

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number
WA 159/07
File Number 5082323

BETWEEN Bonnie Johnstone
(Applicant)

AND The Chief Executive in respect
of the Inland Revenue
Department
(Respondent)

Member of Authority: P R Stapp

Representatives: Bonnie Johnstone in Person
Susan Hornsby-Geluk for Respondent

Investigation Meeting: Wellington, 23 and 24 October 2007

Determination: 30 November 2007

DETERMINATION OF THE AUTHORITY-The Wellington Matter

Employment Relationship Problem

[1] This determination is restricted to matters that Mrs Bonnie Johnstone has complained about in her employment relationship problem during the period of her employment with the IRD on secondment in Wellington. There is another matter before the Authority that related to her employment in a position located in New Plymouth. That matter will be dealt with in a separate determination.

[2] Mrs Johnstone has claimed that she has a number of unjustified disadvantage claims against the Department of Inland Revenue (the Department or IRD) during the period she was seconded to Wellington. The Department has denied the claims and says that a number of the claims have been made outside the 90 days allowed to raise a personal grievance with the employer or outside the 3 years to file the grievance raised with the employer in the Employment Relations Authority. It conceded that a grievance was raised by Mrs Johnstone's representative on 6 September 2004 (document 40) about the investigation, which is central to the proceedings, but not the incidents that

it related to. It says the incidents were only raised with the statement of problem filed in the Authority by Mrs Johnstone on 17 March 2007.

Issues

[3] Does Mrs Johnstone have any unjustified disadvantage claims against the Department? Were they raised in 90 days and filed in 3 years?

[4] Ordinarily if the answer to this issue was that the personal grievances were raised outside the 90 days and not filed in the Authority in the 3 years as provided for under the Act the matter would end there. However, where I have made such findings that the personal grievances are out of time I will comment on each of the claims as a matter of background and for completeness.

The facts

[5] Mrs Johnstone commenced a secondment in Wellington at the IRD National Office on what was called in the Department the Maori Authorities Project. She commenced work on the project in August 2003. At first the work and experience seemed to go well.

[6] On 1 December 2003 Mrs Johnston raised a complaint through her union delegate, Mr Richard Wordsworth, about continued inappropriate behaviour and what she considered was an “informal-dismissal” the previous day. Mr Wordsworth took up the complaint with Mr Ian Hebbend a senior HR advisor at the Department and they discussed what the “informal-dismissal” meant and they observed that may be it could only be resolved as a personal grievance.

[7] Mr Wordsworth decided the matter needed to be referred to the union’s national office, but before this happened he says Mr Andrew Minto, the National Manager Operational Strategy and Design, intervened to find out what had happened. Mr Minto, Mr Wordsworth and Mrs Johnston had a meeting. This appeared to a very frank meeting concerning Mr Minto’s appraisal of differences with Mrs Johnstone and her work and relationships. The meeting was unsatisfactory for Mrs Johnstone because Mr Minto said to her that she was “*standing in front of a big wave*”, which she took exception to, and considered was a threat. She and Mr Wordsworth were left wondering what they had to do next when Mr Minto asked them to contact him again during the afternoon with what options she wanted to take. Mrs Johnstone returned to her desk and in accordance with her understanding on what she had to do emailed Mr Minto for time out to consider her wellbeing.

[8] Mr Minto accepted that there were some serious matters to be looked into. He consulted Mr Hebbend in setting up an investigation. In the meantime Mrs Johnstone returned to New Plymouth to be with her family with her employer's consent.

[9] Mrs Johnstone's Union obtained authorisation from her to act as her representative. The situation is best summarised in a paragraph from the Union's letter dated 22 December 2003 to Mrs Johnstone where it says:

"When the internal process is finished the matter will either be resolved to your satisfaction or not resolved. The HR manual outlines a number of possible solutions. The internal process is the one most likely to resolve the matter quickly and with the least emotional impact on all parties".

[10] I am satisfied that on advice Mrs Johnstone agreed to an internal investigation when she signed an authorisation to be represented. The Union's letter and a follow up letter dated 5 January 2004 did not raise a personal grievance in respect of any of the complaints made by Mrs Johnstone and the letters related to participating in an internal enquiry.

[11] Mr Minto met with Mrs Johnstone's Union officials to focus on the process for a formal investigation. Agreement was reached on how the investigation would be carried out. Meetings on 26 and 30 January were held by Mr Hebbend and Margaret Cotton, the National Manager Technical Standards, and the designated investigator on the complaint, with Mr Minto, and Mrs Johnstone and her union advocates/field officers, respectively.

[12] A final written complaint of 219 pages was handed in on 11 February 2004 by Mrs Johnstone's Union. Because there were allegations made about Andrew Minto, Mr Scully, the National Manger Operational Strategy and Business Design, decided Mr Minto should step aside and Mr Scully became the appointed decision maker on any outcome from the investigation being conducted by Margaret Cotton (the Cotton investigation).

[13] On 20 February 2004 Mrs Cotton summarised the complaint Mrs Johnstone had alluded to during the 30 January 2004 meeting and from her written complaint of 11 February 2004.

[14] On 3 March 2004 Mrs Johnstone contacted Mrs Cotton in writing and said and I quote verbatim:

“Thank you for your letter of 20 February 2004. My written report to you did outline my complaints, which as per your letter was summarised on page 3 of my report. All other information included in my report is in support of my complaint.

In regards to other issues raised in my report I note that in our discussion of 30 January 2004 (recorded notes) I refer to taking separate action with the complaint and personal grievances.

You have raised the first grievance in bullet point re ‘an [alleged] threatening statement made by Andrew Minto to me in December 2003.

I would like to add to this two other bullet points, which are raised in my report

- The Area Manager Hamilton Mr Murray Rickerby contacting my husband to discuss my personal details-mentioned in my report*
- Team leader New Plymouth discussing with Team Leader Business Project Team my habit ‘putting Team Leaders into counselling’-mentioned in my report.*

[15] Mrs Cotton proceeded with her investigation and any notice of an intention by Mrs Johnstone to take separate action and personal grievances was not responded to. This letter has not been referred to by IRD since.

[16] The next development can best be summarised in the following way. Mrs Johnstone’s relationship with her Union, and in particular, one of the field officers assigned to the case, became strained. Her access to her delegate was no longer possible. She and her Union had issues with the Department over the requests for information and Mrs Johnstone had an issue with the Union on its handling of her matter. Mrs Johnstone went to the Ombudsman on the disclosure of documents. Mrs Cotton continued to progress her investigation including dealing with the requests for information from Mrs Johnstone. The Union maintained its confidence in the field officers handling the matter. From 18 May 2004 Mrs Johnstone disengaged the Union representing her. She instructed a lawyer who immediately pursued requests for information from the Department, sought time to receive and consider the information and told IRD that Mrs Johnstone would remain at home until they could meet.

[17] A new issue emerged for the Department when Mrs Johnstone engaged her new lawyer. It related to confidentiality required under s 81 of the Tax Administration Act. The Department wrote on 21 May 2004 to Mrs Johnstone’s lawyer requesting a certificate of secrecy be signed. It also wrote on 24 May 2004 to Mrs Johnstone to remind her of her obligations under that Act. The Department would not provide information to Mrs Johnstone’s lawyer that compromised that

provision. When the certificate was not forthcoming for whatever reason the Department released censored versions of notes and documents relevant to the complaint.

[18] Another matter involved Mrs Johnstone's absence from work. The Department did not agree that she stay at home if she was well enough to work. Mrs Johnstone commenced sick leave from 3 December 2003. When that ran out she was given special paid leave, which she remained on until 19 May 2004.

[19] With Mrs Johnstone's permission the Department sought an independent opinion on her state of health. A report was provided by Dr Armand de Beer that stated:

"In summary, her mental state was within normal limits at the time of interview...

Mrs Johnstone describes how she had been affected by circumstances at work and appears to have suffered from an Adjustment disorder with symptoms of depression and anxiety disorder, which has now resolved."

[20] It was Dr de Beer's opinion that Mrs Johnstone should be granted a further period of 3 months special leave.

[21] The department decided the above conclusion required clarification from Dr de Beer who in further correspondence added:

"...I recommend that she takes leave 1-2 days at a time in a 3 month period, as required, to prevent a relapse and consolidate recovery".

[22] Mrs Johnstone's Union became involved in discussions on managing Mrs Johnstone's return to work. However, this was not resolved with the Union before it was discharged from representing her and her new lawyer was instructed to act for her. The Department made a decision that Mrs Johnstone was to return to work when it was satisfied that she was fit and well enough to resume work. Mrs Johnstone did not immediately return to work. Instead she remained away. The Department would not pay her and considered her absence was unauthorised until it was arranged she would return in August of 2004.

[23] The information was provided generally to Mrs Johnstone's representative and I accept the specific detailed letters involving Dr de Beer and the Department only came into Mrs Johnstone's possession during the Authority's investigation process.

[24] On 14 July 2004 Mrs Johnstone's lawyer challenged the Department's decision for Mrs Johnstone to return to work without the Cotton investigation being completed and referred to seeking assistance from the Employment Relations Authority if necessary and referred to references in the Department's HR manual in regard to constructive dismissal. It fell short of raising a personal grievance and given the content could have meant any employment relationship problem being raised, but that was not specified.

[25] The Cotton investigation on Mrs Johnstone's complaints about other employees continued during this time involving 14 people being interviewed over 29 identifiable complaints from Mrs Johnstone. Each person was provided with relevant extracts from Mrs Johnstone's complaint to enable them to reply and they were interviewed. Notes were taken and written up and relevant extracts of the interviews given to Mrs Johnstone to reply to. Mrs Johnstone's interviews were taped and the tapes transcribed. Responses where appropriate were elicited from the other employees, and Mrs Johnstone given an opportunity to reply in writing to any further relevant matters raised by them.

[26] There is an issue about when Mrs Johnstone received the Cotton report dated 18 June 2004. The evidence is that the Department through its in-house lawyer provided Mrs Johnstone's lawyer with the final report on 1 July 2004 but received no reply. It is interesting that Mrs Johnstone's lawyer wrote to the Department on 14 July and did not allude to the report. Furthermore the Department's same in-house lawyer wrote to Mrs Johnstone's lawyer in reply alluding to the report but not stating clearly that the Department had actually provided it. The situation remains unexplained. Mrs Johnstone says she did not receive the Cotton report until 30 August when Mr Scully wrote to her direct that she had had time since the report and its recommendations had been provided on 1 July 2004 to her lawyer to comment on. Mr Scully also informed Mrs Johnstone that he would not be taking disciplinary action on the one recommendation that related to her behaviour. I accept she received the Cotton report for the first time on 30 August 2004.

[27] From September 2004 Mrs Johnstone and her lawyer sought details of the interviews, notes and relevant documents that related to the Cotton report. The Department had a difficulty because Mrs Johnstone's lawyer, for what ever reason, still had not signed a certificate of secrecy, and the documents involved administration of tax matters and referred to clients that it says it had to protect.

[28] On 6 September 2004 Mrs Johnstone's lawyer wrote to the Department: it accepts the letter raised a personal grievance over the fairness and factual findings in the Cotton report.

[29] More details of Mrs Johnstone's challenge to the Cotton report were provided by her lawyer to the Department on 10 December 2004 but that fell short of formalising the raising of a personal grievance. In particular she disagreed with 3 matters. They were:

- Andrew Minto's wave statement made on 2 December 2003
- Murray Rickerby's alleged breach of privacy telephoning the applicant's husband at home on 8 December 2003
- Marcia Paurini's disclosure of counselling to another team leader.

[30] From this time Mrs Johnston completed the payment of significant legal fees to her lawyer: their relationship appears to have ended on 17 March 2005.

[31] Mrs Johnstone raised a further grievance on 12 March 2005 that related to the disclosure about the counselling matter. Mrs Johnstone wrote another letter dated 15 March 2005 raising a grievance against three other employees for alleged unsubstantiated derogatory comments that referred to her during the Cotton investigation:

- Screaming and yelling.
- A liar.
- A poor performer in her role and duties.
- A disruptive team member.
- A person who threatens team members.

[32] The Department replied to Mrs Johnstone directly and rejected her personal grievances being made against colleagues and seeking clarification on the type of personal grievance she was attempting to raise. The Department denied any unjustifiable disadvantage claim. The next development was that Mrs Johnstone filed in the Authority.

Determination

[33] The Department has challenged the jurisdiction of Mrs Johnstone' application in respect of grievances being raised in 90 days and or filed in the Authority in the 3 years required under the Act. I will deal with each of these as I have to. The Department has been able to successfully satisfy me that the above requirements have not been meet, as I will explain. I will also make some

observations on Mrs Johnstone's employment relationship problems she has tried to bring as grievances and explain why her claims do not meet the legal tests associated with an unjustifiable disadvantage. As I said earlier ordinarily if the answer to this issue was that the personal grievances were raised outside the 90 days and not filed in the Authority in the 3 years as provided for under the Act the matter would end there. However, where I have made such findings that the personal grievances are out of time I will comment on each of the claims as a matter of background and for completeness because there are claims relating to alleged breaches of health and safety and they may impact on Mrs Johnstone's claims in the other case heard by me.

[34] I am satisfied that Mrs Johnstone's employment relationship problem, while it has huge dimensions, essentially boils down to 3 conclusions arising out of the Cotton report (problems 1, 2 & 3). There are other matters (problems 4 & 5) and I will deal with those matters in turn. The first 3 matters are:

- Andrew Minto's wave statement-problem 1 from the SOP
- Murray Rickerby's alleged breach of privacy -problem 2 from the SOP,
- Marcia Paurini's alleged counselling statement made to another team leader-problem 3 from the SOP.

[35] Mrs Johnstone has also alleged that Mr Rickerby failed to follow the recommendation of her doctor on returning to work.

[36] It was accepted that Mr Minto made his statement on 2 December 2003. The matter was investigated and a recommendation made in the Cotton report:

"That Andrew be reminded that the use of analogies in circumstances like this can be problematic and should be avoided where possible".

[37] Mr Scully was responsible for determining what if any of the recommendations should be implemented. On the whole he decided to accept them. He had to balance the relative seriousness of the allegation with the mixed context and disputes over fact. I accept that it was open to a fair and reasonable employer to make a decision of his own based on the Cotton report, without having to litigate the whole matter again, especially where he had the benefit of the findings and conclusions of the report, including references to the interviews. He also genuinely believed that Mrs Johnstone had an opportunity to comment and reply on the one recommendation that he had to make a decision on her behaviour.

[38] Mrs Johnstone's letter of 11 February 2004 and her follow up letter dated 3 March 2004 are the only references to the possibility of her raising a grievance on this incident. Her complaint did not constitute raising a personal grievance. The complaint involved agreement to be involved in an internal investigation. I am satisfied Mr Wordsworth did not raise a grievance for Mrs Johnstone in terms such as to put the Department on notice that he was raising a personal grievance. He says that it was not his responsibility but would leave that to the national office of the Union. He referred to Mrs Johnstone only wanting to raise a grievance. I am satisfied that the Union did not raise a personal grievance with the Department in as much as it had instructions to follow the internal complaint process, which I would say was a proper course to follow, and I find it had genuine reasons for following that internal procedure before moving to any external procedures.

[39] Mrs Johnstone's letter dated 3 March 2004 did raise a personal grievance but was out of time in regard to her complaint about Mr Minto's action on 2 December 2003. Furthermore the grievance was filed outside the 3 years required to file in the Authority: 21 March 2007-s 114(6) applied. I do not accept that this is a matter to extend the time under s 221 of the Act on the reasons advanced by Mrs Johnstone. I do not accept that delays in getting to mediation and delays in obtaining documents are grounds to extend the time requirements or that as such they would be an impediment to file in the Authority in the required time. Mrs Johnstone's husband's involvement could have been pursued without relying on any delays in obtaining documents. She decided to keep him out of the matter for her own reasons. It is further not fair on an employer to face such an extension when the matter could have been reasonably filed earlier, in my opinion. I exercise my discretion not to extend the time.

[40] As an aside I comment that Mr Minto was unwise in making the comment that he made. However, Mrs Johnston was not disadvantaged because it was investigated as she requested with an outcome by way of a recommendation that involved Mr Minto receiving some guidance. He had no further direct input because Mr Scully moved to safeguard everyone's rights in the process of the Cotton investigation so as not to disadvantage anyone. Mrs Johnstone had little more to do with Mr Minto because she did not return to the secondment and had continuing employment with the Department in New Plymouth.

[41] It was not a disadvantage for the secondment to have ended early because Mrs Johnstone wanted to return to her family in New Plymouth, and her place of work was based in New Plymouth as a Maori Community Officer. I note that she is deeply upset about not being able to finish her

work and get adequate recognition for what she did but she was also a party to the managed return to work arrangements back in New Plymouth. Also she took sick leave.

[42] I now turn to the breach of privacy alleged against Mr Rickerby for phoning Mrs Johnstone's home address in New Plymouth on 8 December 2003 to enquire where she was. She alleged Mr Rickerby engaged her husband in conversation about her, without her knowledge or consent. The grievance was raised on 3 March 2004 by Mrs Johnstone. The matter has been filed outside the 3 years required by s 114 (6) when the grievance was filed in the Authority on 21 March 2007. For the same reasons given above I do not accept that this is a matter to extend the time under s 221 of the Act.

[43] As an aside I would say given that the matter was investigated, a finding made and a recommendation acted upon Mrs Johnstone has not been able to establish that she was unjustifiably disadvantaged by Mr Rickerby's action. The procedure was agreed, there was an independent decision-maker, an independent person conducting the investigation, and Mrs Johnstone had an opportunity for input, comment and reply to information about her. Also, the Department did not have to interview Mrs Johnstone's husband because of the finding it made on the information available to it at the time and that Mr Rickerby accepted that he did telephone her husband.

[44] The complaint was investigated and although Mrs Johnstone does not accept the outcome, the matter was dealt with, and Mr Rickerby was reminded of his obligations in respect of privacy matters. Mrs Johnstone's complaint was dealt with without any action taken in regard to her employment. She has not established there was any disadvantage with findings she believed did not go far enough.

[45] I now turn to the recommendation that Mr Scully considered about Mrs Johnstone from the Cotton report. Ordinarily Mrs Johnstone would expect a fair and reasonable employer would have given her an opportunity to have some input into the decision. However this matter can be distinguished from the general requirement of the law relating to personal grievances where that has to happen, because this was a complaint against other employees who have their separate rights and were involved in an internal investigation instigated by Mrs Johnstone. Mrs Johnstone's complaint was dealt with and followed an agreed procedure. It is not enough to object to the outcome and say it was unjustified simply because the findings did not satisfy her or go far enough in the form of any disciplinary action against other employees. The findings, conclusions and outcomes might not have been what she would have hoped for or even liked, and if they are wrong (as they might be)

then she could have been disadvantaged, but since the investigation was not unfairly conducted there can be no personal grievance.

[46] On the one recommendation in the Cotton report made against Mrs Johnstone in regard to her behaviour the Department did not take any action as recommended for disciplinary action, except to caution her. Mr Scully genuinely believed that Mrs Johnstone had the Cotton report, which he understood had been sent on 1 July to Mrs Johnstone's representative. He waited for any comments before proceeding to make a decision on the recommendation that related to her. His decision did not disadvantage her in her employment when the decision was made before she had any input because as I have said the decision not to apply the recommendation from the Cotton report was in her favour.

[47] On the next matter Mr Rickerby has also been accused in Mrs Johnstone's SOP of failing to follow the recommendation of a doctor's opinion involving her return to work. This can not be sustained.

[48] Considering the documents that the Department obtained from Dr de Beer alongside the general information provided by the Department to Mrs Johnstone's representative I am satisfied she was not disadvantaged, this is especially so given the continuing leave she had and her having no entitlement to be paid.

[49] Furthermore, I am supported in my conclusion because Mrs Johnstone was represented by experienced legal counsel, the parties were engaged in on-going discussions about her managed return to work and Mrs Johnstone did not contradict the advice the Department had received with any other medical opinion. She remained off work for another 3 month's anyway. The Department did not take any action on that. She continued on leave, continued in her employment and as the Department has adequately explained, in its discretion decided that further leave had to be without pay.

[50] The claim of personal grievance on this ground is also outside the 90 days required to raise a grievance. That is because Mrs Johnstone was advised of the Department's decision on 19 May 2004 to return to work and the grievance was not raised until she filed her statement of problem on 21 March 2007.

[51] There are other strands to Mrs Johnstone's application. The first is about the Department requiring her to work full duties without support. The Department explained her managed return to work as agreed. The claim was made outside 90 days.

[52] Secondly, she complained that she had to return to work without an agreed return to work plan and was refused more leave. This was explained by the Department in regard to her managed return to work. Thirdly, she never raised a grievance in regard to the Department's refusal to allow her more leave. Fourthly, her complaints about not being supported upon resuming work have not been previously raised.

[53] For completeness other grievances were referred to by Mrs Johnstone's lawyer in the letter dated 10 December 2004 but these also related to matters that had occurred in her deciding to make a complaint on 11 February, and in pursuing them now, they are clearly out of time, such as the matter of the alleged "informal dismissal".

[54] I have to add that Mrs Johnstone's complaint of February 2004 also included claims relating to the Department not providing a safe place of work and was in breach of its obligations on safety and health. Such claims have not been pursued as personal grievances (3 March 2004, 6 September 2004, 12 and 17 March 2005) except from 10 December 2004 and in general terms in the statement of problem filed on 21 March 2007. As such they are out of time and were not raised in the 90 day time requirement under the Act. For completeness Mrs Johnstone's application and evidence lacked detail and specifics of a sufficiently independent nature from any independent medical practitioners. Furthermore, any claim would be affected by the evidence of underlying performance issues between the parties, which I express no comment on except to say that it is entirely open to an employer to raise such issues, and any other causes for the medical issues raised by Dr de Beer and Mrs Johnstone's own doctor. I noted Dr de Beer's opinions but his information remained untested (as did Mrs Johnstone's own doctor's information) and no grievances were raised based on it. Mrs Johnstone has complained that she did not receive the full documents that Dr de Beer wrote. The Department was amiss not to provide these to her since at the time it was relying on his letter. I am satisfied that the information conveyed to her was sufficient to meet the reason why it was requested in the first place.

[55] During the Cotton investigation the comment was made by another worker (the subject of a complaint) that "*she's driving me nuts and I'm not going to let her put me into counselling like her last team leader*", in discussing Mrs Johnstone's complaints. That complaint has come about

because the other employee told Mrs Johnstone what her team leader had said in regard to Mrs Johnstone attending counselling. Again the matter was dealt with in the context of the Cotton investigation, where other workers were the subject of Mrs Johnstone's complaints and had to respond to a wide range of criticisms about their work and relationships. An employee cannot in making complaints necessarily be immune from responses when other workers are defending themselves and are being invited to reply on complaints about their behaviour. The responsibility of the employer is to ensure relevance is applied and I am satisfied that the Department endeavoured to do that. I will comment more about this point shortly. Mrs Johnstone had an opportunity to reply and the information was not withheld from her. The matter was raised by Mrs Johnstone when she learnt of the statement being made and she put it in her complaint dated 11 February 2004. She did not raise a grievance until 10 December 2004 through her lawyer that related to receiving the Cotton report. The grievance was clearly out of time.

[56] Mrs Johnstone has further complained about what she considered were defamatory comments made by other employees during the course of her complaints. I accept that the comments were made during the course of the Cotton investigation. They were found not to be material to that inquiry. They were not reproduced or made public by the Department. I agree that the Department can not be held responsible where other employees expressed personal views during the Cotton investigation that was instigated by Mrs Johnstone. In any case the matter came to Mrs Johnstone's attention in August 2004 and she has only raised them in March 2007. They are clearly out of time. None of the personal criticisms have been pursued by the Department against Mrs Johnstone.

[57] Finally Mrs Johnstone has alleged that the Department has not met its obligation to provide a safe place of work because of the findings that Messrs Rickerby and Minto and Ms Paurini were not sufficiently substantiated to justify disciplinary action and she was required to return to work contrary to the recommendation of her doctor. Both claims fail for the following reasons.

- The absence of appropriate and sufficient independent medical evidence from Mrs Johnstone that is linked to her medical circumstances and work, especially given the extent and scope of her employment problems and health generally that she talked about when she gave her evidence.
- There is insufficient evidence that the matters she has relied upon were the cause of any harm and foreseeable.

- Mrs Johnstone complained about other employees' behaviour in the first place that left it open to a fair and reasonable employer to investigate. Mrs Johnstone set the scope and extent of the investigation on the basis of her complaints.
- The Department granted her leave, she had sick leave, she had special leave and took leave without pay.
- The Department sought independent advice and when that was not clear it sought clarification and only acted upon informing Mrs Johnstone and her representatives.
- The Department took all practicable steps to protect Mrs Johnstone in investigating her complaints, provide her with leave, and acted on the recommendations when they were made in regard to other employees and team leaders.

[58] In reaching this point I dismiss Mrs Johnstone's claims. I know this determination will not be welcomed by her. I note that some of the interactions by the Department's employees with Mrs Johnstone involved the Department acting on the investigation report and cautioning them on appropriate comments and confidentiality when relationships were fragile and sensitive. It may be that those comments she has complained about were injudicious, unwise and unfortunate but they were I find not the cause of any unjustified disadvantage through the Cotton investigation. To establish harm, causation and to show that practicable steps were not taken to cause any harm involves a threshold that has not been met here. The cost of any trial and the emotional energy will be consuming if closure is not brought to this matter by Mrs Johnstone: closure could be expected with an internal investigation or an Authority investigation. I hope closure results from this determination.

Orders of the Authority

[59] Mrs Johnstone's claims are dismissed.

[60] Costs are reserved.

P R Stapp

Member of the Employment Relations Authority