IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2012] NZERA Christchurch 141
5283526

	BETWEEN	BRENDA BENGE Applicant
	A N D	CANTERBURY LANGUAGE COLLEGE LIMITED known as CANTERBURY COLLEGE LIMITED Respondent

Member of Authority:	Helen Doyle
Representatives:	Phil Butler, Advocate for Applicant Penny Shaw, Advocate for Respondent
Investigation Meeting:	9 February 2012 at Christchurch
Submissions Received:	20 and 27 February 2012 from Applicant 20 February 2012 from Respondent
Date of Determination:	9 July 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Brenda Benge was employed by Canterbury Language College Limited now known as Canterbury College Limited (the College) as a teacher in Christchurch for three different periods of time. The College operates a foreign language college in Christchurch providing English language and exam classes. The Authority is mainly concerned with the third of those periods commencing in or about late October 2008.

[2] Ms Benge says that for the third period of employment she was employed for *full time hours.* Full time hours were commonly known to be 23 hours per week because of the hours the school operated.

[3] Ms Benge says that she has two employment relationship problems. The first of those is that she was unjustifiably disadvantaged in her employment because her hours were reduced without her agreement from 23 hours per week to about 15 hours per week for a period of six weeks. Ms Benge seeks reimbursement of the sum of $1,185.17 gross by way of remedy. That sum includes holiday pay assessed at 8 % and the employer Kiwisaver contribution of 2 %.

[4] The second employment relationship problem is that Ms Benge says she was unjustifiably dismissed from her employment in a meeting with the College Director, David Pepperle, on Wednesday, 4 November 2009. Ms Benge says at that meeting she was told that as of the following Monday there would be no more work for her. Ms Benge's last day at the College was 6 November 2009. Ms Benge seeks lost wages for a period of six months together with lost benefits of the employer Kiwisaver contribution of 2 %, holiday pay and interest, compensation in the sum of $10,000 and costs.

[5] The College says that Ms Benge was offered and accepted employment in late October 2008 on the same casual basis that she had been employed with the College during her second period of employment commencing in April 2008. It says that the College was not obliged to offer Ms Benge hours of 23 per week and it was justified in not giving her those hours of work each week. It further does not accept that on 4 November 2009 Mr Pepperle dismissed Ms Benge. It says Mr Pepperle advised, as he was entitled to do in a casual relationship, that there would be no hours the following week for Ms Benge. The College does not accept it is liable to pay anything by way of remedy to Ms Benge.

[6] In the statement of problem there was a claim for a penalty for late provision of wage and time records. That matter was not pursued.

The issues

[7] The issues for the Authority to determine in this case are as follows:

- What was said about Ms Benge's terms and conditions of employment when she was offered employment with the College in late October 2008 by the then Manager of the College, Miriam O'Connor?

- Did the hours actually worked by Ms Benge and the pattern of work after her commencement at the College support that there was a guarantee of hours or that the employment was a casual one and not of a permanent ongoing nature?

- Was the reduction in Ms Benge's hours an unjustified action that caused her disadvantage?

- If it was, then what remedy is Ms Benge entitled to?

- What was said in the conversation between Ms Benge and Mr Pepperle on 4 November 2009?

- Was Ms Benge dismissed from her employment on 4 November 2009 with such dismissal taking effect from 6 November 2009?

- If Ms Benge was dismissed then was that dismissal justified?

- If the dismissal was unjustified then what remedies should be awarded and did Ms Benge take adequate steps to mitigate any loss.

What was said in the late October 2008 telephone conversation between Ms O'Connor and Ms Benge?

[8] Ms Benge resigned from her second period of employment with the College in late September 2008. Her final pay, including holiday pay, was paid out in the pay period ending 3 October 2008. Ms Benge left the College at that time to work at another language school for a three week period on trial. Things did not work out with her new employer and she was then without employment.

[9] Ms Benge said that she had made *a bit of a fuss* during her second period of employment with the College because she wanted more hours and an increase in her hourly rate from $23 to $30 per hour. She developed and put forward a proposal during that second period of employment to the College, which built in a minimum of three hours preparation toward the development of a course plan that the College had wanted her to undertake. The College rejected Ms Benge's proposal. She accepted that her second period of employment had in all likelihood been on a casual basis although I am not required to determine the nature of the relationship for that period of time. Ms Benge said that during the second period of employment she didn't have

work on Monday mornings and was initially told there would be no work over the term breaks. The Director of Studies at the College, Keith Burgess, did manage to find some limited work for Ms Benge over the term breaks during that second period of employment.

[10] Given the matters that had arisen during the second period of employment Ms Benge said she was surprised when in or about late October 2008, she was telephoned by Ms O'Connor and asked if she wished to return to the College teaching General English. Ms Benge said she asked Ms O'Connor whether it would be on the basis of full time hours (23 hours per week). She said that Ms O'Connor advised her that it would be and on that basis Ms Benge duly accepted the employment offer.

[11] There was agreement that there was discussion about Ms Benge either not complaining about hours or maintaining a positive attitude if she was to be employed for a further period. Ms O'Connor agreed that when she talked to Ms Benge on the telephone about returning to the College to teach General English, Ms Benge asked if it was full time. Ms O'Connor said in her oral evidence at the Authority investigation meeting that her response was that *right now it is*. She went on to describe that as in the immediate future, the following week. She said in her oral evidence that Ms Benge did push her during the telephone discussion and asked whether the work was ongoing and that Ms O'Connor responded *if work was available*.

[12] Ms O'Connor did not, understandably given the passage of time, have a particularly good memory or recollection of what was said during the telephone conversation. She relied on what she described as the standard approach that the College would never tell a teacher that they were a permanent teacher and that all teachers are on casual terms. There was no disagreement that the word *permanent* wasn't used in the discussion between Ms O'Connor and Ms Benge. Rather the conversation was about whether the hours would be full time hours. Ms O'Connor said in her written statement *I can say that no teachers had signed contracts which guaranteed them hours, as they all had Casual Contracts*…

[13] The Authority heard evidence from Louise McFarlane who was employed at the College in April 2009 as an English teacher. Her evidence was that she was guaranteed a minimum of 23 hours per week and she produced an employment agreement that supported that signed on 23 April 2009 by Ms O'Connor. Ms McFarlane said that she didn't even ask for 23 hours a week but it was

nevertheless in her agreement. If Ms McFarlane not given evidence at the instigation of the applicant and provided an employment agreement signed on behalf of the College by Ms O'Connor then the Authority would in all likelihood have been left with the view that there was never any guarantee of a number of hours per week to teachers. I cannot conclude in light of Ms McFarlane's evidence that that is correct. There was then some further evidence to support that another teacher was also offered guaranteed hours by Mr Burgess. When both these contractual arrangements came to light they were explained as exceptions. I am not satisfied of that.

[14] There was no discussion about pay rates during the conversation between Ms Benge and Ms O'Connor. Ms Benge expected to and did receive the same hourly rate of $23.00 as she had in her earlier assignment.

[15] I find that Ms O'Connor had a less reliable memory of the conversation than Ms Benge. Ms O'Connor tended to rely on what she usually did or told teachers about the nature of employment at the College.

[16] I am not required to rely simply on what was said over the telephone in determining the nature of this relationship and whether in fact full time hours were guaranteed. That is because I have the benefit of Ms Benge's actual hours worked until 6 November 2009. I can therefore form an understanding of the pattern of work that will assist in determining whether it is more likely or not that Ms Benge was guaranteed minimum hours.

[17] Unfortunately no written employment agreement was provided to Ms Benge at the outset of her employment. A proposed agreement was not provided until 18 September 2009 notwithstanding Ms Benge had asked for a written employment agreement on several occasions prior to that date. The proposed employment agreement offered to Ms Benge in September 2009 does not advance matters because it was not agreed to. Ms Benge promptly raised a concern about it with the Director of the College, David Pepperle because it described her as casual and that was not her understanding of the nature of the relationship. I now turn to consider the actual hours and pattern of work during Ms Benge's employment.

Did the hours and pattern of work support that there was a guarantee of hours for Ms Benge and/or that the relationship was casual or permanent ongoing employment?

[18] If Ms O'Connor's recollection that no guarantee of full hours was offered beyond perhaps the first week or so of work, then I would have expected the pattern of hours to reflect variation for the period of time that Ms Benge was employed. Ms Benge was paid fortnightly.

[19] The records show for the first pay period after employment ending 14 November 2008, Ms Benge worked 41.50 hours per fortnight or 20.75 hours per week. The next pay period ending 28 November 2008 she worked 43.5 hours for the fortnight or 21.75 hours per week. I have then considered the next 16 fortnightly pay periods until the period ending 24 July 2009. For nine of these Ms Benge was paid for 46.50 hours per fortnight and for one 46.25 hours per fortnight. That is therefore either 23.25 or 23.15 hours work per week for twenty weeks. The small increase from 23 hours per week was explained in evidence by Ms Benge as the result of attending a half hour staff meeting each week. One fortnight pay period for the period over Christmas was for 44.27 hours per fortnight or 22.13 hours per week although falling within that period was two public holidays for which Ms Benge was paid. For the remaining five pay periods, ten weeks Ms Benge was paid for just over 23 hours per week. There were then fewer hours worked for the fortnight ending 24 July 2009, 21.15 hours per week, but that seems to have been the result of leave. After that pay period the next three pay periods show Ms Benge paid for 23 hours work per week. The hours for the pay period ending 18 September 2009 were 20 hours per week but increased for the next pay period back to 23 hours. The remaining pay periods followed Ms Benge's leave ending 16 October 2009 and 30 October 2009 and 13 November 2009. They are the subject of the disadvantage claim as the hours worked were less than 23 per week. For 34 weeks of her employment Ms Benge worked at least 23 hours. An analysis of the records establishes that Ms Benge was paid one week in arrears.

[20] I have considered the pay records and the evidence about the telephone conversation during which there was an offer of employment. I conclude that it was more likely than not that Ms Benge was given a commitment from Ms O'Connor that there would be full time hours if she returned to the College to work in late October 2008. The hours worked are consistent with such a guarantee.

[21] The College does face difficulties with fluctuating numbers of students and corresponding numbers of teachers required at any given time. I heard evidence about that and I accept that is challenging. It can be addressed by way of the employment arrangements the College enters into with individual teachers. Care must be taken to ensure the arrangements reflect both what was offered to employees and the reality of the relationship.

[22] In this case the regularity of the work that Ms Benge performed, the consistency of the hours worked each week and the period over which it was performed was indicative of ongoing rather than casual employment – *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225. I was referred to the judgment of Chief Judge Colgan in *Rush Securities Services Ltd t/a Darian Rush Security* v *Samoa* [2011] NZEMPC 76 that followed the principles adopted by Judge Couch in *Jinkinson.* Ms Benge had to apply to take annual leave and was also paid for statutory holidays. Her proposed employment agreement made allowances for sick leave, annual leave and notice of termination. Ms Benge simply arrived each week and taught the class that she had been assigned to teach. These are matters inconsistent with a casual relationship.

[23] I find that the employment relationship between Ms Benge and the College was permanent and ongoing as opposed to casual.

Was the reduction in Ms Benge's hours an unjustified action that caused her disadvantage?

[24] I have found that Ms Benge was guaranteed 23 hours of teaching per week. Ms Benge was asked by Mr Burgess about two weeks before she went on leave whether she would mind teaching on a morning only basis her regular intermediate prep class until her leave commenced. Ms Benge couldn't recall exactly what Mr Burgess said but she understood it was only until she returned from leave and she agreed that would be fine. Ms Benge was only required to work one week before she commenced her leave on 18 September for mornings only and began working full time again for the second week. She properly in the circumstances does not claim for the shortfall in hours for that period.

[25] The situation however continued when Ms Benge returned from leave for work commencing on 5 October. Mr Burgess telephoned her at home and advised her that she would only be working mornings because numbers were down. Ms Benge

was not happy about that particularly when she arrived at work to see a new staff member Adrienne teaching classes morning and afternoon that she could have taught.

[26] Part of the issue was that the new staff member Adrienne had commenced at the College whilst Ms Benge was on holiday. Ms Benge considered that Adrienne was now doing her job teaching morning and afternoon in the classes that Ms Benge had been teaching.

[27] Ms Benge took the matter up with Mr Burgess who advised her that Adrienne was being employed to teach a special class that was commencing the following year. Ms Benge became angry about that and said that she had a conversation with Adrienne who advised her that she had been *headhunted* and that she was paid a higher hourly rate than Ms Benge. Ms Benge also noticed that another employee, Hadassah, who had been covering her class while she was away on leave, was also teaching morning and afternoon.

[28] Toward the end of the first week that Ms Benge had returned from leave, Mr Burgess advised her that she would only be required for the afternoon classes for the following week. Ms Benge said that she asked Mr Burgess why this was happening and that he indicated to her that it was personal and he thought that it was because the owner of the College, Sue-Ann Wang, did not like her. Mr Burgess indicated to Ms Benge that he was just doing as he was told. Mr Burgess in his written evidence did not accept that he said this and in his oral evidence said that he could not recall what if anything was said on this occasion. He did accept that decisions were made by management about whether to give work to one employee or the other and that he did not like having to tell Ms Benge that she could no longer have both the morning and afternoon hours. I find it more likely that Mr Burgess did make a comment to Ms Benge that Ms Wang did not like her because consistent with that Ms Benge went straight to see Ms Wang and asked whether she wanted her there or not. Ms Wang recalled the conversation and in her evidence said that she responded that she did not know what Ms Benge was talking about and that she confirmed to her that she did want her presence at the College.

[29] Ms O'Connor when she gave her oral evidence said that at a management meeting prior to Mr Burgess having a discussion with Ms Benge about reducing her teaching time Ms Wang had made her position clear that Ms Benge was no longer in favour. Ms O'Connor said that Ms Wang had said some things about Ms Benge in

relation to her behaviour and that her attitude was bothering Ms Wang. When these matters were put to Ms Wang she said she had no recollection about them and she did not accept that when she was unhappy at employees their jobs were at risk. I prefer Ms O'Connor's evidence on this matter and find that Ms Wang had become unhappy for some reason at Ms Benge and that in all likelihood this led to decisions about who should get the teaching hours at the College. Ms Shaw submits that Adrienne had been recruited previously when hours were available and had skills and experience vital to the business. That does not in my view satisfactorily explain why Adrienne started some months prior to the course for which she was required and was teaching classes that Ms Benge could have taught.

[30] Ms Benge contacted ASTI, the English teachers' union to ask what could be done about her not receiving her guaranteed hours. She was advised to attend mediation to sort out the problem. Mediation did take place on 23 October 2009 and it was common ground that Mr Pepperle was to get back to Ms Benge with some answers to some concerns raised. The situation of reduced hours continued until 6 November 2009 and the questions were never answered.

[31] I have found that Ms Benge was offered employment for full hours of 23 per week and accordingly a unilateral decision to reduce those hours was unjustified and caused Ms Benge disadvantage. The decision was further based on matters that had never been put to Ms Benge for her explanation and was against a background where other teachers performed work that she could have done. Ms Benge has a personal grievance of disadvantage in terms of s 103(1)(b) of the Employment Relations Act 2000 that she has been disadvantaged in her employment by an unjustified action of her employer.

Remedy for unjustified action causing disadvantage

[32] The most appropriate remedy is to compensate Ms Benge for her lost wages. Mr Butler has calculated there were 24 hours fewer worked over this period following leave and the loss was the sum of $1077.43 together with holiday pay and the Kiwi Saver contribution from the College. The sum of $1077.43 though divided by Ms Benge's hourly rate is 46.84 hours not 24 hours and the period after Ms Benge returned from leave and continued with her employment was four weeks and not six because it was from 5 October 2009 to 6 November 2009. The correct calculation in my view is not $1069.50 x 3 but 1069.50 x 2 that equals $2139.00 (the normal

fortnightly hours). From that, bearing in mind, that Ms Benge was paid a week in arrears I will deduct the amounts paid in the final pay period of $731.07 and $700 to arrive at an amount of $707.93 which is about 30.7 hours lost wages for that period or approximately 7.5 hours less worked and paid each week. Holiday pay on top of that is $56.63. The Kiwi Saver contribution is $14.15. The total amount owing is $778.71. There are no issues of contribution.

[33] I order Canterbury College Limited to pay to Brenda Benge the sum of $764.56 gross being reimbursement of lost wages and holiday pay and $14.15 being the lost benefit of the Kiwi Saver contribution.

What was said in the conversation between Ms Benge and Mr Pepperle on 4 November 2009?

[34] Ms Benge said that at or about this time when her hours were cut, she saw an advertisement on TradeMe for a mobile coffee van and she discussed this with her partner, Mark. She decided that she would look into supplementing her income on weekends by selling coffee. In order to organise a loan to purchase the coffee machine, she had to confirm that she was in part time employment and the hours that she was working. She put these at 15 per week which was the correct number at that time but of course does not have any bearing on the matters in front of me as I have not found the relationship was causal and I have found that there was a guarantee of hours made to Ms Benge.

[35] On 4 November 2009 Ms Benge was asked to attend a meeting with Mr Pepperle and Mr Burgess. She thought that Mr Pepperle was going to get back to her with respect to answers from the mediation.

[36] Mr Pepperle is 75 years old and said in his evidence that his memory has become unreliable particularly since the Christchurch earthquakes. He did provide an email that he wrote on the day of the meeting and sent to Ms Wang. I shall refer to that shortly. Mr Pepperle said that he advised Ms Benge that there would be no work for her the following week. Ms Benge said that Mr Pepperle advised that there was no further work for her from Monday and did not limit that at all. She said that she advised him she had devoted ten years of her life to teaching and could not believe how it was ending. Ms Benge made a comment about payment of redundancy compensation and said she was advised none would be paid and asked whether four days notice was enough. Ms Benge then left the room and went into the staff room

and advised Ms McFarlane she had been *sacked*. She continued working until 6 November and then did not return to the College. Her final pay paid to her at the end of the pay period 13 November 2009 included holiday pay.

[37] I have carefully considered Mr Pepperle's email to Ms Wang dated 4 November 2009. It commences with his intention to meet with Ms Benge about the mediation questions and that he was sure he could sort out the problems. He then set out that he had not had that meeting to follow up on the mediation issues because the matter was overtaken by more recent developments. He said that he found out Ms Benge's morning hours were in jeopardy because of student numbers dropping the following week, classes merging and commitment to other teachers. He does not set out exactly what was said to Ms Benge at the meeting although does say that Ms Benge evidently formed the idea that it would be her last week as one of her questions to him was whether *4 days notice is enough.*

[38] Mr Pepperle in his written evidence said that he could not recall if he used the word redundancy but in oral evidence was quite clear that he did use that word redundancy although said that was not unusual in the situation. His evidence was somewhat unreliable as to the actual words used about no more hours and whether it was simply for the following week or permanently. What is clear is that Mr Pepperle knew Ms Benge thought she had been dismissed. There was no follow up by the College to advise her to the contrary. Mr Burgess said that this was because she told Mr Burgess she was going to operate her coffee business. Ms Benge does not accept that was her intention. Mr Burgess in his evidence under questioning accepted that he may have made the wrong deduction about that. No-one from the College checked with Ms Benge about that.

[39] In conclusion I prefer Ms Benge's evidence that she was told there would be no more hours for her to work at the College. If this was not the intention of the College they took absolutely no steps to advise her of the correct situation.

Was Ms Benge dismissed from her employment on 4 November 2009 with such dismissal taking effect from 6 November 2009?

[40] I find that Ms Benge was dismissed from her employment on 4 November 2009 with the dismissal taking place from 6 November 2009 – *Wellington etc Clerical etc IUOW v Greenwich (t/a Greenwich and Associate Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC).

Was the dismissal justified?

[41] Section 103A of the Employment Relations Act 2000 as it applied at the time of this dismissal provided:

> *For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.*

[42] Mr Butler's submission, which I agree with, is that the College only claimed there was no dismissal but did not claim in the alternative that the dismissal was justified. Ms Benge was dismissed for reasons that she knew nothing about and there is in that regard a breach both of good faith obligations and the obligation to act fairly and reasonably. She was dismissed before there was a proper attempt made to resolve her issues about her hours notwithstanding she had commenced a process to deal with that issue. Although Ms Benge suspected given her conversation with Mr Burgess in October 2009 that there was something behind what was going on with the reduction of her hours and the giving of these to a new teacher she was never told what that was. She took the proper step of directly confronting Ms Wang but it was only on the day of the Authority investigation meeting that it was confirmed by Ms O'Connor that Ms Wang had issues with her.

[43] I find that Ms Benge's dismissal was unjustified. A fair and reasonable employer would not have dismissed Ms Benge in all the circumstances at the time the dismissal occurred. Ms Benge has a personal grievance that she was unjustifiably dismissed and is entitled to remedies.

Remedies for Dismissal

Reimbursement of Lost Wages

[44] Ms Benge seeks reimbursement of wages lost for a period of six months together with the lost benefit of Kiwi Saver and holiday pay although her loss extended for seven months beyond that time. Mr Butler refers the Authority to the Court of Appeal in the judgment in *Sam's Fukuyama Service Limited v Zhang* [2011] NZCA 608 with reference to ss 128(2) and (3). I have had regard to that judgment.

[45] Ms Benge focussed on her coffee business that ran at a loss for the financial year ending 31 March 2010 and for the following year. She explained that she did not feel that she could approach other employers about teaching positions for many months because of the way she had been treated at the College. I accept that she did not give up her search for other employment entirely. Ms Shaw in her submission says that Ms Benge failed to mitigate her loss and effectively hid behind her *coffee business* and that by doing so meant she was unavailable for other work. Ms Shaw submits that if the Authority is to award loss of wages the sales from the coffee business should be taken into account not the overall loss of business. That is because the expenses would have been incurred whether or not she was working in the business full time and by not teaching she had more time to dedicate to increasing the sales.

[46] I find that Ms Benge attempted to mitigate her lost wages by focussing on her coffee business and although that operated at a loss she was entitled to a period of time to ascertain whether it would be profitable. In terms of Ms Shaw's submission that the sales of coffee should be taken into account I prefer Mr Butler's submission that is not the correct approach to that matter – *Phipps v NZ Fishing Industry Board* [1996] ERNZ 195,212. The evidence did not satisfy me that the expenses included items of a non-recurring or capital nature so as to make an allowance for those matters.

[47] I find that a reasonable time to see if the coffee business was profitable was four months from 6 November 2009. There will always be a start up period in any business but I am not satisfied that the College should be liable for lost wages due to continued unprofitability after that four month period. Ms Benge is entitled to be compensated for the loss of her Kiwi Saver employer benefit of 2%.

[48] I turn now to the claim for holiday pay on the lost earnings. In *McKendry v Jansen* [2010] NZEmpC 128 the Full Court of the Employment Court answered a question of law removed from the Employment Relations Authority about whether s 123(1)(c) or 123(1)(c)(ii) of the Act permitted the Authority to order the payment of compensation for the loss of an entitlement to paid parental leave under the Parental Leave and Employment Protection Act 1987. The Court held in para 68 that s.123(1)(c) of the Act did not contain any express limitation or restriction (of benefits), nor can it be implied from s.123(1)(c)(ii) that compensation is limited to any

loss arising from the employment agreement. In answer to the question the Employment Court held that compensation for loss of a parental leave payment was other money lost by the employee as a result of the grievance under s 123(1)(b) of the Act and also independently the loss of any benefit whether or not of a monetary kind which the employee might reasonably have been expected to obtain if the personal grievance had not arisen under s 123 (1)(c)(ii).

[49] I have applied the reasoning in *McKendry* to this case. I find that Ms Benge when dismissed lost her entitlements under the Holidays Act 2003. Those entitlements were the loss of either money or a benefit she could have reasonably expected to have obtained if her personal grievance had not arisen. That money or benefit can be quantified by multiplying the four months lost wages by 8%.

[50] I have calculated four months lost wages on the basis of Ms Benge's usual fortnightly payment of $1069.50 to arrive at a weekly figure of $534.75. This figure is arrived at from the hours per week that Ms Benge usually worked at the College of 23.25. The period from 9 November 2009 to 8 March 2010 is 17 weeks. The lost wages therefore are $9090.75. The Kiwi saver employer contribution benefit lost of 2% is $181.82 and holiday pay at 8% is $727.26.

[51] I order Canterbury Language College Limited known as Canterbury College Limited to pay to Brenda Benge the sums of $9090.75 gross for lost wages, $727.26 gross for loss of a holiday pay entitlement and the sum of $181.82 net for the loss of a Kiwi Saver benefit.

Interest

[52] There is a claim for interest on the above amounts. The Authority has the power to award interest on any monetary sum awarded by way of remedy under clause 11 of the Second Schedule of the Act. There was considerable delay in progressing this matter. Some of it was because of the earthquake requiring the first investigation meeting to be rescheduled but then there were considerable delays including a respondent adjournment request for the second meeting and further delays when Ms Shaw had difficulties briefing evidence due to witness unavailability.

[53] It is appropriate to make an order for interest for the lost wages award of $9090.75 at the rate prescribed under s 83(3) of the Judicature Act of 5% from 16 August 2010 until the date of payment.

Compensation

[54] Ms Benge gave evidence about her dismissal. She described herself as very emotionally upset. She said that she was shocked in the meeting on 4 November because she thought it was to be about mediation and she knew she had a large financial commitment with her coffee business to meet. She explained that she had biked home crying and was in a state of depression and was not confident about employment coming up to the Christmas period. I also heard from Ms Benge's partner Michael Corcoran who said that he felt after the loss of employment Ms Benge *pulled back* and was embarrassed. He explained that Ms Benge's relationship with her students extended beyond the classroom to tennis and outings and she lost all that contact with them.

[55] I find that Ms Benge did experience considerable humiliation and loss of dignity as a result of her dismissal. I do take into account Ms Shaw's submission that Ms Benge having had an unsuccessful trial period with another college just before she commenced her employment with the College for the third period may well have contributed to her feeling she now could not approach other language colleges to teach. Nevertheless I find that an award is called for that reflects the very real distress suffered by Ms Benge as supported by the evidence. In all the circumstances I find an award should be made in the sum of $8000.

[56] I order Canterbury Language College Limited known as Canterbury College Limited to pay to Brenda Benge the sum of $8000 without deduction under s 123 (1)(c)(i) of the Employment Relations Act 2000.

Contribution

[57] I do not find Ms Benge contributed to the situation that gave rise to her personal grievance.

Costs

[57] I reserve the issue of costs. I would encourage agreement about these but if that is not possible Mr Butler has until 23 July 2012 to lodge and serve submissions as to costs and Ms Shaw has until 13 August to lodge and serve submissions in reply.

Summary of findings and orders made

- I have found Ms Benge has a personal grievance that she was unjustifiably disadvantaged in her employment by the reduction of her hours without her agreement.

- For the disadvantage grievance I have ordered Canterbury College Limited to pay to Ms Benge the following amounts to reimburse her for the loss in pay because of the reduction in hours:

  $764.56 gross being reimbursement of lost wages and holiday pay.

  $14.15 being the lost benefit of the employer Kiwi Saver contribution.

- I have found Ms Benge has a personal grievance that she was unjustifiably dismissed from her employment.
- For the dismissal grievance I have ordered Canterbury College Limited to pay the following amounts:
  $9090.75 gross for lost wages and interest on that sum from 16 August 2010 to the date of payment at 5%;
  $727.26 gross for loss of a holiday pay entitlement;
  $181.82 net for loss of a Kiwi Saver benefit;.
  $8000 without deduction for compensation for humiliation and loss of dignity.
- I have reserved costs and have timetabled for submission in the event agreement cannot be reached.

Helen Doyle
Member of the Employment Relations Authority