

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 194
5525330

BETWEEN FAY EVELYN BROWNLIE
 Applicant

A N D TONY AND JANET RUSBATCH
 trading as GOLDEN BAY
 FLOWERS AND GARDEN
 Respondent

Member of Authority: Helen Doyle

Representatives: Warwick Heal, Counsel for the Applicant
 Graeme Downing, Counsel for the Respondent

Investigation Meeting: 29 October 2015 at Nelson

Submissions Received: On the day of the investigation meeting

Date of Determination: 10 December 2015

DETERMINATION OF THE AUTHORITY

- A Fay Brownlie was unjustifiably dismissed from her employment.**
- B Tony and Janet Rusbatch are ordered to pay to Fay Brownlie:**
- (i) The sum of \$9138.37 gross being reimbursement of lost wages under s 123 (1)(b) of the Act.**
- (ii) The sum of \$6000 without deduction being compensation under s 123 (1)(c)(i) of the Act.**
- C Costs are reserved and failing agreement a timetable has been set for submissions.**

Employment relationship problem

[1] Tony and Janet Rusbatch purchased the business in Takaka known as Golden Bay Flowers and Garden in November 2012. Fay Brownlie was an employee of the vendors. Before the sale and purchase of the business was completed Ms Brownlie was offered employment with Mr and Mrs Rusbatch and was party to an individual employment agreement (the agreement) dated 31 October 2012. She was employed in the position of Garden Centre Shop Assistant/Florist.

[2] Ms Brownlie had previously owned the business of Golden Bay Flowers and Garden for many years but had sold it in 2007. She had continued to work as an employee at the business apart from a period of six months after it was originally sold.

[3] Ms Brownlie says that she was unjustifiably dismissed from her employment on 18 September 2014. She claims lost wages until 20 December 2014 when part-time employment was obtained (the calculation is dependent on how her previous earnings for working for Mr and Mrs Rusbatch are assessed), compensation in the sum of \$6000 and costs.

[4] Mr and Mrs Rusbatch say that Ms Brownlie's dismissal was substantively and procedurally justified.

The Issues

[5] The issues for the Authority in this case are as follows:

- (a) Was Ms Brownlie's dismissal unjustifiable?
- (b) If so, what remedies ought she to be awarded and are there issues of mitigation and contribution?

Was Ms Brownlie's dismissal unjustifiable?

Reason for the dismissal

[6] Ms Brownlie was dismissed after her partner Andrew (Andy) Johnstone went into the business premises on Tuesday 9 September 2014 and spoke with another employee of Mr and Mrs Rusbatch, Robyn Bennett. Ms Bennett found the

conversation threatening and frightening. Mr Johnstone was issued with a trespass notice.

[7] At a disciplinary meeting on 17 September 2014 Ms Brownlie explained that she did not know anything of what had occurred, was not present and had not encouraged or incited Mr Johnstone to do whatever it was he had said or done. Ms Brownlie agreed that staff at the shop were entitled to a safe and happy workplace.

[8] On 18 September 2014 Ms Brownlie was provided with a letter terminating her employment. It stated under the heading *termination of employment*:

Further to the meeting we had with you and your support person on 17 September 2014, we have considered your explanation for the incident on Tuesday 9 September involving the abuse of a fellow employee, which resulted in her having to take stress leave. We do not accept your explanation. As discussed, we regard this as serious misconduct. Your employment is accordingly terminated forthwith.

Background to the dismissal

[9] I agree with Mr Downing's submission that events after 8 September are the material ones but I shall succinctly set out some background to the 9 September 2014 incident to put it into context.

[10] The commencement of the employment relationship was without incident. The first time Ms Brownlie became aware that Mr Rusbatch was unhappy with her was when he gave her a letter dated 25 October 2013 detailing some issues and concerns that had come to light. Ms Brownlie undertook to respond to these over the weekend and did so by letter dated 28 October 2013. There was no further discussion about those matters. Ms Brownlie said that she took the issues raised by Mr Rusbatch on board and dealt with matters that were of concern to him.

[11] In January 2014 Ms Brownlie was given what she considered to be a written warning by Mr Rusbatch, for not asking for leave on 24 January 2014 when she had been undertaking a Victim Support street appeal in Takaka. Mr Rusbatch stated in his letter that he expected Ms Brownlie to ask if it was *ok* to have time off and that continued failure to remedy that could lead to termination of her employment.

[12] Ms Brownlie acknowledged the letter of 25 January 2014 and apologised for not formally requesting time off but set out that she had let staff know her contact

number and that she would be called back if required. She also recorded in her response that she had stayed on at the shop in the evening to prepare for a wedding and did not charge for all of her hours. She advised that she was happy to have a discussion although the evidence does not support that one took place.

[13] Over the winter that followed the January 2014 warning Ms Brownlie said that she felt more alienated. She said that Mr Rusbatch's instruction given in October 2013 that she not leave the shop unattended for more than a few minutes had resulted in her only being able to have very limited involvement with the nursery or stock at the rear of the premises. She was excluded from cashing up although she was unclear why and also felt some communications were not passed onto her.

[14] In July 2014 Mr Rusbatch reduced staff hours including Ms Brownlie's by about a third. I am not satisfied that there was consultation before that decision was made. Ms Brownlie's hours reduced from 41.5 hours to 27.5 hours. Although she understood that the business did get quieter over winter Ms Brownlie expected that her hours would increase in the Spring/Summer period because of a note Mr Rusbatch left with the pay slips. Mr Rusbatch did not disagree that Ms Brownlie's hours may have increased over the busier period from spring.

[15] On 22 August 2014 Mr Rusbatch wrote to Ms Brownlie about some further concerns. The concerns raised were that Ms Brownlie had not returned her employment agreement, there were no bunches of flowers made up for sale for the previous two weekends, that Ms Brownlie was doing deliveries but staying later to catch up on other orders, that she was continuing to leave the shop to help customers out down the back for lengthy periods and that there were outstanding customer payments. Finally there was a concern that Ms Brownlie directed matters to Ms Bennett when they should be directed to Mr Rusbatch.

[16] On 24 August 2014 Ms Brownlie responded to the 22 August communication in some detail. Ms Brownlie saw some of the concerns arising as a consequence of the reduction in her hours. A discussion was proposed.

[17] On 3 September 2014 Mr Rusbatch issued a directive to Ms Brownlie that all deliveries of flowers during the working hours were to be done by others.

8 September 2014

[18] On 8 September 2014 Mr Rusbatch suggested a meeting with Ms Brownlie and a support person at the shop the following day. Ms Brownlie felt uncomfortable that the notice given to her for such meeting was very short and that there was no neutral venue. Ms Brownlie was able to arrange a support person and proposed a new date of 11 September 2014 in a letter she gave to Mr and Mrs Rusbatch that evening at their home. In the letter she noted that she appreciated the opportunity to discuss the concerns raised. Ms Brownlie stated that in order for her to prepare for the meeting it would be helpful if Mr and Mrs Rusbatch could clarify the purpose of the meeting and the issues that they felt needed to be addressed.

9 September 2014

[19] Mr Johnstone dropped Ms Brownlie off at work the morning of 9 September 2014 but she said she had no further contact with him during the day and she had not made any arrangements with him to collect her from work.

[20] Mr Rusbatch provided Ms Brownlie with a written statement setting out the performance meeting issues as she had requested that morning. I am satisfied from the evidence of both Mr Rusbatch and Ms Brownlie that there was also confirmation of the date, place and time for the performance management meeting on 11 September 2014.

[21] Ms Bennett in her evidence to the Authority said that there was an incident at work that morning following which she told Ms Brownlie that she could not work with her. The incident, which Ms Brownlie acknowledged, involved a customer Ms Bennett was serving. The customer had asked Ms Bennett about a particular vegetable seed which she could not find in the seed rack. Ms Bennett suggested putting an order through and then Ms Brownlie went to the seed rack and placed a packet on the counter. Ms Bennett said to Ms Brownlie *so we have them then* and Ms Brownlie replied *yes*. Ms Bennett said that this made her feel foolish in front of the customer and it was not an isolated incident. She felt that Ms Brownlie could easily have responded with *I think we might have these on the rack, let me look* which would have been helpful.

[22] Ms Brownlie said that she was in a difficult position with balancing the needs of the customer and Mr Rusbatch's concerns and direction from his letter of

25 October 2013. I set the concern Mr Rusbatch had under the heading *taking over serving customers*:

Hardly a day goes by without staff mentioning this to me. They will be starting the transaction with the customer and if you happen to know the customer, you will go over and butt in and more or less push them out of the way and take over. This is very demeaning to the staff and one of the rudest things that could happen in the shop. I don't want to see or hear of this happening again.

[23] Ms Brownlie in her response to Mr Rusbatch dated 28 October 2013 said there were some situations where she would step up including where a sale was being lost due to the customer being told the business did not have a product when it did. She was quite adamant however that she never completed a sale that other staff had started and that she was sorry if her willingness to assist had been interpreted as demeaning and rude but noted many customers are valued supporters over 25 years and if lost would affect turnover. She said that giving them her attention and respect was not intended to create any negative outcome. I find that Ms Brownlie was in a somewhat difficult position with customer interaction.

[24] I asked Ms Bennett how Ms Brownlie responded to being told that she could not work with her again. Ms Bennett said that Ms Brownlie said she was really sorry about that and then carried on work as normal. Ms Brownlie said that she could not recall Ms Bennett stating to her on 9 September that she could not work with her any longer. Ms Brownlie said that if she had heard that then she would have explored how they could deal with it. Her recollection was that Ms Bennett said she did not like the atmosphere and she agreed with her that the tension was awful, as I understand it, because of the issues Mr Rusbatch had with Ms Brownlie. Ms Brownlie said that she apologised to Ms Bennett about that.

[25] Ms Brownlie asked Ms Bennett to do a delivery close to 3pm. Ms Bennett returned to the store a little after 3pm. Ms Brownlie then left the store ten or so minutes after 3pm. Her evidence is that she joined two friends Bev and Eleanor at the Dangerous Kitchen Café for a coffee and that Bev later took her home.

[26] The incident involving Mr Johnstone and his interaction with Ms Bennett took place after Ms Brownlie had left the store. There was a dispute between Ms Bennett and Mr Johnstone as to the exact time the discussion took place. I will return to that. Ms Brownlie said that when her friend Bev drove her home she saw Mr Rusbatch

backing his Ute and trailer in toward the roller door and they waited for him to complete the manoeuvre.

[27] Ms Brownlie said that she was completely unaware of the exchange that had taken place between Mr Johnstone and Ms Bennett and there was no discussion about it that evening when she got home.

[28] Ms Bennet complained to Mr Rusbatch that afternoon about what Mr Johnstone had said to her and how it made her feel. He told her to have the next day off on stress leave.

10 September 2014

[29] On 10 September when Mr Johnstone dropped Ms Brownlie off at the shop, Mr Rusbatch gave him a trespass notice. Ms Brownlie said that she was incredulous but no questions were asked. When Ms Brownlie arrived at the shop another employee, Nicky yelled at her *it's all your fault Robyn's not coming in today because of you.*

[30] Ms Brownlie did not have a chance to talk to Mr Johnstone that evening as she went to Nelson for Victim Support training from Takaka.

11 September 2014

[31] On 11 September 2014 as planned, Ms Brownlie met with Mr and Mrs Rusbatch and her support person, Simon Jones, at Heartlands at Takaka. A number of matters were discussed about the performance concerns and there were some agreed outcomes about what would happen in the future, including:

- Ms Brownlie would undertake to have at least three pieces of floral work on the street at any time, including Saturday and that she could work beyond 3pm in order to provide them;
- Andy was not to telephone her at work anymore;
- It was all right for her to go to the back of the nursery with a customer if Tony and/or another staff member were in the shop;
- Any unpaid accounts were to be passed to Tony.

[32] It is common ground that during the meeting on 11 September 2014 there was no discussion about the interaction between Mr Johnstone and Ms Bennett. Ms Brownlie said that she did not see there being any issues because Mr Johnstone had been served with a trespass order. Mr Rusbatch said that with the performance meeting concluded he was then able to focus on the incident involving Mr Johnstone.

[33] Ms Brownlie said that on her return to the business after the performance management meeting it seemed to her that other staff avoided her by going to the back of the premises. She did recall a discussion with Ms Bennett about what Mr Johnstone said to her. She said that Ms Bennett advised that she felt intimidated and upset because Mr Johnstone had been in *wild eyed* and *agitated* and that she did not feel comfortable. Ms Brownlie said that Ms Bennett did not tell her all that was set out in Ms Bennett's statement of evidence including about *the taking to Court part*. Ms Brownlie said that she apologised to Ms Bennett and said that there was a trespass notice.

[34] It is useful at this point to set out what Ms Bennett said of the interaction with Mr Johnstone in her statement of evidence.¹ Ms Bennett said that shortly after the incident she had written a note and given that to Mr Rusbatch. I accept that he had this note before the disciplinary meeting that took place on 17 September 2014. Mr Rusbatch accepts that he did not show the note to Ms Brownlie and it is no longer available although Ms Bennett said that the content of the note is the same as what she has set out in her written statement of evidence. Ms Bennett said that she had told Ms Brownlie about the exchange with Mr Johnstone as set out in her statement of evidence.

[35] Ms Bennett in her statement of evidence said that it was just after 4pm when Mr Johnstone came into the shop. She did not accept that he asked for Ms Brownlie and Ms Bennett realised that he had an agitated kind of look on his face. She said that he asked her straight away if she knew what was going to happen tomorrow. Ms Bennett responded *No* but that he repeatedly asked her the same question. Mr Johnstone then started accusing Mr Rusbatch of being *bitchy* in his treatment of Ms Brownlie. Ms Bennett started moving away from Mr Rusbatch behind the counter to create a barrier, smelt alcohol on his breath and did not feel safe. She said that he then said something like *Good luck, because the shit is going to hit the fan tomorrow*

¹ Para 5

and we are going to take you to Court and it is going to cost you thousands. Good luck with that. Ms Bennet said that it had nothing to do with her and Mr Johnstone left.

[36] Mr Johnstone disputes that he made many of the statements or acted in the manner Ms Bennett says he did. He also disputes the time he came into the shop. He thought it was 3.20pm. He says that he asked if Ms Brownlie was there because he had taken his chain saw into town for a service and wanted to know if she wanted a lift home. Resolving the conflicts in the evidence as to exactly what was said or not between Ms Bennett and Mr Johnstone and when it was said is not the focus for me in determining whether Ms Brownlie's dismissal was justifiable. I accept that whatever was said upset Ms Bennett and she advised Mr Rusbatch of that. Mr Johnstone did say materially in his evidence that he had talked to Ms Brownlie about some of her problems at work but she had never asked him to intervene with Mr or Mrs Rusbatch or talk to any member of the staff.

12 September 2014 (Suspension)

[37] On 12 September, which was a Friday, Mr Rusbatch met Ms Brownlie at the shop door when she arrived at work in the morning. He told her that he had taken legal advice and that she was suspended on pay from that point on. There is a dispute as to whether Mr Rusbatch advised that the matter may result in Ms Brownlie losing her job. Mr Rusbatch was adamant that he made this clear. Ms Brownlie is equally adamant that she was not so advised. Mr Rusbatch said that Ms Brownlie said that Mr Johnstone should not have done what he did but he had been drinking. Ms Brownlie does not accept making that statement although I find it likely she did as it is recorded in document 20 attached to the statement of problem.

[38] Ms Brownlie did ask if she would be able to carry on preparing some floral orders for the following day and Mr Rusbatch agreed that she could do that so she gathered the necessary material from the shop. Ms Brownlie recalls Mr Rusbatch explaining that it was his duty to make the workplace safe and Ms Brownlie agreed that she was in support of that.

17 September 2014 (Disciplinary Meeting)

[39] Over the next few days a meeting was arranged for 17 September 2014 at 11am. There was nothing in writing about what was to be discussed at the meeting

although Ms Brownlie knew that the meeting was to discuss the interaction between Mr Johnstone and Ms Bennett on 9 September 2014. She said in her evidence that she knew she had been stood down and that it was serious but did not think she could be dismissed.

[40] Ms Brownlie was supported at the meeting by Mr Jones and Mr Rusbatch was accompanied by Mrs Rusbatch. Mr Rusbatch said that he advised Ms Brownlie what he had been told by Ms Bennett about what had happened and that he was required to provide his staff with a safe workplace. Ms Brownlie said that she was given an opportunity to explain the events that had occurred at the shop between Mr Johnstone and Ms Bennett but that she knew little about what Mr Rusbatch understood had happened at that time or what he had been told. She recalled there was some mention of money and that Mr Rusbatch described Ms Bennett as upset and distressed.

[41] Ms Brownlie's explanation was that she knew nothing of what had occurred at the time as she was not present and that she had not encouraged or incited Mr Johnstone in any way to do whatever was done or said. Ms Brownlie agreed that staff were entitled to a safe and happy workplace. She said that she did not make any excuses for Mr Johnstone's conduct.

[42] Mr Rusbatch concluded that Ms Brownlie was not being truthful and honest and that she must have been discussing her employment issues with her partner as it was those issues Ms Bennett was confronted over by Mr Johnstone. He said in his written evidence that a denial of knowing anything did not ring true. In his written statement of evidence he said that he took into account the timing of matters. Firstly he said that there was the list of performance issues he handed to Ms Brownlie that morning. Then he said there was the incident where Ms Bennett told Ms Brownlie she could not work with her anymore. He placed some reliance on Ms Brownlie finishing work shortly after 3pm and at 4pm Mr Johnstone coming into the shop in an agitated state. Mr Rusbatch concluded it did not seem credible that Ms Brownlie knew nothing about what her partner was going to do and that it seemed to have been planned to occur after 3pm and that it was likely that Mr Johnstone had come into town to pick Ms Brownlie up and they had a discussion between 3pm and 4pm before Mr Johnstone made a beeline for Ms Bennett.

[43] He made a decision to dismiss Ms Brownlie and on 18 September 2014 the letter of termination was delivered to her.

The test in s 103A of the Employment Relations Act 2000 (the Act)

[44] The test of justification in s 103A of the Act provides that whether a dismissal was justifiable must be determined by the Authority on an objective basis as to whether the employer's actions, and how the employer acted were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[45] The Authority must consider the four procedural factors set out at s 103A (3) of the Act and any other factors it thinks appropriate. The Authority must not determine a dismissal unjustifiable solely because of defects in the process if they were minor and did not result in the employee being treated unfairly.

[46] A fair and reasonable employer could also be expected to comply with the statutory obligations of good faith.

[47] Ms Brownlie was dismissed not for her own actions but for actions of her partner Mr Johnstone. There must be a good cause for a dismissal. There may be some circumstances in which the actions of one person may be considered serious misconduct on the part of an employee. I shall go on to consider whether a fair and reasonable employer could have so concluded in this case.

Procedural fairness and good faith

[48] Mr and Mrs Rusbatch are small business owners in Golden Bay. They do not have the benefit of human resource advice although they had obtained some legal advice before Ms Brownlie was suspended. I take those matters into account in assessing the process of investigation.

[49] While it was clear to Ms Brownlie she was to attend a meeting to discuss the incident on 9 September 2014 the specific allegations she faced were not clear. That in turn made it difficult to identify what conclusions had been reached about her conduct leading to the making of the decision to dismiss. I was unclear for example if it was alleged and subsequently concluded that Ms Brownlie had talked to Mr Johnstone about her work issues that day or earlier, whether she had encouraged him to go to the shop on 9 September 2014 or was it that she knew he was going to the shop and had not stopped him. These allegations could of course have been put in

the alternative before the disciplinary meeting but there was nothing in writing provided before the meeting

[50] Mr Downing said that the final decision was made from a mix of all three concerns in his submissions but when I asked Mr Rusbach whether he had concluded Ms Brownlie had asked Mr Johnstone to go to the shop he said *not necessarily*. Under questioning from Mr Heal he responded to a question whether he asked Ms Brownlie if she put Mr Johnstone up to the exchange *No I did not*.

[51] The raising of concerns before dismissing an employee is a requirement of procedural fairness under s 103A (3)(b) of the Act. It is not only necessary for giving an opportunity for explanation but also for an employer to reach conclusions as to whether the allegations are made out or not. If they are made out then a fair and reasonable employer could be expected to consider whether the conduct amounts in all the circumstances to serious misconduct. For example a fair and reasonable employer could not conclude Ms Brownlie talking to Mr Johnstone at their home about issues at work to be misconduct let alone serious misconduct. The focus at the meeting must have been on alleged discussions between Mr Johnstone and Ms Brownlie on 9 September which Ms Brownlie denied.

[52] Some reliance seemed to have been placed on an issue arising between Ms Bennett and Ms Brownlie on 9 September 2014 that Ms Bennett no longer wanted to work with Ms Brownlie. I could not be satisfied that Ms Brownlie was asked about that matter at the disciplinary meeting. That was not fair. Ms Brownlie said in her evidence that she had not taken Ms Bennett to have said that she could no longer work with her.

[53] Ms Brownlie was not given the written note that Ms Bennett had given Mr Rusbach about the exchange with Mr Johnstone. Good faith obligations under s 4(1A) of the Act require that an employer who is proposing to make a decision which may adversely impact on an employee's ongoing employment is to provide the employee with relevant information and an opportunity to comment on it before a final decision is made. Ms Brownlie should have been provided with that information.

[54] A fair and reasonable employer could have been expected to have placed some reliance on the fact that Ms Bennett's account of the exchange in the written note

which she said was the same as in her statement of evidence was that Mr Johnstone referred to the meeting taking place *tomorrow*. The following day would have been 10 September and not 11 September when the meeting was to take place, having been confirmed on the morning of 9 September 2014. That needed to be weighed as part of the investigation into the likelihood of a discussion between Mr Johnstone and Ms Brownlie about the performance management meeting on 11 September 2014. Ms Brownlie of course had no knowledge of what Ms Bennett had written about that at the time of the disciplinary meeting and was deprived of an opportunity to consider and respond to it.

[55] In conclusion I am not satisfied that Ms Brownlie knew the specific concerns she was required to answer as required under s 103A(3)(b). I do not find that Mr Rusbatch could as required under s 103A (3)(d) genuinely therefore consider her explanations against those concerns before she was dismissed. It was not enough in the absence of specific allegations simply to conclude Ms Brownlie was untruthful. Some information that was relied on to form an adverse view that Ms Brownlie was untruthful was not disclosed to her.

[56] I find that the process was fundamentally flawed and not in a minor way so that it could be said that no fairness resulted. The dismissal was procedurally unjustified.

Substantive justification

[57] There was no evidence from the investigation for a fair and reasonable employer to conclude that Ms Brownlie instigated or encouraged Mr Johnstone in the exchange he had with Ms Bennett. There was information to raise some doubt that there had been a further conversation between Ms Brownlie and Mr Johnstone on 9 September 2014 after she was given the performance issues letter and had the date for the performance meeting confirmed for 11 September. Mr Johnstone referred to a meeting that was to take place the next day which was 10 September 2014 and that was clearly incorrect.

[58] The evidence supported that Mr Rusbatch knew Mr Johnstone is a different personality to Ms Brownlie. Mr Johnstone described himself in evidence as more direct and abrasive and Ms Brownlie as gentle, kind and compassionate. There was no evidence to support that Ms Brownlie had any involvement in what occurred and a

full and fair investigation would have disclosed that. Health and safety of staff is very important but Mr Rusbatch had issued Mr Johnstone with a trespass notice.

[59] I do not find that a fair and reasonable employer could conclude there was substantive justification for dismissing Ms Brownlie.

[60] I find that the dismissal was substantively unjustified.

Conclusion

[61] Ms Brownlie has made out her personal grievance that she was unjustifiably dismissed and is entitled to remedies.

Remedies

Lost wages

[62] There was some dispute as to the period for which lost wages should be assessed and the basis on which lost wages should be calculated.

[63] I find that lost wages should be calculated for loss of three months remuneration under s 128 (1) of the Act. Ms Brownlie was dismissed on 18 September and the three month period ends on 18 December 2014. I agree with Mr Downing that after that date Ms Brownlie, on the basis of the confirmation of income details from the Inland Revenue Department, does not appear to have suffered a loss, albeit she was working two jobs.

[64] I accept that Ms Brownlie adequately attempted to mitigate her loss making approaches to 15 businesses which resulted in six interviews and eventually two jobs.

[65] I now turn to the basis on which the lost wages should be assessed. Ms Brownlie says that they should be based on her earnings over the previous twelve months because a return to normal hours was certainly anticipated in spring, the season at the time of dismissal. Mr Downing says that lost wages should be calculated based on average earnings over the previous three months. Mr Heal suggested a third method that lost wages should be calculated on a forty hour week because the unilateral change to hours in the winter was unlawful and the employment agreement provided for 40 hours.

[66] I agree, although not the case in front of me, that the reduction to Ms Brownlie's hours in winter did not seem to be in accordance with the employment agreement and was imposed without consultation. Ms Brownlie could see some basis for a reduction in staff hours over the winter months and held on to the hope that her hours would return to normal come springtime. There was some basis for her to have reasonably expected her hours to increase at that time. I find in the round that the fairest calculation would be for me to average earnings over the previous 12 months.

[67] For that 12 month period excluding holiday pay Ms Brownlie received \$36,553.50 gross which for 52 weeks is an average of \$702.95 gross per week.

[68] Subject to any findings about contribution Ms Brownlie is entitled to reimbursement of lost wages for three months being \$702.95 multiplied by 13 weeks in the sum of \$9138.37 gross.

Compensation

[69] Ms Brownlie seeks compensation in the sum of \$6000. She gave evidence about the impact of the dismissal on her. She said that her identity in Golden Bay of the last 27 years as *Fay from the garden shop* had been removed on an unsubstantiated basis which has shaken her self-esteem and ability to function. Ms Brownlie felt humiliated by the dismissal because she was a hardworking and worthwhile employee and she has lost the ability to contribute to the community through her profession which had given her immense personal satisfaction.

[70] I find that the impact on Ms Brownlie of being unjustifiably dismissed was significant and far reaching.

[71] Subject to any findings as to contribution Ms Brownlie is entitled to compensation in the sum claimed of \$6000 without deduction.

Contribution

[72] The Authority is required under s 124 of the Act to assess the extent to which Ms Brownlie contributed to the situation that gave rise to the personal grievance and if required reduce remedies accordingly.

[73] I do not find that Ms Brownlie engaged in any blameworthy conduct that requires a reduction in remedies.

Orders made

[74] In light of my findings about contribution I make the following orders.

- (a) I order Tony and Janet Rusbatch to pay to Fay Brownlie the sum of \$9138.37 gross being reimbursement of lost wages under s 128 (1) of the Act.
- (b) I order Tony and Janet Rusbatch to pay to Fay Brownlie the sum of \$6000 without deduction being compensation under s 123 (1) (c) (i) of the Act.

Costs

[75] I reserve the issue of costs. Failing agreement Mr Heal is to lodge and serve submissions by 23 December 2015 and Mr Downing has until 22 January 2016 to lodge and serve submissions in reply.

Helen Doyle
Member of the Employment Relations Authority