

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Tom Foster (Applicant)  
**AND** Chief Executive of the Department of Corrections (Respondent)  
**REPRESENTATIVES** Mark Ryan, for Applicant  
Roanna Chan, for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**INVESTIGATION MEETING** 29 September 2005, 30 September 2005  
**SUBMISSIONS** 14 November, 15 November 2005  
**DATE OF DETERMINATION** 1 March 2006

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

- [1] Mr Foster is a prison officer employed by the Department of Corrections at Paremoremo. After this matter was lodged in the Authority the parties attended mediation. As I understand it they achieved a partial resolution of the issues between them because Mr Ryan subsequently confirmed to the Authority that the problem for determination had narrowed in scope. The problem I have been asked to determine now (as set out in Mr Ryan's closing submissions) is a disadvantage grievance relating to events between June and December 2001. Mr Foster claims that the respondent disadvantaged him through a breach of its duty to provide him with a safe and healthy workplace and through the conduct of his Unit Manager, Mr Frew.
- [2] However, what happened during those months can only be understood as part of a wider set of circumstances which have had very serious consequences for Mr Foster. In 1995 he was assaulted by an inmate and needed extensive surgery and rehabilitation. After a year's leave he appeared to be largely recovered and returned to his former duties. Then in March 2000 he was the victim of a second attack. It was not as serious as the first and this time Mr Foster was absent for only a few days. However he soon began to experience difficulties in his work. In the second half of 2001 his health deteriorated. On 7 November he was referred to EAP and placed on a month's leave.
- [3] On 7 December on the recommendation of his EAP counsellor he went in to the prison fire station to participate in a training session there. Mr Frew heard of his attendance and approached him to remind him that he was not cleared to return to work. An argument ensued between the two men. For Mr Foster this was the final straw. He became very distressed, returned home, and sought medical advice. On the basis of that advice and

further psychiatric and psychological assessment his leave was extended. He was not to return to work for three and a half years.

- [4] The consensus of psychiatric and psychological opinion on Mr Foster's case is that the effects of the original assault were much more far reaching than had been appreciated at the time, and that these had been compounded by the second attack. Examinations in 2002 and 2003 revealed that Mr Foster was exhibiting signs of head injury (including serious loss of cognitive functioning) severe depression, and Post Traumatic Stress Disorder.
- [5] This grievance does not relate directly to the assaults. In early 2002 ACC accepted that Mr Foster was still suffering personal injury arising out of the original 1995 attack. On that basis he received earnings related compensation (ERC) for the three and a half years before he went back to work in February 2005. The respondent paid Mr Foster his full salary in the interval before he went onto ERC, and later topped up his earnings related compensation to 100% of salary.
- [6] Section 14 (3) Accident Rehabilitation and Compensation Act 1992 (and corresponding provisions of subsequent legislation) provides that no proceedings may be brought for damages arising "*directly or indirectly out of personal injury.*" Mr Ryan has conceded that Mr Foster cannot claim further relief for the personal injury he suffered as a result of the assault. He says however that by failing to take all reasonable steps to minimise the stress and anxiety Mr Foster was experiencing in the latter part of 2001, the respondent subjected him to further disadvantage, additional to what arose out of the personal injury. Specifically:
- for a period in 2001 the perpetrator of the second assault was returned to the Special Needs Block (SNB) where Mr Foster worked;
  - Shortly before he was referred to EAP Mr Foster had been told he was being transferred to another unit, away from the support of his colleagues and against his wishes;
  - Mr Frew failed to consult with Mr Foster or consider his input in relation to either of the above matters.
- [7] Mr Ryan also says that during this time Mr Frew further disadvantaged Mr Foster as a result of:
- Derogatory and humiliating actions by Mr Frew to Mr Foster, including inappropriate comments made both to him and about him to others, and
  - The episode on 7 December.
- [8] The respondent denies all of these allegations. The substantive issues for me to determine are therefore whether any are established on the facts and amount to an unjustified action to Mr Foster's disadvantage.
- [9] In addition the respondent has also raised a number of other defences. First of all, Ms Chan says that Mr Foster's personal grievance amounts to a claim for damages arising out of personal injury. Ms Chan argues that it is impossible to separate whatever Mr Foster suffered between June and December 2001 from the ongoing physical and mental effects of the assaults. She says that but for the bodily injury there would be no claim as the weight of the evidence is that Mr Foster's stress and anxiety were the effects of the assaults and not of

Mr Frew's actions. She says that even if those effects were exacerbated by Mr Frew's conduct (which is denied) the claim would still be statute barred: Jack v Attorney General [2002] 1 ERNZ 720.

[10] In addition, she says that claims in respect of bodily injury must be commenced within 2 years of the cause of action which in this case was, at the latest, 2000. (s4 (7) Limitation Act 1950.) She further argues that this principle applies to cases brought in contract (no matter how they are framed) where the causes of action relate substantially to bodily injury, as they do here.

[11] It is not in dispute that a claim for compensation or damages in the Authority cannot succeed if it relates to personal injury by accident. For this reason, I consider the submission on the Limitation Act may be disposed of with the following quote from Chief Judge Goddard in Para 44 of *Jack* :

*"There is little to be gained in invoking s4 (7) of the Limitation Act 1950 when the plaintiff says that she is not claiming compensation for physical injury."*

[12] The alleged grievance relates to a continuum of conduct from June 2001 until 7 December 2001. Ms Chan notes that according to Mr Ryan's submission the grievance was raised on 7 February 2002 in a meeting between Mr Foster, his union representative Mr Slater and the respondent's human resources manager, Mr Langdon. It was lodged with the Authority on 10 February 2005. She argues that this was outside the requirements of section 114(6) which provides:

*"No action may be commenced in the Authority or the Court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section."*

[13] For convenience I group the issues for determination into three broad categories as follows:

- i. Was a personal grievance raised within 90 days and lodged within a further three years of that?
- ii. Have the allegations against Mr Frew been made out?
- iii. Do any amount to unjustified actions to Mr Foster's disadvantage, distinct from the disadvantage he suffered as a consequence of the personal injury by accident?

Was the personal grievance raised within 90 days and this action commenced within a further three years of that?

*Whether the grievance was raised within the 90 day time limit*

[14] Mr Slater is now deceased. Mr Foster and Mr Langdon, who attended my investigation meeting, could not clearly recall the detail of the meeting of 7 February 2002. My summary of what happened at it is therefore drawn from handwritten notes Mr Langdon took at the time.

[15] He and Mr Slater met with Mr Langdon with the primary purpose of establishing whether the respondent would continue to pay Mr Foster while he waited to see if his claim

for ERC would be accepted. However, Mr Foster told me, there was a secondary issue of concern, and that was Mr Frew's conduct. Mr Slater also tabled several pages of notes the union delegate (Ms Williams) had prepared on Mr Foster's behalf. These documented concerns about what had happened to Mr Foster over a period going back several years (to the first assault in fact.) Most of the document was her own third person account but the final section was a direct (first person) transcript of recent events as Mr Foster had recounted them to her. This document contained a number of criticisms of Mr Frew.

[16] Mr Langdon's notes record:

*"John Slater presented a letter ...regarding Tom [sic] health and dealings with his Unit Manger Mr Frew. Mr Slater did not wish to go through the comments in the letter in detail (as the letter had been completed by a third party.) After discussion Tom and John asked that all further communication regarding Tom absence [sic] be done via HR-myself or HR officer. Mr Frew Unit Manager was advised of this and that he was not to make contact in the future with Tom...confirmed with Tom that support for him would continue and be ongoing ...Tom continue on full pay...EAP support continues. Compassionate sick leave confirmed in support..."*

*John Slater (CANZ) agreed that what was in place he was happy with. Contact with Tom to continue and rehab support as appropriate put in place..."*

[17] On 18 March Haigh Lyon wrote to the respondent advising that Mr Foster had instructed them to pursue a personal grievance on his behalf. No details at all were provided as to the nature of the grievance. The letter also included a request for access to Mr Foster's records. The respondent's regional manager replied on 25 March explaining what documents had been located and enclosed. Other than that all the letter said was:

*"As you will be aware Tom has been absent on a work related absence since November 2001, and we are currently supporting him in conjunction with ACC...EAP and his Doctor."*

[18] On 4 June Haigh Lyon wrote again, referencing the letter of 18 March and explaining the nature of the grievance in detail, including background from the time of the first assault. Mr Frew's conduct towards Mr Foster in the latter part of 2001 was included as part of the alleged actions to Mr Frew's disadvantage.

[19] Mr Ryan submits that the grievance was raised twice; on 7 February 2002 and then again on 18 March 2002. If I have understood her correctly Ms Chan says that it was raised on 7 February 2002. I do not accept either of these positions.

[20] Two points in the evidence lead me to conclude that the grievance was not raised on 7 February. The first is the fact that the meeting notes record that Mr Slater said he was happy with what was in place. This is not consistent with the raising of a grievance. The second is the fact that the letter of 18 March made no reference to any earlier raising of the grievance. Had there been any suggestion that it had been raised already I would have expected this to be noted, given that by 18 March it was outside the 90 days.

[21] Nor do I consider that the grievance was properly raised on 18 March as there was absolutely no clue as to what it might have related to.

[22] I have concluded that the grievance was raised only on 4 June, when for the first time the respondent knew that Mr Foster wanted further action regarding his outstanding issues with Mr Frew. This was outside the 90 day period.

[23] The next question for determination is therefore whether the respondent consented, expressly or impliedly, to the grievance being raised out of time.

*Whether the employer consented to the late raising of the grievance*

[24] It is clear that the employer did not expressly consent to the late raising of the grievance. However in Jacobsen v Creative Surfaces Ltd [1994] 1 ERNZ 35 Palmer J said at p.54 that if an employer with whom a grievance has been raised outside the 90 day period:

*“purposefully seeks to resolve the contended grievance through, say, a process of negotiation or mediation with the affected employee or his representatives then such an employer has plainly consented...to the submission of the stale grievance to him. In any given case it is a matter of fact and degree ...as to whether what has materially occurred comprises a consent by a particular employer to the ...stale grievance.”*

[25] This may be demonstrated through correspondence, and the raising of a substantive defence:

*“may be taken as implied consent to the submission being determined on the basis of the alleged defence”* Phillips v Net Tel Communications Ltd [2002]2 ERNZ 340, at 354 para [46]

[26] These cases make it clear that a much later protest to jurisdiction does not override earlier implied consent. Nor does a denial of liability mean that the employer has declined consent; indeed quite the contrary.

[27] On 28 June the Regional Manager Brendan Moynihan made a full reply to the issues raised in the letter of 4 June. He outlined the assistance that Mr Foster had received, and denied some of the allegations relating to Mr Frew. Mr Moynihan noted that at the meeting of 7 February:

*“the Union was satisfied that the concerns Tom had relating to Mr Frew were best dealt with by him only making contact with the Human Resources Department, from the time of him being on a work related absence from the 7<sup>th</sup> November 2001.*

...

*I am keen to meet with you to discuss resolve [sic] in these matters that have been raised. However I do reiterate that as a responsible employer we are very particular to ensure a safe and secure working environment for all staff...*

*It is our belief that compensation to Mr Foster is not warranted. We are of course happy to meet to discuss in conjunction with ACC, a return to work plan for Mr Foster as his full return to work has always been our objective.”*

[28] Nowhere in this letter did Mr Moynihan mention anything about the grievance being outside the 90 day limit. I am satisfied that by means of this letter, Mr Moynihan has purposefully sought to resolve the contended grievance. He continued to do so for many

months more until Ms Chan was instructed at which point a protest to jurisdiction was made on this as well as other grounds.

**[29] I am satisfied that the 28 June letter from Mr Moynihan, and the respondent's conduct in the period which followed, amounted to implied consent to the late raising of the grievance.**

*Whether the action was commenced within 3 years of the raising of the personal grievance*

**[30] It follows that since the grievance was not properly raised until 4 June the action was commenced within the time frame required by s.114 (6).**

The substantive allegations against the respondent

[31] Mr Foster does not have a problem with other managers who were involved with his case from late 2001 on; he says Mr Langdon and the regional manager have both been very helpful. His grievance is all about Mr Frew's conduct.

*Background*

[32] Mr Foster had been employed at Paremoro Prison for about six years when he was assaulted in 2000 and ended up needing a year of treatment and recuperation. Soon after he returned he was moved to the Special Needs Block (SNB) so that he could work more closely with other officers. This suited him better than his previous position as it had required him to work a sole charge night shift.

[33] The SNB housed inmates with special psychiatric or psychological needs. Officers found it one of the more demanding units to work in. In October 1999 Mr Frew took over as Unit Manager in SNB. He noticed only one thing that may have indicated that Mr Foster was not coping. This was his dishevelled appearance. Principal Prison Officer Clark was second in command and the person primarily responsible for hands-on staff supervision in the unit, so Mr Frew asked him about this. Mr Clark told Mr Frew that Mr Foster could not shave regularly as injuries sustained in the attack made his skin sensitive, and he wore his jacket at all times because he felt the cold. Mr Frew accepted this.

[34] In May 2000 Mr Foster was attacked again. Although he sustained relatively minor injuries, and had only a short spell off work, this incident compounded the effects of the earlier one. After Mr Foster returned he relied heavily on the support of his workmates to help him cope with the demands of the job. He says that he did not get the same level of support from Mr Frew.

[35] Immediately after the attack the inmate responsible (inmate P) was moved out of the Special Needs Block to the punishment block. After a time he was assessed as being at risk and it was decided that the only safe or suitable place for him was back in SNB. Mr Foster felt unsafe with inmate P returning, and told Mr Foster he did not want him back. He considered that the respondent should have arranged another placement for inmate P even if it meant moving him to another prison. He also notes that this was the second time this type of thing had happened to him as some time earlier his first attacker had had a spell in SNB. During that time, unbeknown to senior management but with the co-operation of other officers, Mr Clark arranged shift swaps for Mr Foster so that he could be kept away from that inmate. This helped him through that time.

*Return of inmate P and transfer proposal*

- [36] Mr Frew told me that Mr Foster gave no indication that he felt unsafe with inmate P moving back. He says if Mr Foster had he would have explored an alternative placement for Mr Foster in another part of the prison. He said this would have posed no difficulty because Mr Foster's employment agreement provided that he could be deployed to certain other parts of the Paremoremo site. It also suited Mr Frew because the unit needed what he described as "fresh blood." The hours of lock up were about to be increased which put the special needs inmates in his unit at increased risk. He wanted to bring in officers with the skills to run programmes which would keep the inmates busy during the day so that they coped better during the long nights alone. Moving Mr Foster and a few others out would create some space to bring new officers in from other parts of the prison.
- [37] It appears that inmate P returned to the unit about June 2001. After this Mr Foster said nothing more about it to Mr Frew, but co-workers became aware that Mr Foster was not coping as well as he should have been. By this time, PCO Clark had moved out of that unit and the shift swapping that had previously helped Mr Foster was not happening.
- [38] Mr Clark did however take it upon himself (as a friend) to tell Mr Frew that he felt Mr Foster would be better off in a less stressful working environment. This fitted in well with Mr Frew's plans. He proceeded to talk to Mr Foster about alternative placements for him. Mr Foster told Mr Frew that he wanted to stay where he was with the supportive team he had. Because his unit was such a high pressure environment, Mr Frew did not accept that this would be in Mr Foster's best interests.
- [39] Mr Frew told Mr Foster of two options. One was in the sex offenders unit, in the East section of the prison to which Mr Foster could not be transferred without consent. Although that unit was generally considered a very low stress place to work (sex offenders apparently being among the less aggressive inmates) Mr Foster reminded Mr Frew that he could not be required to go there and would not consent to it.
- [40] The other option was in the Custodial Support Unit, (CSU) which was in the section of the prison to which Mr Foster could be transferred under the terms of his agreement. Mr Foster did not put up a specific argument about this option and Mr Frew inferred that Mr Foster would accept a move there. On 31 October Mr Frew confirmed to Mr Foster that this was what was happening.
- [41] Mr Foster says he had not agreed to any changes. He understood that in his new role he would be required to escort inmates around the prison. In fact, he was mistaken, but it was a prospect that alarmed him. I do not think it an overstatement to say that he panicked at the very thought of leaving the colleagues upon whom he had come to rely so heavily. On 7 November he saw an EAP counsellor and went off on a month's sick leave.
- [42] **I conclude that, as alleged, there was little or no consultation with Mr Foster about inmate P's return to SNB or about his own transfer out of SNB. He was kept informed, but that is all. Mr Frew did tell Mr Foster that if he could not cope with working in the prison environment, he should consider other employment. He did not take any initiative to investigate why Mr Foster might not be coping.**

*7 December incident*

- [43] Mr Foster returned on 7 December for a training session at the fire station. Prior to doing so he had spoken with Mr Langdon, the human resources manager, and mentioned the suggestion that he participate. Mr Langdon voiced no objection to the idea and Mr Foster took it that his attendance was approved and proceeded to the fire station.
- [44] However Mr Langdon could not authorise attendance until Mr Foster had medical clearance to return to work (something upon which the prison insisted because of the high risk nature of the environment.) Mr Foster's sick leave expired that day but he had yet to see his doctor to discuss that issue. Nor had he spoken to his unit manager (still Mr Frew) about arrangements for his return.
- [45] When Mr Frew heard that Mr Foster was at the fire station he rang Mr Langdon who confirmed that Mr Foster had no clearance as yet. He advised that Mr Frew should tell Mr Foster that he should not be working that day.
- [46] The training session was underway with Mr Foster participating when Mr Frew came down to tell him that he was not cleared to return to work (with the implication he should return home.) The day had been going well for Mr Foster up until this point and he felt positive about being at work. He did not feel that Mr Frew was being reasonable and refused. He also said that Mr Langdon had been happy about it which annoyed Mr Foster as this was contrary to what Mr Langdon had just told him. Both men became angry and argued the point.
- [47] At this stage, Mr Frew had not seen any report on Mr Foster's health and had no idea what was wrong (beyond the fact that stress was a factor) or how bad it was. Mr Foster had yet to provide the respondent with any information about this. Nor had Mr Foster yet told any representative of the respondent that he did not wish to deal with Mr Frew. Mr Frew accepts that he spoke directly and forcefully to Mr Foster, in response to the fact that Mr Foster became heated and refused to do as he was told.
- [48] Mr Foster says that on 7 December and in all previous discussions with Mr Frew he was subjected to rudeness, insensitivity and the insinuation that he was malingering. He says Mr Frew told him then and on other occasions: "*if you can't f...en handle the job f...ck off.*" The union delegate, Ms Williams told me that she recalled Mr Frew implying that Mr Foster was malingering. Mr Clark (who was called as a witness by Mr Foster) could recall Mr Frew saying nothing derogatory.
- [49] For his part, Mr Frew told me he was unaware of any problems in the relationship between him and Mr Foster until he told Mr Foster of his transfer. He does not accept that he spoke as alleged but agrees he said something like: "*there's a time whether you have to move on and get over it.*" He denies that this was said in a derogatory way.
- [50] **Initial allegations that Mr Frew made derogatory remarks to others about Mr Foster were not borne out in the evidence at my investigation meeting. I conclude however that both Mr Frew and Mr Foster became heated during the exchange on 7 December in a way which went beyond what could be considered professional.**

Do these allegations amount to unjustified actions to Mr Foster's disadvantage?

[51] I do not accept the proposition that the respondent should have found somewhere else to put inmate P. I accept that SNB was the only appropriate place for him. Neither the move, nor the lack of consultation, is an unjustified action. The respondent was obliged to inform Mr Foster (which it did) and to accommodate his needs by moving him if he did not wish to work with inmate P. However he did not request a transfer.

**[52] No personal grievance arises out of the placement of inmate P.**

[53] Nor do I accept that subsequently transferring Mr Foster to another unit was unjustified. His contract permitted it, there were good operational reasons for it, and although Mr Foster disputes this, I find that it was reasonable for Mr Frew to think that it was also in Mr Foster's best interests.

**[54] No personal grievance arises out of the plan to move Mr Foster to another unit.**

[55] This leaves the question of Mr Frew's attitude and behaviour towards Mr Foster including his conduct on 7 December.

[56] With the benefit of hindsight (knowing now just how unwell Mr Foster was) I find Mr Frew's conduct towards him was not appropriate. From his medical records it is clear that Mr Foster required a high level of support, including professional support, and needed to be taken out of the work environment. He did not start getting the help he needed until at least 7 November onwards. In the meantime, Mr Frew gave Mr Foster no special treatment and spoke to him in the robust way that he thought a fully functioning prison officer could cope with.

[57] I find no blame attaches to Mr Frew for this up until the time when PCO Clark told Mr Frew that Mr Foster was not coping. Prior to this, there appears to have been almost a conspiracy by Mr Foster's team to make sure that he was protected and to make sure that the difficulties he was experiencing did not come to the attention of the unit manager. In such circumstances, Mr Frew cannot be blamed for the fact that he did not have his finger on the pulse.

[58] Once Mr Frew had spoken to PCO Clark (and presumably, accepted what he had to say) he was on notice to proceed with caution. This need was confirmed when Mr Foster sought EAP assistance on 7 November. Unfortunately, at this point, Mr Frew did not heed the alarm bells which were finally ringing. When Mr Foster came onto the site on 7 December, without a medical clearance and after a month on stress leave, he should have been approached sensitively and in a way consistent with his health status. The request to leave the site was not inappropriate, but the manner of it, I find, was.

**[59] So I can conclude that in relation to the incident of 7 December the respondent's actions (being Mr Frew's manner) were inappropriate.**

*Did Mr Foster suffer disadvantage as a result, distinct from the suffering caused by his injury?*

[60] All Mr Foster's medical reports indicate that at the time of these events he was very unwell, prone to lose his temper easily, and hypersensitive to small things. This is consistent with the evidence of his wife and of PCO Clark. However he refused to believe this at the time and still refuses to believe it. He says he was fine and coping well and would have

continued to do so if it were not for Mr Frew. Numerous health professionals, and ACC itself, have concluded that his health issues were the result of the injuries he sustained in the assault, but he told me that he cannot accept that the assault has had significant effects on him or made him unable to work. He says he would have been back at work promptly if it had not been for the way Mr Frew behaved.

[61] I can only conclude that Mr Foster is seriously in denial about the nature and seriousness of his symptoms. From what I understand of his medical and psychological assessments, this is probably consistent with the effects of the trauma he had suffered.

[62] In submissions Mr Ryan stated:

*“The applicant does not claim that the actions of ... Mr Frew caused the same level of stress and anxiety as the assaults may have, but that they exacerbated the Applicant’s pre-existing condition.”*

[63] In submissions Ms Chan has referred me to Jack v Attorney General [2002]1 ERNZ 720 as being on point with the present matter. From paragraph 37 of that decision onwards Judge Goddard CJ has this to say:

*“A strong element seems to be that the department did not look after her better thus aggravating the injury but she must be taken to have been compensated for the consequences of all that by the ACC...”*

...

*What is left is a claim for compensatory damages for humiliation, anxiety and distress caused...by a condescending and uncaring attitude culminating in a dismissal ...*

[64] Chief Judge Goddard goes on to make it clear that there can be no award of compensation for the effects of personal injury, whether those effects are direct or indirect.

[65] Mr Frew’s manner to Mr Foster did not go beyond the bounds of normally acceptable workplace behaviour. His conduct was inappropriate only in the context of Mr Foster’s poor health. I am satisfied that “but for” the injury he had already sustained, Mr Foster would have been fine.

**[66] I accept that Mr Frew’s actions leading up to and including the incident on 7 December exacerbated the Applicant’s pre-existing condition, as Mr Ryan suggests. However I also accept Ms Chan’s submission that to compensate for this is to compensate for the indirect consequences of personal injury by accident.**

[67] I make one final point and that is to acknowledge the assertion, made on Mr Foster’s behalf, that the respondent breached its obligations to provide a safe workplace. The same sequence of events is relied on in making this claim as the more general claim of disadvantage. Given his pre-existing condition, I consider that by the latter part of 2001, the workplace was indeed unsafe for Mr Foster. However, for reasons which I have set out already, I do not consider that the respondent could be blamed for being unaware of this. The harm Mr Foster suffered at that time was not, I conclude, reasonably foreseeable. I note also that the 7 December request that he leave the workplace was consistent with the obligation to provide a safe workplace.

[68] In any event, even if I am wrong about this, I am satisfied that the consequences of any breach of duty are consequences of personal injury by accident which have already been compensated for.

[69] Mr Foster has suffered great physical, psychological and emotional distress, but the principal cause of that suffering was the injury he sustained in the assault. I want to stress to him that the extent of what he has gone through is fully appreciated by the Authority. However he has already been compensated for this suffering and his claim for compensation for hurt and humiliation is statute barred. I can do nothing more to help him with his employment relationship problem.

## Costs

[70] I leave it to the parties to discuss this issue between themselves however any claim for costs should be made within 28 days of the date of this determination.

Y S Oldfield  
Member of Employment Relations Authority