IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2016] NZERA Auckland 330
5604461

	BETWEEN	NENA HERGATT Applicant
	AND	WANDA HENDRIKSE AND JAMES COCHRANE TRADING AS MCBREENS SOLICITORS Respondent

Member of Authority:	Vicki Campbell
Representatives:	Alex Hope for Applicant Simon Scott for Respondent
Investigation Meeting:	22 August 2016
Submissions Received:	2 and 20 September 2016 from Applicant 16 September 2016 from Respondent
Determination:	27 September 2016

DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY

A. **One or more conditions of Ms Hergatt's employment were affected to her disadvantage by an unjustifiable action and Ms Hergatt was unjustifiably dismissed.**

B. **Ms Wanda Hendrikse and Mr James Cochrane trading as McBreens Solicitors are ordered to pay to Ms Hergatt the sum of $7,000 under section 123(1)(c)(i) of the Employment Relations Act 2000 within 28 days of the date of this determination.**

C. **Costs are reserved.**

Employment relationship problem

[1] Ms Nena Hergatt was employed as a Legal Secretary for Ms Wanda Hendrikse and Mr James Cochrane trading as McBreens Solicitors (McBreens). Ms Hergatt started work for McBreens on 5 August 2014 and was dismissed by reason of redundancy on 30 October 2015. Ms Hergatt was then offered a part time role which she accepted and was then dismissed on 3 November 2015.

[2] Ms Hergatt claims both dismissals were unjustified and also claims that one or more conditions of her employment were affected to her disadvantage by unjustifiable actions by McBreens.

[3] McBreens denies the claims.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from Ms Hergatt and McBreens but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Background

[5] Ms Hergatt was employed as a full time legal secretary on 5 August 2014 to provide secretarial services to Mr Cochrane and to a legal executive. The terms and conditions of Ms Hergatt's employment were set out in a written employment agreement.

[6] On 5 October 2015 Ms Hergatt was advised that her full time position was to be disestablished. Ms Hergatt was offered the opportunity to take up a new part time role and was given until 30 October 2015 to indicate her acceptance of that role. The discussion on 5 October 2015 was confirmed in a letter dated 7 October 2015.

[7] Ms Hergatt accepted the part time role on 21 October 2015 during a discussion with Ms Hendrikse.

[8] On 28 October 2015 Ms Hergatt proceeded on a period of four days sick leave as a result of injuries she had sustained. On 3 November 2015 Ms Hergatt's doctor advised Ms Hergatt to take a further four days sick leave.

[9] Ms Hergatt completed an ACC form for her injuries and requested McBreens to complete the employer form. McBreens did not complete the form.

[10] Ms Hergatt received her final pay from McBreen's on 4 November 2015.

Issues

[11] The issues for determination are:

a) Whether Ms Hergatt was disadvantaged in her employment by a failure of McBreens to provide a safe working environment and if so what if any remedies should be awarded;

b) Whether Ms Hergatt was disadvantaged in her employment by a failure of McBreens to complete ACC documentation and if so what if any remedies should be awarded;

c) Whether Ms Hergatt's dismissal on 30 October 2015 was unjustified and if so what if any remedies should be awarded; and

d) Whether Ms Hergatt's dismissal on 3 November 2015 was unjustified and if so what if any remedies should be awarded.

Disadvantage claims

[12] Pursuant to section 103A of the Act I must be satisfied on the balance of probabilities that one or more conditions of Ms Hergatt's employment were affected to her disadvantage due to McBreens' unjustified actions. This requires a two-step process, firstly I must be satisfied of the disadvantageous actions and then I must determine whether those actions were justifiable.

[13] The justification test in section 103A of the Act is to be applied by the Authority in determining justification of an employer's actions. This is not done by considering what the Authority may have done in the circumstances. The Authority is required under section 103A of the Act to consider on an objective basis whether McBreens' actions and how it acted were what a fair and reasonable employer could have done in all the circumstances.

[14] The Authority must consider the four procedural fairness factors set out in section 103A(3) of the Act and may take into account other factors as it thinks appropriate and must not determine an action to be unjustified solely because of defects in the process if they were minor and did not result in the employee being treated unfairly.

[15] Ms Hergatt claims one or more conditions of her employment were affected to her disadvantage by unjustifiable actions of McBreens in relation to :

a) McBreens failure to provide a safe working environment; and

b) McBreens' failure to complete the ACC forms.

Failure to provide a safe working environment

[16] Ms Hergatt says she suffered from a debilitating injury while working for McBreens and claims the firm did nothing to address matters to avoid the injury.

[17] The written employment agreement sets out the obligations of the parties to the employment relationship including the obligations of the employer. Included at clause 5 of the employment agreement there is an undertaking that McBreens shall take all practicable steps to provide Ms Hergatt with a safe and healthy work environment.

[18] This obligation is reinforced in clause 10 of the agreement which states:

> Both the Employer and the Employee shall comply with their obligations under the Health and Safety in Employment Act 1992. This includes the Employer taking all practicable steps to provide the Employee with a healthy and safe working environment. The Employee shall comply with all directions and instructions from the Employer regarding health and safety and shall also take all reasonable steps to ensure that in the performance of their employment they do not undermine their own health and safety or the health and safety of any other person.

[19] During September 2015 the legal executive to whom Ms Hergatt provided secretarial support gave notice that she intended to retire on 16 October 2015. The partners decided to replace the legal executive with two qualified junior solicitors. In order to accommodate the new employees Ms Hergatt was advised that she would be moved from her current desk to another desk in a back office. Mr Cochrane had already relocated to the back office and as his secretary it made sense that Ms Hergatt would be located in the same area.

[20] Ms Hergatt was on annual leave for the week ending 25 September 2015 and on her return moved to her new location on about 30 September 2015. Ms Hergatt says the desk she was required to use in her new location was not ergonomically correct for her and she requested she be provided with a safe working environment. Ms Hergatt says her requests were ignored and that his failure exposed her to an unnecessary risk of injury. Ms Hergatt wanted her old desk moved to her new work location.

[21] Mr Cochrane was away on leave during this time. He commenced a period of leave on 28 August 2015 and returned to the office on 2 October 2015. Ms Hergatt acknowledged at the investigation meeting that she did not have a lot of work to do during Mr Cochrane's absence and that she spent a lot of time closing files, although she did recall undertaking some work for a consultant to the firm. Ms Hergatt was unable to recall how much typing she did and I have concluded it was very little.

[22] Mr Cochrane's evidence which I accept, is that he did not generate any work for Ms Hergatt when he returned on 2 October 2015. This is because he spent his time reading mail including emails and catching up on matters that had arisen during his absence. He told me he returned to work on a Friday, so that he could ease back into a full workload the following week.

[23] All of the medical information provided to the Authority records that Ms Hergatt reported her injury as being sustained on 2 October 2015. Ms Hendrikse told me that on 5 October 2015 when she met with Ms Hergatt to discuss the redundancy issue, Ms Hergatt never mentioned anything about her workstation being unsafe nor did she mention anything about having suffered from any injury.

[24] It was at the meeting on 21 October 2015 where Ms Hergatt advised Ms Hendrikse that she would accept the offer of a part time role that Ms Hergatt mentioned to Ms Hendrikse that she had suffered an injury due to her desk and was not able to work at that desk in the future.

[25] Ms Hendrikse enquired as to the cause of Ms Hergatt's injuries given that her workload had been very low since she had moved to the new desk. Ms Hergatt did not provide any further information. Ms Hergatt was due to attend her doctor the

following Tuesday, 27 October 2015 (Labour weekend intervened and this was the first appointment Ms Hergatt was able to secure).

[26] Ms Hendrikse asked Ms Hergatt to get something from the doctor explaining what was wrong and what had caused the injury while she was seeing her doctor the following week. This was to assist Ms Hendrikse to consider what could be done about the desk.

[27] On 27 October 2015 Ms Hergatt produced a medical certificate which indicated Ms Hergatt had suffered from a sprained thumb and neck. During the discussion with Ms Hendrikse about the medical certificate, Ms Hergatt told Ms Hendrikse the medical certificate was wrong and she would need to get it changed. It is not clear what it was about the medical certificate that required amendment. Ms Hergatt produced a second medical certificate on 3 November 2015 which was identical to the one produced on 27 October 2015.

[28] Ms Hergatt claims she has suffered from a gradual process injury as a result of McBreens' not providing a safe working environment. Ms Hergatt says that the injury was caused by the desk she was required to work at after she moved to the back office in September 2015 and McBreen's failed to address her concerns about her new workstation when they were raised.

[29] Ms Hergatt completed the move to the new workstation by 30 September 2015 and was operating from the new desk from that date. Ms Hergatt did the majority of her work for Mr Cochrane who was absent from the office until 2 October 2015. The evidence has established that Ms Hergatt did little work between 30 September and 2 October 2015.

[30] In her oral evidence Ms Hergatt told me that on 2 October 2015 her back started to become sore and although she had tried raising her chair it was then too high from the floor for her to sit comfortably. Ms Hergatt told me that on Monday, 5 October 2015 her arm and left hand became sore and later in the day, her wrist and thumb area became so sore that she was unable to use that hand at all.

[31] Ms Hergatt told me she then started to wear a brace, although she had not sought medical assistance, and cannot recall when she started to wear the brace.

[32] Ms Hergatt says she spoke to Mr Henry Stokes, a salaried partner in the firm, late in the afternoon of 2 October 2015. Ms Hergatt says she told Mr Stokes that the desk she had was unsuitable. Mr Stokes did not have any authority to resolve the issue and referred Ms Hergatt to Ms Hendrikse. Following her discussion with Mr Stokes Ms Hergatt requested the use of a footstool. This was provided.

[33] Ms Hergatt did not raise concerns that she was suffering a work injury with Ms Hendrikse until 21 October 2015. There is no dispute that Ms Hergatt suffered from a thumb and neck sprain.

[34] When Ms Hendrikse was advised of the injury she requested further information from Ms Hergatt which was not provided. Following Ms Hergatt's visit to the doctor on 27 October 2015 Ms Hergatt did not return to work. This means McBreens was never given the opportunity to rectify any issues with the work station.

[35] I have had the assistance of a medical report provided to ACC following a full assessment of Ms Hergatt's injury. In his report Dr Kahan has stated that no employment properties or characteristics have caused or contributed to the cause of Ms Hergatt's injury. Further, Dr Kahan assessed Ms Hergatt on 25 Febraury 2016 some four months after Ms Hergatt's injury. On that date Ms Hergatt reported that her injury had worsened since she had stopped working.

[36] Ms Hergatt has not established to my satisfaction that her injury was caused by any breach of duty owed to her by McBreens. I find that one or more conditions of Ms Hergatt's employment were not affected to her disadvantage by any unjustifiable actions of McBreens.

[37] Once Ms Hendrikse was advised of the nature of Ms Hergatt's injuries on 21 October 2015 she requested further information after the doctor's appointment the following week. In particular Ms Hendrikse requested information as to what was needed to fix whatever, in the workplace had caused the injury. This was an enquiry an employer acting fairly and reasonably could make.

[38] Ms Hergatt never provided that information to McBreens. The only information Ms Hergatt provided was a copy of a medical certificate stating Ms Hergatt had suffered from a thumb and neck sprain.

[39] Further, in her written evidence Ms Hergatt told me she was aware of a company called Ergoworks which provides assessment and advice on workspace design in order to prevent injuries. At the investigation meeting, despite her written evidence that Ergoworks had resolved issues for her in the past, Ms Hergatt was clear that Ergoworks would not have helped in this situation. That evidence lacks credibility.

Failure to complete ACC documentation

[40] On 27 October 2015 Ms Hergatt, through her doctor lodged a claim for cover under section 20 of the Accident Compensation Act 2001 for a work related gradual process injury.

[41] On 3 November 2015 Ms Hergatt provided McBreens with a copy of an ACC form which McBreens as Ms Hergatt's employer was required to complete. Ms Hendrikse advised Ms Hergatt that as she believed Ms Hergatt was no longer an employee of McBreens she would not be completing the form. Ms Hergatt advised Ms Hendrikse that because it was a workplace injury and because she was employed by McBreens at the time of the injury, McBreens needed to complete the form. Ms Hendrikse undertook to write to ACC and seek clarification.

[42] Ms Hendrikse wrote to ACC advising it that Ms Hergatt was no longer employed by McBreens, having been made redundant on 30 October 2015. Ms Henrikse sought clarification as to whether the form still needed to be completed.

[43] Ms Hendrikse spoke to an ACC Claims Manager on 4 November 2015 who advised her that it would be helpful if the form was completed and Ms Hendrikse confirmed the form would be completed. The form had to be completed and returned to ACC by 26 November 2015.

[44] Before Ms Hendrikse completed and returned the form she received a letter dated 16 November 2015 from ACC advising that Ms Hergatt's claim for a work related gradual process injury had been rejected. The letter stated that Ms Hergatt's claim was not accepted because there was no work task or factor in Ms Hergatt's work environment that could be identified as having caused her condition.

[45] Ms Hendrikse told me that because ACC had already reached a conclusion about Ms Hergatt's claim it did not seem necessary to complete the form.

[46] Ms Hergatt has failed to establish one or more conditions of her employment have been affected to her disadvantage by the action of McBreens in not completing the ACC form.

Unjustified dismissal claims

[47] Ms Hergatt claims she was dismissed twice. The first time on 30 October 2015 as a result of her position being disestablished and then on 3 November 2015 when Ms Hendrikse advised ACC Ms Hergatt was not an employee of McBreens and arranged for her final pay to be calculated and paid to her.

[48] The test of justification for dismissal is set out in section 103A of the Act. The test requires the Authority to assess whether McBreens actions and the way it acted was what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal.

[49] The Court of Appeal considered the application of section 103A in a redundancy setting in *Grace Team Accounting Limited v Brake.*[1] That decision upheld the earlier Employment Court[2] decision where the Court confirmed employers must show that a decision to make an employee redundant is genuine and based on business requirements. This requires the Authority to scrutinise the reasons relied on by the employer in making its decision to dismiss.

[50] Section 4 of the Act requires parties to an employment relationship to deal with each other in good faith. Parties are to be active and constructive in establishing and maintaining a productive employment relationship in which they are responsive and communicative. The statutory obligations of good faith require employers to provide affected employees with access to information relevant to the continuation of the employee's employment and an opportunity to comment on the information before the decision is made.

[1] [2014] NZCA 541.
[2] [2013] NZEmpC 81.

[51] The employment agreement at clause 13 addresses redundancy in the following terms:

> 13.1 The employee shall be regarded as redundant when the position held by the Employee becomes surplus to the requirements of the Employer or is otherwise disestablished as a result of the closing down of all or part of the Employer's business or a reduction in work available or as a result of any other genuine business decision of the Employer.
>
> 13.2 If the Employee's employment is terminated on account of redundancy the Employee shall be entitled to notice of that termination or payment in lieu of that notice but shall not be entitled to an extended period of notice or to compensation on account of redundancy.

[52] Clause 14 requires written notice of three weeks.

20 October 2015 dismissal

[53] During Mr Cochrane's absence in September 2015 it became noticeable that Ms Hergatt had very little work to keep her occupied. Two senior secretaries approached Ms Hendrikse individually seeking some resolution as the secretaries seemed to be competing for the same work and this was causing unrest.

[54] After his return from his September leave on 2 October 2015 Mr Cochrane and Ms Hendrikse discussed Ms Hergatt's role. Mr Cochrane and Ms Hendrikse agreed her full time role was not sustainable as Mr Cochrane did not generate enough work to keep a full time secretary busy. Mr Cochrane had reduced his hours and was working four half days each week.

[55] McBreens had also recently employed two new junior solicitors. One had already started work and the other was due to start work the following week which coincided with the retirement of the legal executive. The junior solicitors would provide their own support and would not require the services of a legal secretary. Mr Cochrane was to pass all of his property work onto the new junior solicitors. Mr Cochrane's work had therefore decreased significantly which consequently reduced his need for secretarial support.

[56] Mr Cochrane and Ms Hendrikse agreed that having a part time role matching Mr Cochrane's working hours would be useful and so it was decided to dismiss Ms Hergatt from her full time role and offer her a new part time role.

[57] On 5 October 2015 Ms Hergatt was invited to attend a meeting with Ms Hendrikse. At that meeting Ms Hergatt was informed that the decreasing work flow and the imminent retirement of the legal executive to whom Ms Hergatt provided secretarial support had caused Ms Hendrikse and Mr Cochrane to review the overall legal executive and secretarial support required in the office.

[58] Ms Hergatt was given notice that her position had been disestablished and her employment would terminate on 30 October 2015. At the same time Ms Hergatt was offered the new part time role working four days per week, Tuesday to Friday inclusive with start and finish times of 1pm and 5pm. The role was to provide secretarial support for Mr Cochrane and to provide back up for reception. The offer included a revision of Ms Hergatt's salary to an equivalent hourly rate which would be paid for each hour worked. The offer was open for acceptance until 30 October 2015.

[59] Ms Hergatt says that after consideration of the offer of the part time position, on 21 October 2015 she met with Ms Hendrikse and accepted the offer. During the meeting Ms Hergatt also advised Ms Hendrikse of her injury and advised Ms Hendrikse that she had an appointment to see her doctor the following week.

[60] On 27 October 2015 Ms Hergatt reported to Ms Hendrikse that her doctor had put her off work and presented a medical certificate confirming that she was not fit for work for four days.

[61] During their meeting on 27 October 2015 Ms Hendrikse confirmed to Ms Hergatt that her full time position would end on 30 October 2015 irrespective of what was happening with her injury. In the meantime the part time role would remain unconfirmed but the role would not be offered to anyone else.

[62] Ms Hendrikse contacted Ms Hergatt on 2 November 2015 to ascertain Ms Hergatt's intentions regarding the part time role. Ms Hendrikse told Ms Hergatt that before she could take up the new role there were a number of matters that needed to be resolved first. These matters included the provision of a new medical certificate confirming Ms Hergatt's fitness for work, any issues regarding the desk being sorted out and a new employment agreement being signed. The discussion concluded with

Ms Hendrikse advice to Ms Hergatt that if she wanted to take up the part time role she needed to come back to her [Ms Hendrikse].

[63] The following morning on 3 November 2015 Ms Hergatt emailed Ms Hendrikse advising that she would be seeing her doctor that afternoon and that she had an ACC questionnaire which needed to be completed by her employer and that she would drop that in after seeing the doctor.

[64] In accordance with her earlier advice Ms Hergatt dropped off a new medical certificate together with the ACC questionnaire later that day. The questionnaire referred to Ms Hergatt's claim which she had lodged with ACC claiming she had suffered a work related gradual process injury.

[65] Because Ms Hendrikse considered Ms Hergatt's full time role had ended the previous week, and in the absence of any confirmed employment agreement relating to the part time role Ms Hendrikse considered Ms Hergatt's employment had ended.

[66] When Ms Hergatt followed up with Ms Hendrikse about the ACC forms being completed Ms Hendrikse advised Ms Hergatt that it was not appropriate for Ms Hendrikse to complete the forms as Ms Hergatt was no longer an employee. Ms Hergatt received her final pay on or about 4 November 2015.

Conclusions

[67] The decision to disestablish the full time role came as no surprise to Ms Hergatt. She had been aware that her work flow was dropping off and had been actively searching for a new position. There had been discussions among the legal executives and secretarial support staff about the situation and it was common knowledge that there were too many staff.

[68] Ms Hendrikse told me she had a number of discussions with Ms Hergatt during Mr Cochrane's absence about her lack of work and the need to address it by reducing numbers. At the investigation meeting, Ms Hendrikse could not provide me with any details about the dates on which she had these discussions or notes about what was discussed.

[69] Ms Hendrikse told me that the decision about who should be made redundant was on the basis of "last on, first off" and as the other two affected employees had longer service Ms Hergatt would be made redundant.

[70] At the investigation meeting Ms Hendrikse elaborated on the reasons why it was Ms Hergatt that was made redundant which included Ms Hergatt's general skills and abilities.

[71] I am satisfied the need for reducing the number of legal executive and secretarial employees was for genuine business reasons. However, the process employed by McBreens to select and consult over the redundancy was not the action a fair and reasonable employer could take.

[72] The selection criteria used to select Ms Hergatt was never made known to her and she did not have any opportunity to have input into the criteria. The decision to dismiss Ms Hergatt from her full time role was made prior to any consultation process being embarked upon.

[73] I am not satisfied Ms Hergatt was in attendance at an afternoon tea meeting where Ms Hendrikse advised the other support staff that a decision about how to address the reduction in workloads would be made on Mr Cochrane's return to work. Ms Hendrikse could not recall when the meeting took place only that it was while Mr Cochrane was on leave. Ms Hergatt also took a period of one weeks' leave during that time and it is possible it was during this week that Ms Hendrikse met with the other support staff.

[74] The decision to dismiss Ms Hergatt by reason of redundancy was, in itself unjustified due to the procedural deficiencies. Because Ms Hergatt continued to be employed by McBreens I have concluded, pursuant to my powers under section 160(3) of the Act that the redundancy decision was an unjustified action which affected one or more conditions of Ms Hergatt's employment to her disadvantage.

[75] Ms Hergatt accepted, in good faith, the offer of an alternative role based on the discussions she had with Ms Hendrikse on 5 October 2015. Due to her injury Ms Hergatt was unable to commence in that role immediately and on 4 November 2015 Ms Hergatt's employment was terminated when her final pay was calculated and paid to her.

[76] Ms Hendrikse told me that there was no new signed employment agreement. I do not accept that the absence of a signed employment agreement means the offer and acceptance of the part time role can be ignored. On 21 October 2015 Ms Hergatt had accepted the terms of the part time role as offered to her.

[77] The dismissal which took effect on 4 November 2015 had all the hallmarks of a dismissal for medical incapacity. A number of principles may be derived from decided cases on medical incapacity. The test expressed in *Hoskin v Coastal Fish Ships Supplies Ltd*[3] is whether the point has come "*at which an employer can fairly cry halt*".

[78] In essence, this phrase captures a particular facet of dismissal for medical incapacity, namely the question of how long the employer is obligated to keep a job open. In the present case, Ms Hendrikse told me that McBreens has continued to maintain the vacant part time role since November 2015. Despite that and based on the evidence produced to the Authority I am satisfied Ms Hendrikse considered Ms Hergatt's employment at an end on 4 November 2015.

[79] The payment to Ms Hergatt of her final pay on 4 November 2015 saw the end of Ms Hergatt's employment with McBreens. Ms Hendrikse considered the employment relationship to be at an end. This was largely due to the redundancy situation but was exacerbated by Ms Hergatt's injury.

[80] I am satisfied on the balance of probabilities it is more likely than not that Ms Hendrikse treated the employment relationship at an end on 30 October 2015 after giving Ms Hergatt notice of redundancy and relied on this to terminate the employment relationship following the receipt of the medical certificates in November 2015.

[81] Ms Hergatt's dismissal was unjustified. McBreens had neither requested nor received any information regarding the extent of Ms Hergatt's injuries and at the time of the dismissal McBreens' only information was contained in three medical certificates which indicated Ms Hergatt would return to work the following week on 9 November 2015.

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[3] [1985] ACJ 124 at 127.

Remedies

[82] Ms Hergatt has been successful in her claims and is entitled to a consideration of remedies.

Lost wages

[83] I have found the redundancy situation was an unjustified disadvantage. As Ms Hergatt continued in her employment, albeit on sick and annual leave, she has not experienced any loss of wages in respect to the unjustified disadvantage grievance.

[84] Ms Hergatt told me she was cleared to return to work in February 2016, however, the evidence produced at the Authority shows that Ms Hergatt has still not been medically cleared to return to work. Ms Hergatt is in receipt of a benefit and is required to produce quarterly medical certificates to confirm her incapacity for work. At the time of the investigation meeting Ms Hergatt confirmed that she was about to seek a further medical certificate confirming her incapacity to work.

[85] In my conclusions regarding lost wages I have taken into account the report from Dr Kahan who has stated that no employment properties or characteristics caused or contributed to the cause of Ms Hergatt's injury. When Dr Kahan assessed Ms Hergatt on 25 Febraury 2016 some four months after Ms Hergatt's injury Ms Hergatt reported that her injury had worsened since she had stopped working.

[86] Ms Hergatt's loss of wages is not attributable to the unjustified dismissal, but has been caused by her incapacity to work. This incapacity continues. Given my finding that unjustified dismissal was not the reason for the lost wages, no order for lost wages will be made.

Compensation

[87] Ms Hergatt seeks payment of compensation for the distress, humiliation and loss of dignity she has suffered firstly as a result of the redundancy process and secondly when she was dismissed on 4 November 2015.

[88] At the time Ms Hergatt's role was disestablished and she was given notice that her employment would terminate she had sole responsibility for a mortgage and needed to earn a reasonable income to cover her living expenses. Ms Hergatt

accepted the part time role even though she would struggle to live on the part time income.

[89] I have taken a global approach to the award of compensation which I have assessed at $7,000. This award takes into account both the unjustified disadvantage and unjustified dismissal personal grievances.

[90] Ms Wanda Hendrikse and Mr James Cochrane trading as McBreens Solicitors is ordered to pay to Ms Hergatt the sum of $7,000 under section 123(1)(c)(i) of the Act within 28 days of the date of this determination.

Contribution

[91] The Authority is required under s 124 of the Act when it determines an employee has a personal grievance to consider the extent to which the actions of the employee contributed to the situation that gave rise to the personal grievance and if required reduce remedies that otherwise would have been awarded.

[92] I have concluded that Ms Hergatt did not contribute to either personal grievance and her remedies will not be reduced.

Costs

[93] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Ms Hergatt shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. McBreens shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[94] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors require an adjustment upwards or downwards.

Vicki Campbell
Member of the Employment Relations Authority