

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 126  
5362704

BETWEEN

JENNIFER MCDONALD  
Applicant

A N D

CHIEF EXECUTIVE OF THE  
MINISTRY OF FOREIGN  
AFFAIRS AND TRADE  
Respondent

Member of Authority: G J Wood

Representatives: Rachel Burt for Applicant  
Susan Hornsby-Geluk for Respondent

Investigation Meeting: 12-14 June 2012

Submissions Received: By 9 July 2012

Date of Determination: 16 October 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ms Jennifer McDonald worked for the respondent (MFAT/the Ministry) for over 25 years (most recently in the role as senior finance adviser), before her employment was terminated by reason of redundancy. Ms McDonald disputes that her dismissal was justifiable because of predetermination, failure to consult properly with her and a failure to genuinely consider reasonable alternative positions.

[2] MFAT denies all of Ms McDonald's claims.

**Issues**

[3] The issues for determination are:

- Did MFAT predetermine Ms McDonald's dismissal?

- Did MFAT fully consult with Ms McDonald over the disestablishment of her position and her redundancy?
- Did MFAT genuinely consider reasonable alternative positions or instead undermine redeployment opportunities?
- Did MFAT follow the requirements of the collective employment agreement that applied to the parties?
- If Ms McDonald was unjustifiably dismissed/disadvantaged in her employment, what remedies should be awarded to her?

### **General Comment**

[4] Ms McDonald has made serious allegations about the motives of a large number of MFAT staff, which would require me to believe that her manager, Ms Kathryn McBride, had been prevailed upon by senior staff in MFAT, and others who worked in NZ Aid, to not only take a negative attitude about Ms McDonald, but also to seek the termination of her employment, even from before the time Ms McBride took over staff responsibility for her. Such motives were also ascribed to a number of other managers in MFAT who had dealings with Ms McDonald. I consider it less likely than not that any of them would have been involved in such actions to deliberately remove Ms McDonald from her career position at MFAT.

[5] While there were clearly a number of issues in the way in which MFAT officials dealt with Ms McDonald I consider those are more likely to have happened out of ignorance or coincidence rather than through collusion, as Ms McDonald alleges. Similarly, in those areas where Ms McDonald has witnesses to support her position such as exclusion from meetings, there are explanations for them, for instance on the basis of accepted management practices, whereby a new manager can attend meetings in the place of a staff member who has other duties to undertake.

### **Factual discussion**

[6] While Ms McDonald was employed by MFAT between 1986 and 2011, between 2002 and 2009 she worked in the Financial Services Unit of the Management Services Group of a semi autonomous body known as NZ Aid, responsible (as its name implies) for New Zealand's aid efforts overseas.

[7] In the latter part of that period NZ Aid had received a poor audit. In 2009 the Government reintegrated New Zealand Aid into MFAT, in accordance with the new Government's views on centralising government bodies' operations. Ms McDonald believes that she was blamed for the poor audit and unfairly given a poor performance review in 2006-2007, which was remedied after a favourable review by an independent reviewer.

[8] For reasons given above, I accept that in 2009 Ms McDonald's position in the Financial Services Unit was genuinely disestablished. Ms McDonald was given a new role as senior finance adviser in the International Development Group. Ms McDonald's new role as senior finance adviser was transferred from Management Services to the Finance Team in November 2010. Ms McDonald took no action to challenge this transfer at the time, although she now considers that it was part of a plan to remove her from a position that was involved primarily with procurement rather than finance.

[9] I do not accept that Ms McDonald's position involved only a very limited amount of finance rather than procurement work, as Ms McDonald now claims, despite her working with the procurement team, and her MFAT-supported training towards a formal procurement qualification. Her job description in her senior finance advisor role, which was essentially agreed with by Ms McDonald, covers mainly financial functions, albeit in a procurement context. Ms McDonald's key result areas involved the provision of budget advice particularly in relation to contract related budgets, advisory support on contract related budgeting and the provision of advice to staff in assessing and interpreting financial information provided by others. Qualifications and experience in finance, together with experience giving advice on complex contract related budgeting issues were seen as essential areas of experience and knowledge. However procurement was the key area with which Ms McDonald had an interface over contracts, and with whom she had worked as part of the procurement team in NZ Aid previously.

[10] I accept that as part of the integration from NZ Aid back into MFAT, and as a result of Government funding priorities changing, MFAT wanted to restructure the finance team post-reintegration, as had occurred with communications and IT, and was to occur in procurement. As required by the parties' collective employment agreement, this took place by way of a review.

[11] Ms McDonald alleged that this review was completed by Ms McBride, and with unreasonable haste, showing predetermination. I accept that Ms McBride worked closely with the Chief Financial Officer on the review. I also accept that the review, which led to the disestablishment of Ms McDonald's position (as well as those of several other staff - who were by contrast redeployed), was done for genuine reasons. In addition, I accept that the outcomes were ones that a fair and reasonable employer could have reached, given forthcoming changes to the procurement area and the financial constraints that MFAT was under at the time.

[12] Ms McDonald has a point, however, that given that Ms McBride's position was changed to some degree, she should not have been seen to have been running the restructuring, but rather communications should have come from the Chief Financial Officer himself. In these circumstances it is understandable why Ms McDonald felt isolated and unfairly picked on, particularly as she was the only person not to be redeployed as part of this process. By contrast, her concern over not being appointed to act up in Ms McBride's absence, highlights the extremity of the position she took, given that she is not an accountant, unlike Ms McBride and the person chosen to provide temporary cover.

[13] The decision of Ms McBride and the CFO was delivered to Ms McDonald on 19 May 2011. While Ms McBride intended to make it clear to Ms McDonald that there was no alternate position for her in the proposed new structure, what Ms McDonald heard was that there was *no role for you*. My conclusion is that the parties were talking at cross purposes when this was said, and that this had the unfortunate effect of strengthening Ms McDonald's conviction that she was being deliberately targeted for dismissal.

[14] I note that this finding on credibility may not have been needed had Ms McDonald been given proper forewarning of this important meeting, and accordingly a reasonable opportunity to obtain representation. While MFAT claim that this was simply a preliminary meeting, the fact is it was the first meeting at which Ms McDonald was informed that her position was to be disestablished. This is just the sort of meeting where a fair and reasonable employer would have given reasonable prior notice to an employee such as Ms McDonald, and a reasonable opportunity to obtain representation.

[15] From the end of that month until 11 July Ms McDonald was ill and could not attend work, because of how upset and stressed she felt about the outcomes of the review. During that period she requested copies of other staff's feedback on the review, to bolster her view that her position was still required by MFAT. MFAT refused this request because it believed it would breach the privacy of other staff. This could easily have been resolved by MFAT redacting staff names, such as has occurred in many Authority investigations, including this one.

[16] Similarly, Ms McDonald was not given copies of the terms of reference or full copies of the documents sent to the group in MFAT making the decision on redundancies.

[17] On 21 July Ms McDonald was told that her position would be made redundant. One role was suggested as a possible reassignment position, but that was well beneath her level of skill and experience, and was thus paid significantly less. Both parties agreed that this was not a suitable role for reassignment for Ms McDonald.

[18] Ms McDonald then went overseas for an extended period of annual and long service leave. During this period all positions that were advertised within MFAT were provided to Ms McDonald. Also Ms McBride wrote an email to HR suggesting that Ms McDonald could be given notice and have her employment terminated, unless a redeployment option was found within the term of her notice period.

[19] After her return to work Ms McDonald upset Ms Debbie Stevens, the manager of the Contracts team, because of her interactions with contracts/procurement staff. She had complained about Ms McDonald being over in the contracts area and spending "*most of her day ... winding up the budget advisors and other members of the team*". When Ms McBride spoke to Ms McDonald about this she felt that she was being unfairly targeted.

[20] Following the new IDG financial support structure coming into effect, Ms McDonald met with MFAT on 13 September. She was told that she would be given one month's notice of redundancy if no redeployment opportunities could be found by the next Monday, the 19th of September.

[21] On 20 September Ms McDonald was informed that there were no redeployment options for her. Mr Richard Cross, MFAT's senior HR adviser, sought to give Ms McDonald a letter terminating her employment on one month's notice for redundancy. However, Ms Burt, on Ms McDonald's behalf, refused to accept the letter, claiming that it was premature given that the Ministry had not complied with its obligations in a redundancy situation.

[22] The collective employment agreement dealt with restructuring and surplus staffing in clause 22. In the introduction, termination of employment is said to be a step taken only as a last resort and that attempts should be made to place affected employees in positions outside of MFAT, as well as within. Clause 22.1 includes the following comment:

*When a surplus staffing situation exists the Ministry may, following consultation and agreement with affected employees and/or the Unions, either reconfirm in the same or similar position, or reassign to an alternative position for which they are suitable, those employees affected. Agreement will not be withheld unreasonably. Reconfirmation or reassignment may include placement to a suitable position in an existing agency or in a new structure or agency established as part of the restructuring.*

[23] Clause 22.2 deals with restructuring and surplus staffing and states:

*When a surplus staffing situation exists the following options may be applied:*

- (a) *Reconfirmation of position;*
- (b) *Reassignment;*
- (c) *Attrition;*
- (d) *Leave without pay;*
- (e) *Retraining;*
- (f) *Redeployment/Job Search;*
- (g) *Redundancy*

*Option (a) will preclude employees from access to the other options. The aim will be to minimise the use of redundancy ...*

[24] Clause 22.4 deals with reassignment:

*Following reconfirmation, and where agreement has been reached on reassignment, if there are positions still vacant, then the Ministry, the employees and/or the Unions will meet to assess the skills of those employees still left without a position and to reach agreement on the process for appointment to new positions.*

*In determining the parameters for reassignment, cases will be dealt with on an individual basis, with a view to placing as many employees as possible by matching individual skills with positions which require*

*similar skills. This exercise may involve individuals undertaking some on-the-job training or attending training courses (e.g. keyboard skills). Such training needs will be identified prior to the individual being reassigned and with costs to be met by the Ministry.*

*Employees to be reassigned under this process will be consulted prior to any appointment being made.*

...

*All affected employees not placed by reconfirmation or reassignment are surplus and the following provisions apply.*

[25] Those provisions include clause 22.5, Notification:

*The Ministry will notify the surplus employees concerned and the Union/s a minimum of one month prior to the date that the surplus is required to be discharged ...*

[26] Clause 22.7 deals with other options:

*During this period the affected employees and the Union/s and the Ministry will meet to reach agreement on the options which may be appropriate to the circumstances and may be available to surplus employees.*

*How they may be used, other options which the Ministry and the affected employees and/or the Unions may agree to, and the types and levels of financial assistance, will be negotiated on a case-by-case basis.*

*By agreement between the Ministry and the affected employees the option of redundancy may be considered at any stage on a case-by-case basis.*

[27] Clause 22.10 deals with retraining. It states:

*Retraining is an efficient and worthwhile option for dealing with staff and surpluses. To this end the Ministry will as far as possible:*

- a. Identify particular skill shortages in the public service or elsewhere in the State sector or private sector.*
- b. Assess where there are generally job opportunities in the public service, in the State Sector and/or in the private sector.*

*When a staffing surplus is identified the Ministry will consider the skills, training etc of the employees who are surplus and will determine whether there are retraining opportunities for them for work either in the Public Service and/or the state or private sector.*

*If retraining opportunities are identified, specific retraining programmes will be designed at a cost of no more than the redundancy payment available to a surplus employee.*

[28] Mr Cross decided not to issue notice following Ms Burt's intervention, but instead to look at again whether the Ministry had met its obligations under clause 22.

[29] Despite it being open to the Ministry to have given notice on that date, as I conclude below, the Ministry determined an alternative option, which was to look at work that Ms McDonald could do in the interim, particularly as the IDG procurement review consultation document was soon to be released and Ms McDonald was of the view that positions could be found for her there. As a result of that review there were meetings on 21 and 22 September that looked at short term tasks that Ms McDonald could do for the finance team.

[30] On 6 October, at a redeployment meeting, a short term role in the scholarships team was identified for Ms McDonald. The agenda for that redeployment meeting included a recap of previous options, further options identified by MFAT, and any other options that Ms McDonald could identify.

[31] A redeployment option that was discussed was the possibility of the vacant position as a contracts trainer in the procurement area. By contrast, retraining was only discussed in the context that any other temporary tasks that had been identified that Ms McDonald could undertake would have involved more training than the duration of the work involved. Ms McDonald was invited to propose any other redeployment options that might exist and she agreed to do so.

[32] Furthermore, the Ministry wrote to Ms McDonald on 13 October about a meeting to reach agreement on options which may be available. MFAT proposed that Ms McDonald take special leave without pay so that she could consider roles that became available as a result of the procurement review. Ms McDonald did indeed wish to be considered for roles resulting from that review.

[33] The first redeployment role to arise out of the procurement review in which Ms McDonald was interested was that of contracts trainer. Given my assessment below of the requirements under the collective agreement, I accept that it was open to MFAT to not consider Ms McDonald until reconfirmation and reassignment had taken place for those affected by the procurement review. However, MFAT did conduct a competitive process for this position, which was a fixed term half-time role. I accept that this was initiated by Human Resources.

[34] The appointee was to report directly to Ms Stevens, who had already raised concerns about Ms McDonald's behaviour, and who had been actively seeking to recruit one of her own staff for this role. Following a process of expressions of

interest, MFAT appointed the person Ms Stevens had approached, it considering her the best person for that particular position.

[35] Ms McDonald also sought to be appointed as an activity procurement adviser or tender adviser. However, this position only became vacant as a result of an incumbent resigning. It is important to address the timing of this resignation. On 14 October, following her unsuccessful application for the contract trainer's role, Ms McDonald was given one month's notice, but was also provided with the option to take leave without pay until the procurement review decisions had been made. That document was released on 1 November 2011. On 8 November Ms McDonald filed in the Authority seeking a stay on the notice of termination. On 9 November, following a telephone conference with the Authority, Ms McDonald agreed to take leave without pay and to be considered for procurement roles.

[36] On 9 November Ms McDonald also stopped attending work at MFAT, although she was paid to 14 November. On 18 November Ms McDonald, having heard that the activity procurement adviser role would soon become vacant, sought to be redeployed to that role. While Ms McDonald was correct that the position was soon to become vacant, I do not accept that that was any certainty of that at that point in time, because the incumbent had not yet given notice of her resignation.

[37] On 7 December, however, the activity procurement adviser was offered a position outside of MFAT. She told its director of development strategy of this division, Ms Jackie Frizell, of the offer that day. I accept the evidence of those witnesses that they did not discuss exactly how or when the incumbent would be leaving the Ministry. In fact while she left to take up the position overseas, she remained on leave without pay with MFAT.

[38] However, given that there were no suitable redeployment options for her, a letter terminating Ms McDonald's employment was issued the next day. I accept that at that point the left hand did not know what the right hand was doing, particularly as the incumbent in the contracts activity procurement adviser role had not formally given notice. I also accept that in light of the budget constraints on MFAT, Ms Frizell decided not to replace the activity procurement adviser position when the incumbent did leave. Thus no vacancy ever formally arose.

## The Law

[39] This case is to be decided under the new section 103A. In *Angus & McKeen v. Ports of Auckland* [2011] NZEMPC 160 the full Court dealt with the issue of the application of this section in practice. It held at para.[57]ff:

- lvii. *The Authority or the Court must first determine, as matters of fact, what the employer did leading to the employer's dismissal or disadvantage of the employee, and how the employer did it. This may include findings about what occurred which brought about the employer's acts or omissions that led to the dismissal or disadvantage, if the facts about material events are disputed.*
- lviii. *Next, Long on Evidence, relevant legal provisions, relevant documents or instruments and upon the specialist knowledge of employment relations, the Authority and the Court must determine what a fair and reasonable employer could have done, and how a fair and reasonable employer could have done it, and all the relevant circumstances at the time at which the dismissal or disadvantage occurred. These relevant circumstances will include those of the employee, the nature of the employer's enterprise [inaudible], and any other circumstances that may be relevant to the determination of what a fair and reasonable employer could have done and how [inaudible] or employer could have done it. Subsections 3, 4 and 5 must be applied to this exercise.*
- lix. *Finally, in determining justification under the new s103A, the Authority or the Court must determine whether what the employer did and how the employer did it, or what that notional fair and reasonable employer in the circumstances could have done, bearing in mind that there may be more than one justifiable process and/or outcome, the Court or authority must do so objectively, that is ensuring that they do not substitute their own decisions for those of a fair and reasonable employer in all the circumstances.*

[40] Those subsections 3, 4 and 5 referred to above state as follows:

- 3. *In applying the test in subsection 2 the Authority or the Court must consider –*
  - (a) *Whether, having regard to the resources available to the employer, the employer sufficiently investigate the allegations against the employee before dismissing or taking action against the employee; and*
  - (b) *Whether the employer raised the concerns that the employee had with the employer before dismissing or taking action against the employee; and*
  - (c) *Whether the employer gave the employee a reasonable opportunity to respond to the*

*employer's concerns before dismissing or taking action against them; and*

(d) *Whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*

4. *In addition to the factors described in subsection 3, the Authority or the Court may consider any other factors it thinks appropriate.*

5. *The Authority or the Court must not determine a dismissal or an action to be unjustifiable under this section solely because defects in the process followed by the employer if the defects were –*

(a) *minor; and*

(b) *did not result in the employee being treated unfairly.*

[41] Those provisions, implying as they do some sort of allegations of misconduct by an employee, do not necessarily sit well in the context of redundancy. The broad principles are clear, however, and can be applied to this case.

[42] In *Vice Chancellor of Massey University v. Wrigley* [2011] NZEMPC 37 the Full Court found that issues of access to information apply equally in cases other than the context of selection for redundancy, the issue in *Wrigley*. In this context, at para.[57] the Court held:

*If employees request access to further information, the employer will then provide that to the extent it is relevant to the decision the employer proposes to make.*

### **Determination**

[43] I conclude that this was a genuine redundancy situation. I accept that MFAT genuinely believed that it needed more complex financial advice and assistance than the financial budget advice provided through the Senior Finance Advisor's role, the demand for which would be reduced under the Ministry's new aid models. MFAT's actions in this respect were fair given that they were in accordance with the Collective Agreement and not made with ulterior motives or otherwise outside the purview of an employer's rights to manage its own business. Therefore what it did was what a fair and reasonable employer could have done in all the circumstances at the time.

[44] I rely particularly on the general comment section above for these conclusions. Similarly, Ms McDonald's concern that she was never appointed as Acting Deputy

Director of Finance in Ms McBride's absence can easily be explained by the fact that Ms McDonald was not an accountant unlike Ms McBride and the person chosen by her to act when she was away. Even though much was made of Ms McBride's notice in her email suggesting that Ms McDonald could be given notice and have her employment terminated unless a redeployment option was found within the term of her notice period, that was not inconsistent with the terms of the collective agreement and therefore falls within the range of what a fair and reasonable employer could do. The same analysis applies to what was described as a premature attempt to give Ms McDonald notice.

[45] Similarly, it is clear that Ms McDonald's behaviour was frustrating for Ms McBride, who no doubt wanted to focus on the future of her area, which of course was not going to involve Ms McDonald. As noted above, Ms McBride should also not have been seen to have been running the restructuring. However I conclude that none of this detracts from the genuineness of the redundancy, including Ms McBride's bona fides, who presented as relatively inexperienced in the management of change, and who did not appear to receive a lot of support.

[46] It was clear from the emails in early September from Ms Stevens to Ms McBride and others that Ms Stevens was upset with Ms McDonald. I conclude that Ms Stevens was indeed upset by Ms McDonald's actions, even although in a redundancy setting such as this, a great degree of tolerance is required by management. However, I also conclude that however insensitive, this view was not an important factor in deciding whether Ms McDonald was selected for a redeployment role. The non-selection of Ms McDonald was an option open to a fair and reasonable employer, given that there were two credible candidates for one position. This decision called for an exercise of judgment between an experienced employee with training experience and an employee with less experience in training, but with much more direct experience in the roles that were to receive the training. In this regard I accept Ms Stevens' evidence that she genuinely believed that the appointee was the person best suited for the position. In cases such as this, in the absence of bad faith or ulterior motives, it is not for the Authority to substitute its judgment for that of the employer, MFAT, particularly given Ms McDonald's recent absences.

[47] The contracts advisor role became vacant around the same time that Ms McDonald's employment was terminated. I conclude that it was an unfortunate coincidence that these two events occurred around the same time, and that in any event the position would not have been filled for financial reasons and thus would not have been available for Ms McDonald to take up as a redeployment option. Despite the fact that Ms Frizell could have been more astute in linking the two matters, that would have made no difference, given that the position was, for genuine financial reasons, not ever filled.

[48] I turn now to how MFAT acted. It is clear from the restructuring and surplus staffing provisions that a surplus staffing situation relates to a review that has been undertaken applying to the same people in the same positions. Therefore each surplus staffing situation needs to be dealt with separately from any arising from any prior or subsequent reviews. It was therefore appropriate that reconfirmation and reassignment take place review by review, and that staff affected by that review only have rights to reconfirmation and reassignment to positions arising from that review. The staff affected by different reviews, however, are still entitled to consideration to redeployment, because once a surplus staffing position affects them, they are entitled to redeployment within the public service, which includes MFAT. That is different to reassignment, however, which takes place before a surplus staffing situation has been reached. Here it was accepted that there were no appropriate positions for Ms McDonald to be reassigned into that had been created as a result of the finance review.

[49] Thus provided that MFAT has properly followed the reconfirmation and reassignment provisions then it may give notice to staff, which shall be a minimum of one month. At this point the parties are required to meet to reach agreement on the options which may be appropriate on a case-by-case basis. By implication these meetings take place after notice has already been given. It follows that in this case, with reconfirmation and reassignment within the review having been properly assessed by MFAT, MFAT would have been entitled to give notice to Ms McDonald on the 19th of September, as it attempted to do. This therefore gives further strength to my conclusion that the review was not entered into with a major purpose of ending Ms McDonald's career with the Ministry.

[50] During the period of notice a number of options need to be considered, including retraining and redeployment. At the meeting of 6 October there was no real discussion of retraining as a separate option, but Ms McDonald was given the opportunity to put forward any alternative options, which could have included retraining. The claim that she could not do so because notice was then given in breach of the collective agreement is wrong, because, under the agreement, notice can properly be given before options such as retraining need to be discussed. It follows therefore that it was incumbent on Ms McDonald to identify retraining or other redeployment options as she had undertaken to do. MFAT can not be held to be in default of its obligations for her failing to do so. The collective agreement requires active involvement by both parties in surplus staffing situations.

[51] In the particular circumstances of this case, with Ms McDonald having been involved in a number of restructurings, and with her length of service in the Ministry, I consider that MFAT officials did have sufficient knowledge of her skills and experience etc to determine whether there were retraining opportunities for her, and that the decision it made that there were not, was one that a fair and reasonable employer could justifiably make.

[52] In this case Ms McDonald wanted to know what submissions other employees had made so as to assist her and bolster her claims that her position should not be made redundant. This was an entirely appropriate approach for her to pursue. It is clearly relevant whether other employees supported the need for her position to be retained, as they had regular dealings with and/or worked closely with her. Equally, she was entitled to consider all the information that the review body held, such as its terms of reference. As the disputed documentation was relevant to the continuation of Ms McDonald's employment, it should have been given to her so as to give her an opportunity to comment on that information before the decision to dismiss her was made.

[53] Ms McDonald was also entitled to reasonable notice of a meeting at which she was to be told of the results of the review, whereby it was proposed that her position was to be disestablished. No fair and reasonable employer could have acted in such a way, for the reasons described above.

[54] How MFAT acted has been found to be at fault and was unjustifiable in two respects. To not follow section 103A(3)(c), by commencing a surplus staffing process

without proper notice or opportunity for representation, and thus also not giving Ms McDonald a reasonable opportunity to respond, can not be described as minor, nor can the breaches of the information requirements, which are fundamental to employment law and are clearly set out in the *Wrigley* case. In particular, it can not be said with absolute certainty that the provision of further information to Ms McDonald about what other submitters to the review had said, would not have permitted Ms McDonald to have made more effective submissions in support of her own position. Similarly, had she had all the relevant information she sought, she may have come to accept the genuineness of her redundancy. This latter point also applies to MFAT's actions when informing her that her position was to be disestablished. They may alternatively be described as matters leading to an unjustifiable disadvantage in Ms McDonald's employment or to her unjustifiable dismissal.

[55] There is no doubt that these were two of the decisions of MFAT that caused Ms McDonald so much upset and heartbreak. In all the circumstances of this case, I consider it appropriate an award of compensation is \$3,500. No other remedies are appropriate given the procedural nature of the breaches. Similarly, Ms McDonald has not contributed to those breaches by MFAT.

[56] I therefore order the respondent, the Chief Executive of the Ministry of Foreign Affairs and Trade, to pay to the applicant, Ms Jennifer McDonald, the sum of \$3,500 in compensation under section 123(1)(c)(i).

### **Costs**

[57] Costs are reserved.

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