

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2016] NZERA Wellington 142  
5578470

BETWEEN            CHRISTOPHER TALBOT  
                                 Applicant

AND                    CORIGLADE LIMITED trading as  
                                 GEEKS ON WHEELS  
                                 Respondent

Member of Authority:    M B Loftus

Representatives:        Barbara Bucket and Jordan Boyle, Counsel for Applicant  
                                 Susan Jane Davies, Counsel for Respondent

Investigation Meeting:    18, 19 and 20 April 2016 at Wellington

Submissions Received:    2 May and 17 May 2016 from Applicant  
                                 10 May 2016 from Respondent

Determination:            25 November 2016

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**DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Christopher Talbot, claims he was unjustifiably dismissed by the respondent, Coriglade Limited (Coriglade). Mr Talbot also claims to have been unjustifiably disadvantaged by Coriglade's failure to provide a safe and healthy work environment and its failure to act as a fair and reasonable employer by not building a productive employment relationship.

[2]     Coriglade accepts it dismissed Mr Talbot but claims it was justified given an incapacity which rendered him incapable of performing his duties.

[3] Mr Talbot accepts he suffered an incapacity which led to his absence from the workplace but attributes this to a hostile working environment created by the bullying behaviour of Coriglade's Chief Executive, Matthew Carr-Gomm.

[4] Coriglade denies Mr Talbot was subjected to workplace bullying or that it failed to act in good faith. Furthermore, Coriglade claims it was Mr Talbot who breached the duty of good faith in that he tried to undermine Mr Carr-Gomm and for that it seeks a penalty.<sup>1</sup>

## **Background**

[5] Coriglade trades as Geeks on Wheels and is in the business of providing mobile computer support with its technicians travelling to clients in order to solve computer and smart device problems. It has some 54 staff based in various locations around New Zealand.

[6] Mr Talbot was employed by Coriglade in September 2013 to manage the Technical Team in Wellington. He reported to Mr Carr-Gomm and controlled a team of approximately nine technicians. Mr Talbot says his main role was to oversee the operation and performance of the Wellington technical team though there were other tasks which were to become prominent such a requirement he maintain the vehicle fleet.

[7] This was Mr Talbot's first role in this industry having previously worked in hospitality. He says that as a novice he was referred to as a *luddite* by Mr Carr-Gomm but was also given a lot of training though that meant a huge amount of knowledge had to be ingested.

[8] Mr Talbot was initially employed on a three month trial. He says he became alarmed during that time by what he considered a high level of staff turnover and he was surprised some of the staff concerned did not complete their trial. That said he considered personal failure *was simply not a viable option* and he was *jubilant* when he completed three months.

[9] Mr Talbot said he soon became concerned he was being *increasingly targeted* by Mr Carr-Gomm and reprimanded on an almost daily basis for trivial things. He says:

*I took this all without comment and only asked how I could improve and gain my way into his good graces. Having had many tough employers in my time working as a chef I thought that Matthew was merely “hazing” me to see how much I would take and I thought that eventually he would lose interest and focus on more important things.*

[10] Mr Talbot then comments on a task he was asked to complete at a team meeting some four months after commencement. He says the request was made at short notice and the task complex, especially as he did not fully understand what he was being asked to do. He says he raised this with Mr Carr-Gomm but was simply told *if you don't understand this now you are not management material*. He says his stress at the meeting was such that after speaking for some three 3 minutes both Mr Carr-Gomm and his wife, Sarah, took over. Mr Talbot says he found the way they did so brutal and he was left sitting in silence and red in the face, in front of his team.

[11] Mr Talbot says the criticism continued and he was at his wits end given a view *endless small criticisms [were] being blown into big deals*. He says he was looking forward to Mr Carr-Gomm's absences but feared his return which would lead to an immediate summons to his office for the obligatory telling off which would be initiated with the words *Talbot! Get in my office*. He goes on to say it became a standing joke around the office if 9.30 had come and he had not received his *reaming yet*. Mr Carr-Gomm responds to this by saying he was brought up in the English public school system where addressing someone by their surname is the norm. Till told it was unappreciated, which he wasn't, he had no reason to question it.

[12] Mr Talbot goes on to say he was not the only victim of Mr Carr-Gomm's *bad mood* and claims even Mrs Carr-Gomm was a frequent victim with audible insults.

[13] Mr Talbot goes on to say that after a year or so he felt Mr Carr-Gomm had finished with the *attacks* and he (Talbot) had finally passed muster. He says he started to feel more secure and even a little appreciated. He says this was reflected in an increased effort at work though he never felt this was appreciated.

[14] Mr Talbot says after some three or four months of relative peace he again found himself in Mr Carr-Gomm's *firing line*. In particular he cites an event when Mr Carr-Gomm came into a meeting room accompanied by the technical services manager, Mr Weata, and accused him of neglecting to replace one of the licence plate

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<sup>1</sup> Paragraph 1(e) of the Statement in Reply

surrounds on a technician's car with a company one. Mr Talbot claims Mr Carr-Gomm stated he was to be performance managed as a result but Mr Weata then advised he was responsible. Mr Talbot says Mr Carr-Gomm left the room ripping up the performance management documents but there was no apology.

[15] Mr Talbot says Mr Carr-Gomm then started making ominous remarks about how it had been a very long time since he had had a nice juicy court case and *he had not had a good firing of an employee for a while*. Mr Talbot says he was being looked at while such comments were being made along with others such as a reflection by Mr Carr-Gomm that he made some appalling mistakes when hiring staff.

[16] On 2 March Mr Talbot was called to a meeting at which he says he was berated and abused about his time management and his management of the vehicle fleet. He says this gave him cause to prioritise the tasks he had been criticised about.

[17] On 4 March Mr Talbot received a letter headed *Disciplinary Meeting Misconduct* in which he was invited to attend a meeting on 13 March. Coriglade wished to discuss his failure to assist with an important part of a new employees induction on 2 March as he had told the HR coordinator, Melanie Capp, he would. Reference was also made to the earlier discussion about the *unrelated* issue of vehicle fleet management. The letter goes on to say Mr Carr-Gomm was concerned Mr Talbot had failed to adequately manage or prioritise his work; expended a disproportionate amount of time attending to vehicle matters; undermined and affected the ability of a colleague to do her job properly and appeared to demonstrate an immature and disrespectful attitude towards matters when they were raised. The letter referred to various contractual obligations and *the code of conduct and disciplinary process policy* before advising the time and place of the meeting. Mr Talbot characterises the letter as making unjustified and unfounded allegations.

[18] The meeting was held as scheduled on 13 March 2015. It was attended by Mr Talbot, Mr and Mrs Carr-Gomm. The meeting resulted in a written warning issued later that day. About that Mr Talbot says *I believe this warning was completely unjustified and this was confirmed when it was later withdrawn by [Coriglade]*.

[19] The warning letter also contains advice Coriglade intended developing a performance management plan addressing Mr Talbot's time management and workload prioritisation.

[20] On 16 March Mr Talbot received a letter inviting him to another disciplinary meeting. The letter advises Coriglade had concerns about events on 4 March and alleges Mr Talbot had, following a telephone conversation with Mr Carr-Gomm, made a series of inappropriate and heated outbursts in the presence of other employees. It was alleged Mr Talbot made serious allegations about being bullied by Mr Carr-Gomm which were unsubstantiated and untrue; that the behaviour and outburst were inappropriate and unacceptable particularly in front of other staff; that Mr Talbot was unable to control himself and that he had undermined the integrity of the business and CEO by making such comments. The letter also referred to a conversation Mr Talbot and Mr Carr-Gomm had on 10 March during which Mr Talbot was said to have *confessed that you had boiled over with rage and made these comments, but on reflection you were embarrassed that you had done so*. The meeting was scheduled for Friday 20 March.

[21] It was at this point Mr Talbot sought legal advice and his lawyer wrote to Coriglade on 18 March. Amongst other things, the letter asks the meeting of 20 March be rescheduled.

[22] Mr Talbot says that on 24 March he was subjected to a ruthless and unrelenting barrage from the Carr-Gomm's which lasted an hour and a half. He says *I have never ever felt so low and when they finally broke for lunch I fled home for my lunch*.

[23] Mr Talbot goes on to say he thought about returning but concluded he couldn't. He telephoned Mr Carr-Gomm and advised he was going on stress level which he attributed to *the traumatising effect of [the] attack*. Mr Talbot says he ... *had been putting up with this abuse for so very long that there was just a point where I could no longer go on and I had to stop fighting to save my own sanity*.

[24] On 26 March Mr Talbot saw Dr Richard Hornabrook. Dr Hornabrook worked in the same practice as Mr Talbot's normal GP, Dr Dassanayake. Mr Talbot says Dr Hornabrook diagnosed him as suffering from work related stress and provided him with a medical certificate to 13 April 2015.

[25] On 27 March Mr Carr-Gomm advised Mr Talbot he wanted the company car Mr Talbot had use of, the fuel card and a phone returned. Mr Carr-Gomm then

collected the car which Mr Talbot saw as both humiliating and a sign Coriglade had already decided he was no longer going to remain in its employ.

[26] On 17 April Mr Talbot again saw Dr Hornabrook who determined he was incapable of returning and the incapacity would continue until *the work issue is resolved*.

[27] Correspondence followed as did a mediation on 15 May 2015. It did not resolve the issues. There was also a further medical certificate on 18 May which again advised Mr Talbot would remain incapacitated until the work issue was resolved.

[28] Also on 18 May Coriglade's lawyers wrote to Mr Talbot's. Included therein was advice the company was willing to rescind the warning of 13 March and discontinue the disciplinary process commenced on 16 March in order to help resolve the problems between the parties. Mr Talbot has interpreted this as proof those processes were unjustified. Coriglade sees it as a sign of good-will designed.

[29] The correspondence continued with Coriglade asking for permission to deal directly with Mr Talbot's doctors to *discuss his prognosis for recovery and what steps the company can take to assist his return*.<sup>2</sup> On 2 June this was extended with Coriglade also asking Mr Talbot undergo a medical assessment from a doctor of its choosing and that he complete a "Healthy Work Assessment Tool" which he later did.

[30] On 9 June Coriglade's lawyers wrote again asking for a written report about various aspects of Mr Talbot's health and prognosis. Mr Talbot's representatives replied the next day advising *We do not wish to enter into any further debate on this matter*<sup>3</sup> (being a reference to the suggestion Mr Talbot might return to work)<sup>4</sup> and further information about the effect the work environment was having on Mr Talbot was being sourced from Dr Hornabrook. There were then numerous examples of what Mr Talbot alleges constituted improper behaviours exhibited by his employer before an allegation the attempts to gather information about his prognosis had resulted in various breaches of the Privacy Act 1993.

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<sup>2</sup> See for example letter Dearing to Buckett dated 20 May 2015

<sup>3</sup> Letter Buckett to Davies dated 10 June 2015 at [2]

<sup>4</sup> n 2 at [3]

[31] The reply came on 19 June. It notes there had been no further information as intimated in the letter of 10 June and an accusation the letter was unhelpful and lacking specificity. The 19 June letter goes on to advise:

*Your client has been absent from the office since March. His last medical certificate indicated the absence would continue indefinitely. This ongoing absence, with your client's opposition to engage with the company in provision of more realistic medical information and information to support his bullying claims cannot be allowed continue.*

*Accordingly, my client is proposing to terminate your client's employment by reason of incapacity. It will make the decision on the basis of the information it has. Please provide your client's feedback on this proposal by 3pm on Thursday 25 June 2015, after which a final decision will be made*

[32] On 24 June Mr Talbot's lawyers advised further medical information would be forthcoming as soon as it could be obtained. The letter also cautioned against dismissal on the grounds there was no reason to terminate but every reason to engage with the help of a third party to address the underlying issues. The letter was accompanied by two statements from former employees alleging bullying behaviour by Mr Carr-Gomm.

[33] On 25 June Coriglade responded saying that unless the further medical information was provided by 5pm that day dismissal was going to occur. It was then Mr Talbot advised he was unable to get the information but he did advise he was now prepared to engage with Dr Whiteside who he refers to as a specialist in the identification of work-place hazards and who he now considered would be empathetic to his situation.

[34] On 30 June, and having not dismissed in the interim, Coriglade again wrote. It canvassed the correspondence and noted what it called Mr Talbot's uncooperative delays before ending with an ultimatum. It required Mr Talbot allow the uplifting of medical records from Dr Hornabrook for forwarding to Dr Whiteside by 5pm 1 July 2015.

[35] Mr Talbot replied on 1 July 2015 advising he, or more correctly his current GP (he had returned to the care of Dr Dassanayake), could not meet that time constraint. Coriglade's response was effectively enough is enough and it advised its decision to dismiss Mr Talbot the following day – 2 July 2015.

## Determination

[36] This determination has not been issued within the three month period required by s 174C(3) of the Act. As permitted by s 174C(4) the Chief of the Authority decided that exceptional circumstances, or more correctly a series thereof, existed to allow a written determination of findings at a later date.

[37] As already said Mr Talbot has three claims. They are:

- a. He has been unjustifiably disadvantaged as a result of Coriglade's failure to provide a safe and healthy work environment; and
- b. Coriglade failed to act as a fair and reasonable employer by not building a productive employment relationship; and
- c. He was unjustifiably dismissed.

[38] The claim Coriglade failed to provide a safe and healthy workplace is based on Mr Talbot's view he was bullied by both Matthew and Sarah Carr-Gomm, though mainly Mr Carr-Gomm, in what was a hostile environment. The argument Coriglade failed to build a productive work environment has, at its heart, the same underlying accusation. I shall consider these claims first as they underpin the dismissal claim in that it is argued these issues caused Mr Talbot's incapacity.

[39] The plain dictionary meaning of the word hostile is *antagonistic* or *unfriendly*.<sup>5</sup>

[40] Evidence on whether or not such an environment existed was presented by two diametrically opposed camps. Mr Talbot and his witnesses concentrated their criticism at Mr Carr-Gomm and accuse him of being ill intentioned, bad tempered and constantly swearing at others including his wife.

[41] He denies the accusation have validity. He portrays the environment as a quirky one predominately populated by generation Y employees where *colourful* language is common, including its use by himself, but not directed offensively at anyone.

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<sup>5</sup> Collins Dictionary of the English Language, William Collins Sons & Co Ltd, London and Glasgow

[42] Opposing the views of Mr Talbot and his witnesses were those of Coriglade's witnesses. They were, as Ms Davies submitted, overwhelmingly positive about the environment. They evidenced a fun loving workplace with their views being supported with photographic evidence.

[43] About Mr Talbot they are essentially saying his skills managing a kitchen could not be transferred to the tech environment. This led to deficiencies with his performance Coriglade was entitled to address. In response he developed a fictitious portrayal of the environment to try and deflect Coriglade from investigating its concerns and then stymied their attempts to address the developing situation.

[44] It becomes a matter of which group of witnesses I consider has the best recollection of events. The answer is those appearing for Coriglade.

[45] Mr Talbot's evidence was far from compelling. It contained numerous and often emotively couched allegations of improper and bullying behaviour by Mr Carr-Gomm. That said the accusation were often general in nature and when asked to flesh out his assertions and provide detail Mr Talbot was frequently unable to do so. One example related to a paragraph of his brief<sup>6</sup> where he describes *Mathew [launching] into a very personal attack at me over how I mismanaged the meeting when it was so important to get it right.* When asked to talk about the meeting he was referring to was incapable of doing so. He was confused as to which meeting he was referring confused and finished by admitting he simply could not remember the event.

[46] The same occurred when he was asked to describe instances upon which he claimed he had witnessed others being abused. Again Mr Talbot's ability to provide detail or context was limited. To that I add the fact Mr Talbot gave evidence the workplace could be robust and he too, for example, spoke over the top of others and could act aggressively.

[47] There is then the fact the duty to be responsive and communicative<sup>7</sup> falls upon both parties and it has long been accepted that where an individual is of the view he or she is being subjected to bullying or harassment there is a duty to bring this to the employer's attention so it may be addressed. The evidence is Mr Talbot did not do so or at least did not until March 2015. In this regard Ms Buckett puts weight on the fact

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<sup>6</sup> Paragraph 13

<sup>7</sup> Section 4(1A)(b) of the Employment Relations Act 2000

Coriglade's letter of 16 March refers to Mr Talbot's accusation of bullying aired on 4 March thus confirming it had to be aware of his accusations.

[48] I do not accept that for two reasons. First it was a single event where the comments were not being directed at the employer but where Mr Talbot was, as he accepted when questioned, mouthing off. Second and more importantly Mr Talbot had already resiled from the accusation, at least as far as Coriglade was concerned, during the conversation of 10 March. Here it should be noted he accepted when questioned the relevant references in the letter of 16 March were accurate (refer [20] above). In such circumstances I conclude Coriglade had no reason to suspect there was a live issue it had to address until Mr Talbot's lawyer's letter of 18 March. From that point Coriglade's attempts to deal with the issues appear, in my view, to have been stymied by Mr Talbot's reluctance to provide information so the Company could address his alleged concerns.

[49] There are then the remedies sought by Mr Talbot. While the claim has since been dropped I note Mr Talbot originally sought reinstatement.<sup>8</sup> That reinstatement was no longer being sought was not confirmed till after the investigation meeting.<sup>9</sup> I remain bemused anyone could contemplate returning to an environment they portray so negatively and the fact the remedy remained so long further undermines the veracity of the claims.

[50] There was then the evidence of Mr Talbot's supporting witnesses. In my view these were, as Ms Davies submitted *disaffected ex-employees who each had their own bugbears which they wanted to air and which made up the bulk of their evidence.*<sup>10</sup>

[51] When asked about the events complained of by Mr Talbot their evidence was, in my view, weak and far from helpful to Mr Talbot's cause. For example when asked if Mr Talbot ever complained about bullying one simply said *not in those words* while another said he had commented on meetings which were less than pleasant but not made comments about bullying. When asked what he had done about it the witness simply said *none of my business*. The same witness could not even recall a specific example of Mr Carr-Gomm swearing preferring to say it was *regular*.

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<sup>8</sup> Statement of Problem at paragraph 3.3

<sup>9</sup> E-mail Boyle to Davies dated 5 May 2016

<sup>10</sup> Respondent's closing submission at [8]

[52] Similarly a third supporting witness could not recall Mr Talbot talking of bullying and all failed to recollect specific instances they were alleged to have witnessed such as Mr Carr-Gomm swearing at his wife and another incident where he is alleged to have thrown a ball directly at Mr Talbot. Instead it appears cushion balls were thrown between participants at meetings.

[53] Finally there was the evidence of Dr Hornabrook. Its presentation was most unsatisfactory and raised further questions over the veracity of the evidence presented on Mr Talbot's behalf though this is not a criticism of the Doctor. He was open in answering question though his answers reflected badly upon Mr Talbot and his assertions.

[54] There were difficulties over establishing a time for Dr Hornabrook to attend the investigation and when he did there as a long adjournment – approximately half an hour. When he did commence an amended brief was presented with two large portions of the previously filed document redacted. Included in the redacted portions was evidence that went to the heart of this claim – for example the two references, one of which was close to half a page, to the Doctor being of a view Mr Talbot could not return to *the workplace environment without the causative issues being resolved* and another attributing a worsening diagnosis on 18 May to the Doctor's opinion it was due to Coriglade's failure to engage.

[55] When asked why the brief has changed Dr Hornabrook candidly admitted that upon reviewing it he considered the brief, which had been prepared on his behalf by Mr Talbot's counsel, to be *over-embellished*. Given the frequent failure of Mr Talbot's other witnesses to come up to brief and detail their generalised accusations, I could not help wondering whether this was the only brief which suffered from such a problem.

[56] From there things got worse. It transpired the medical certificate of 18 May had been written without a consultation and the certificates simply reported what Mr Talbot was saying. Even that was not good enough with evidence from the notes produced by Dr Hornabrook that the content of the certificates was being edited by Mr Talbot then *reworded as requested*.

[57] As Ms Davies submitted *Dr Hornabrook's evidence is of little value other than to document what the applicant had told him, and undermine the applicant's credibility in his statements about Dr Hornabrook.*

[58] The same problems did not arise with Coriglade's witnesses. They do not face the same criticism regarding a lack of specificity and when questioned their answers did not result in the type of devastation Dr Hornabrook's answers caused. As already said Coriglade's evidence portrayed a quirky environment which Mr Carr-Gomm led with a firm but fair hand. There was also criticism of Mr Talbot's performance and not just from the Carr-Gomm's. For example one witness said he *was inconsistent and unreliable. He preferred to avoid questions and problems rather than solve them.*

[59] Perhaps one of the most telling witnesses was an ex-employee who travelled from Auckland to give evidence in support of Mr Carr-Gomm. While not unique such an event is rare enough to send a message.

[60] Mr Talbot's evidence and the way it came across left an unsavoury feeling his claims had been embellished to a point they had little resemblance to actuality. It is for an applicant to establish a prima facie case for the respondent to answer. The weaknesses in both his evidence and that of his supporting witnesses' means he has failed to convince me he was subjected to improper bullying or harassment. That also means he has failed to convince me the employer acted in bad faith.

[61] Turning to the dismissal. Coriglade accepts it dismissed Mr Talbot. It is therefore required to justify its decision which it attempts to do on the grounds of medical incapacity.

[62] In essence it is a frustration argument and as the Court observed in *Motor Machinists Ltd v Craig*<sup>11</sup> this is an approach that is often raised in cases of illness and injury. In that case the Court found:

*(1) frustration of contract can occur where illness prevents the performance of an employment contract. However, an employment contract is not frustrated simply because an employee is ill or has been in the past. The contract is not frustrated where there is no medical evidence that the employee is permanently incapacitated or it cannot be said that the incapacity has been such that it destroyed the root of the contract. Under the doctrine of frustration there is no requirement of fairness as the contract terminates by operation of law, rather than by the decision of one of the parties. (p 591, line 24; p 592, line 1)*

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<sup>11</sup> [1996] 2 ERNZ 585

*(2) Where illness or injury occurs which prevents an employee from returning to work the employer is not necessarily bound to hold that employee's job open indefinitely. However, if the employer chooses to dismiss the employee, its action must be justified at the time in accordance with the established jurisprudence. The employer must have substantive reasons for the dismissal and must show that the procedure it followed in carrying out the dismissal was fair. This ensures that the employee is not dismissed without the opportunity to provide information, such as medical reports, to prevent the employer taking such action, while at the same time allowing the employer to end the contract without needing to establish that the contract was frustrated.*

[63] This means the employer is required to put the employee on notice the employment is at risk but give an opportunity for the employee to provide information about his or her situation which might mitigate against such an outcome.

[64] Here there is a large quantity of correspondence. The documents speak for themselves but if I were to simplistically summarise their content I would say the letters shows numerous requests from Coriglade for information about both the alleged bullying and Mr Talbot's medical prognosis. Their responses are, in my view, inadequate and did not provide information of sufficient specificity to allow Coriglade to address the bullying accusations or satisfy it Mr Talbot was capable of returning. I would also have to say the responses reek of delay and obfuscation.

[65] Indeed Coriglade went further. It put Mr Talbot on clear notice his approach would lead to his dismissal yet he still failed to provide Coriglade with information that would leave it confident he was capable of returning. Indeed the repeated assertion the situation was attributable to an environmental as opposed to medical condition means, given my conclusion about that, the outcome was an inevitable outcome of the approach taken by Mr Talbot.

[66] Even when he was put on clear notice of Coriglade's intentions he continued to vacillate. It has been long accepted an employer can eventually say enough to an absence. Here the evidence leads me to conclude Coriglade could rightfully conclude that point had been reached and the dismissal justified.

### **The counter claim**

[67] Coriglade sought a penalty for Mr Talbot having allegedly breached the duty of good faith by trying to undermine Mr Carr-Gomm with other staff. While I suspect this claim relates to the outburst of 4 March (refer [20] above) I do not really know.

The claim was not specifically evidenced and not referred to in Ms Davies submissions.

[68] I shall treat it accordingly and dismiss it.

### **Conclusion and costs**

[69] For the above reasons I conclude Mr Talbot has failed to establish he was disadvantaged by reason of unjustified bullying by his employer. It follows he has failed to establish his employer failed to provide a safe workplace by reason of said bullying.

[70] I also conclude Coriglade has justified its decision to dismiss Mr Talbot. As a result Mr Talbot's claims are dismissed.

[71] Coriglade's counter claim is dismissed.

[72] Costs are reserved.

**M B Loftus**  
**Member of the Employment Relations Authority**