IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2011] NZERA Auckland 427
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	BETWEEN	HELEN MANOHARAN First Applicant
	AND	ANN ROBINSON Second Applicant
	AND	THE CHIEF EXECUTIVE OF WAIARIKI INSTITUTE OF TECHNOLOGY Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Catherine Stewart, counsel for Applicants Richard Harrison, counsel for Respondent
Investigation Meeting:	24, 25 and 26 August 2011
Submissions Received	12 and 13 September 2011
Determination:	3 October 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicants, Ms Helen Manoharan and Ms Ann Robinson, worked as senior managers at the Waiariki Institute of Technology until their employment was terminated on 15 June 2011. Ms Manoharan was summarily dismissed. Ms Robinson gave a resignation with immediate effect and was paid two months' salary in lieu of notice, but claims that in the circumstances she too was dismissed, constructively.

[2] Ms Manoharan had been a second tier manager at Waiariki, employed in the position of Director of the Institute's School of Nursing and Health Studies. Ms

Robinson had been the Operations Manager of the School, a third tier management position.

[3] They raised grievance claims of unjustifiable dismissal with their employer the respondent Chief Executive of the Institute, Dr Pim Borren. As the grievances remained unresolved the Authority, on the application of Ms Manoharan and Ms Robinson, investigated the claims after mediation had been undertaken. Also investigated was a compelling claim that certain instructions given by Dr Borren while an application was before the Authority, were in contempt and breached the dispute resolution provisions of the employment agreement under which personal grievance claims were intended to be resolved.

[4] To remedy their grievances, after unsuccessfully applying for interim reinstatement Ms Manoharan and Ms Robinson have strongly and urgently sought permanent reinstatement to their former positions. They have also sought reimbursement of wages lost as a result of the grievances, and compensation for hurt feelings, humiliation and distress caused by their contended unjustifiable dismissals. In relation to the contempt and breach claim, the remedies sought are compensation or damages, a penalty for breach of an employment agreement and a penalty for delaying or obstructing an Authority investigation.

Grounds for disciplinary action

[5] The applicants' employment was terminated by Dr Borren because he reached the conclusion that they had engaged in serious misconduct. He alleged of both Ms Manoharan and Ms Robinson that they had failed to follow proper procedure when claiming expenses and that they had also been dishonest when giving him explanations about the expense claims. Ms Manoharan and Ms Robinson were alleged to have falsified expense claims and to have been dishonest when inquiries were made of them about the claims and the circumstances in which claim forms had been produced by them.

[6] Depending on the circumstances, dishonesty in an employment relationship may constitute serious or less serious misconduct. The Code of Conduct governing the employment relationships of both Ms Manoharan and Ms Robinson gave as one example of serious misconduct, "wilfully submitting a false claim for expenses." In the Code less serious misconduct expressly included "failure to comply with Waiariki

policies and procedures." Serious misconduct, if established, was expressed to usually lead to summary dismissal, whereas less serious misconduct usually would lead to dismissal following "repeated infringements."

[7] After a first enquiry held in relation to Ms Manoharan only had been completed into three particular expense claims, more expense claims that also appeared to have been falsely completed were discovered. This lead immediately to a second round of inquiries and to Dr Borren concluding quickly that he had not been told the truth when Ms Manoharan and Ms Robinson had said that the first claims he had questioned were a once only mistake which had not been made by them before.

15 June 2011

[8] The second enquiry was conducted by Mr Richard Bird, Director Human Resources at Waiariki, and Dr Borren. They held disciplinary meetings separately with Ms Manoharan and Ms Robinson on 15 June 2011. Reasonably detailed notes of the separate meetings were made by Mr Bird which, although they do not purport to be a word-for-word record, I consider from the investigation are accurate as to the effect of what was said.

[9] On 15 June 2011 at about 3.30pm at the end of her meeting Ms Manoharan was advised by Dr Borren that he had considered her explanation and had decided to terminate her employment with effect from 5pm that day. He advised he had not found her explanation believable and considered she had lied to him, causing him to lose all trust and confidence in her as a senior manager. He emphasised to Ms Manoharan that at Waiariki honesty had the highest value and greatest importance placed on it. Dr Borren gave her a letter confirming the termination of her employment and his loss of trust and confidence in her ability to perform her position of employment.

[10] At the end of the meeting Dr Borren had with Ms Robinson on 15 June she was advised that he had not been able to believe her explanation for the misconduct alleged and that, as she had deceived him, he had lost all trust and confidence in her as a third tier manager. Dr Borren emphasised to Ms Robinson that trust and confidence was critical in an employment relationship, especially one at the level of her position and one he was a party to.

[11] Dr Borren advised Ms Robinson that he had prepared a letter terminating her employment and intended signing it and giving it to her but that because of her personal situation he would offer her an opportunity to resign and to receive two months salary in lieu of notice.

[12] Ms Robinson requested time to discuss her situation with others before she made a decision whether to resign, but this was declined by Dr Borren. She gave her resignation and signed a letter written by her for that purpose. It confirmed that she was to be paid two months' notice as well as her annual leave entitlements. She was requested to leave the Institute by 5pm the same day.

[13] The opportunity to resign was presented to Ms Robinson, I accept, for any value that form of termination offered her in seeking new employment. I accept that Dr Borren had not intended to coerce Ms Robinson into resignation but wanted to leave her with some choice in the manner of termination, if she considered that to be of benefit to her. In the circumstances Dr Borren does not challenge the claim that Ms Robinson was dismissed but he has sought to justify that action. The resignation will be regarded by the Authority as a dismissal.

The May expense claims

[14] Dr Borren's inquiries that led to the dismissals began when he wrote to Ms Manoharan on 19 May 2011 advising that he had concerns about three expense claims "made by Ann Robinson dated 11/5/2011 and approved by you". He said in his letter that he understood the claims were for expenditure Ms Manoharan had made, and he advised "if this is the case then this potentially represents serious misconduct in the form of deception."

[15] A disciplinary meeting with Ms Manoharan took place on 9 June, after which Dr Borren and Mr Bird met Ms Robinson to seek further information. Notes of both meetings were made by Mr Bird and produced to the Authority.

[16] Dr Borren concluded the inquiry on 9 June by advising Ms Manoharan in writing that he had accepted her conduct was "a genuine mistake … not a deliberate act of dishonesty". He noted in his letter, "trust is of paramount importance to me".

[17] Ms Robinson was not the subject of the first disciplinary inquiry and was a witness only. No conclusion or advice was therefore required to be given to her about her conduct following the 9 June meetings.

[18] The next day, 10 June, Dr Borren wrote to both Ms Manoharan and Ms Robinson advising each that since the meeting of the day before a number of expense claims had come to light from which it appeared that expenditure by Ms Manoharan had been claimed by Ms Robinson in her name on a claim form that had been signed off by Ms Manoharan. Dr Borren advised both employees that this raised two serious concerns for him: first that Ms Manoharan and Ms Robinson had not followed Waiariki's proper procedure for claiming expenses, and second:

> *A concern about your honesty in that yesterday you assured me that the expense claim of 11 May was one off and a genuine mistake, and that you had not done this previously. This claim suggests that is not the case, that you had done this on a number of occasions, and that you deceived me on this point when we met yesterday.*

[19] Ms Manoharan and Ms Robinson were advised that the concerns could potentially amount to serious misconduct resulting in disciplinary action, including termination of their employment. They were required to attend the formal disciplinary meeting held on 15 June, at the end of which they were dismissed.

[20] In response to the grievances raised, Dr Borren, as Chief Executive of Waiariki, has accepted his obligation as their employer to justify the dismissal of Ms Manoharan and Ms Robinson.

Justification test

[21] The test at s 103A of the Employment Relations Act 2000 was amended with effect from 1 April 2011. Justification in respect of the 15 June dismissals falls therefore to be determined under the amended test. To date there have been few cases in which the Authority has had to consider and apply that test in respect of a substantive matter. One such case has been *Ian Sigglekow v. Waikato District Health Board* [2011] NZERA Auckland 384, issued on 7 September 2011. The determination (of Member Ms Rachel Larmer) contains a detailed analysis and review of the previous test and the way it was applied by the Employment Court, in particular when the Court was considering circumstances and factors relevant to justification.

[22] I do not set out the statutory test of justification as it has been reproduced and carefully discussed in detail in the *Sigglekow* case at paras.[105] to [121]. That determination has considerably assisted me.

[23] Applying s 103A, the Authority finds that Dr Borren in carrying out the disciplinary inquiry, in the case of both Ms Manoharan and Ms Robinson, did not act fairly or reasonably in a significant respect. That was his failure to put to both Ms Manoharan and Ms Robinson a view he reached that they had collaborated in presenting to him explanations he disbelieved.

[24] Without giving them an opportunity to address his view that there had been collusion, Dr Borren did not I find reach a point where he was reasonably able to reject as being untrue the explanations for their conduct given by Ms Manoharan and Ms Robinson. One or both of them may have been telling the truth.

[25] The notes of the meeting held with Ms Helen Manoharan on 15 June record that, after hearing her explanations, Dr Borren and Mr Bird retired to consider what she had said to them. The notes record that in private discussion the following exchange, or something to very similar effect, occurred between Dr Borren and Mr Bird:

> *After the first disciplinary meeting with Helen,* [on 9 June 2011] *Ann had told the same story – almost exactly. At the time this was a relief and taken as confirmation of Helen's honesty. But given these other instances, it is hard to see this as anything other than them both collaborating to tell the same story.*

[26] I find that in addition to allegations made separately against both Ms Manoharan and Ms Ann Robinson of dishonesty, the strong suggestion of collusion or collaboration was in itself a further allegation of distinct and significant dishonest conduct. It was unfair not to have put that allegation to them both for an explanation or response, if they had any.

[27] A danger in not putting those conclusions to the employees for comment was that, where the case against one employee might have been assessed on its own as stronger than that against the other, a conclusion of collaboration could tend to take them to the same level. The risk was that a finding capable of being made against one employee that she had made a genuine or honest mistake would not be properly considered once there was a finding that the employee colluded with the other.

[28] A feature of the disciplinary investigation process carried out on 15 June was that once Dr Borren and Mr Bird had conferred and the former had concluded that both employees were guilty of serious misconduct, there was no further opportunity given to them to consider that finding before it was determined that both employees should be dismissed. That two step process is indicated by the requirements of good faith under s 4(1A) of the Act.

[29] In this case, not only was there no opportunity for input from Ms Manoharan or Ms Robinson about the employer's conclusions before the punishment was decided upon, there was no opportunity for input into the significant conclusion as to the distinct element found of their conduct that they had colluded or collaborated.

[30] Under s 103A the Authority, in applying that test, must consider, amongst other things, any factors it considers appropriate, including those expressly listed in s 103A. Those factors have been held to include whether significant conclusions, including tentative ones, were articulated to the employees: *X v. ADHB* [2007] ERNZ 66, at para.[153]. Collaboration was such a conclusion I find that should have been articulated to the employees in this case.

[31] I do not consider that under s 103A(5) the defects found in the way the investigation meeting was concluded were minor only, or did not result in any unfairness to either Ms Manoharan or Ms Robinson.

[32] Ms Robinson, when advised that the employer had decided to dismiss her, had asked for an opportunity to get representation but this was declined. Had she been told that Dr Borren had concluded that she and Ms Manoharan had collaborated in their stories, she is likely to have had even more need for representation, so that her explanation could be fully and clearly put before Dr Borren if it had not already been. Part of her explanation may have involved input from her husband who had featured in her explanation of her conduct. Mr Robinson was not heard from by Dr Borren.

[33] The Authority therefore determines that Ms Manoharan was dismissed unjustifiably. The Authority confirms that Ms Robinson had her employment terminated by dismissal rather than freely given resignation, and it determines that her dismissal too was unjustifiable.

Contempt

[34] Independently of Ms Manoharan's personal grievance claim and its outcome, remedies are sought by her against Dr Borren as the Chief Executive of Waiariki for his actions during the course of the Authority's investigation.

[35] The investigation commenced on 11 July 2011, when Ms Manoharan's statement of problem was lodged in the Authority. That statement was dated and signed on 8 July, the day it was served according to Ms Stewart's letter accompanying the lodgement.

[36] On 11 July at 5.36pm with knowledge that he was being "sued," as Dr Borren regarded the claims made to the Authority, he sent an email to Nursing and Health Studies staff. In it he referred to Ms Manoharan's personal grievance against him and to the fact that her lawyer, Ms Stewart, had been in touch with some of the staff with regard to character references. Dr Borren told the staff:

> *It should go without saying that you are not to provide any support at all to Helen (or anyone working on her behalf) and I am instructing you on this as your employer.*
>
> *I do not take kindly to be sued by anyone let alone an ex-staff member who has seriously let Waiariki down.*

[37] I accept evidence that while the grievance resolution process remained in operation Dr Borren addressed meetings of Waiariki staff at which he referred to his termination of the employment of Ms Manoharan and Ms Robinson and advised that they had been dismissed for dishonesty to do with money. He told staff that they had acted together.

[38] When Ms Stewart applied to the Authority for action to be taken against Dr Borren for contempt of the Authority and its investigation process, Dr Borren was given an ultimatum by the Authority to retract immediately his instruction given on 11 July to the Nursing and Health Studies staff or else he would be ordered to issue a retraction.

[39] Dr Borren responded by emailing the staff, on 27 July, to advise that he was withdrawing his instruction not to support Ms Manoharan. Of his email of 11 July he said he regretted sending it "as in this email there were comments which the Employment Relations Authority deem inappropriate."

[40] The remedies sought to meet Dr Borren's conduct in this regard are penalties under s 134A for delaying or obstructing an Authority investigation, and damages or compensation for breach of a term of Ms Manoharan's employment agreement that continued in force after the termination of the employment relationship with Dr Borren.

[41] In final submissions Mr Harrison was unable to present any significant opposition to the claims of contempt and breach. He pointed to the retraction by Dr Borren of his 11 July email and submitted there was no evidence from witnesses to suggest that any individual staff member had been dissuaded from giving evidence or assisting Ms Manoharan to resolve her grievance as a result of Dr Borren's communication to them of 11 July. Following the Employment Court decision in *Ho v. The Chief of Defence Force* [2005] ERNZ 93, I consider the point is not whether staff were dissuaded but that the potential was there for that to happen. The interests of justice require that there is a complete absence of any such pressure.

[42] It is a fact that Dr Borren did not withdraw or retract his 11 July email until 27 July, over two weeks later. The breach of the employment agreement was therefore sustained. It was a most serious failure and a deliberate one, in the sense that Dr Borren intended his instruction and intended it to be acted upon with the consequence that assistance would not be given to Ms Manoharan.

[43] Had his conduct occurred while the employment relationship still existed Dr Borren would have been liable to a penalty under s 4A of the Employment Relations Act for breach of the duty of good faith. Under that provision a party to an employment relationship who fails to comply with a duty of good faith is liable to a penalty if the failure was deliberate, serious and sustained, or if it was intended to undermine an employment relationship. The maximum penalty (since 1 April 2011) in the case of an individual such as Dr Borren, is $10,000 in respect of this breach.

[44] I accept, however, that at the time of giving his instruction by email of 11 July, the employment relationship between Dr Borren and Ms Manoharan had been ended by the dismissal of the latter on 15 June.

[45] Even after the ending of an employment relationship, there are clearly ongoing obligations of good faith owed by parties, particularly during an Authority investigation. That is clear from s 181 of the Act under which the Authority must, if

requested by the Court, submit a report giving its assessment of the extent to which the parties involved in an investigation have "acted in good faith towards each other during the investigation."

[46] The sanction for breach of that provision is one for the Court to determine in the way it permits a party in breach to reply or respond to a challenge to an Authority determination. That situation has not been reached at this stage.

[47] I am satisfied that the Authority was delayed or obstructed in its investigation. Although the Authority had yet to give directions its investigation had commenced by the time the email was sent. Dr Borren's instruction was intended to be maintained at least over the time he continued to be "sued." In the course of an investigation the Authority is always greatly assisted by the parties being able to have access to potential witnesses and being able to arrange for those witnesses, usually voluntarily, to provide material evidence.

[48] Witnesses fearful of repercussions in their employment if they give evidence impede an investigation and limit the ability of the Authority to determine the truth of what happened. The actual or potential intimidation of witnesses who could provide material evidence for either of the parties to the investigation and thereby assist the Authority to reach a determination according to the substantial merits of the case was an obstruction at that time. As usual, in an Authority investigation, the parties themselves were required or had been given the opportunity to present material evidence collected to assist the Authority process.

[49] Dr Borren's 11 July instruction I find subverted or pre-empted the dispute resolution process from being applied effectively as intended under the Act and the employment agreement. Dr Borren's blatant attempt to disable any opposition to him in response or reply to the personal grievance was not an action in good faith towards Ms Manoharan. I consider, from the evidence, that his retraction, some two weeks later, did little to reassure those who felt intimidated by his action that they could, if they wished, assist Ms Manoharan without suffering adverse consequences to their employment.

[50] The Authority has been guided by the *Ho* decision (above). In particular, the Court noted that, whether or not a party's case was damaged by the conduct, was not the point: "It is sufficient to show that the potential was there." The Court in that

case awarded $20,000 contractual damages for contempt. The Court also referred the matter to the Solicitor-General to determine whether there had been contempt.

[51] The Court noted that conduct similar to Dr Borren's in this case amounted to a serious breach of an employment agreement and that this was particularly so because the Employment Relations Act recognises that employees may not be made the subject of retaliatory action by their employer if they bring a personal grievance or support another employee who has done so.

[52] The Court found that compensation or damages were able to be awarded, for breach of contract or as a remedy for an established personal grievance. The compensation could include pecuniary loss and also cover vexation, disappointment, distress, humiliation and injury to feelings as well as loss of reputation in a personal grievance.

[53] I am satisfied that for some 16 days Ms Manoharan had to endure the prospect that former colleagues would be dissuaded from assisting her in seeking, as she has done very strongly, reinstatement to her employment as a result of Dr Borren's instruction of 11 July. I am satisfied that even after he withdrew that instruction, Ms Manoharan had no confidence she would freely receive the assistance she was entitled to seek.

[54] Ms Manoharan should be compensated with damages for breach of the dispute resolution provisions of her employment agreement. They continued to apply after her dismissal and until her grievance was resolved. The instruction tended to infect Ms Robinson's case as well, as many of the potential witnesses were in common to both cases and were all employed by Dr Borren. Ms Robinson should be compensated with damages for the same breach.

[55] Dr Borren's conduct should also be met with a penalty, particularly to send a message that attempts made to subvert statutory and contractual dispute resolution processes must not go unchecked by the Authority, as parties to employment relationships must have confidence that the Authority, without delay or obstruction, will be able to carry out a full and fair investigation into any employment relationship problem whenever required. A penalty payable to the Crown for breach of s 134A of the Act is appropriate.

[56] Dr Borrens' conduct may also sound in costs.

Remedies for personal grievances

[57] At this point the Authority would usually proceed to determine remedies appropriate under s 123 of the Act to resolve a personal grievance. In doing so it must consider the extent, if any, to which an employee's actions contributed towards the situation that gave rise to the grievance. The Authority must consider the extent to which remedies should be reduced to take account of any contributory fault found.

[58] This is not a usual case. The Authority has found a serious defect in the employer's disciplinary process sufficient to make the dismissals unjustifiable. The employer has tried to seriously impede the grievance resolution procedure by instructing staff not to assist the employees with their claims, although that instruction was later retracted.

[59] Also unusual is that after extensive final submissions had been received further information provided by both parties has raised questions about the wilfulness of the employee's actions and their knowledge of Waiariki policies and procedures. Ms Stewart on 30 September with reference to the affidavit evidence of Mr Dawson and Mr Bird received the day before raised an objection to new material being considered by the Authority in the particular circumstances. I consider that this information may need to be investigated further rather than being left as unexamined affidavit evidence.

[60] On the basis of the finding that the dismissals of Ms Manoharan and Ms Robinson are not justifiable, without determining remedies at this stage I direct that the parties are to undertake further mediation in an attempt to fully resolve the grievance claims and also the contempt and breach claims.

Contribution

[61] I do consider that there was some contribution by Ms Manoharan and Ms Robinson to the situation that gave rise to their grievances, but I do not determine precisely that contribution or whether and how it is to be taken account of in determining remedies.

[62] The presence of contribution is clear to the Authority from the following circumstances. There is no dispute that Ms Manoharan put her signature or initials on six separate expense claim forms used by Waiariki. The forms had been filled in with

the details of items purchased and the amount spent, for which reimbursement was being sought. The forms were signed by Ms Manoharan in January (2), March (1) and May (3). With her signature on the forms as the "senior manager" approving the claim in each case, the forms purported to be claims by Ms Robinson for expenses she had incurred and which Ms Manoharan had approved.

[63] For her part Ms Robinson on six occasions claimed expenses which were not hers. She signed the claims and they were then signed off by Ms Manoharan as the senior manager, despite the fact that they were actually Ms Manoharan's own expenses and had not been incurred by Ms Robinson.

[64] The forms have been accurately described as false, in the sense that on the face of them they purported to be something they were not. The expenses were in fact Ms Manoharan's and they had been incurred by her using a personal credit card. Consequently she had failed to follow Waiariki's normal procedure requiring claims for expenses to be approved by someone other than the claimant and by someone in a more senior position. In Ms Manoharan's case, her claims had been required to be approved by Dr Borren.

[65] The issue for Dr Borren when investigating the expense claims was whether Ms Manoharan and Ms Robinson had falsified the forms deliberately, so that their actions were dishonest, or whether they had made a genuine and honest mistake. Dr Borren's first investigation was into the three May 2011 expense claims only. It was a disciplinary investigation in respect of Ms Manoharan only. A second investigation commenced a day after the first had been concluded was into the three January and March 2011 claims. It was a disciplinary one for both Ms Manoharan and Ms Robinson.

[66] Counsel Mr Harrison for Dr Borren, in correspondence after a grievance had been raised, explained how Dr Borren had viewed Ms Manoharan's conduct in claiming expenses and the reason he had for deciding to dismiss her, as follows:

> *Dr Borren was satisfied that these various incidents amounted to dishonest and deceptive conduct. The reason being that this practice hides Ms Manoharan's expenses from the employer; this could not be more fundamental to the issue of trust and confidence, particularly from a senior staff member who reports directly to the CEO. This is a person who occupies a senior position, is responsible for a significant budget and a large number of staff that report either directly or*

> *indirectly to her. Understandably, Dr Borren as CEO, must have a high degree of trust and confidence in a role of this nature.*

[67] In replying to the grievance raised on behalf of Ms Robinson it was submitted by Mr Harrison:

> *Dr Borren was well satisfied on the evidence before him and from* [Ms Robinson's] *responses that Ms Robinson and Ms Manoharan had jointly engaged in falsely completing expense claims that had the effect of deceiving their employer; both as to the level of expense claims (for Ms Manoharan) and possibly the nature of expenditure which would avoid proper scrutiny given it was being signed off by Ms Manoharan.*

[68] The view that would be most favourable to both Ms Manoharan and Ms Robinson, is that they both made an honest mistake and on 9 June both were simply unable to recall the three claim forms filled out in January and March for total amounts of $380, $636 and $112. Even on that view, if it was taken by the Authority, their actions contributed towards the situation that gave rise to their personal grievances.

[69] I do not consider that there was a lack of training or the unavailability of usual staff such as Pedre, Ms Manoharan's PA, to reasonably explain their failure to process Ms Manoharan's expense claims in the correct way. Jointly, Ms Manoharan and Ms Robinson caused false documents to be produced and to be acted upon by the finance section which paid out the sums claimed, although to Ms Robinson rather than to Ms Manoharan who had incurred the expenditure.

[70] Both women were senior managers of long experience and I find they knew very well the importance of correctly following process in relation to financial transactions where employees are to receive money from their employer separately from their regular remuneration. They had been given no approval or authorisation by Dr Borren to make expense claims in the way did.

[71] The view most favourable to Ms Manoharan and Ms Robinson, if taken, would lead to a finding that their actions amounted to carelessness enough to be regarded as blameworthy. Whether their contribution was equal is a matter that would need to be looked at in the light of the further information recently supplied. Their actions were causally linked directly to the situation where Dr Borren responded by conducting an inquiry from which he concluded there had been serious misconduct and, as a consequence, decided to dismiss both Ms Manoharan and Ms Robinson.

However they did not cause Dr Borren to act unfairly or unreasonably in conducting the disciplinary investigation, as I have found he did.

[72] The causal connection was broken at the point where, during the inquiry, neither applicant was asked for an explanation with regard to Dr Borren's conclusion that they had colluded over their answers given during the inquiry. Their contribution, therefore, could not be regarded as at the top end of the scale, were the Authority to finally determine their grievances on the view most favourable to Ms Manoharan and Ms Robinson.

Determination and Direction

[73] For the reasons given above, the dismissals of Ms Manoharan and Ms Robinson are determined by the Authority not to be justifiable.

[74] The parties are directed to undertake further mediation urgently to try and resolve the grievance claims of Ms Manoharan and Ms Robinson.

[75] A final determination of contribution and remedies, including remedies of damages and penalties for contempt or breach, will remain reserved until the parties have had mediation. Costs are also reserved.

A Dumbleton
Member of the Employment Relations Authority