

[3] This early optimism did not last long. As 2005 progressed Ms Ringrose found her workload to be unreasonable and the support she received to be inadequate. She claims that she routinely worked in excess of 60 hours per week. By mid November 2005 her health had deteriorated to the point where her doctor diagnosed “burn out” and advised her to take sick leave, which she did, meanwhile informing *BNT* in writing of her concerns about workload and her belief that it was the cause of her health problems.

[4] Upon her return to part-time work in mid December she found that her workload remained excessive. In addition she claims that from this time onwards she was subjected to unreasonable and bullying treatment from her managers Mr Brad Dansfield and Ms Trudy Davis. It is Ms Ringrose’s position that instead of taking all reasonable steps to ensure she did not suffer further harm, *BNT* hastened and aggravated the additional harm she suffered.

[5] As a result she says that she found it impossible to remain in the role. She resigned on 28 January 2006, after sixteen months of employment. Her general practitioner formed a view that she was suffering from a relapse of burnout and depression and referred her to a psychiatrist. She was seen in March 2006 and diagnosed with “*acute adjustment disorder with depressed mood*” in reaction to stress. She was not fit to return to work until May 2006. Income protection insurance covered her lost earnings after an initial four week stand down period.

[6] *BNT* says that Ms Ringrose’s workload was not excessive and that she received adequate support. It says that by January 2006 it had concerns about the performance of the NZ operation and about the way in which Ms Ringrose had been managing it. It says that these matters were brought to her attention in a proper manner and that there was no bullying or unreasonable treatment.

[7] There are three parts to Ms Ringrose’s employment relationship problem. The first is a claim that the harm to her health (which was evident from November 2005 onwards) was caused by workplace stress. It is argued for her that this harm was foreseeable and her employer failed to take all reasonable steps to prevent it, thus failing to provide a safe system of work. On the basis that the employer is liable for losses arising out of this breach Ms Ringrose claims reimbursement for the earnings

she lost during her sick leave. (Having already used her sick pay entitlement, Ms Ringrose used annual leave to cover this leave.)

[8] The second part is a claim that the resignation in January 2006 was a consequence of that breach and a further breach (associated with the conduct of her managers) which destroyed the necessary trust and confidence in the employment relationship. She argues that these were such serious breaches of her employer's duties to her that her resignation was foreseeable, and so amounts to a constructive dismissal. In relation to this part of the problem Ms Ringrose claims compensation of \$20,000.00 for hurt and humiliation arising out of the ending of her employment as well as the four weeks wages she lost during the insurance stand down period.

[9] In closing submissions Mr Campbell pointed out that the statement of problem alleged a constructive dismissal and claimed remedies for lost earnings and compensation for distress. He noted, correctly, that it did not include a claim for damages arising out of a failure to provide a safe place of work. However during my investigation meeting Ms Murphy confirmed that Ms Ringrose was claiming for losses sustained during her stress related sick leave in November–December 2005. I am satisfied that the respondent was not prejudiced in any way by the late advice of this additional claim. *BNT* was able to respond fully to it as all relevant evidence was captured by the investigation into the constructive dismissal claim. The claim for damages will therefore be determined here along with the claims relating to the constructive dismissal allegation.

[10] The third part of the employment relationship problem relates to a dispute about reimbursement of expenses. During her employment Ms Ringrose used her personal mobile phone for work purposes and paid the associated charges with her *BNT* credit card. She says that at the time of her resignation there were outstanding amounts for which she is entitled to be reimbursed. This claim has been met by a counterclaim. *BNT* says that the payments she put on its credit card were excessive and seeks repayment of these in part.

[11] Neither party has backed up the expenses assertions with enough evidence for me to proceed to make a determination. Both claim and counterclaim are therefore

reserved. Should either party wish to provide further evidence in support of the claim or counterclaim they should notify the Authority accordingly.

Issues

[12] The key questions for determination in “workplace stress” cases are what caused the ill health, whether it was foreseeable, and whether the respondent met its obligations to prevent it. The answers to these questions can be complex, especially where an individual has become unable to cope with a workload he or she once managed with ease, or that co-workers complete without difficulty. However, this is not such a case. The job Ms Ringrose occupied was a newly created one with no exact equivalent within *BNT*. She says it proved impossible because the workload was simply too great for anyone to complete even in the best of circumstances.

[13] This case therefore turns on whether the demands placed on Ms Ringrose were indeed excessive. I discuss the issues for determination under the following headings:

- i. Whether, in the period to 15 November 2005, Ms Ringrose carried an excessive workload which caused her health to break down;
- ii. Whether, in the period 12 December-28 January, ongoing workload pressures and/or the conduct of her managers caused her to resign;
- iii. Whether the health problems and the resignation were foreseeable and if so whether appropriate remedial action was taken;
- iv. Whether breaches of duty giving rise to constructive dismissal have been made out, and
- v. What if any remedies are to be awarded.

(i) **September 2004-November 2005: did an excessive workload cause the applicant's health to break down?**

[14] Ms Ringrose's induction consisted of one week in a top performing Sydney store and one on the road with a senior Area Manager in Australia. (The job of New Zealand "Country Manager" contained elements of the State Manager's role but was most similar to that of an Area Manager, who was typically responsible for 7-10 stores of which all or most would be located in the same town.) Mr Dansfield told me the aim of the induction period was to give Ms Ringrose a "*grassroots feel for the business at the shop front level*" including who the customer was and what *Bras n Things* was selling to them.

[15] Ms Ringrose did not feel that this was enough. In her role as Country Manager she was responsible for training all staff in bra fitting techniques and training store managers in a range of areas including detailed induction and security protocols. Unlike most Area and Store Managers, who were recruited from within the organisation, Ms Ringrose was not already familiar with the in house training programme and with company policies and protocols. She felt that her induction should have included an opportunity to complete all the training that she would later deliver. Instead, she was left to work her way through the manuals alone. Although they were clear and self explanatory this was not a brief task as they covered every aspect of business operation in minute and prescriptive detail. One, the recruiter's manual, was not provided to her for many months, and could not be viewed online because Ms Ringrose did not have access to the respondent's G drive.

[16] Between October 2004 and the end of December 2004 five stores were opened in New Zealand. Experienced managers came over from Australia to assist Ms Ringrose with the rollout and helped recruit for staff for the first two stores, although Ms Ringrose hired all staff after that. Ms Ringrose found this period hard work but positive and felt it taught her a lot about the business. Early in the New Year department heads met in Australia to address "teething problems" over I.T and stock delivery issues, and most of these were resolved by March or April.

[17] After this, the New Zealand operation was expected to be standing on its own two feet. Ms Ringrose soon started to think that her job was too much for one person.

In February she asked for an Area Manager to assist her. Mr Dansfield replied that from July an additional position was budgeted for but it was contingent on getting stores six and seven up and running first.

[18] Store six (the second for Hamilton) was opened in May and this time primary responsibility for the opening was left to Ms Ringrose. Throughout April, May and June Ms Ringrose continued to raise with Mr Dansfield her concerns about her workload. He agreed that she could start looking for an Area Manager, and candidates were interviewed during June and July. No appointment was made however. On reflection Mr Dansfield decided that it was still too soon and that a position at that level was not required. He favoured waiting a little longer, and creating a role of "Floating Manager" instead. This position would carry less responsibility and a lower salary. He also knew of a potential candidate for this position currently employed as a store manager in NZ.

[19] Ms Ringrose agreed that this person was very suitable for promotion however both the delay and the downgrading of the role were disappointments to her. She would not be able to delegate as much to a Floating Manager and in addition, where an Area Manager would have been trained in Australia, it would fall to her to recruit and train a new Floating Manager.

[20] From 8 to 21 August 2005 Ms Ringrose was on annual leave. After she returned she progressed the appointment of the new Floating Manager and on 29 September Rachelle Jackson was appointed to the position. Rachelle was viewed as a great asset in the NZ operation as she had worked for *BNT* in Australia prior to taking on the role of Christchurch store manager.

[21] Ms Ringrose was away for a further two weeks from 29 September until 10 October, this time on sick leave for abdominal surgery. She returned to several substantial areas of work. Ms Jackson (who had started in her new role on 4 October) needed to be trained and inducted. Preparations for the seventh store at Queensgate had to be completed. Earlier recruiting work had been wasted when the store opening had been put back (twice) and Ms Ringrose had to start again assembling a team for the store. Although Mr Dansfield did assist with this, it meant Ms Ringrose had to

duplicate work she had already done before the store finally opened towards the end of October.

[22] Also requiring Ms Ringrose's attention at this time was the rollout of a new information management system: "Store 21". Although someone was coming over from Australia to train the New Zealand staff in its use, Ms Ringrose was required to make the necessary arrangements for the training sessions and to arrange accommodation and travel for the trainer. The rollout had been delayed until after Ms Ringrose returned so that she could be on hand to assist as required.

[23] By the beginning of November it was also time to start recruiting the 15 or so temporary staff required for the Christmas rush. Finally there was still an expectation (at that time) that stores 8 and 9 would be opening within a few months. Ms Ringrose said that this was "hanging over everything" and increased her stress further.

[24] With the opening of the Queensgate store Ms Ringrose was responsible for seven stores: two in Auckland, two in Hamilton; one in Tauranga, one in Wellington and one in Christchurch. For most of her employment (until the Floating Manager was appointed) she was solely responsible for the following routine duties.

[25] Each of the stores was open seven days a week, with at least one late night. Ms Ringrose was required to visit each store personally once a fortnight, with a minimum of half a day on site at each location. (In the final weeks of her employment she was told that this should increase to a day in each location.) On each visit she was expected to inspect each store carefully to ensure precise compliance with detailed policies covering everything from store layout and product display to pricing and promotions. In addition she was required to supervise, coach and develop staff on sales techniques (modelling the right approach by serving in the shop herself) conduct bra fit training for all staff, and to recruit and induct new staff as required.

[26] In between visits, Ms Ringrose was required to monitor sales figures for each store on a daily basis. She was required to telephone each store manager morning and evening to check for problems, collect sales figures and debrief about the day's trading and any issues that had arisen. Each evening she would relay the day's trading figures to Australia.

[27] Drawing up weekly rosters for all stores, taking morning sick calls and finding replacement staff were also Ms Ringrose's responsibilities. Because wages and salaries were the biggest expense for the business, weekly staffing levels were finalised only after consideration of seasonal, weekly, and daily trading patterns. Apart from a small core (the store manager and usually one other in each store) staff were not full time and were not guaranteed regular hours of work.

[28] Other routine tasks which fell to the NZ Country Manager included (for all 7 stores):

- i. Checking timesheets and entering payroll data;
- ii. Handling disciplinary matters (although any final decision was made by Ms Ringrose's managers in Australia);
- iii. Preparing budgets (within guidelines);
- iv. Recording and checking stock deliveries;
- v. Overseeing banking;
- vi. Processing gift vouchers, and
- vii. Taking calls from store managers relating to problems ranging from customer service issues to staff matters and IT difficulties.

[29] Mr Dansfield confirmed his view that this routine work should have taken up seven days a fortnight, including four days out of town (to visit Wellington, Christchurch, Hamilton and Tauranga, with associated travel) a day at the Auckland stores and two days per fortnight on administrative tasks such as payroll and rosters. He believed that the remaining three days a fortnight would be sufficient for Ms Ringrose to complete any other work which arose. During 2005 such other work included two new store rollouts, the Store 21 roll out, recruitment and training, and stock takes.

[30] Initial scoping work for new stores was done by head office in Australia. Ms Ringrose's involvement at that stage was limited to visiting proposed locations and giving "on the ground" feedback as to suitability. Once premises were signed up however she took primary responsibility for organising the fit out and stocking of

each new store, which included everything from arranging telephone connections to pricing, tagging and hanging stock.

[31] In each of the three years prior to the New Zealand launch *BNT* had opened approximately 7 stores across the whole of Australia. The last time there had been a rollout on a comparable scale to that of the New Zealand launch was 12 years earlier when several stores had been opened in Western Australia within a relatively short timeframe. The rollout of a new store, let alone several in rapid succession, was not a frequent experience for Australian Area Managers.

[32] Recruitment was a particularly time consuming responsibility for Ms Ringrose, in part because of the sheer numbers needing to be recruited and in part because of the detailed and prescriptive nature of the recruitment process. For every 20 applicants ten would be phoned for a preliminary screening, 3 would be interviewed and finally, one hired and inducted. Where more than one position was involved (as for example where a new store was being opened) a group interview would be conducted after the phone screen however this would still be followed by an individual interview.

[33] In total Ms Ringrose personally recruited 75 staff. This included a full complement of staff for each of five new stores (approximately thirty people in total, each store requiring a full time store manager and, on average, about five others, mostly part-timers.) Over the Christmas periods two additional casual workers were also employed (on average) for each store. The rest (around 20 more staff) were required because of high staff turnover. Mr Dansfield held Ms Ringrose responsible for this high turnover. He told me that it was a result of her poor management. Ms Ringrose agreed that staff turnover was high (especially compared to Australian stores at the time) but attributed it to the fact that hours of work could vary. Most staff members preferred regular arrangements and in a buoyant labour market were able to find them elsewhere. In her evidence to me Ms Jackson also told me that she felt that the reason for the high turnover was that staff were not prepared to accept varying hours.

[34] Training these new staff members also took up a lot of time. All regular full and part time staff were required to complete bra fit training which was provided to

them in three evening sessions over two consecutive weeks. During her employment Ms Ringrose conducted at least one course of 3 nights' duration in each centre with at least one more each in Auckland and Hamilton. That is to say she ran at least seven courses of three nights each while she was with *BNT*.

[35] During her employment Ms Ringrose completed half yearly stock takes for five of the seven New Zealand stores. She conducted them with the help of up to four staff and under the supervision of a specialist from Australia. Each took approximately 12 hours to complete and was done overnight after the shop had closed for the day.

[36] Ms Ringrose also pointed out in her evidence that like anyone in a management role, she found that much of her time was taken up dealing with problems as they arose rather than with routine tasks. She believed that this was compounded by several factors: the fact that head office was located in Australia and operated on a two hour time difference, leaving her with less back up than colleagues there; the fact that she was running a new operation with inexperienced staff and the fact that there were some local differences (such as pricing differences and differences in the NZ barcode system) which the parent operation had not fully prepared for. Ongoing IT issues were a particular problem: she had no G drive, the computer was prone to crash and the Point of Sale material was not correct for the New Zealand situation.

[37] Except for the passing of trading figures to head office on Ms Ringrose's rostered day off, very little was delegated to store managers. Their responsibilities were limited to staff supervision and to maintaining store presentation and customer service. Everything else was escalated to the Country Manager, as the person responsible for executing policies and guidelines. Ms Jackson's appointment would eventually have eased Ms Ringrose's load but the benefit of this had yet to be felt at the time Ms Ringrose fell ill on 18 November.

[38] On 15 November Ms Ringrose spoke to Mr Dansfield by phone about her perspective on her problems. Later in the day she emailed him saying:

“As discussed these are my concerns with regards to the New Zealand operations where I need help.

- *Workload is ridiculous*
- *Continually exceeding 100 hours a week*
- *Working 7 days straight since my operation in end September and not being able to recuperate. Working everyday while on restricted recovery time*
- *Not being paid for hours worked or recognised with pay rise or even a review*
- *Not being able to have a weekend off since NZ roll out*
- *Need two days to collect mail, process payroll, clear emails and organise rosters – don’t get this as having to do so many roles*
- *Doing more rolls than other country/state managers in business*
- *Being asked to put forward my own contracts, absence of employment letters etc when we have an HR and L&D department*
- *Not getting proper support in NZ – only me for over a year and only just now being able to have a floaty manager [sic] with restricted duties*
- *No office/base to operate from*
- *Need someone else to cover store 21 as physically not possible to recruit around the country until Saturday afternoon and then get to Bayfair for Sunday roll out. Won’t be able to reference check any candidates, offer positions, and get all manuals/contracts out – as still struggling to find hours in the day to phone screen and book candidates in to the interviews whilst covering day to day business issues like today’s threats of stores power being cut off due to a continual lack of payment (third time) and no IT support during NZ trading times to name a few.*

I need to have some support now as I physically can’t keep going at this rate.”

[39] Mr Dansfield told me that he was unaware until this point how Ms Ringrose was feeling. He knew she felt the workload was high but did not know the hours that she claimed to be working or that it was affecting her health.

[40] He also told me he believed he knew what had led Ms Ringrose to raise issues with him. In early October 2005 while Ms Ringrose was away two New Zealand store managers used a confidential hotline to the Managing Director to pass on concerns about last minute provision of rosters, under rostering of busy days, rosters which did

not provide adequate breaks, and variable hours. They placed the responsibility for these matters with Ms Ringrose, complaining that they did not have enough autonomy as store managers and that she made decisions about team movements without consulting them. They also asserted that when they raised such matters with Ms Ringrose she could be abrupt, unprofessional and even rude.

[41] At the time Mr Dansfield felt that the operational issues raised (regarding rosters for example) were fixable and did not warrant performance management apart from follow up to ensure that they got done. He mentioned the issues to Ms Ringrose briefly without suggesting that they were serious in any way and without examples of what had been causing some of the concerns. Indeed some of what the complainants were concerned about (what they referred to as under-rostering and last minute provision of rosters) may in fact have been consistent with company policy.

[42] By early November both complainants had left *BNT*. Mr Dansfield decided to relay to Ms Ringrose their concerns about her personal style. Mr Dansfield told me that when he did, he *“could get no agreement from Ms Ringrose that her style and approach were a problem.”* Mr Dansfield believes that his raising these matters was what triggered the events of November 15 however Ms Ringrose disputes this and told me that it was only after she raised her concerns that he brought up the issue of the confidential complaints.

[43] Ms Ringrose told me that throughout her working life she had thrived on challenging roles which sometimes required long hours. She did not expect, or want, anything different this time. However, she had reached the point where she felt unable to carry on. On 18 November she saw her doctor, who advised two weeks complete rest. With Ms Ringrose’s consent, annual leave was used to cover her time off work.

Determination: issue (i)

[44] I have set out the requirements of Ms Ringrose’s role in some detail in order to show the sheer volume of work she was required to complete between the time she started at *BNT* and the point where her health collapsed in mid November 2005.

[45] I have concluded that the role was never scoped properly. The role was wrongly compared to that of an established Area Manager, when in fact it required Ms Ringrose to travel more, to work without management support on hand and (most significantly) to start a new operation from scratch with inexperienced staff. As Mr Dansfield and Ms Davis gave their evidence it became apparent that neither had ever added up the time it would take to complete all the responsibilities of the NZ manager in the first year of business.

[46] In particular I note their evidence that three days a fortnight were available to be spent on tasks outside the normal routine. Once consideration was given to the time required to complete each such area of work (including bra fit training, two new store rollouts, stock takes, recruitment of extra Christmas staff and general troubleshooting) it became obvious, in my view, that those tasks could not be completed by one person in three days a fortnight. In all the circumstances at that time, the number of stores to be managed was not reasonable.

[47] The employment of a Floating Manager may eventually have eased some of these problems. However it came too late to avert Ms Ringrose's burn out. The November crisis was just a couple of weeks after Ms Jackson started and her presence had yet to make an appreciable difference to Ms Ringrose's workload. It was, very simply, far too much for one person and I am satisfied that she is not exaggerating when she says she routinely worked in excess of 60 hours per week.

[48] I note that I do not share Mr Dansfield's belief that Ms Ringrose's email of November 15 resulted from hearing of the complaints of exiting staff. Hearing about the complaints may have helped to make her feel even more overwhelmed but she was already carrying an onerous burden and I see this as a greater factor in her difficulties.

[49] Nor do I see the after effects of the surgery as a primary cause of the burnout. Ms Ringrose had no previous experience of an illness of the type she suffered in November 2005. Although it can be inferred that her recent surgery may have made her more vulnerable to the effects of stress there was no evidence to link it to the November ill health. Like her general practitioner, I accept that her excessive workload was the cause of the November health problems.

(ii) 12 December-28 January: did ongoing workload pressures and/or the conduct of her managers cause Ms Ringrose to resign?

[50] Ms Ringrose was cleared by her doctor for return to part-time work on 12 December. Her doctor's instructions were that she could work 20 hours in the week beginning 12 December, 30 hours in the week beginning 19 December and full time thereafter, although she was not to exceed 40 hours per week.

[51] After her health broke down Ms Ringrose had sought legal advice and on 12 December her solicitors (Simpson Western) emailed BNT General Manager Cheryl Williams outlining her concerns about her workload, the inadequacy of the support provided to her and the effect of these factors on her health.

[52] While Ms Ringrose was away her duties had been split amongst several people. There was no hand over on her return to work. Mr Dansfield told me that by this time, however, some changes had already been made to Ms Ringrose's duties. When Ms Ringrose went on leave in mid November he organised for some aspects of payroll to be picked up by Australia and for store managers to prepare a first draft of their own store rosters each week. These arrangements were to remain in place after Ms Ringrose's return. The Floating Manager, Ms Jackson, was to be on annual leave from 9 January to 22 January but once she returned (and had completed her training) it was planned that some responsibility for recruitment, store visits, daily calls to store managers, and bra fit training could be delegated to her on an ongoing basis.

[53] He felt that these changes were sufficient to enable Ms Ringrose to complete her workload in 40 hours per week. He met with her on 16 December 2005, with their respective advisors present, and told her so. He refused to agree that her problems were a result of her workload. He told me he believed they arose from "*her own inefficiency and management style*" and during the meeting he referred again to the concerns he had passed on from the store managers in November.

[54] On 21 December the respondent's representative made a formal written response to Simpson Western's email of 12 December in which it was confirmed that the respondent did not accept that it had failed to provide adequate support to Ms

Ringrose in carrying out her role. The letter also stated that the respondent did not accept the claim that Ms Ringrose's illness was a result of any breach of duty on its part.

[55] About 20 December, issues arose about payment of staff at the new Queensgate store. Ms Ringrose told me that on 24 December she received a "very gruff" telephone call from Ms Davis concerning a team member who had not been paid while Ms Ringrose was on sick leave. Over the holiday period Ms Davis called Ms Ringrose again to say that she was waiting on the NZ timesheets from Ms Jackson. Ms Ringrose told me:

"This was something that had been agreed between Rachelle and Trudy while I was on sick leave and I had no knowledge that the team was to fax their timesheets to Trudy for approval and actioning... Trudy was not communicating with me...any more and I was not aware of systems that were being implemented...until Trudy criticised me for not having done anything about them."

[56] Mr Dansfield told me that he was concerned that Ms Ringrose seemed to think that all responsibility for payroll had been taken off her. He told me:

"Darlene seemed to have abdicated all responsibility for seeing that her staff were paid when we agreed to do the time sheets for her. I sent her an email on 29 December clarifying her duties in relation to payroll.

I was concerned whether I could trust her any more. I came to NZ and visited five stores. I sent a report to Darlene on 4 January 2006 raising issues about the management and profitability of the stores. Darlene replied on 5 January...I had little to do with Darlene after this as Trudy took over."

[57] In his report Mr Dansfield noted that New Zealand was approximately 22% below budget for the year to date. He identified the following concerns in the stores he visited as factors which could be contributing to the poor sales figures:

- i. An insufficient number of staff having completed training as bra fitting specialists;

- ii. High numbers of missed markdowns and failures to “red slash” prices of sale items;
- iii. Low stock levels for some product lines;
- iv. Certain lines being displayed wrongly;
- v. A promotional poster having been displayed too soon.

[58] The report emphasised the overriding importance of bra fit training and included a specific instruction to “*have this fixed before the end of January at the latest.*” He also stressed the importance of Ms Ringrose “*following up on the crucial points of the sales guidelines and all other company issued directives*” and noted that a key function for her was to be “*the driving force between the stores and head office to ensure that the stores have what they need to achieve the set targets.*”

[59] He also noted a wide range of problems with the newest store, Queensgate. He pointed out that this store should have received priority as it had a new team with very little training. He also noted that the store lacked an assistant manager and that there were “*9-10 applications sitting at the store ready to be called to arrange applications...can you please ensure that you call the applicants prior to getting down to the store, conduct a phone screen to see if you can arrange interviews for while you are down in Queensgate.*”

[60] Mr Dansfield concluded by reminding Ms Ringrose that she was accountable for these issues and advised:

“Can you forward a plan as to how you will tackle the above issues and breaches of company standards...you can email me your response...by Wednesday 4th January...in late January I will return to New Zealand to catch up with you and visit the stores to ensure that we have made the necessary improvements...Please keep free the dates 6th February and 11th February so that we can visit the NZ stores together to check that the standards have improved.”

[61] Ms Ringrose told me that after returning to work on 12 December she had put in place arrangements to travel to the Wellington and Christchurch stores on 20th and 23rd of December. However Mr Dansfield had cancelled these visits telling her that it was not economic to fly out of town whilst on reduced hours and that she was to “*stay*

local in Glenfield or St Lukes or the Hamilton region especially given the 4-6 hr per day work limit.”

[62] Ms Ringrose felt that she could not be responsible for what was happening at the distant stores when she had not been allowed to visit them since before her illness in early November and had worked only three shortened weeks thereafter. She therefore perceived that Mr Dansfield was now holding her accountable for matters which were beyond her control.

[63] She also told me that she questioned Mr Dansfield’s assertions about the sales/budget figures and noted that these had been unreliable in the past. By way of example she showed me an email to her from Mr Dansfield in April 2005 in response to a request that he check the budget for one store because it seemed high. He had replied: *“I think they have compressed an annual budget into the smaller year that you are trading in”*

[64] Mr Dansfield’s report was sent to Ms Ringrose 9.29pm on 4 January. Possibly as a result of its timing she did not comply with the instruction to provide her response the same day. She did however respond on 5 January with notes on the report, a revised January planner for herself, and a “Bra Fitting Specialists Update.” All were copied to Ms Davis. Ms Ringrose told me:

“Over the next two days I worked extremely hard putting things in place in order to comply with Brad’s deadlines. I felt at this time not only was I under the same pressure as previously...but...under more pressure given the tone of the email and the strict deadlines...”

[65] On or around 5th January Ms Davis took over Mr Dansfield’s role. Although Ms Ringrose knew that this was in contemplation she had not understood that it would be so soon. Certainly Mr Dansfield’s email of 4 January gave no indication of this.

[66] Ms Ringrose told me that on 6 January she worked a 12 hour day (contrary to her doctor’s instructions) before emailing her planner to Ms Davis. In it was set out a training programme designed to ensure that bra fit training would be complete for all stores in accordance with Mr Dansfield’s deadlines. Ms Ringrose also sent off all

associated flight and travel requests to Australia for booking. That evening she received a voicemail message from Ms Davis telling her to hold off on all travel requests for the following week. Ms Ringrose left messages for Ms Davis but was not able to speak with her that day. Meanwhile Ms Davis had left a further message for her advising that she was coming to New Zealand the following week and that Ms Ringrose should keep the Wednesday free to meet with her.

[67] The two women finally spoke on the telephone on 7 January. Ms Davis provided me with notes of this conversation (taken at the time.) The notes record *“Darlene was extremely irritated wanting to know why her travel had been cancelled”* and that she asked the purpose of the meeting Ms Davis had scheduled for the Wednesday. Ms Davis explained that the travel had been cancelled so that she could meet with Ms Ringrose. The notes (with Ms Davis referring to herself in the third person) go on:

“Darlene stated she did not understand why Trudy was doing this as she had planned to start all of the bra fit courses as Brad had requested. She then stated this was stopping her from doing her job.

Trudy then explained that the sales results in NZ were her main concern and these have dramatically dropped and this needed to be rectified... bra fitting courses alone were not going to [give] the results needed.”

[68] Ms Davis appeared unaware that Mr Dansfield had just asked Ms Ringrose to prioritise bra fit training, especially for the newest store. According to her notes, Ms Davis went on to tell Ms Ringrose that she should arrange to run bra fit courses in the Auckland and Hamilton areas instead. They conclude by saying that Ms Ringrose was abrupt and aggressive in tone and *“ended the conversation not happy with the outcome.”*

[69] Ms Davis told me that Ms Ringrose raised her voice, lost her temper, cut her off when speaking and repeated herself. Ms Davis said she was taken aback because she had never heard Ms Ringrose speaking like this before. Ms Davis discussed the situation with the General manager and decided that she should “counsel” Ms Ringrose about the way she had spoken.

[70] The meeting on Wednesday 11 January proceeded. The NZ sales results and Mr Dansfield's report were discussed and Ms Davis advised that she would now work out Ms Ringrose's planner with her so that she could be sure she was utilising her time efficiently. She advised that Ms Ringrose was not to deviate from the planner without talking to Ms Davis first. Ms Davis also said that Ms Ringrose was no longer to work from home. Instead she was to get a desk to put in the back room of one of the Auckland stores.

[71] Ms Ringrose declined to be "counselled" at this meeting, saying she wanted a representative present. The counselling took place on Saturday 14 January instead. Ms Ringrose was presented with a counselling form which had been prepared by Ms Davis before she left Australia "*with the help of HR.*"

[72] On the form under the heading "*Summary of Incident*" was a report of the telephone conversation of 7 January, with the comment "*Darlene displaying inappropriate business behaviour...*" Below this was a further heading, "*Summary of Discussion,*" which repeated a similar summary of the incident but included additional comments that Ms Ringrose used an agitated tone and displayed complete disrespect toward Ms Davis. It continued:

"I clearly gave Darlene a directive and she aggressively/unprofessionally challenged my authority.

In my 7 years of experience as a manager, I know that when a team member is doing a great job my visits are welcomed – so Darlene's unprofessional response is now an alarm bell to me and must be addressed accordingly...this is unacceptable behaviour from Darlene... and going forward this will not be accepted.

[73] Ms Davis read this all out to Ms Ringrose and then gave her the opportunity to comment. Ms Ringrose responded that she was not aggressive or unprofessional and did not accept the counselling. She said she wanted to know what Ms Davis's intentions were about the meeting and "*was unsure what was going on because of the changes.*"

[74] The final page of the form carried a section for Ms Ringrose's signature which stated: "*I understand failure to rectify this problem by the review date will lead to termination of my employment.*" This was amended to read "*will lead to second counselling*" and Ms Ringrose proceeded to sign it.

[75] Attached to the form was an agreement which was also signed by both Ms Ringrose and Ms Davis. It noted that Ms Ringrose was to authorise rosters after Store Managers had completed them and then fax them to Ms Davis each Thursday. Time sheets were to be checked and authorised and then faxed to Ms Davis on Monday mornings. It was also specified that store visits were to be for full days; "*not multiple stores in one day.*" (It is worth noting here that this would have required Ms Ringrose to spend five days a fortnight out of Auckland.)

[76] Although it was again discussed at the meeting, the agreement did not cover the issue of where Ms Ringrose was to be located to complete her administrative work. Throughout her time at BNT Ms Ringrose had worked out of her home. She had never been happy with this arrangement, finding that it increased the intrusion of her work into her personal life. Ms Davis shared the view that this was not satisfactory. She advised Ms Ringrose to clear out the back room of one of the Auckland stores and set it up as an office. Ms Davis told me that she authorised Ms Ringrose to purchase the necessary office furniture. Ms Ringrose denies this, saying that she had provided Ms Davis with information about the cost of various options but never received a response.

[77] Timesheets for the weeks ending 1 January, 8 January and 15 January show that notwithstanding statutory holidays, Ms Ringrose worked 52 hours, 52.5 hours and 57.5 hours respectively in these weeks. During the week that followed (16-21 January) Ms Ringrose was stationed at one of the Auckland stores covering for the manager who was on leave. Originally she had arranged for another store manager to take on this cover but Ms Davis overruled that plan and instructed Ms Ringrose to look after the store personally. Ms Ringrose told me that having to look after that store all week made it additionally difficult to complete the other tasks required of her.

[78] On the afternoon of 17 January Ms Davis emailed Ms Ringrose with her concerns regarding the performance of New Zealand BNT. Much of the memo focussed on the Queensgate store, despite first Mr Dansfield and then Ms Davis having cancelled arrangements for Ms Ringrose to visit that store. Ms Davis required Ms Ringrose to forward an action plan to rectify the areas of concern by 19 January. Ms Ringrose told me:

“Many of the comments were a repetition of Brad’s email of 4 January...I was frustrated that many of the points would have been completed had Trudy not told me to cancel all my travel plans on 7 January and had not required me to work in the Glenfield store....”

[79] The following week saw her down in Wellington, where she worked into the evening of Wednesday the 25th (including speaking to Ms Davis by telephone after 11.00pm NZ time.) She arrived back in Auckland late in the morning of the 26th feeling unwell: she described herself as being *“back to square one health wise.”* She saw her doctor who advised her to:

“Stop working until she was fully recovered and not return to work until she was well and until better working conditions had been negotiated.”

[80] On leaving the doctor’s rooms Ms Ringrose went back to her North Shore home to complete various administrative tasks including finalising job offers, thanking temporary summer staff who were about to finish up and sending contracts, manuals and payroll information to new recruits.

[81] While Ms Ringrose was doing these things, Ms Davis made an unscheduled visit to the Glenfield store expecting to find Ms Ringrose at work in the back room. When she did not, she tried to contact her and found at first that Ms Ringrose’s phone was on divert. When her message finally got to Ms Ringrose, in the late afternoon, Ms Ringrose rang back. Ms Davis made notes of the conversation which record as follows:

“I explained to Darlene that we had had a discussion over two weeks ago that she was no longer to work from home...Darlene did not reply...I had to ask “Are you still there?”

Darlene...replied “yes I still don’t have an office there as you did not get back to me about the desk etc.”

I explained that we had had that discussion regarding tables etc and ...she was told to get the \$100 one.

Darlene then yelled down the phone “you did not!”

[82] Ms Davis’s notes record that she responded that she was not going to get into an argument but that Ms Ringrose had been told not to work from home and had gone against this directive. Ms Davis advised that the matter would need to be dealt with further and concluded the conversation by saying she would be back in NZ the following week to do so. She then called back to ask Ms Ringrose to provide her with rosters and other work she expected her to have completed that day. At 6.20pm Ms Ringrose called in to the Glenfield store, picked up resumes of two job candidates and dropped off the rosters to Ms Davis.

[83] The 27th was Ms Ringrose’s rostered day off. On reflection Ms Davis decided that she wished to meet with Ms Ringrose at 9.00am on that day. At 7.06 pm on 26th she left a message on Ms Ringrose’s phone to say that *“we need to change [your] day off.”* Ms Ringrose replied that she had plans. Ms Davis therefore rescheduled the meeting for Saturday 28th (for which Ms Ringrose was rostered to work.) This was confirmed to Ms Ringrose by email of the following day, 27 January which noted:

“Following our phone conversation yesterday... at about 5.15pm concerning you not being at location specified on your agreed planner without notice to me of a change in your plans plus your unacceptable response to my phone enquiries and your adverse behaviour during the call, we have reason to believe that serious misconduct may have taken place. The company considers this matter very seriously. The company is also seriously concerned about what it considers to be ongoing serious performance deficiencies for a person entrusted with a key position. Specifically there has [sic] been recent correspondence and discussions ...regarding your not satisfactorily

accomplishing the requirements of your position, including specific directives issued recently...

[84] The email advised:

“You should be aware that the meeting is to be part of an investigation into possible serious misconduct and that your employment could be adversely affected by any result including the possibility of dismissal.”

[85] The meeting on 28th was short. Ms Davis told me:

“Darlene did not really respond to my concerns about where she was and why she had not contacted me except to say that she could not work out of Glenfield because she did not have a desk. She complained about me, said I lied and then resigned.”

[86] Ms Ringrose told me that by this time, she had lost all confidence in Ms Davis and felt she was playing games with her. She told me that when she had received the email the day before she felt overwhelmed and at the meeting on the 28th, she simply felt unable to cope.

[87] Until her illness in November she had believed that she was a highly valued staff member whose good performance was recognised by her employer. It had for example been specifically noted in the General Manager’s report for the 2004/2005 trading year that she had exceeded her annual sales budget for that period by \$168,850.00. She felt this attitude changed markedly after her solicitors wrote to her employer on 12 December.

[88] From January 7 onwards she felt that BNT were looking for ways to terminate her employment. She felt that she was being held accountable for the way the operation had been managed during her absences. In addition, contrary to what Mr Dansfield and Ms Davis were telling her in January, she understood that sales figures were holding steady at that time. The evidence I saw is consistent with that view. Sales figures for all “states” (New South Wales, Western Australia, New Zealand, South Australia, Victoria and Queensland) for the week ending 16 January 2006

showed New Zealand ranked third when compared to budget and first when compared to the same time the previous year.

[89] After her resignation Ms Ringrose applied for and was granted income protection insurance. As part of that process she saw a psychiatrist, psychologist and occupational therapist. She was diagnosed with reactive depression however with behavioural therapy she was successfully rehabilitated back into work. She claims four weeks wages being the stand down period for her insurance, and \$20,000.00 compensation for the hurt and humiliation associated with the termination of her employment. Ms Ringrose told me that the ending of her employment at BNT, with the associated ill health, was the worst thing that has ever happened to her.

[90] After Ms Ringrose left *BNT* the NZ operation went through a period of instability. Her replacement lasted only a few months and it was some time before another suitable manager was found. However by early 2007 further shops had been opened, bringing the total to nine, and an additional Area Manager role had been created.

Determination: issue (ii)

[91] Ms Ringrose clearly suffered harm in January 2006. The process required for the approval of her income protection insurance was a robust one and the associated medical evidence establishes that she suffered reactive depression which amounted to a relapse of the health problems she had suffered in November. This left her unable to cope with her job any longer. Indeed it proved sufficiently serious to prevent her from working for several months.

[92] The harm suffered, and the decision to resign, were direct results of the pressure Ms Ringrose faced at work between 12 December and 28 January. This pressure came on several fronts. For a start, the ordinary demands of the job continued as before. Although some relief was in prospect with Ms Jackson's appointment she was on leave for much of the time in question and had yet to complete her own induction, which had been interrupted by Ms Ringrose's illness.

[93] In addition, even before Ms Ringrose had returned to normal full time work extra pressure came on her from Mr Dansfield and then Ms Davis in the form of their reports. This extra pressure forced Ms Ringrose, once again, to work long hours at a time when she should have been recuperating and was completely unreasonable. Mr Dansfield and Ms Davis made serious and unfounded criticisms of her performance and that of the New Zealand operation, demanded remedial action within an impossibly tight timeframe, blocked her attempts to comply with their own instructions, and then made further criticisms regarding the same issues.

[94] The respondent witnesses were unable to provide any reasoned basis for their performance concerns. Sales figures presented to me in evidence indicated that New Zealand performance was not in fact below average for the organisation overall. Specific problems identified in stores around the country were for the most part outside Ms Ringrose's control arising as they did during her sick leave or time on reduced hours.

[95] It was particularly unreasonable to hold her responsible for shortcomings in the Queensgate store. It had opened only a couple of weeks before Ms Ringrose's collapse in November. In the normal course of events, a new store would have required extra attention to make sure it was up and running satisfactorily. Ms Ringrose was not there to give it that attention. After her return from sick leave she set out to do so (on two separate occasions) but both sets of travel arrangements were cancelled. She could not be held accountable for problems evident in that store over the Christmas/New Year trading period when she had been prevented from identifying them let alone fixing them.

[96] As well as the reports, Ms Ringrose was subjected to what I find to be unfair counselling sessions. I accept that it is more likely than not that Ms Ringrose was "unprofessional" in the tone she took with Ms Davis on 7 and 26 January respectively. In the circumstances, including the unreasonable pressure being placed on Ms Ringrose, I consider it hardly surprising that she did not respond positively to what Ms Davis had to say. Ms Davis knew that Ms Ringrose was recovering from a stress related illness and she recognised that her tone was uncharacteristic of her. In this context, Ms Ringrose's reaction should have been seen for what it was: a sign of

distress from someone who was struggling to cope. Instead, Ms Davis embarked on inappropriate and heavy handed disciplinary action.

[97] The notes of the conversation of 27 January also indicate that Ms Ringrose was genuine in her belief that she was waiting on authorisation to buy new office furniture. At most, if she had overlooked advice to the contrary, this was a mistake rather than careless disregard of instructions. To describe it as serious misconduct is out of all proportion to the gravity of the error.

[98] The extent of the demands placed on Ms Ringrose broke her health while the unreasonable nature of those demands destroyed her trust and confidence in her managers. I am satisfied that both the ill health and the resignation were direct consequences of the treatment she received from her managers at this time.

(iii) Were the ill health and resignation foreseeable and if so did the respondent take appropriate remedial action?

[99] The respondent's position is that the first breakdown in Ms Ringrose's health was not foreseeable. Although it is not disputed that she repeatedly told him that her workload was too great and she required help, the respondent notes that she did not tell him that her health was affected by this at any stage prior to November 15th. In addition the respondent notes that in an email on her return from holiday (22 August) she advised one of her Australian managers;

"I'm really relaxed and ready for all that BNT can hit me with.

[100] For Ms Ringrose, Ms Murphy argues that the workload was so grossly excessive that it placed an unreasonable demand on Ms Ringrose. She argues that like the third claimant in the English Court of Appeal case *Sutherland v Hatton [2002] EWCA Civ 76* the way in which Ms Ringrose was treated and her complaints about it made the injury to her health foreseeable.

[101] I have found that the workload was indeed excessive and I have found that Ms Ringrose asked for additional help. I also accept that if Mr Dansfield did not actually realise that she was working long hours, he should have been able to work this out.

However I do not accept that it follows that he should have known her health was at risk. Ms Ringrose herself did not have this insight until a short time before her collapse in November 2005, perhaps partly because she was a robust person who normally enjoyed good health. As her August email shows, three months before her breakdown she still felt that she was coping. She had complained to Mr Dansfield, as she was entitled to, because her job dominated her waking hours and she wanted her life back. She did not however give him any inkling that her work was causing her health to suffer. I do not accept that it was foreseeable prior to November 15th that her work posed a risk to her health. It is therefore unnecessary for me to go on to consider whether the respondent took appropriate remedial steps to address the risk at that time.

[102] The situation after 15 November is very different however. Ms Murphy has argued in submissions that there can be no dispute that the injury suffered by the applicant in January 2006 was foreseeable. I agree. On 15 November Ms Ringrose gave very clear and explicit information about her situation. A few days later this was backed up with a medical certificate and medical advice that Ms Ringrose take time off on sick leave, with a graduated return to work. I accept that notification was clearly established and conclude that it was clearly foreseeable that if reasonable steps were not taken by the respondent with respect to the applicant's conditions of work, then she would suffer further harm.

[103] The respondent had attempted to alleviate Ms Ringrose's load with the appointment of a floating manager. I have already noted that this came too late to avert the ill health Ms Ringrose sustained in November 2005. I further conclude that it did nothing to prevent her second breakdown in January 2006. This was because in the intervening period it had not yet been possible for Ms Ringrose to utilise the floating manager to full capacity in a systematic way. Ms Jackson had spent most of her time since her appointment covering for Ms Ringrose's absences, after which the two women were at work together for only one full week before Ms Jackson went on leave (leave which had been confirmed before Ms Ringrose fell ill in November.)

[104] Nor were adequate arrangements put in place to address the need for additional support during Ms Ringrose's first two weeks after her leave, when she was on reduced hours. There was no handover and no evidence of any ongoing assistance

for Ms Ringrose during this period. Mr Dansfield instructed her not to undertake certain out of town travel but then proceeded to hold her fully accountable for out of town stores she had been unable to visit. A very few tasks (such as payroll) had been delegated but Ms Ringrose continued to retain overall responsibility.

[105] Finally as already discussed Ms Ringrose was subjected to additional pressure to raise the performance of the New Zealand operation and was held accountable for matters outside her control. As Ms Murphy has argued, rather than put in place appropriate remedial action to prevent further harm to Ms Ringrose, the respondent imposed additional and unreasonable demands on her.

[106] In short, the ill health and resignation were foreseeable and the respondent did not put in place appropriate steps to prevent them.

(iv) Was there a constructive dismissal?

[107] The respondent failed to take reasonable steps to address a foreseeable risk of harm to Ms Ringrose. This resulted in the second collapse in her health which in turn contributed to the decision to resign. This was in my view a serious breach of the duty to provide a safe system of work.

[108] In addition between 4 January and 28 January her managers subjected her to unreasonable and unjustified treatment of a type which destroyed her trust and confidence in the respondent as her employer. This was a further contributing factor in the decision to resign.

[109] Both matters were serious breaches of duty on the part of the employer. I am satisfied that either one would have been enough to establish a claim for constructive dismissal. The applicant's claim of unjustified dismissal has been made out.

(v) Remedies.

[110] Ms Ringrose claimed loss of earnings for the period 18 November to 25 December (being losses arising out of the injury in November.) For the reasons already set out this claim fails.

[111] Arising out of the unjustified dismissal, Ms Ringrose also claims pay in lieu of notice (two weeks) lost earnings (four weeks) and \$20,000.00 compensation for hurt and humiliation.

[112] Ms Ringrose was a very impressive witness. She struck me as a calm, competent and reasonable person who normally took most challenges comfortably in her stride. It was a serious blow to her self esteem that she had not been able to do so on this occasion. I accept her evidence that this was a very distressing experience for her. In all the circumstances I consider her claim for compensation for hurt and humiliation to be a reasonable one, and consider it should be awarded in full. She is also entitled to the earnings she lost as a result of the dismissal.

[113] **I therefore order the respondent, *BNT*, to pay to Ms Ringrose:**

- **\$20,000.00 pursuant to s.123(c) (i) of the Employment Relations Act;**
- **Two weeks pay in lieu of notice;**
- **Four weeks wages pursuant to s.123 (c) (ii).**

Costs

[114] The issue of costs is reserved. If it is required that the Authority determine the issue submissions should be made within 28 days of the date of this determination.

Yvonne Oldfield

Member of the Employment Relations Authority