



contact with the Authority about any new address that she may have and it is clearly her responsibility for her to inform the Authority of any such address.

[3] Following the case management conference, I am satisfied that the notice of investigation meeting was properly served on Ms Skilton's home address and that it has never been returned to the Authority.

[4] This matter needed to be investigated, even though there was no apparent way for the Authority to directly contact Ms Skilton, for instance by telephone.

[5] Ms Skilton did not attend the investigation meeting.

[6] I therefore determined, as there was no good cause for Ms Skilton's failure to attend, to act as fully as if she had attended, pursuant to clause 12 of Schedule 2 of the Act.

### **The Facts**

[7] Ms Skilton was employed as a Business Manager at City Nissan on a base salary, together with commissions paid to her following sales of financing and insurance policies. She commenced work on 20 September 2007.

[8] There were some issues raised with Ms Skilton about her performance in 2008. None of those matters were taken to a disciplinary level. She did in fact tender her resignation at one point during this period, but withdrew it following discussions with City Nissan.

[9] In October 2008 a new product was introduced by City Nissan, with a new focus for Ms Skilton on paint and protection policies.

[10] In November 2008 there were internal changes within City Nissan about how income from cars would be distributed where there was no profit on the sale of those cars. This, however, had no actual impact on the income received by Ms Skilton before she left and she never questioned this change of approach.

[11] In January 2009 Ms Skilton evidently became concerned that vehicle sales people were now allowed to sell add-ons and that this had been introduced without consultation. This claim was denied by Mr Brent White, the Dealer Principle of City Nissan.

[12] Mr White was the only witness who attended the investigation meeting. I accept his evidence as he answered questions to my satisfaction and I have no reason not to accept his evidence. Therefore, I do not accept that this change was brought in without any consultation with Ms Skilton. In any event, it did not have any significant change, if any, to her level of commission income. Her income had certainly not *crashed* as she claimed in her statement of problem.

[13] On 22 January 2009 Ms Skilton walked in on Mr White, who was trying to deal with a customer, and told him that she was resigning *effective immediately*. When she was asked why, she said that she had had enough, that City Nissan sales people were taking her income and she was not getting enough support. When Mr White tried to engage her on these issues she declined to talk about them and simply said that she was leaving.

### **Determination**

[14] Clearly an employee is required to raise issues with her or his employer before taking the drastic step of resigning, which Ms Skilton had failed to do in any reasonable manner, if at all.

[15] In the light of all the circumstances of the resignation and, the extremely limited, if any, impact on Ms Skilton's commission, this was clearly a voluntary resignation. It therefore follows that there was no dismissal and that Ms Skilton's claim of unjustified dismissal is dismissed.

### **Costs**

[16] City Nissan seeks costs in the sum of \$3,400, given the failure of Ms Skilton to attend or participate at all in the Authority's process and that the claim was without merit.

[17] I do not necessary accept that this was a vexatious claim. There had been some minor changes to the commission structure. Furthermore, in the absence of Ms Skilton it is difficult to be certain as to what happened at City Nissan at the time. But the fact is that Ms Skilton has taken no steps to pursue this matter, and has never even contacted the Authority.

[18] In those circumstances I consider that City Nissan ought to be able to recover all its reasonable costs. Given that this matter has taken less than one hour to investigate, that it was doubtful whether Ms Skilton would ever participate, I determine that reasonable costs in this case would total \$2,250.

[19] I therefore order the applicant, Tania Skilton, to pay to the respondent, Infinity Automotive Limited trading as City Nissan Lower Hutt, the sum of \$2,250 in costs.

**G J Wood**  
**Member of the Employment Relations Authority**