

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 228  
5312321

BETWEEN

MORGAN GOLDER  
Applicant

AND

JAMOR HOLDINGS LIMITED  
T/A COLUMBUS COFFEE  
LINCOLN ROAD  
Respondent

Member of Authority: Rachel Larmer

Representatives: Janette Golder, Representative for Applicant  
Adrian Price, Representative for Respondent

Investigation Meeting: 13 May 2011 at Auckland

Determination: 30 May 2011

---

**DETERMINATION OF THE AUTHORITY**

---

- A Ms Morgan Golder was unjustifiably dismissed from her employment with Jamor Holdings Limited trading as Columbus Coffee Lincoln Road (Columbus).**
- B Ms Golder contributed towards the situation that gave rise to her personal grievance claim, so remedies have been reduced accordingly.**
- C Columbus is ordered to pay Ms Golder:**
- (i) \$3,500 for the hurt, humiliation, and injury to feelings her unjustified dismissal caused her; and**
  - (ii) \$71.56 to reimburse her for her filing fee.**

**Employment Relationship Problem**

[1] Ms Morgan Golder alleged she had been constructively dismissed by Columbus from her job as Head Chef at the Columbus Coffee Lincoln Road cafe.

[2] Ms Golder said she resigned by giving one week's written notice on 24 August 2010 because:

- (a) After she had a non work-accident which required time off work, Columbus immediately filled her position with a permanent instead of a temporary employee;
- (b) After being medically cleared to return to her chef duties, Columbus refused to allow her to undertake work in the kitchen and instead used her to cover extra front of house shifts and duties, which she said she was unsuited to;
- (c) When another chef vacancy arose on 18 July 2010 she asked to be given that position, but her request was not responded to and another front of house staff member was given the vacant chef position;
- (d) Columbus failed to provide her with the hours of work specified in her ACC approved Stay at Work Programme. It also failed to give her kitchen duties, but it did not discuss its reasons for that with her;
- (e) She was given two written warnings two days apart which she said were unwarranted and which she believed indicated Columbus did not intend to return her to her Head Chef role.

[3] Ms Golder said these factors combined caused her to believe Columbus was not going to return to her Head Chef role, so she felt she had no option but to resign. At no time did she agree to change her role to that of a front of house employee and she did not consent to her days and hours of work being permanently changed.

[4] Ms Golder said when she resigned she had no job to go to. Her resignation letter stated *...Mr Judd has made my working conditions so hard, with constantly nasty behaviour that I feel I have been forced to take this action ....*

[5] Columbus denied Ms Golder had been dismissed. It said Ms Golder resigned of her own free will because she did not want to face a disciplinary process about her unacceptable behaviour. It did not accept that its actions had caused or contributed to Ms Golder's resignation.

[6] Columbus said Ms Golder was a difficult employee who was challenging to manage. Columbus said the main reason it did not allow Ms Golder to return to her Head Chef role was because it was concerned about her attitude and performance, so it wanted to address those concerns before she was allowed back into the kitchen.

## **Relevant Facts**

### *Background*

[7] Ms Golder commenced full time employment with Columbus as Head Chef on 6 June 2009. She worked 40 hours per week, five days per week, eight hours per day from 6.30am to 3pm Monday, Tuesday, Wednesday, Saturday and Sunday. Columbus also employed Ms Minnie Kim as a Second Chef. Ms Kim worked 32 hours per week, eight hours per day from 6.30am to 3pm Thursday to Sunday.

[8] Mr Judd commenced employment as the Manager of Columbus in November 2009. He said he immediately found Ms Golder difficult to work with because she was resistant to him making changes to the kitchen, which *she considered was her domain*. He described her as *a volatile worker, difficult to talk to, and with no respect for authority*.

[9] Mr Judd said he had a number of confrontations with her, which he found very stressful and which *created a horrible atmosphere in the café*. Mr Judd told me he *was reluctant to speak to Morgan because of her negative hostile reaction to issues being raised*. Mr Judd had complained to Mr Adrian Price (owner of Columbus up until 1 February 2011) that *problems with Ms Golder were destroying the business*.

[10] Mr Price arranged a meeting with Ms Golder, her mother, and Mr Judd on 10 March 2010 to discuss the various issues and to clear the air. The parties agreed to make a new start and things improved for a short time, then Ms Golder had her accident.

### *Ms Golder's absence from work*

[11] On 18 April 2010 Ms Golder had a horse riding accident and suffered a brain injury. She was hospitalised and put into an induced coma.

[12] Ms Golder's mother, Felicity Robinson, contacted Mr Judd, to advise him of the accident. She told him Ms Golder was likely to be off work for 6-8 weeks, but the

doctors did not think there would be any permanent injury, so she would return once she had recovered.

*Permanent replacement employed*

[13] Leeanne Ashby, ACC case worker, was assigned Ms Golder's case on 28 April 2010. Her role was to assist Ms Golder her with rehabilitation and to support her with returning to work.

[14] Ms Ashby contacted Mr Judd by telephone on 29 April 2010 to discuss Ms Golder's employment with Columbus. Mr Judd advised Ms Ashby he had already employed someone to fill Ms Golder's position, but would be willing to take Ms Golder back once she was fit to return to work, although it would have to be on a part time basis only.

[15] I note the employer monthly schedule recorded the replacement employee as having started work on 5 May 2010, so whilst Mr Judd may have offered Ms Golder's role to another person, her replacement had not yet started work at the time he spoke to Ms Ashby. He did not disclose that to Ms Ashby when they spoke about Ms Golder's situation.

[16] Mr Judd told me Ms Golder's accident placed Columbus in a desperate situation because it needed a chef immediately to replace Ms Golder in order to keep the café running. Mr Judd explained how he had extended Ms Kim's days and hours of work, so immediately after the accident Ms Kim worked seven days a week. Mr Judd then increased the hours of one of his casual employees and used her as a chef to give Ms Kim time off. However, this casual employee also worked elsewhere, so Mr Judd did not consider that arrangement to be a solution to his problem.

[17] Mr Judd said he therefore decided to employ Ms Grace Fei to cover Ms Golder's job. Ms Fei was known to Mr Judd because she rented a room in his house. Ms Golder suggested Ms Fei was Mr Judd's girlfriend, but Mr Judd denied that. At the time Mr Judd offered to employ Ms Fei, she worked as a chef elsewhere but was apparently unhappy with that job. Mr Judd said he employed Ms Fei because he knew her and he did not want an unknown person in the café.

[18] Ms Fei was employed on a full time permanent basis to cover Ms Golder's Head Chef duties. The chef responsibilities were spread between Ms Fei and Ms Kim, who between them worked Monday to Sunday 6.30am to 3pm.

[19] Mr Judd said he did not consider offering Ms Fei fixed term employment because he did not know anything about fixed term engagements. He also said he did not offer Ms Fei a temporary position because he did not think she would have accepted it, because he doubted she would have agreed to leave her permanent job for temporary work. There was no evidence he had discussed with Ms Kim whether she would provide temporary cover.

[20] Mr Judd said he did not go to an employment agency to find a temporary employee to cover Ms Golder's absence because he did not want to engage anyone who was untested and unknown to him. He said he preferred to use his contacts to find someone who he knew could work to the required standard and who was compatible with the business.

[21] Mr Judd said he knew at the time he employed Ms Fei that when Ms Golder returned to her job he would have three chefs, so he would have to fund the extra wages associated with that. However, he believed it was best for the business to appoint Ms Fei permanently, so he told me he was prepared to incur the additional costs that could have been associated with that. He always recognised this was not a situation where Ms Golder was not expected to return to work.

[22] Mr Judd said at the time he employed Ms Fei the information he had about Ms Golder's situation *was sketchy*. He had not spoken to Ms Golder but he had spoken by phone to her mother and staff who had visited Ms Golder told him what they knew about her situation. Mr Judd had also been given a medical certificate for Ms Golder dated 19 April 2010 which signed her off work for a month.

#### *Stay at Work Programme*

[23] Ms Golder returned to work via the ACC Stay At Work Programme (SAWP). The aim of the SAWP is for an injured person to remain in full or part time work with adjusted duties in order to assist them to achieve a full return to work in the injured person's pre-injury role.

[24] Ms Golder was referred to the SAWP in May 2010 and a workplace meeting was set up for 26 May 2010 between Ms Golder, Rebecca Samways of IPH Limited, and Mr Judd. Ms Samways was an Occupational Therapist who provided concussion services to ACC clients under a service contract with ACC.

[25] Mr Judd did not attend the meeting, but spoke to Ms Samways by telephone instead. Ms Samways recorded *he was unclear if there will be a fulltime job for Morgan as they have taken on other staff permanently to do her shifts*. However, he did agree to the work trial and would see what shifts did become available.

[26] It was agreed Ms Golder would return to work for a two week trial on alternative duties and with reduced hours. She was medically cleared to work three hours a day, for three days, during her first week back at work and four hours a day, for three days, during her second week back at work. Ms Golder did not return to her kitchen duties but was moved by Columbus (initially with her agreement) to front of house duties, which included direct customer contact.

[27] Ms Golder said she agreed to the front of house duties for the two week trial, but if the trial was successful she expected to return to her Head Chef job.

[28] Ms Golder then commenced a gradual return to work with her days and hours of work increasing over time. Ms Golder says that she was not offered work for all of the days and hours she was medically cleared to work and she said that hindered her ability to return to her pre-accident job. She said that over a ten week period she was given 45 hours less work than she had been medically cleared to work, which worked out at approximately 4.5 less hours per week than she thought she should be doing.

[29] Mr Judd accepted Ms Golder had not been given work for all of the days and hours she was medically fit to work. Mr Judd explained how difficult it was to fit her in around the hours other staff were contracted to work, because he said he did not want to cut the hours other staff worked to provide Ms Golder with work.

[30] Mr Judd did say because Columbus was short staffed, he was able to offer Ms Golder part time front of house work for spare shifts that existing staff could not cover. This mostly involved making coffees, displaying cabinet food, serving customers, waitressing and maintaining tables in the café. I find Ms Golder was not aware she was offered part time front of house work because Columbus was short

staffed. I find she believed her front of house work was a temporary measure until she had been medically cleared to return to the kitchen.

[31] Mr Price said Mr Judd had been reporting daily difficulties with Ms Golder's attitude and he noted Ms Golder had constantly stated she did not want to work front of house. Ms Golder said she considered herself unsuitable to deal with customers so she felt requiring her to work front of house, instead of in her normal job in the kitchen, was setting her up to fail.

[32] Ms Golder said while she initially agreed to work front of house for a couple of weeks, she was kept there too long which caused her considerable frustration. She said she kept telling Mr Judd she was fit to return to her kitchen job and that she wanted to be back in the kitchen, not at front of house. Ms Golder could not understand (because she had not been told) why she was not returned to her role in the kitchen. She accepted that the failure to return her to her normal job caused her anger and frustration, which I find she took out on Mr Judd.

*Medical clearance for kitchen work*

[33] The SAWP report dated 7 July 2010 recorded Ms Golder was able to do kitchen work, as shifts became available.

[34] The ACC SAWP report dated 20 July 2010 recorded Ms Golder was in a position to undertake kitchen work. An email from Ms Samways to Mr Judd dated 5 August 2010 stated Ms Golder was recovering well and in a position to work seven hours a day, four days a week, so she asked that Ms Golder be given more hours to work.

[35] Ms Samways' email to Mr Judd also recorded Ms Golder was in a position to work in the kitchen and expressed her disappointment he had not discussed Ms Kim's vacant role (I discuss this later) with her so they could have worked out a way for Ms Golder to do it. Ms Samways referred to Mr Judd's concerns about Ms Golder working with customers and suggested to him the kitchen was a better set up for Ms Golder because it reduced her customer contact.

[36] The SAWP report dated 8 August 2010 recorded Ms Golder had told Ms Samways she was feeling increasingly stressed at work because Mr Judd did not communicate with her effectively and she was not being given work in the kitchen.

Ms Samways noted she had emailed Mr Judd asking him to give Ms Golder work in the kitchen, but he had not responded. The report concluded that Ms Golder was looking at other work options because of the issues she was having with increasing her work hours.

*Failure to return Ms Golder to kitchen work*

[37] Mr Judd did not recall Ms Samways' email of 5 August 2010. However, he said it was not just a matter of finding shifts for Ms Golder because *wherever she was working she would cause problems*. He said it was concern about her conduct, performance, and attitude which made him reluctant to return her to the kitchen.

[38] Mr Judd stated he did not want to put Ms Golder back into the kitchen because he felt she did not control her temper and she demonstrated anger towards authority. Mr Judd said he had the same concerns about Ms Golder before her accident, so he attributed these to personality issues rather than problems which had arisen as a result of her accident.

*Removal from SAWP*

[39] Ms Ashby reported Ms Golder's SAWP was successful in terms of her being able to complete the work required of her. However, it was unsuccessful in returning Ms Golder to her pre injury role as full time Head Chef because:

- (a) Her job had been filled by another person;
- (b) She was only being given front of house work; and
- (c) She was not being given more than 18-19 hours work per week, despite being medically cleared to return to her pre injury role.

[40] Ms Ashby and Ms Samways decided on 17 August 2010 to discontinue the SAWP because it was apparent Ms Golder was not going to be able to return to her pre injury role for the reasons identified above.

[41] Ms Samways wrote a SAWP report dated 18 August 2010 which recorded that in a discussion with Mr Judd he had stated:

- (a) He was unable to increase Ms Golder's hours of work;

- (b) He was unable to give Ms Golder work in the kitchen;
- (c) He could continue to give Ms Golder part time front of house work;
- (d) Ms Golder's hours were unlikely to increase from 18 hours per week.

[42] In light of this information, Ms Samways recommended Ms Golder be discharged from SAWP. Ms Golder was subsequently discharged from SAWP.

*Incident on 6 July 2010*

[43] Mr Judd issued Ms Golder with a letter dated 6 July 2010 which stated:

*Here we are yet again, you have only been back at work a short period of time & already another warning.*

*This is for shouting at me again from behind the counter in front of customers today Tuesday 6.7.10.*

*Also for "I am sick of your shit" pointed towards me your boss.*

*You will be notified of a meeting, to be arranged to discuss this.*

[44] Ms Golder said that when Mr Judd gave her the letter he told her he did not have to employ her in the kitchen because her contract was null and void because she had been on ACC for more than six weeks. In his evidence Mr Judd denied saying that.

[45] Ms Robinson said her daughter called her crying and very upset about what Mr Judd had said. Ms Robinson said her first thought was that there must be some kind of misunderstanding as she did not think Mr Judd would have said that. However, she called the Department of Labour (DoL) for advice on Ms Golder's rights so that she and Ms Golder were clear about her situation.

[46] Ms Robinson said she then called Mr Judd and relayed what her daughter had told her and what DOL had said. Ms Robinson's evidence was that Mr Judd knew what she was talking about but did not deny it, but instead told her she should not be phoning him and hung up. Mr Judd said he hung up because Ms Robinson was shouting at him.

[47] Ms Golder wrote to Mr Judd on 6 July 2010. She referred to their conversation that day and to advice she had received from DoL. She noted her

contract was not void and, although she was on ACC, her employment was continuous. She stated that she retained her position unless they agreed to something different, in which case they would have to both need to agree and discuss the issues, and what they discussed would need to be written down, and they both had to keep copies of it. Ms Golder then referred to Ms Kim leaving and said she was medically fit to work Ms Kim's hours. Finally she asked for Mr Judd's response to her letter *within the next 5 working days*.

[48] Mr Judd did not respond to Ms Golder's letter.

[49] I consider it likely, on the balance of probabilities, Mr Judd did tell Ms Golder her contract was null and void. I consider it unlikely she would have sought advice from the DoL and then subsequently written to Mr Judd with that advice if Mr Judd had not made the comment she attributed to him. I also consider Mr Judd would have been likely to have responded to her letter denying he had said the comment she attributed to him, if he had not said it. However, he did not respond to her at all.

#### *Second Chef vacancy*

[50] Ms Kim resigned and left her job as Second Chef on 18 July 2010. Ms Golder wrote to Mr Judd on 6 July 2010 saying she was fit to do Ms Kim's job and would be medically cleared to work Ms Kim's days and hours of work. Ms Golder asked for Mr Judd's response to her request.

[51] Mr Judd did not respond to her but instead filled Ms Kim's position with another staff member who, had up until then, had been working at the front of house. Mr Judd said that decision was about employing the best person for the job. He told me he believed Ms Golder's attitude problems made her unsuitable to take over Ms Kim's job.

[52] Mr Judd told me there was *a slot available in the kitchen* but said he was *not going to jeopardise the business by putting someone who was volatile into the role*. He said he *made an employment decision based on the right person for the job*. Mr Judd explained:

*Adrian and I were trying to get control of Morgan's performance issues so we could work with her. We needed to know we could work with her instead of having to go around her all the time. We needed to be able to work with her before we could build her back into the*

*kitchen role. It was not just about getting her back into the role, it was about getting her back there right.*

[53] When asked what the impediment was to Ms Golder returning to her kitchen role, Mr Judd said *it was her attitude. It didn't matter what we did, it was wrong.*

[54] I find Columbus did not explain that to Ms Golder. Columbus had a duty to return Ms Golder to her pre-accident role once she was medically cleared to do it. By the time Ms Kim resigned Ms Golder had been cleared to do Ms Kim's duties and days and hours of work.

[55] I find she should have been given Ms Kim's vacant position. Columbus should have managed its concerns about her performance once she was back in her normal role. I find some of the issues of concern to Columbus occurred because Ms Golder, as she accepted, was unsuited to dealing with customers. Keeping her at the front of house only made matters worse.

[56] It was wrong for Columbus to keep Ms Golder at the front of house until her attitude improved, because that was not what she had been employed to do.

#### *Written Warnings*

[57] Ms Golder was issued with the letter dated 6 July 2010 which contained a written warning.

[58] On 10 July 2010 Mr Judd issued Ms Golder with a letter which stated:

*You will accept this as another written warning. This one is for being rude to a customer today when she asked where her food was & your answer to her was " I can't do two things at once" this was said twice. I then had to go to the customer and apologise for the rudeness.*

[59] On 24 August 2010 Mr Judd issued Ms Golder with a letter which called her to a meeting on 27 August 2010 to discuss her behaviour on 23 August 2010.

[60] Ms Golder said that letter was the final straw. She said she finally realised Columbus did not want to employ her and that she was not going to get her Head Chef job back, so she resigned that day.

[61] Mr Judd accepted no process was followed before these warnings were issued, so Ms Golder had not had an opportunity to respond to his concerns before she was

issued with each warning. Mr Judd said he was not aware that a process had to be followed before a warning was issued.

*Steps taken by Ms Golder to resolve her concerns*

[62] I consider Ms Golder took a number of appropriate steps to attempt to resolve concern about her duties and hours of work before resigning.

[63] It was not disputed that on numerous occasions she told Mr Judd she wanted to return to her usual duties as Head Chef.

[64] On 14 June 2010 Ms Golder wrote to Mr Judd inviting him to attend mediation over her concern about the way her full time permanent hours of work had been cut back to part time hours without any communication or consultation with her.

[65] On 6 July 2010 Ms Golder contacted DoL to get advice and then wrote to Mr Judd recording the advice she had been given and asking for his response.

[66] Mr Price was given copies of the SAWP reports and he was in regular, usually daily, contact with Mr Judd so Columbus was aware of what days/hours and duties Ms Golder had been cleared to work. These reports identified that she was able to undertake kitchen work from 7 July 2010.

[67] On 14 July 2010 Ms Golder filed a personal grievance claim with the Authority which stated she wanted to return to her full time 40 hours per week contractual hours of work. She recorded that Mr Judd had agreed to attend mediation, but then changed his mind and would not attend.

[68] On 5 August 2010 Ms Samways emailed Mr Judd asking for Ms Golder to be given kitchen work. This request was followed up towards the end of August, before the recommendation was made to discharge Ms Golder from the SAWP.

**Issues**

[69] The issues for the Authority to determine are:

- (a) Did Ms Golder resign or was she constructively dismissed?
- (b) If she was dismissed what, if any, remedies should be awarded?

## Outcome

*Did Ms Golder resign or was she constructively dismissed?*

[70] An apparent resignation may amount to a dismissal if the employer's actions obliged, or strongly induced, an employee to resign.<sup>1</sup> A constructive dismissal may occur in the following circumstances:

- (a) An employer gives an employee the choice of resigning or being dismissed;
- (b) An employer follows a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; or
- (c) A breach of duty by the employer causes the employee to resign.<sup>2</sup>

[71] I consider that the evidence established there was a breach of duty by Columbus which caused Ms Golder's resignation. In coming to that conclusion I have had regard to the Arbitration Court's (as it was then) comment in *Wellington etc, Clerical etc IUOW v Greenwich*<sup>3</sup>:

*It is essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the borderline which separates inconsiderate conduct causing some unhappiness or resentment to the employee, from dismissive or repudiatory conduct reasonably sufficient to justify termination of the employment relationship.*

[72] I consider Columbus' conduct towards Ms Golder was dismissive and repudiatory, and I conclude that she was constructively dismissed. Ms Golder's resignation was not borne out of mere unhappiness or resentment. It was caused by her employer's breach of duty towards her.

[73] Columbus replaced Ms Golder with a permanent new employee a mere eleven days (eight of which were working days) after her accident. This action unilaterally varied fundamental core terms of her employment, namely her days and hours of work and her work duties.

---

<sup>1</sup> *Wellington Clerical etc IUOW v Barraud & Abraham Ltd* [1970] BA 347; *NZ Woollen Workers IUOW v Distinctive Knitwear NZ Ltd* (1990) ERNZ Sel Ca 791

<sup>2</sup> *Auckland etc Shop Employees etc IUOW v Woolworths (NZ) Ltd* [1985] 2 NZLR 372; (1985) ERNZ Sel Cas 136

<sup>3</sup> [1983] ACJ 965; (1983) ERNZ Sel Cas 95

[74] Columbus did not communicate with Ms Golder before it gave her job to a new employee, so she was unable to have any input into that decision. It did not seek any medical information from Ms Golder before it effectively permanently removed her from her normal full time job. Columbus did not fully or properly explore alternatives to obtaining temporary cover for Ms Golder's role until she had recovered.

[75] Once Ms Golder had recovered sufficiently to work in the kitchen, it refused without good reason, to return her to her normal role. It never looked into the feasibility of Ms Golder doing a gradual return to her normal Head Chef role, perhaps on reduced days and hours of work and/or reduced duties. Instead it used her to cover a shortfall it had in the front of house area of the business but it was not up front with her about what it was doing.

[76] Columbus decided to use Ms Golder's absence from work due to her accident as an opportunity to unilaterally move her to a front of house role. Although Ms Golder had agreed to do front of house duties for an initial two week SAWP trial period, she never agreed to do it on an ongoing basis. I find Ms Golder believed she would be returned to her pre accident Head Chef role, and she acted consistently with that belief. Her understandable view was that once she was cleared as medically fit to return to that role, then she should, and would, do so.

[77] I find Ms Golder remained in employment with Columbus because she expected to get her Head Chef role back and she took a number of steps to achieve that. She raised it with Mr Judd so many times and so forcefully that it became an issue between them.

[78] Columbus should not have issued Ms Golder with written warnings without first putting its concerns to her to respond to and without providing her with information relevant to those concerns. It did not do so, which deprived Ms Golder of an opportunity to respond to those concerns before the warnings on 6 and 10 July 2010 were imposed.

[79] Ms Golder actively sought a return to her pre accident role as a chef in the kitchen. She asked Mr Judd for Ms Kim's job when she left. She took advice from DoL about her rights and shared that advice with Mr Judd. Ms Golder applied for mediation with the aim of getting her normal full time job back. She also filed an

employment relationship problem with the Authority which sought a return to her normal full time Head Chef duties as the remedy. She asked her Occupational Therapist to speak to Mr Judd about returning her to the kitchen. It was not until after ACC withdrew her from the SAWP, based on information it had received from Mr Judd, she finally realised she was not going to get her pre accident job back.

[80] That was the point she resigned. I find her resignation was not borne of her free will but was occasioned by her employer's serious and ongoing breach of duty towards her. I do not accept that she resigned to avoid a disciplinary meeting. I find she resigned once she finally realised she was not going to be put back into her pre-accident Head Chef role.

[81] Columbus never made it clear to Ms Golder that her return to her pre accident role was dependent on her changing her attitude and improving her performance, rather than just being medically cleared as fit to return to that role. This failure mislead Ms Golder into believing she was going to get her pre accident job back. Although Mr Judd conveyed the true position to Ms Samways – that it was not going to increase Ms Golder's hours of work and it would not be putting her back into her role as a chef in the kitchen, I find that he did not directly inform Ms Golder of that.

[82] Mr Judd in his evidence acknowledged he was aware Ms Golder was entitled to return to her normal pre accident duties when she was medically fit to do so. However, I find he did not facilitate her return to work in her Head Chef role. Instead he actively prevented her from returning to work in the kitchen first by giving her job to Ms Fei, then by replacing Ms Kim with another front of house employee, without having discussed either decision with Ms Golder before it was made, by refusing to give her kitchen work and by refusing to increase her hours of work after she had been medically cleared as fit to do kitchen work.

[83] I find the initiative for the dismissal came from Columbus and Ms Golder resigned in response to its fundamental and ongoing breaches of her contractual terms, as soon as she realised these breaches were not going to be remedied.

## **Conclusion**

[84] Ms Golder was constructively dismissed. She has a personal grievance claim for unjustified dismissal.

## **Remedies**

[85] Ms Golder was out of work for five weeks after her employment with Columbus ended. However, she continued to be paid ACC over this period, so she did not lose remuneration.

[86] Ms Golder said she suffered hurt, humiliation and injury to feelings and she provided detailed evidence of that. This included referring to medical problems she experienced and medication she was prescribed.

[87] I consider an award of \$5,000 under section 123(1)(c)(i) of the Act is sufficient to compensate her for her hurt and injury to feelings.

[88] Section 124 of the Act requires me to consider whether Ms Golder contributed to the situation that gave rise to her grievance, and if so then I must reduce remedies accordingly. I find that Ms Golder's attitude and interactions with Mr Judd and other staff contributed towards the situation which gave rise to her unjustified dismissal.

[89] I consider that the amount awarded under section 123(1)(c)(i) of the Act should be reduced by 30% to reflect Ms Golder's contribution towards the situation that gave rise to her personal grievance.

## **Order**

[90] Columbus is ordered to pay Ms Golder \$3,500 under section 123(1)(c)(i) of the Act.

## **Costs**

[91] Neither party was legally represented so there is no issue as to costs.

[92] Columbus is to reimburse Ms Golder \$71.56 for her filing fee.

Rachel Larmer  
Member of the Employment Relations Authority