

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 56  
5332037

BETWEEN

CLAIRE HARVEY  
Applicant

AND

THE HOME CENTRE  
LIMITED TRADING AS  
MARLBOROUGH MITRE 10  
MEGA  
Respondent

Member of Authority: P R Stapp

Representatives: Kent Arnott, Counsel for Applicant  
Peter Zwart, Counsel for Respondent

Investigation meeting: 14 December 2012 at Blenheim

Submissions Received: 14 December 2012 at the investigation meeting

Date of Determination: 19 March 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This is an employment relationship problem filed in the Employment Relations Authority by Claire Harvey in regard to the procedure followed by her employer over her complaint about being bullied by her supervisor<sup>1</sup>. She alleges that her employer, the Home Centre Limited trading as Marlborough Mitre 10 Mega, failed to properly deal with her complaint. She alleges that her resignation from her employment amounts to an unjustified constructive dismissal. She is claiming lost wages, and compensation for hurt, humiliation, loss of dignity and injury to feelings, and costs.

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<sup>1</sup> The supervisor's name has been withheld because the person has not been involved in the Authority's investigation and was not called to appear at the Authority's investigation meeting.

[2] The Home Centre Limited denies all Ms Harvey's claims.

### **The Issues**

[3] The issues in this matter are:

- (a) Whether Ms Harvey's resignation from her employment was reasonably foreseeable?
- (b) Whether Ms Harvey's resignation occurred as a result of a sufficiently serious breach of her employment and/or terms and conditions of employment by The Home Centre Limited?

[4] There are some factual matters and these will be dealt with in the course of the determination.

### **The facts**

[5] Claire Harvey (Ms Harvey) was employed by the Home Centre Limited trading as Marlborough Mitre 10 at Blenheim from 26 January 2010 until 19 October 2010 as a checkout operator in the check out team in the trade department. The team consisted of herself, another part time person and her supervisor. Ms Harvey reported to her supervisor and through the supervisor to the Trade Manager, Gena Birtles.

[6] On Friday 8 October 2010 Ms Harvey, through her mother Jackie Harvey, (Mrs Harvey) contacted Pamela Allen-Baines, the Human Resources and Development Co-ordinator, claiming that Ms Harvey had been bullied by her supervisor over a prolonged period of time.

[7] Claire and Jackie Harvey met with Ms Allen-Baines on Monday 11 October 2010. They outlined the nature and the details of Ms Harvey's claims that she had been bullied by the supervisor. The allegations were written down by Ms Allen-Baines (notes of the allegations 11 October 2010), and it is common ground that up until this time, Ms Harvey had not made any allegations of bullying or otherwise against her supervisor.

[8] Ms Allen-Baines says that she advised the Harveys of the process that she would then follow. She says her process included the following, and I quote:

1. *Write up my notes;*

2. *Speak to Gena to give her heads up;*
3. *Sift and sort my thoughts (noting that she has been thinking about this for nine months and it's new thoughts for me);*
4. *Speak to [name withheld – supervisor] about her complaint;*
5. *Meet together and work it through;*
6. *Continue to work through the issues and concerns;*
7. *Give each of them tools for tool box to work together in a healthy way.*

[9] Ms Allen-Baines says that at no time did Ms Harvey raise any questions about the procedure. Ms Allen-Baines says she stepped through each of the points 1 – 3 above ordering her thoughts in a document (second notes) which in the first column of the document outlined Ms Harvey's comments because they became the basis for her discussion with the supervisor later.

[10] Ms Allen-Baines then met with the supervisor on 12 October 2010. Assisting her in that meeting as a witness was Gena Birtles. This was the first time that the supervisor had any knowledge of such a complaint, and she had no prior warning beforehand. From the documents and the evidence of Ms Allen-Baines and Ms Birtles it would appear that the supervisor was shocked by the allegations, and indeed comments attributed to the supervisor by Ms Harvey later support this conclusion, I hold. Indeed, the apparently positive relationship between Ms Harvey and the supervisor before the complaint supports that there had been no forewarning of a complaint. I am supported in this conclusion by the existence and acceptance of a good performance review by Ms Harvey and that Ms Harvey had house-minded for the supervisor.

[11] Ms Allen-Baines decided to have a joint meeting with Ms Harvey and with the supervisor. The purpose of the meeting was to facilitate Ms Harvey's issues and concerns and to give her and the supervisor an ability to work together. It appears that any investigation procedure became secondary to this goal I hold. This is because Ms Allen-Baines' outline above does not refer to an investigation as such.

[12] Ms Harvey says that she was not told that her supervisor would also be attending the meeting. This conclusion is supported by point (4) above appearing outside each of the points 1-3 that Ms Allen-Baines says she stepped through with the Harveys. I hold that there does not appear to have been any preparation by Ms Allen-

Baines in regard to preparing Ms Harvey and the supervisor for such a meeting, except to allow support people to attend with them both. In other words there was no coaching and assistance provided to each of them to avoid any confrontation. I reach this conclusion because the supervisor made a request to make a statement at the end of the meeting that Ms Allen-Baines allowed to occur and I will come discuss that shortly.

[13] The meeting occurred on Tuesday 19 October 2010 in a board room office at the Marlborough Mitre 10 premises. At the meeting Ms Allen-Baines went through each of Ms Harvey's issues and gave her the opportunity to provide any further explanation and/or examples for any issues. Ms Allen-Baines then allowed the supervisor an opportunity to provide her reply to the claims. Ms Allen-Baines' says the purpose for allowing the supervisor to have an opportunity to comment was to assist her to determine whether or not bullying had occurred, although this was not indicated in her earlier outline for the meeting.

[14] In the first part of the meeting Ms Harvey became upset, and she left the meeting with her mother. Ms Allen-Baines followed them out of the room and encouraged Ms Harvey to return to the meeting. Although both parties have different versions of what they say was said to each other during the adjournment it is common ground that Ms Harvey did return to the meeting. Ms Allen-Baines says that this was an opportunity for Ms Harvey to "*develop herself as a woman*", and thus she thought it was important for Ms Harvey to return to the meeting. However, Ms Harvey claims that she had no choice but to return to the meeting and that Ms Allen Baines told her to "*grow up, and act like a woman*". Mrs Harvey also says this is what Ms Allen-Baines said. Ms Allen-Baines denies the claim and says she was trying to get Ms Harvey to "*develop herself as a woman*" and provided her with a choice on what to do next. I hold that Ms Allen's comments did put pressure on the Harveys to return to the meeting in the absence of any other real choices to do with the investigation of the matter. Upon the meeting resuming the parties continued to review the allegations.

[15] As the meeting began to wind up the supervisor asked, and was given approval, to read a pre-prepared statement. Ms Harvey says that the document now produced by the respondent that purports to be the statement used by the supervisor at the time was not the one read during the meeting. There is no evidence that it was handed out at the time. Notwithstanding this, there is common ground that the

supervisor said that Ms Harvey made her (the supervisor) “feel sick” when she looked at Ms Harvey. At this point in the meeting Ms Allen-Baines immediately decided to terminate the meeting. She says she made it clear that she disapproved of the statement made by the supervisor. She refers in her statement of evidence finding the comment unacceptable and uncalled for. Also, during this incident in the meeting, the witnesses say that the supervisor made another comment, but to Mrs Harvey “*what kind of mother are you to allow your daughter to feel like this for so long...*” “*or words to that affect*”.

[16] Ms Allen-Baines says that in concluding the meeting she advised that she needed sometime to further consider the issues and decide whether or not bullying had occurred and to set a way forward for both parties. She did not appear to make it clear what she would be doing and what the timetable would be other than to attempt to arrange another meeting. Ms Allen-Baines says it was the intention to reconvene once she had considered what both sides had said.

[17] Arrangements were then made for Ms Harvey to take her mother home and to get her uniform. Ms Harvey returned to work to finish her shift. Coincidentally Ms Harvey’s return to work involved not having to work with her supervisor. There were no other plans put in place in regard to Ms Harvey and her supervisor.

[18] Later on the same day, 19 October 2010 Ms Harvey resigned. In contacting Ms Allen-Baines it was agreed that she would give one weeks notice and she signed off a resignation form that she was resigning due to an *unsatisfactory working relationship*. Her final pay was for the period ending 26 October 2010.

### **The law**

[19] This is an employment relationship problem that involves the law of constructive dismissal. The applicant has relied on three causes of action in regard to her claim:

1. *That the respondent breached its duty under the Health and Safety Act to provide a safe place of work;*
2. *That the employer breached the applicant’s employment agreement by failing to recognise the intent of social legislation; to implement and use safe work methods and practices and comply with recognised Health and Safety Guidelines.*

3. *That the respondent has failed to act in good faith and breached s.4(1)(a) of the Employment Relations Act.*

[20] Both parties agree on the law that applies in this case. This is a matter that relies on the claim that there has been a significantly serious breach by the respondent in the applicant's employment and/or terms and conditions of employment to make it reasonably foreseeable that she would resign.

[21] The concept of constructive dismissal as a personal grievance has been examined by the Court of Appeal in *Auckland Shop Employees Union v. Woolworths (NZ) Limited* [1985] 2 ACJ 963:

*The concept is certainly capable of including cases where an employer gives an option of resigning or being dismissed; or where an employer has followed a course of conduct with the deliberate and dominant purpose of coercing a worker to resign ...A third category consists of cases where a breach of duty by a the employer leads a worker to resign.*

[22] The Court of Appeal held that:

*In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.*

*Auckland Electric Power Board v. The Auckland Provincial District Local Authorities Officers IUOW* [1994] 1 ERNZ 168

[23] In considering the duty not to act in a manner calculated to destroy or seriously damage the employment relationship, or to destroy any confidence between employer and employee, the Court held in *Yong and Co v. Chin* unreported 20 June 2007, AC 37/07 (Perkins J):

*Applying those principles, whether it be as a breach of the implied mutual obligations of trust and confidence or the overall obligation of good faith, it is then necessary to look at whether in this case the employer's conduct as a whole, judged reasonably and sensibly to use the words of Browne-Wilkinson J, was such that Ms Chin should not have been expected to put up with it.*

[24] Also the Court held in *NZ Woollen Workers IUOW v Distinctive Knitwear Ltd* (1990) 2 ERNZ Sel Cas 790 (LC) that the employer's conduct needs to be "*of such a character as to entitle the employee to terminate the contract of employment on the grounds of the employer's breach of duty under it*".

[25] The Employment Court held in *Turks Poultry Farm Ltd v Atkins* [1996] 1 ERNZ 374 (EmpC) that an employee "*was entitled to expect tangible evidence that something was being done to protect the employee from further ...harassment*".

### **Determination**

[26] Ms Allen-Baines was required to follow Marlborough Mitre 10's procedure as it applied to allegations of harassment. Marlborough Mitre 10's procedure made provision for an investigation into allegations as follows:

*"Investigations into allegations of harassment will be conducted in a sensitive manner and to the extent possible will remain confidential. An investigation may require conferring with parties and witnesses named by the complaining employee."*

[27] There are no particular requirements as to who is required to put a complaint in writing. Ms Harvey did not fill out a harassment complaint form that was available for such a purpose. I hold that Ms Allen-Baines' notes were a substitute for this. There is no issue about this approach. Ms Allen-Baines properly put in writing the complaint for Ms Harvey in the absence of Ms Harvey doing so for her self. This was a reasonable action given that a complaint had been made and the employer had to take the issues seriously.

[28] It was entirely reasonable for Ms Allen-Baines to meet with the supervisor next and to put each of the matters to the supervisor that she had written down in regard to Ms Harvey's complaint. Ms Allen-Baines then wrote down the supervisor's response to each of Ms Harvey's comments. Ms Allen-Baines then made her own notes about their comments. This was recorded in writing, and then used by Ms Allen-Baines to prepare notes for the meeting that she had scheduled for all the parties to attend on 19 October 2010. There was no prior meeting with the Harveys to go through each of the replies from the supervisor or indeed to enable Ms Harvey to know the supervisor's reaction to her complaints. Ms Harvey has claimed that the joint meeting held on 19 October meeting was a breach by the employer to protect her

from further indignity and any harassment. I hold that it was entirely open to Ms Allen-Baines to make the decision to have the meeting, but it was ambitious in the goals that Ms Allen-Baines set because she had made no findings in regard to the complaints despite meeting both parties separately first. I hold that having the meeting was in order because: First, Ms Harvey agreed to attend. Second, Ms Harvey had a support person at the meeting; her mother. Third, the meeting was an opportunity for (a) the allegations to be clarified so that they could be understood, and (b) to get responses. Fourth; the employer has the right to ensure that complaints are put to the person being complained about. There is no one set way about how this is done. It is a matter of judgement. Ms Allen-Baines' approach to the procedure did, however, entail some risk, especially given that she had no preplanning around the attendances, that there was a dispute about what Ms Allen-Baines said to Ms Harvey and her mother during the time they left the meeting and that the supervisor was allowed to make an unscheduled statement.

[29] The first issue is about the attendance at the meeting. Ms Harvey did not know her supervisor would be there. This does not conform to the harassment policy to conduct an investigation in a sensitive manner and preserve some confidentiality. In the first instance Ms Harvey could have expected to be advised that her supervisor would be coming to the meeting and to be involved in feedback on the supervisor's initial responses since Ms Allen-Baines had conferred with the supervisor and Ms Birtles before the joint meeting.

[30] The second issue was the disputed discussion outside the meeting between the Harveys and Ms Allen-Baines in the corridor. Ms Allen-Baines is a mature and experienced woman. Ms Claire Harvey is a younger woman who was upset and had been crying. Her mother is also a mature woman, but she too was upset at the time and I hold was not experienced in the process and management of an employment situation with inter-personal and legal issues. I hold that it is more likely than not that Ms Allen-Baines has recalled more accurately what she said in the corridor than what the Harveys now remember what they think they heard. My reasons are:

- a. The Harveys have alleged that the supervisor's statement produced is not the one referred to during the meeting. They could not establish their claim, I hold.

- b. The Harveys could not remember that they had prepared notes after the meeting and which were subsequently put on their lawyer's file. Indeed Claire Harvey said that she had no notes when she was questioned during her interview at the Authority's investigation meeting. It was only after their representative disclosed some notes from his file during the Authority's investigation meeting that I was able to ascertain from the Harveys that the notes had been prepared after the meeting by them. The notes were made on 26 October 2010. The Harveys' notes refer to Ms Harvey being told to grow up, but also for her to develop as a woman.
- c. The Harveys were upset.
- d. Ms Allen-Baines denies saying to Ms Harvey to 'grow up' and I hold that it is more likely than not that the comments have not been put in context by the Harveys having regard to Ms Allen-Baines's clear and unequivocal evidence. In this regard the Harveys' notes record:

*At one point my mother and I called a halt and we left the room. Pam came out and took us into a vacant office and told me I had to grow up repeatedly and to become a woman and go back into the meeting. This comment was repeated again in front of [supervisor's name withheld], her support person and Gena and further said this is all helping Claire grow up.*

[31] There is no other evidence that the comments were repeatedly made in front of Ms Birtles having regard to Ms Allen-Baines' and Ms Birtles' witness statements.

[32] Ms Birtles' and Ms Allen-Baines's notes say:

*Claire became up set and left the room. Both Claire and Jackie were up set. They said they were leaving. Pam encouraged Claire to stay and have her say. "You're free to go, but I'd like to see you stay and have your say. (said something about developing herself as a woman). I was proud of Claire in returning to 'really talk and share from her thoughts and feelings. We returned to the room and I explained to the others that we were going to move on and if Claire came up with examples, she would share them".*

[33] Ms Allen-Baines has provided accurate and consistent evidence, I hold. I understand that the Harveys believe what they say they heard, but I prefer Ms Allen-Baines' evidence based on her minutes.

[34] The third issue was the supervisor's intemperate and ill judged comments to the Harveys. In the overall context there has to be some allowance for the fact that the supervisor was shocked about the complaint, had never heard it before, and that she was angry and emotional about Ms Harvey's claims. However Ms Allen-Baines' responsibility was to ensure that her process in investigating Ms Harvey's complaint was done in a safe and confidential environment. The result of what unpredictably happened involved Ms Harvey's supervisor. Ms Allen-Baines immediately called for silence, because she recognised that the comment was unacceptable and uncalled for. The problem was compounded when next the supervisor added another comment and said to Mrs Harvey "*what kind of mother are you to allow your daughter to feel like this for so long*". Ms Allen-Bain stopped the meeting at this point. I hold that it was entirely appropriate to stop the meeting. Ms Allen-Baines' evidence that she explained that she would need to continue and carry out her investigation was also entirely appropriate. However, Ms Allen-Baines was responsible for the process and it did unfold in an unfortunate way and was then compounded by an inadequate attempt to make arrangements for Ms Harvey to continue at work. Ms Harvey did not have to put up with her supervisor abusing her and her mother. My reasons are as follows:

- a. That Ms Allen-Baines did not meet the requirements under the harassment policy to handle the matter sensitively and confidentially. Her decision to hold a facilitation meeting (19 October) was premature, I hold, without having reached any findings on the claims first.
- b. That Ms Allen-Baines should have advised Ms Harvey of the supervisor's response to her claims before having a joint meeting. This would have enabled Ms Harvey to reply and provide further examples in a more sensitive way, and indeed to allow her to reflect on her claims.
- c. That Ms Harvey was much younger and it should have been clear when she got upset that she was not coping with the meeting and needed assistance.

- d. That while Ms Allen-Baines's approach to the matter was genuine her approach did not meet the needs of the circumstances and was perhaps too ambitious. The Harveys were upset during the meeting. They left during the meeting. Clearly Mrs Harvey did not have the skills despite her maturity to deal with the matter unfolding and to properly represent Ms Harvey. Ms Birtles says that it took Ms Harvey courage to return (to the meeting).
- e. That the employer is responsible for having a meeting where Ms Harvey's supervisor made intemperate and insensitive and inappropriate comments. Better planning should have prevented this from occurring.

[35] I hold that Ms Allen-Baines did put pressure on Ms Harvey to return to the meeting when a fair and reasonable employer would have made clear that there was a real choice of not proceeding further, especially when the issues could have been dealt with in another way; such as a separate meeting in the initial instance. The situation was about managing a process involving a complaint not an exercise of facilitating Ms Harvey to "develop as a woman" in managing interpersonal relationships at least until some conclusions had been reached. The way Ms Allen-Baines approached the matter was too ambitious and entailed a risk of confrontational behaviour which is what occurred when the supervisor verbally attacked the Harveys.

[36] In such circumstances an employee would not be required to put up with what happened, whilst I hold that Ms Allen-Baines did the right thing to close down the meeting when the supervisor made her intemperate and ill judged comments to the Harveys. Certainly I accept that the comments were negatively construed by the Harveys and they were hurt by the comments. I hold that Ms Harvey's employer has breached an obligation towards her when Ms Allen-Baines decided to follow a process that culminated in an attack on the Harveys by Claire Harvey's supervisor. As such the breaches would make it foreseeable an employee would not put up with it, I hold. I hold that Ms Allen-Baines at least sufficiently reacted to the situation to limit any further breach of duty to Ms Harvey.

[37] There appeared to be some progress made at the meeting until the supervisor made her intemperate comments at the end. The difficulty for Marlborough Mitre 10 is that the supervisor represented the employer as Ms Harvey's line manager and Ms

Harvey was entitled to expect better from her. I have weighed this in the context that such a meeting was never going to be easy and was not going to be comfortable for anyone.

[38] An employer has a responsibility to all employees, and thus the supervisor was entitled to have the complaints put to her, as was done. The employer was not prevented from having such a joint meeting, albeit it was a risky strategy. This is more so when Marlborough Mitre 10's harassment policy did not prescribe it, and Ms Allen-Baines needed to be much clearer about what she was doing, I hold, because an investigation of the complaints should have been the primary objective. A fair and reasonable employer has the right to make a decision to try and facilitate positive and workable relationships in the workplace. That was an option open to Ms Allen-Baines and I am satisfied that Ms Allen-Baines genuinely set out to be helpful, and that when the meeting arrangement failed, she knew she needed to conclude an investigation and make necessary findings. I hold that Ms Allen-Baines explained and told Ms Harvey that she was going to continue. Indeed there was an attempt to organise another meeting but this was abandoned when Ms Harvey resigned. However the employer's action fell short of providing any certainty for Ms Harvey after such an outburst from her supervisor.

[39] I would add as an aside that any outcome on the complaints would have been influenced by the ambiguity of the complaint and the need for more detail and examples from Ms Harvey about her complaint. The ambiguity of the complaint related to matters raised by Ms Harvey that could be interpreted to do with supervision and training (cross examination of Ms Harvey, and reference to the performance review and Ms Allen-Baines's notes). For example the complaints included:

- a. Leadership
- b. Training
- c. Performance review matters
- d. Back injury
- e. Physical space serving customers

- f. Responsibilities for example on a product scheme (involving a responsibility with the internet that Ms Harvey was involved in)
- g. Serving customers

[40] Also, Ms Harvey had never complained before, and her prior relationship with the supervisor could not have alerted anyone to any problem existing before then, I hold. However her claims made it clear that she had issues about the supervisor's behaviour such as allegations of:

- a. The supervisor "bumping" her, physically and to intervene serving customers.
- b. The supervisor "humphing" and "groaning" about matters associated with Ms Harvey.
- c. The supervisor making Ms Harvey to look silly and ineffective.
- d. The supervisor making flippant responses.

[41] The supervisor made her ill judged and intemperate statements in the context of a difficult and uncomfortable meeting where emotions were high and where the complaints had never been raised before and when there were apparently good relationships earlier. Moreover, Ms Harvey's performance review did not indicate any problems of harassment and bullying and Ms Harvey had housed minded for her supervisor. I hold that Ms Allen-Baines did raise a list of a number of examples of what constituted bullying and harassment but she could not get any straight response from Ms Harvey about any of the examples applying to her and her supervisor, except for the allegation of her supervisor physically "bumping" her, "humphing" and "groaning", making her look silly and ineffective and making flippant responses. There were never any findings made in regard to these allegations.

[42] Ms Harvey returned to work once she had taken her mother home and got her uniform sorted out, and she finished her shift without any other incident. I have made this finding notwithstanding that there was an issue at the end of the meeting about getting agreement on the work arrangements between Ms Harvey and her supervisor. As it happened Ms Harvey did not have to work with the supervisor upon returning to work and she resigned before any further discussions could take place about what to

do next, or waiting upon the completion of Ms Allen-Baines' enquiry. Ms Harvey agreed to work out a week's notice. Another meeting was planned was abandoned after Ms Harvey resigned.

[43] Marlborough Mitre 10 has to take responsibility for the situation, but I hold that Marlborough Mitre 10 has not failed to provide a safe place of work and/or that it has breached any health and safety requirements. There has been a breach of good faith because of the pressure put on Ms Harvey to return to the meeting, that the responsibility for the meeting that involved Ms Harvey being abused by her supervisor rests with Marlborough Mitre 10, and it made it foreseeable that Ms Harvey did not have to put up with her supervisor's comments including that the supervisor did not want to work any more with Ms Harvey and things had changed forever. Marlborough Mitre 10's next steps in the investigation process lacked clarity and any certainty about what would be involved.

[44] There are two other procedural matters. First, I hold that although the employer did not give Ms Harvey the written documents at the time that this is not a fatal defect. This is because I hold Ms Allen-Baines went through the documents she had written at the time in sufficient detail for Ms Harvey to respond. There was nothing prejudicial in the documents, and indeed if an investigation continued a fair and reasonable employer could be expected to have given them to Ms Harvey later. Ms Harvey was not concerned enough at the time to ask for any documents. However once Ms Allen-Baines had met with the supervisor best practice should have ensured that the written note of the response was given to Ms Harvey to prepare.

[45] Second, Ms Harvey has also claimed that the room where the meeting took place lacked privacy and was inappropriate. She has not convinced me that this was so, given the evidence from Marlborough Mitre 10 and that Ms Harvey never complained at the time. As I said earlier the meeting was always going to be difficult and possibly uncomfortable, and this would have been so wherever it took place.

[46] My final observation is that Marlborough Mitre 10's policy could be much clearer about the investigation process into harassment including bullying, and this means the process may need some redesigning and consideration on how much detail would assist.

**Conclusion**

[47] I hold that Ms Harvey has a personal grievance. The employer was responsible for what happened because it was the employer's process that went wrong when Ms Harvey was abused by her supervisor. Ms Harvey did not have to put up with abuse from her supervisor at work and she should have been protected by the harassment policy which was not adhered to and to protect her from being abused. That was a sufficiently serious breach in her employment and/or to her terms and conditions of employment that would make it reasonably foreseeable that she would resign, especially as the supervisor noted that she could not be Ms Harvey's direct supervisor any more and that things had changed and would never be the same (supervisor's statement). Furthermore no details were provided as to the completion of the complaint enquiry that Ms Harvey could have reasonably expected to be provided with by her employer. I therefore turn to remedies. Ms Harvey is entitled to compensation, and I hold that a sum of \$3,000 would meet any hurt and humiliation without any other deduction. Also her claim for lost wages must be reduced to two months because Ms Harvey became medically unfit to work for other reasons from January 2011 not associated with The Home Centre Limited. She has not sufficiently mitigated her loss. Moreover the inability to work from January 2011 broke the link between her loss and her employment with the Home Centre Limited, I hold. She was paid \$14 per hour to work forty hours per week. Therefore, she is entitled to \$3,920 for seven weeks (having deducted one week for the notice). Marlborough Mitre 10 has raised some new matters about Ms Harvey in her employment that I do not need to go into because they do not relate to the personal grievance claims and nor do they assist in assessing contributory conduct which is linked to an applicant's behaviour giving rise to a personal grievance.

[48] The Home Centre Limited is to pay Claire Harvey:

- i. \$3,000 compensation for hurt and humiliation under s 123 (1) (c) (i) of the Act.
- ii. \$3,920 lost wages.

**Costs**

[49] Costs are reserved.

P R Stapp  
Member of the Employment Relations Authority