

Centre that there was some friction because of Ms Breeze's perception that she had not been part of these successful developments.

[5] Whether that perception is true or not is one thing, but it is clear from the evidence that so far as Ross Information Centre was concerned, Ms Breeze's attitude to her work changed when she returned to duty after parental leave. Indeed Mr Handisides went so far as to suggest that he formed the view that Ms Breeze did not wish to be there. Mr Handisides was the Chairman of the Committee which provided governance of the employer and accordingly he, while a volunteer, had a day-to-day working relationship with the Centre Manager, Ms Breeze.

[6] It is common ground that on Ms Breeze's return from parental leave, there were discussions between Mr Handisides and Ms Breeze about a number of minor issues. Ms Breeze, in her evidence, referred to issues about pricing stock in the shop and being banned from bringing both her dog and her baby to the Centre. Mr Handisides acknowledged that he did address those issues. In relation to the dog, Mr Handisides said that when Ms Breeze returned to duty he decided to confront the issue of the dog which she had developed the habit of bringing in to the Centre. Mr Handisides said that the dog was inclined to snap and bark at people and therefore was a health and safety issue and he decided to ask Ms Breeze not to bring the dog to the Centre any more. As to the baby, Mr Handisides denied absolutely that he had forbidden Ms Breeze to bring the baby into the Centre and indeed the baby was brought into the Centre every lunchtime so that Ms Breeze could feed the infant. What Mr Handisides said that he forbade was Ms Breeze working with the baby carried on her chest as he thought that would be unsafe as well.

[7] Whatever the detail of these early exchanges, it seems clear from the evidence of both parties that those matters were resolved reasonably amicably and it was not until the end of that calendar year that matters took a turn for the worse.

[8] Immediately prior to Christmas, Ross Information Centre received contact from a Chinese tour group which inquired about whether the Centre would be open on Christmas Day. Ms Breeze responded to that inquiry in the negative and as a consequence of that it appears that the Chinese tour group decided not to visit Ross on Christmas Day. However, Mr Handisides became aware that these events had taken place through another staff member who also volunteered to work on Christmas Day if that would be of assistance. Mr Handisides told me that he was *pretty clear* that

Ms Breeze had told him that the Chinese tour party was not running on Christmas Day when in actual fact the position was that it was not coming to Ross on Christmas Day because it had been told that the Centre would not open on Christmas Day. In the result there was no damage done because, after it became clear that there was a staff member prepared to work on Christmas Day, the arrangements were restored such that the Chinese tour group did come to Ross on Christmas Day and the Centre was open to receive them.

[9] Mr Handisides' objection to these events was that he felt he had been misled by Ms Breeze who he felt reasonably certain had told him that the group was not coming but missed out the critical information that it was not coming because the Centre was not open. As Ross Information Centre is to some extent anyway revenue-based, missing out on a tour group, even on Christmas Day, was of some significance to the employer.

[10] Mr Handisides decided to write a letter to Ms Breeze on behalf of the Committee of the employer and that letter is dated 28 December 2008. It effectively contains three main parts. The first is a complaint about Ms Breeze's alleged failure to give Mr Handisides accurate information about the Chinese tour group and this part of the letter culminates in a first written warning.

[11] Then Mr Handisides goes on to deal with the second area of complaint which can best be summed up as a criticism of Ms Breeze's attitude. Again, this section of the letter concludes with a second written warning. In this section of the letter, Mr Handisides refers to the fall in the esteem with which Ms Breeze is held as the Centre Manager and notes complaints from other staff about Ms Breeze's behaviour. Mr Handisides gave me evidence of the attitude of other staff at my investigation meeting. He quite properly made the point in his evidence that he was unable to deal with individual grumbles from staff if they were not prepared to go on the record and make formal written complaint, but he felt obligated to try to deal with the complaints that he had received (albeit informally) by referring to them in his communication with Ms Breeze.

[12] The final portion of the letter concerns a series of 10 numbered points which Mr Handisides suggests Ms Breeze might agree to which would essentially go some way to restoring the equilibrium that had previously existed. Ms Breeze was offered two options in progressing the matter: one was to engage with Mr Handisides directly

or through a third party; and the other was to engage with the whole Committee of the employer.

[13] Mr Handisides told me in his evidence (and I accept) that the immediate response from Ms Breeze to his 28 December 2008 letter was to seek to engage with him directly to resolve the outstanding issues. Then he says that within a matter of days Ms Breeze had reverted to him and indicated that she would rather meet with the whole Committee and so Mr Handisides managed to organise a committee meeting for just that purpose on 15 January 2009. Mr Handisides pointed out (and I accept) that given the time of year, he was concerned at the possible difficulty of trying to organise a meeting during the holiday period but in the result was able to do it.

[14] Mr Handisides told Ms Breeze on 6 January 2009 that he had arranged for the Committee to meet on the following 15 January. Then Ms Breeze's evidence is that she rang Mr Handisides first on Friday, 9 January 2009 and then again on Sunday, 11 January 2009, and indicated that she did not want to meet the Committee after all but wanted to deal exclusively with Mr Handisides. Her evidence is that she clearly gave Mr Handisides that message and while she seems to rely on both telephone discussions for conveying that intelligence, given the length of time the calls actually took and the general agreement about the bulk of the subject matter between Mr Handisides and Ms Breeze, I am satisfied that the only call that can be relevant is the second one, that is the one on Sunday, 11 January 2009.

[15] There is no dispute from Mr Handisides that both of these calls were received by him; what he disputes is that he ever got the message that Ms Breeze had again changed her mind and now wanted to deal only with him. Both parties agree that the calls were of short duration (the first more than the second) and while there is general agreement about what was discussed, there is no agreement from Mr Handisides that he received the message that Ms Breeze had again changed her mind about the procedure that she wanted to adopt.

[16] In the portion of the week following those exchanges, the two principal protagonists worked together with Mr Handisides calling at the Centre regularly as was his custom. He points out that at no time during those visits to the Centre did Ms Breeze seek to clarify or re-emphasise the fact that the meeting of the Committee called for 15 January 2009 was not required.

[17] Even more curiously, Ms Breeze told me that she spoke to one of the other Committee members (Ms Pat Lister) who she says was clear that the meeting of the Committee was still going ahead and yet despite that intelligence prior to the meeting of 15 January, Ms Breeze took no further steps to clarify her position.

[18] In any event, the meeting took place: Ms Breeze did not attend, apparently in reliance on her earlier intimation to Mr Handisides that the meeting was no longer necessary. The Committee then wrote a further letter to Ms Breeze dated 16 January 2009 in which I think it fair to say the employer *ramps up* its proposals no doubt with a strong sense of frustration that, for whatever reason, they had, as volunteers, met together to consider a particular staff issue and, from their perspective, not even had the courtesy of the staff member concerned turning up or presenting an apology.

[19] This second letter makes clear that the Committee wanted to continue to work with Ms Breeze but that it thought that she needed to develop her skills in the managerial role and the letter lists eight points which are described as a *retraining package* which includes the 10 points from the earlier letter of 28 December 2008 but adds another seven new points which effectively describe a process for making some modest changes to the way that the organisation was managed. More importantly the letter proposes there be regular meetings between Ms Breeze and Mr Handisides precisely as Ms Breeze said she wanted when she gave Mr Handisides (she says) her last word on the subject. The letter concludes with a clear intimation that unless Ms Breeze is prepared to accede to the proposals delivered in this communication, the Committee would likely regard her as not wanting to continue in its employment.

[20] That letter was delivered by Mr Handisides to Ms Breeze at the Centre in the early afternoon of 16 January 2009. While it seems Ms Breeze did not read the letter immediately, Mr Handisides did comment that, as she would see when she read the letter, he was disappointed she had not attended the meeting of 15 January 2009 (the previous night). Mr Handisides said that he then got a verbal tirade from Ms Breeze in which she said to him that:

... because of her two phone calls to me on 9 January 2009 and 11 January 2009 the meeting had been cancelled. I [Mr Handisides] tried to explain that this was not the case. ... Her face was red and contorted her eyes were bulging and her yelling had reached an hysterical pitch.

[21] Mr Handisides' evidence is that he tried to extract himself from the situation by telling her that he was not prepared to discuss the matter any further and he turned and walked out the front door of the Centre. Mr Handisides describes crossing the road opposite the Centre being pursued by Ms Breeze. He says that the person who lived in the house opposite another committee member Ms Maitland could hear Ms Breeze shouting despite the fact that she had her doors and windows closed at the time. Ms Breeze accepts that there was an altercation but she clearly does not regard it as colourful an event as Mr Handisides remembers. It is, however, common ground that there was an altercation and it is equally common ground that at no time did Ms Breeze apologise to Mr Handisides for her behaviour or seek to in any way explain or even comment on the events of that day.

[22] Mr Handisides told me that he was visibly upset and shaking as a consequence of the altercation with Ms Breeze, so much so that he was not able to drive up to Hokitika that afternoon.

[23] The following day, Mr Handisides wrote another letter to Ms Breeze in which he referred to the *element of confusion* about the meeting of the Management Committee on 15 January 2009 and indicated that a further meeting had been set for 22 January 2009 at which the issues would be canvassed again. The letter also makes clear that Ms Breeze was offered four days off on full pay to enable her to prepare for that meeting. Finally, the letter attached an earlier communication from Mr Handisides to the Committee dated 13 January 2009 in which Mr Handisides offered to resign as chair given the predicament the Committee found itself in. Finally, I note that in an addendum to the 17 January 2009 letter, Mr Handisides makes the important observation that any proposal that Ms Breeze might have will need to be considered not just by him but by the full Committee.

[24] The 22 January 2009 Management Committee proceeded with Mr Handisides absent as he had undertaken to be until after Ms Breeze had made her presentation and left the meeting. Ms Breeze attended with a support person whose evidence was that Ms Breeze's representations were well received. That also was Ms Breeze's evidence. However, the Committee took a different view and was disgruntled about Ms Breeze's refusal to answer most questions and her conviction that simply making a statement to her employer was sufficient to resolve the difficulty.

[25] In the result, once Ms Breeze had had her opportunity to address the Committee, Mr Handisides attended the meeting, the Committee deliberated and by a unanimous vote chose to dismiss Ms Breeze on notice. The vote was unanimous in the sense that all of the members of the Committee who voted, voted to dismiss. Mr Handisides did not vote and neither did staff members. That decision was conveyed immediately to Ms Breeze at home about 10pm that night in order to reduce any embarrassment to her of turning up at work the following day and being told of the decision then.

[26] Ms Breeze subsequently sought a reconsideration of that decision by letter dated 25 January 2009 and by letter dated 27 January 2009, full details of the reasoning for the dismissal were conveyed by letter from Mr Handisides to Ms Breeze.

[27] Matters having not been resolved by mediation between the parties, the dispute comes to the Authority for determination in the usual way.

The issues

[28] The fundamental question for determination is whether the decision of the Management Committee of the employer was a fair and reasonable one having regard to the test the Authority is required to apply, as that test is set out by s.103A of the Employment Relations Act 2000.

[29] In order to address the fundamental question though, it is necessary to answer the following factual questions:

- (a) How did Ms Breeze respond to the employer's first letter?
- (b) What happened on 16 January 2009?
- (c) Was the decision made on 22 January 2009 fair?

How did Ms Breeze respond to the employer's first letter?

[30] I have already described at length the contents of Mr Handisides's letter of 28 December last. He delivered that to Ms Breeze by common consent on 31 December 2008. He says, and I accept, that Ms Breeze first of all wanted to deal

only with Mr Handisides and he was happy to accommodate that; that was clearly one of the options in his letter.

[31] Then, within short order, Ms Breeze changed her mind and said she wanted to meet the whole Committee. Mr Handisides accommodated that request by organising a meeting of the Committee, notwithstanding the time of year. The meeting was organised for 15 January 2009. It is common ground that Mr Handisides told Ms Breeze of that meeting on 6 January 2009. Mr Handisides has a diary note confirming that was the date that he told Ms Breeze of the meeting date and she does not contest that evidence.

[32] Then, there are two telephone discussions between the two principal protagonists, the first on Friday, 9 January 2009 and the second on Sunday, 11 January 2009. By all accounts, both discussions were of short duration. Mr Handisides filed with the Authority a telephone log of these two calls which is based on his diary notes of each call. The first call appears to have been just to set up a subsequent discussion. Mr Handisides told Ms Breeze that he could not talk to her then as he had spent the afternoon at the beach with his grandsons and was *buggered*. He asked if they could meet the following day (Saturday, 10 January 2009). Ms Breeze resisted that suggestion because she was going away for the weekend and it was agreed that she would ring when she got home. Ms Breeze accepts that record of the first call so clearly nothing of importance was discussed in it.

[33] On the second call which took place at about 2.45pm on the Sunday afternoon, Mr Handisides declined to deal with the issues then saying that he was *burned out* by the issues having spent all of his Christmas break worrying about the situation and that he would see her at work the following morning (Monday, 12 January 2009). Mr Handisides said that while he was trying to tell Ms Breeze this:

... she insisted to talk over me. Firstly about having a two weekly meeting with me and secondly trying to explain her part in the Christmas Day situation (involving the Chinese tour group) ...

[34] Again, Ms Breeze says this is an accurate recollection of the conversation except that she also said that she wanted to deal with Mr Handisides direct and not deal with the Committee. It follows that she wanted the meeting set down for 15 January 2009 aborted.

[35] Whatever Ms Breeze said, I am absolutely satisfied that Mr Handisides did not hear the message about the cancellation of the Committee meeting. It is common ground that she suggested a two weekly meeting between the two of them to work on the management of the Centre and that suggestion was subsequently incorporated in Ross Information's later proposals to her.

[36] Whatever Ms Breeze said to Mr Handisides, I am satisfied that the onus is on her to ensure that the message she says she transmitted was in fact received. She had ample opportunity to satisfy herself that this latest change in her position (and this was the third change in a very short period of time), had been adequately communicated to the employer and that the necessary arrangements for the cancellation of the Committee meeting were in place. She, after all, was the Manager of the Centre and one would have thought that she had an obligation to be absolutely clear with her employer about what she wanted. The ball was clearly in her court. The employer had made proposals and suggested two courses of action, and then sought her response and a selection of one or other of them. In that response, she changed her mind three times and on the third occasion I am satisfied that she did not take all proper steps to ensure that the employer knew what her requirements were.

[37] This conclusion is supported by the very short length of time that the second conversation with Mr Handisides would have involved. By both accounts of the two witnesses, the conversation was very quick and it is clear from Mr Handisides' evidence and from his diary note that he anyway was trying to end the conversation because he had had enough of the issue and wanted to deal with it during the working week. That in itself should have put Ms Breeze on notice that she had an obligation to be absolutely explicit about her requirements.

[38] What is more, Ms Breeze spoke to one of the members of the Committee (Ms Pat Lister) who told her that the meeting was still going ahead. Ms Breeze quarrelled with her and said that that was not the case and the Committee member in question rang Mr Handisides who said that as far as he was aware the meeting was still proceeding. Again, one would have thought that Ms Breeze would have taken steps to satisfy herself that she had got the message through once she was told by a member of the Committee that the meeting was still going ahead.

[39] Accordingly, my finding is that Ms Breeze had the onus of communicating her wishes to the employer and that she failed to do so adequately. Both parties to an

employment relationship have the obligation of being assertive and communicative in dealing with the other party and in the particular circumstances of this case, it seems to me axiomatic that the obligation was with Ms Breeze to satisfy herself that her employer knew what her requirements were. She had ample opportunity to do that and in my opinion she failed to do it appropriately. Given the fact that she was alerted to the fact that the meeting was still proceeding (when she spoke to Ms Lister), she could easily have spoken again to Mr Handisides who after all was in the Centre on a daily basis. Ross is not a large community and it seems quite extraordinary that Ms Breeze would not have made absolutely certain that her requirements were being met by the employer.

What happened on 16 January 2009?

[40] I have already discussed the events of that day in some detail and I do not propose to repeat what I have already said. I am satisfied that Ms Breeze behaved inappropriately to her employer and at no stage after that event did Ms Breeze take any steps to put matters right. At my investigation meeting, Ms Breeze seemed to accept that she did shout at Mr Handisides and yet she makes no comment about that matter in any of the subsequent material, either the material filed with the Authority or indeed the material that she provided to the employer.

[41] It is difficult to see this as a matter that has been just overlooked. It seems more that it is a matter that has been avoided because it is inconvenient. Mr Handisides described the events vividly and while Ms Breeze does not accept the event was as dramatic as Mr Handisides' description suggests, she does not deny the events happened, nor does she quarrel with the possibility that she was overheard by people across the road shouting at her employer. Mr Handisides was clearly shaken by the events, so much so that he felt unable to drive a return journey from Ross to Hokitika that afternoon. Mr Handisides argued that the behaviour of Ms Breeze on that occasion would have justified summary dismissal and might have enabled him to lay an information with the Police for disorderly behaviour.

[42] I am satisfied on the evidence before the Authority that this was a significant event and that Ms Breeze has, at the very least, tended to minimise the importance of this incident by failing to refer to it and failing to address it in her engagement with the employer. If she had addressed the issue, expressed regret for her behaviour and sought to explain how confused she was when she was accused of deliberately

missing the Committee meeting, there might well have been a more tolerant response from the employer.

Was the decision made on 22 January 2009 a fair one?

[43] I have reached the conclusion that, applying the s.103A test to the factual matrix in the present case, it was available to a fair and reasonable employer to dismiss an employee in the particular circumstances that applied at the time that Ms Breeze was dismissed. It seems to me inevitable that any fair and reasonable employer would find that Ms Breeze was grossly insubordinate at the highly intemperate discussion between herself and Mr Handisides on 16 January 2009 and that factor clearly weighed with the employer so as to overbalance the apparent commitment it had extracted from Ms Breeze who had accepted the various numbered points that the employer had sought to get agreement on.

[44] It is true that Ms Breeze agreed to accept all of the employer's proposed retraining arrangements and the various other remedial points that Mr Handisides had spelled out in his various items of correspondence, but the Committee appears to have doubted her bona fides because of her behaviour at the meeting that she did attend on 22 January 2009 and because of the behaviour when she quarrelled with Mr Handisides on 16 January 2009.

[45] At the meeting of the Management Committee on 22 January 2009, the Committee members told me that Ms Breeze simply attended with her support person, presented her statement in which she committed herself to accepting all of the employer's points, but she refused to engage with the Management Committee (her employer) to discuss the future of the employment relationship.

[46] That, coupled with the altercation on 16 January 2009 which she did not even refer to, left the Management Committee with the conviction that she lacked sincerity in her purported acceptance of the employer's plan.

[47] It seems clear from talking to the Committee members that they doubted Ms Breeze's bona fides. Certainly they accepted that she had bought into the employer's plan for retraining and the like but the Committee felt that Ms Breeze lacked sincerity in that regard. One member told me Ms Breeze read out her statement, answered one question and then refused to answer any others and that she "didn't make a good impression". Several members said words to the effect that "she never accepted she

had done wrong". The prevailing impression from the Committee was that she minimised the issues and took no real responsibility for them. The committee found no evidence of contrition from her, no sense of an apology for her abuse of Mr Handisides (which a member of the Committee had overheard despite being across the street in another building) and no acknowledgement of her poor relationships with the other staff members.

[48] It is clear that, despite Ms Breeze and her support person believing the meeting had gone as well as could be expected, the Committee had not been impressed with Ms Breeze's performance at the meeting which clearly failed to satisfy the employer that there was a genuine commitment to want to change.

[49] After Ms Breeze and her support person left the meeting, there was a general discussion amongst the members of the Management Committee. It was decided to ask Mr Handisides to attend the meeting at this point (which he did). I am satisfied on the evidence I heard that by the time Mr Handisides turned up, the Committee has already decided to dismiss and that with staff and Mr Handisides abstaining, the Committee decision was unanimous.

[50] Ms Breeze says she never expected to be dismissed because she claimed to have done everything the employer asked to remedy the obvious employment relationship problem. I do not accept that claim. It is true Ms Breeze accepted the employer's multi point plan but the employer was not convinced that Ms Breeze was genuinely committed to changing her ways. Had Ms Breeze apologised for her abuse of Mr Handisides, accepted her failures in staff management and genuinely engaged with the Committee in a real way, the employer might well have reached a different conclusion, but given her attitude, I accept that a fair and reasonable employer would reach the conclusion this employer did.

Determination

[51] For the foregoing reasons then, I am satisfied that there has been no unjustified dismissal and that the dismissal was fair and just in all the circumstances.

[52] Ms Breeze's claim fails in its entirety.

Costs

[53] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority