them on 17 December 2012 because she only found out about the loss of her position at CPIT when she was about to start her 5.00 pm shift with Allied on the afternoon of 17 December 2012.

Foreseeability

[76] I have concluded, for the reasons stated above, that Allied breached a number of duties it had towards Ms Guise in the way it dealt with her following the CPIT direction and that her resignation was caused by those breaches. I now turn to consider the second question posed by the Court of Appeal in the *Auckland Electric Power Board* case, namely, whether having regard to the seriousness of those breaches of duty, a substantial risk of Ms Guise's resignation was reasonably foreseeable.[13]

[77] Mr Black denied in cross-examination that it was likely Ms Guise was going to resign so that she could access her holiday pay. He said, "The last thing I wanted on that day was to lose Sharon as an employee." At the same time, he recalled her saying to him in the course of their telephone conversation on 17 December 2012: "It is eight days from Christmas and what am I supposed to do for money".

[78] There was a particularly revealing passage in Ms Boulton's cross-examination of Mr Black on the forseeability issue:

> **Q.** And then from your evidence it seems that the conversation then turned to Ms Guise wanting all of her holiday pay paid out didn't she?
>
> **A.** Immediately yep.
>
> **Q.** Um – sorry I didn't mean to interrupt you there is a bit of a delay.
>
> **A.** Yeah so she said okay well I want all my holiday pay paid out immediately because I am quitting.
>
> **Q.** Okay so she said she was quitting at that point.

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[13] *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc*, above n 3.

> **A.** I believe so yes, yep she was very, very angry, very upset. It wasn't just if you understand it wasn't just one phone call it was hanging up call back, hang up. I don't recall how many conversations we had but it was very, very heated, Sharon was very, very upset.

[79] In the light of that voluntary admission from Mr Black, and in the knowledge that Ms Guise was not going to be paid out her holiday pay, I find that Allied must have foreseen that, as a result of its serious breaches of duty, it was virtually inevitable that Ms Guise was going to resign.

Test of justification

[80] Having concluded that Ms Guise was constructively dismissed, it is necessary for the Court to turn its mind to the test of justification in s 103A of the Act to determine whether the dismissal was justified. The statutory test involves a consideration, on an objective basis, of whether Allied's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[81] Section 103A prescribes a number of factors the Court is required to consider in applying the statutory test of justification which include whether the employer sufficiently investigated the allegations made against the employee and gave the employee a reasonable opportunity to respond to its concerns. The Court must also determine whether the employer genuinely considered the employee's explanation. For the reasons stated above, which I will not repeat, I conclude that the test of justification has not been satisfied in any of these respects.

[82] For the record I also find, for the reasons stated above, that that there were a number of serious defects in the process followed by Allied which resulted in Ms Guise being treated unfairly in terms of s 103A(5) of the Act. On procedural grounds, therefore, the dismissal was also unjustified.

Relief

Loss of wages

[83] Ms Guise claims the sum of $8,771.01 for lost wages made up of the difference in her earnings at Allied and her casual employment income from Triton

Security up until 29 July 2014 when she commenced working for Sub 5 Private Security on a comparable rate of pay with her wages with Allied.

[84] In response, Allied raised the issue of whether Ms Guise can claim any loss of wages on the basis that if she had stayed working with them after her removal from the CPIT site, under cl 17.1 of her agreement she would have been a casual employee and her earnings on that basis would be equivalent to her earnings as a casual worker with Triton Security. I do not accept that proposition because I have found on the facts that Ms Guise was unjustifiably dismissed.

[85] At the same time, I am not prepared to uphold the claim for loss of wages up until July 2014. There were signs that Ms Guise was having problems with some of her co-workers and I cannot be satisfied that she would have remained with Allied beyond the minimum three month period provided for in s 128 of the Act.

[86] I do not understand that Mr Langton disputes the accuracy of Ms Boulton's calculations producing a loss of wages figure of $8,771.01 for the 32-week period between 19 December 2012 and 29 July 2014. That equates to a weekly loss of $274.09. Allowing that same weekly loss figure over the three-month statutory period produces a loss of wages total of $3,563.22, which I allow, rounded off at $3,565.00.

Compensation

[87] Ms Guise seeks an award compensation for humiliation, loss of dignity, and injury to feelings pursuant to s 123(1)(c)(i) of the Act. There is compelling evidence that Ms Guise was significantly effected by the way in which Allied handled the events resulting in her constructive dismissal. Ms Guise, who was in her late 40s when she worked for Allied, told the Court that she was not in a relationship at the time of her dismissal and so she had no intimate financial or emotional support. She explained how she still had to pay her rent and having no stable income at Christmas meant that, unless she obtained another position, she would be unable to buy presents for her children and grandchildren with whom she normally spent Christmas.

[88] The work Ms Guise obtained with Triton Security was, as she described it, very casual making it difficult to know if she could survive from week to week. She described how she was forced to seek food parcels from community groups and meals from friends. Her evidence in this regard was supported by the unchallenged evidence of her close friend, Ms Blough. Ms Blough described how over the three to four-month periods following the termination of her employment Ms Guise became: "very depressed and quiet. She was often in tears. She was concerned how she would cope financially and I was concerned about how she was coping emotionally."

[89] There was a matter which Mr Langton raised with Ms Guise in cross-examination, however, which is relevant to the issue of compensation for hurt and humiliation. It appears that shortly before the events resulting in the termination of her employment, Ms Guise noted a job advertisement listed by Allied on the Trade Me website which she wrongly assumed related to her position at CPIT. It later transpired, and Ms Guise admitted the fact, that the advertisement was unrelated to her position. In this compensation exercise, therefore, I have made allowance for the fact that some of the hurt and humiliation suffered by Ms Guise could be attributed to that extraneous factor.

[90] As compensation for hurt and humiliation, I award the sum of $7,500.

Contribution

[91] Ms Boulton submitted that the Court should not reduce the remedies on account of contributing behaviour by Ms Guise on the grounds that the circumstances surrounding the verbal altercation she had with the other Allied Security Guard, Mr L, was not properly investigated and it would be unfair, in those circumstances, to attribute any blame to Ms Guise. I have some sympathy with that submission. As noted above, Ms Guise impressed me as a responsible individual and I suspect that, had the incident been properly investigated, she would have been found to be in the right. Mr L was later dismissed by the company on an unrelated matter.

[92] But even allowing for these factors, the point remains that Ms Guise should have had more common sense than to indulge in a verbal altercation with Mr L in the

presence of a CPIT staff member. Whatever the provocation, that is not the way to deal with an issue between two work colleagues.

[93] It is not an easy task to assess contribution in such cases but, doing the best that I can, I fix the percentage contribution under s 124 of the Act at 20 per cent.

Penalty

[94] Miss Boulton submitted that the Court should order a penalty against Allied under s 4A(b)(iii) of the Act for a deliberate breach of the good faith provisions undermining the employment relationship in this case. In this regard, Ms Boulton referred, in particular, to the failure of Allied to be active and constructive in maintaining a productive employment relationship as required under s 4(1A)(b) of the Act.

[95] In response, Mr Langton submitted that in the event that a breach of s 4(1) of the Act was found to be established, it was not sufficiently serious to warrant the award of penalty.

[96] I agree with Mr Langton's submission in this regard.[14] I do not order a penalty.

Interest

[97] Although interest was claimed in Ms Guise's pleadings, no submissions were made on the topic and, given the flexibility involved in fixing the award for loss of wages, I do not consider that interest is appropriate in this case.

Conclusions

[98] Ms Guise has succeeded in her claim and is awarded:

(a) Loss of wages in the sum of $3,565;

(b) Compensation for hurt and humiliation in the sum of $7,500.

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[14] Employment Relations Act 2000, s 4A. See also *Waikato District Health Board v The New Zealand Public Service Association* [2008] ERNZ 80 at [36].

[99] The remedies are reduced by 20 per cent on account of Ms Guise's contribution.

[100] Counsel has suggested that costs should be reserved in the expectation of agreement between the parties on the issue. If agreement does not prove possible, however, then Ms Boulton is to file submissions within 28 days of the date of this judgment and Mr Langton will have a like period of time in which to file submissions in response.

A D Ford
Judge

Judgment signed at 2.30 pm on 16 October 2015