

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 371
3047074

BETWEEN SHEREEN ALI
 Applicant

AND MILLENNIUM CORPORATION
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Madeleine Lister, counsel for the Applicant
 Jeff Wong, Group Chief Financial Officer, for the
 Respondent

Investigation Meeting: 9 and 10 May 2019 at Auckland

Submissions Received: 29 April 2019 and at the Investigation Meeting

Date of Determination: 21 June 2019

DETERMINATION OF THE AUTHORITY

- A. The applicant, Ms Shereen Ali, was unjustifiably dismissed by the Respondent, Millennium Corporation Limited (Millcorp).**
- B. Millcorp must, within 21 days of the date of this determination, settle Ms Ali's personal grievance claim by paying her;**
- (i) the sum of \$30,000 compensation for humiliation, loss of dignity, and injury to her feelings.**
 - (ii) the sum of \$5,501.60 gross in lost remuneration together with KiwiSaver contributions.**

C. Costs are reserved.

Employment Relationship Problem

[1] Millennium Corporation Limited (Millcorp) is a “private investment Group focussed on growing successful telecommunications, technology, utilities and media businesses in New Zealand and the Pacific region”.¹

Ms Ali’s Employment by Millcorp

[2] Ms Ali is an experienced chartered accountant and was employed by Millcorp in March 2017. In early April 2018, Ms Ali went on parental leave. Ms Ali was due to return from parental leave on 22 October 2018. In early August 2018, Ms Ali was informed that there were going to be some changes to the finance team. Following a number of telephone discussions with the recently appointed Head of Finance, Ms Goh, Ms Ali was informed on 21 August 2018 that her position was to be disestablished.

[3] Ms Ali was invited to express an interest in the Senior Financial Accountant role and/or the Assistant Accountant role. Ms Ali expressed her interest in the Senior Financial Accountant role and was interviewed. However, Ms Ali was not successful in securing the role. Ms Ali’s last day of employment was 28 August 2018.

[4] Ms Ali says that her dismissal was unjustified both substantively and procedurally. Ms Ali says the new role was essentially the same as the one she had been performing in and so the redundancy was not genuine. Further, she says that she should have been redeployed and given the opportunity to upskill if that was what was required. With regard to the process, Ms Ali says that there was a dearth of information provided to her. She was only consulted by telephone, no notes were provided to her of discussions held by telephone, and insufficient information was provided setting out the rationale for the restructure. Overall, Ms Ali is of the view her role was made redundant for ulterior motives, namely she was on parental leave.

[5] Ms Ali also says that the way in which she was treated by Millcorp was in breach of the Parental Leave and Employment Protection Act 1987(PLEPA), in that Millcorp failed to keep her position open for her during her parental leave, despite undertaking to do so.

¹ www.millcorp.co.nz

Millcorp's Response

[6] Millcorp denies that Ms Ali's dismissal was unjustified. It says that following the appointment of a new Board, the Board's requirements changed. More comprehensive reporting was required and the existing structure of the finance team was insufficient to satisfy this requirement. Therefore, Millcorp decided it was necessary to restructure that part of the finance team to ensure that the level of reporting required could be provided to the Board.

The Investigation Meeting

[7] The investigation meeting took place in Auckland on 9 and 10 May 2019. Ms Ali and her husband Mr Abdul Imtiaz each filed witness statements.

[8] For Millcorp, Ms Louise Baird, Group HR Manager, Ms Sue Goh, Head of Finance, Ms Lynley Dodge, Senior Financial Accountant and Mr Rahul Singh, former employee of Millcorp, each filed witness statements. Ms Bonita Wright, Executive Recruiter at Alexander James Limited (Alexander James) was required to attend the investigation meeting to answer questions and did so. Mr Jeff Wong, Group Chief Financial Officer who represented Millcorp at the investigation meeting, answered questions as required.

[9] Each of the witnesses giving evidence before the Authority either swore on oath or affirmed that their evidence was true and correct. Each witness had the opportunity to provide any additional comments and information and did so.

[10] As permitted under s 174 of the Employment Relations Act 2000 (the Act) this determination does not set out all the evidence and submissions received. The determination states findings of fact and law and makes conclusions on issues necessary to dispose of the matter.

Issues

[11] The issues for determination by the Authority are as follows:

- (a) Was Ms Ali unjustifiably dismissed by Millcorp?
- (b) If Ms Ali was unjustifiably dismissed, what remedies are available to her?

- (c) If Ms Ali was unjustifiably dismissed and remedies are available, did she contribute towards the situation giving rise to the personal grievance concerned?
- (d) Did Millcorp breach ss 41 and 49 of the PLEPA by terminating her employment while on parental leave without proper reason under the PLEPA?

First Issue:

Was Ms Ali unjustifiably dismissed by Millcorp?

Ms Ali's experience

[12] Ms Ali has a double degree in commerce and finance from the University of South Pacific, Fiji. Ms Ali also has a post-graduate diploma in accountancy and is a member of the New Zealand College of Chartered Accountants.

[13] Ms Ali has more than ten years' experience in accounting roles. Prior to applying for employment at Millcorp in February 2017, Ms Ali had been employed in a number of financial accountancy positions.

Interview for Role at Millcorp

[14] In February 2017, Ms Ali applied for a "senior financial accountant" role being advertised at Millcorp. The advertisement was placed by recruitment agency, Alexander James. Ms Ali met with an associate consultant at Alexander James and was interviewed for the role.

[15] On 27 February 2017, Ms Ali was notified by Alexander James that Millcorp wished to make her an offer. However, the email requesting that an offer be made, referred to the role as being that of "financial accountant". Ms Ali immediately emailed Ms Bonita Wright who was handling her application and stated:

Thanks Bonita.
It's a senior financial accountant role right?

[16] Ms Wright immediately responded stating:

Yes but they are keeping the structure flat and titles as is. Hope that's okay.

Employment Agreement

[17] Ms Ali was provided with an individual employment agreement. The position was described as financial accountant. Ms Ali says she believed Ms Wright's statement that the title of the role would remain "financial accountant" but that the role was in fact a senior financial accountant role. At the Authority's investigation meeting, Ms Wright accepted that she had represented the role to Ms Ali as that of a senior financial accountant. The reason she gave was that, by stating in the advertisement that the role was a senior financial accountant, this would attract a wider group of applicants. Ms Wright did not disclose to Ms Ali that she had received an email from Mr Michael Gough, Financial Controller at Millcorp, and to whom Ms Ali's position was to report, confirming that the position Ms Ali was being employed in was that of financial accountant but "there is room to move to senior financial accountant in time, depending on performance".

[18] Ms Ali was not aware of the email from Mr Gough as it was only produced at the Authority's investigation.

[19] When asked about the salary band for a senior financial accountant role, Ms Wright said that a senior financial accountant with five years' experience would expect to receive \$100,000 plus. Ms Wright accepted that Ms Ali's salary range exceeded that of a financial accountant who would be paid anything from \$70,000 to \$100,000. She said Ms Ali's salary was just outside the range for financial accountant and was within the range for a senior financial accountant. She said this put Ms Ali's role into that of a "grey" area.

[20] Ms Ali's husband, Mr Imtiaz, says he understood that the role that Ms Ali was employed to perform was that of senior financial accountant. His view was confirmed upon reading Ms Wright's email to Ms Ali that the title was not senior financial accountant, but the role was.

[21] I consider the role was represented to Ms Ali as being that of a senior financial accountant and Ms Ali was entitled to rely on that representation.

Parental Leave

[22] In early September 2017, Ms Ali and her husband became aware that they were expecting their second child. Ms Ali informed Millcorp of this in late November 2017. On 18 December 2017, Ms Ali received a letter from the HR adviser at the time, Ms Naomi

Austin, acknowledging her application for parental leave and advising her that her role as financial accountant “can be kept open until the end of your parental leave”. Ms Ali applied for parental leave from 23 April 2018 until 21 October 2018. Ms Austin sent a letter to Ms Ali on 18 December 2018 acknowledging her application for parental leave for that period of time and stating:

Your employment as financial accountant can be kept open until the end of your parental leave.

[23] Although Ms Ali was due to go on parental leave on 23 April 2018, she actually went on parental on 9 April 2018. Her son was born on 14 April 2018.

[24] Mr Rahul Singh was contracted for a fixed term to cover Ms Ali’s role while she was on parental leave, until her return to work on 22 October 2018.

Mr Gough’s resignation

[25] On 22 May 2018, Mr Gough notified Mr Wong and Ms Baird of his intention to resign with effect from 10 August 2018. Ms Sue Goh was employed by Millcorp as Head of Finance on 4 June 2018. Ms Goh has extensive experience in the accounting/finance industry working for a number of large corporates.

Proposed restructure of the Finance team

[26] On 8 August 2018, Ms Goh sent a text message to Ms Ali as follows:

This is Sue from Millcorp (Mike’s replacement). Can we catch up in the next couple of days? There are some team changes I wanted to go through with you, either on a call or in person. Are you able to pop in or would you prefer a call?

[27] Ms Ali responded by asking for a chat over the phone as she had had a hectic afternoon with her baby. At 8:04am on 9 August 2018, Ms Ali sent a text message to Ms Goh asking whether they could talk at 9am that morning. Ms Ali says that she was anxious about the text she had received the day before from Ms Goh and wished to find out what the proposed changes to the team were. Ms Goh’s reply was she would text her later with a time. Ms Goh did not text later. Ms Ali sent further texts to Ms Goh on the morning and afternoon of 10 August, asking if she could spare some time to talk as she was wanting some light to be shed on the team changes.

[28] On 13 August 2018 at 6:15am, Ms Ali received a text from Ms Goh as follows:

On Tues – at 10:30 or between 1 to 2, or 3 to 4?

[29] A telephone call was finally made by Ms Goh to Ms Ali in the afternoon of 13 August 2018. Ms Louise Baird, Millcorp's HR Manager, was also present on the call. Ms Ali says she was informed that Millcorp proposed:

- (a) Disestablishing the two financial accountant positions held by Ms Ali and Ms Lynley Dodge;
- (b) Creating two senior financial roles; and
- (c) Creating an assistant accountant role.

Restructure proposal document

[30] Following the telephone call, Ms Ali was provided with a copy of the restructure proposal. A copy of the proposal was provided to the Authority. The existing structure included Ms Goh as head of finance. The rationale for the proposal to disestablish the financial accountant positions and create senior financial accountant positions and an assistant accountant role was that the:

Appointment of a new external Board, and organic business growth have resulted in increased scope and volume of Finance requirements and deliverables which include:

- Additional reporting, enabling more transparency and visibility over key performance measures
- Monitoring and pro-active mitigation of key business risks
- Increased accuracy over medium to long-term cash flow and operational forecasting
- Business partnering with key operational stakeholders

To achieve this, upskilling and provision of additional capacity is required.

[31] The document included the proposed restructure, namely two senior financial accountant positions and an assistant accountant role, all of which would report to the head of finance.

[32] The senior financial accountant roles included the following duties:

- Production of monthly management accounts including commentary and analysis

- Business partnering with key operational stakeholders, including identification of key risks and opportunities and Finance recommendations
- Significant input into Board reports, including commentary and recommendations
- Cash flow and operational forecasting
- Statutory and regulatory compliance
- Coaching and mentoring junior staff

The assistant accountant role was to support senior financial accountants and perform payroll, fixed assets and inter-company work.

[33] The proposal document did not refer to Mr Gough's departure as being a trigger for the restructure. Presumably this is because he had informed Millcorp some two months prior that he was resigning in early August 2018.

[34] The consultation process was stated to commence on 15 August 2018. Feedback was expected to occur, followed by consideration of the feedback and confirmation of outcome.

[35] Ms Ali says following the discussion with Ms Goh and Ms Baird she felt confident that if the restructure did proceed she would be redeployed to one of the senior financial accountant roles. This was because she had considerable experience, qualifications and had been informed by Ms Wright, when interviewed, that the role that she would be doing was that of a senior financial accountant role. Ms Wright confirmed this to Ms Ali when questioned about why the role was specified in the employment agreement as that of financial accountant. Ms Ali says the proposed senior financial accountant role was one she was capable of performing.

Finance team meeting – 13 August 2018

[36] Following the telephone conversation about the restructure, Ms Goh convened a meeting of the finance team. Ms Goh announced the resignation of Mr Singh who was performing Ms Ali's role while on parental leave. Mr Singh had decided he must leave Millcorp because he needed a permanent position in order to pay his mortgage and other outgoings. Mr Singh's evidence is that at the meeting he recalled Ms Goh saying something along the lines that Ms Ali would not be coming back early.

[37] Ms Ali provided the Authority with copies of text messages from another member of the finance team who informed her that she had just been at the meeting at which Mr Singh's

resignation had been announced. The text message stated, “You may have been asked already if you can come back early due to Rahul leaving end of this month?”

[38] Ms Ali was concerned by the comment that she would not return to work early. This possibility had never been raised or discussed with her.

Feedback

[39] On 14 August 2018, there was another phone call between Ms Ali, Ms Goh and Ms Baird. The call was for Ms Ali to provide feedback about the restructuring proposal which had been discussed with her the previous day. Approximately 40 minutes after their telephone call, Ms Goh sent through the draft position description for the senior financial accountant role to Ms Ali. Ms Ali described the process as being carried out with extreme haste which she found difficult. Ms Ali was at home with a young baby and it was challenging and stressful for her to fully consider the proposed changes or provide feedback.

Disestablishment of role

[40] On 21 August 2018, Ms Goh sent an email to Ms Ali confirming that the proposed changes to the finance structure were to proceed with immediate effect. Ms Goh invited expressions of interest in the roles of assistant accountant or in one of the two senior financial accountant roles. On the morning of 22 August 2018, Ms Ali sent an email to Ms Goh and Ms Baird, enclosing her CV and indicating that she felt, following the disestablishment of her role, she should be appointed automatically to the senior financial accountant role. This was because of the similarities between the positions, and that she was fully qualified to perform the duties and responsibilities of the senior role.

Interview process

[41] Ms Ali was interviewed for the senior financial accountant role. On 27 August 2018, Ms Ali was informed that she had not been successful. Ms Ali was informed her role was therefore redundant with effect from Wednesday, 26 September 2018. Ms Dodge was employed to a role of senior financial accountant.

The law

[42] Section 103A of the Act requires the Authority to decide objectively whether the actions of the employer meet the standard of a fair and reasonable employer.²

[43] The decision to make an employee redundant following a restructuring must be shown to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee).³ In order for a redundancy of an employee following restructuring to be justified, an employer must demonstrate that the dismissal was what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred.

[44] The Authority must consider whether the employer met the minimum standards of procedural fairness outlined in s 103A of the Act and whether it made a decision to terminate the employment relationship on substantively justified grounds.⁴

[45] Ms Ali was made redundant following the implementation of a restructuring proposal. The onus is on Millcorp to justify this was a genuine redundancy situation.

[46] Ms Ali was employed as a senior financial accountant. That was the role that was advertised and confirmed to her subsequently by Ms Wright from the recruitment agency, Alexander James. The email to Ms Wright from Mr Gough, that the role was that of a financial accountant not a senior financial accountant, was not provided to Ms Ali until the Authority's investigation meeting. Ms Ali's understanding was that she was employed in a senior role. I accept Ms Ali's evidence that she believed the role she was employed to undertake was that of a senior financial accountant and that she would not have applied for the role if it had not been senior. In my view the salary Ms Ali was paid, the evidence from Ms Wright that Ms Ali's salary fell within a senior financial accountant's salary band, confirms this to have been the case. Ms Ali was performing at the level of a senior financial accountant.

Rationale for restructure

[47] Ms Baird's evidence was that the rationale for the restructure was two-fold. Firstly, Mr Gough had resigned to move overseas, and had been responsible for the

² *Grace Accounting Limited v Brake* [2014] ERNZ (CA) at [85].

³ Footnote 6, see above.

⁴ *Stormont v Peddle Thorp Aitken Limited* [2017] NZEmpC 71 at [52].

management/Board reporting work. Secondly, some new directors had joined the Board and there were increased expectations around Board reporting, including the content, level and insight into risks. This meant the standard of Board reporting needed to be improved. Ms Baird said there was a verbal directive from Millcorp's board to restructure so that the Board's increased expectations around reporting could be met. Mr Wong, Group Chief Financial Officer, contradicted this evidence and said the Board had not directed the restructure, it was Ms Goh's initiative.

[48] Ms Goh's evidence was that the rationale for the restructure included the departure of Mr Gough. She said Mr Gough's duties would be more suitably incorporated into the senior financial accountant role that had been created. Her evidence was that the proposal was to "repurpose existing head count by disestablishing the role of financial controller and creating an additional role of assistant accountant". Ms Goh stated in her evidence that the role of financial accountant and senior financial accountant were significantly different, which is evident from the job descriptions. The senior financial accountant role would involve financial reporting, analysis, management reports, including commentary.

[49] Despite this, when questioned at the Authority's investigation meeting, Ms Goh said that Mr Gough's departure was not one of the drivers for the restructure. Instead, she said that she wanted to "drive a finance transformation in the way the finance team interacted with the rest of the business". She stated that her role was to take on some of Mr Wong's tasks to free him up so that he could invest more of his time on the strategic side of the business. Prior to Ms Goh's commencement at Millcorp, Mr Wong was more involved in the day to day running of the finance team and her role was to free him up.

[50] These reasons were not mentioned in both the restructure document and in the conversation with Ms Ali about the reasons for the changes to the finance team.

[51] Ms Dodge gave evidence that it was explained to her that the proposal was that Mr Gough's role would be disestablished and that a significant amount of his work such as management reporting would be completed by senior financial accountants. She said, "That type of work previously done by Michael, was more senior than the work I was currently carrying out in my role of financial accountant".

[52] At the investigation meeting, Millcorp's witnesses confirmed that it was as a result of Mr Gough's departure and the increased expectations of the Board that Ms Goh determined that a restructure of the finance team was necessary.

[53] This evidence contradicted the written restructure document given to Ms Ali setting out the rationale for the restructure. There is no mention in that document that Mr Gough's departure was a driver for the restructure. Rather, the rationale was that the appointment of a new external Board, required increased reporting, and meant that "upskilling and provision of additional capacity" is required. Firstly, the external Board was appointed in early 2018 and secondly, three months before the restructure, Mr Gough had given notice to Millcorp of his resignation effective on 10 August 2018.

[54] The evidence from the key players in Millcorp's restructure was contradictory in my view. They did not seem clear about what the rationale for the restructure was. Ms Ali did not have an opportunity to provide feedback on the other matters which were given for the restructure.

No notes of meetings

[55] No notes or records of conversations with Ms Ali were made. No Board resolutions of directives or meetings about a restructure were kept. This was confirmed by the witnesses for Millcorp at the Authority's investigation meeting. No adequate reasons were provided as to why no notes were kept. This was a surprising omission.

[56] The lack of documentary information, the fact that consultation was primarily over the phone, the haste with which the restructure took place and the contradictions over the rationale for the restructure, call into question the genuineness of Ms Ali's redundancy.

[57] The timing of the restructure proposal is also a factor. Mr Singh, who had been employed on a fixed term contract to cover Ms Ali's work while she was on parental leave, had indicated in an email to Ms Goh on 3 August 2018 that he was resigning from his position of financial accountant with effect on 31 August 2018. The restructure proposal was mentioned a matter of days following in a phone call to Ms Ali on 8 August 2018.

[58] In my view, on balance, it was the timing of Mr Singh's resignation that triggered Ms Goh's decision to consider restructuring the finance team. This, in my view, was because Ms Ali was on parental leave and was not due to return until late October 2018. Ms Goh

needed to employ someone to perform Ms Ali's duties. Rather than ask Ms Ali whether she could return early, she took steps to restructure the team for a host of contradictory reasons.

Redeployment/upskilling

[59] When asked whether or not Ms Goh considered upskilling staff or redeploying staff, her answer was "no".

[60] Redeployment was a subject considered by the Employment Court in *Wang v Hamilton Multicultural Services Trust*.⁵ Redeployment is a factor a fair and reasonable employer should consider.

[61] Ms Goh did not turn her mind to considering whether or not Ms Ali could be upskilled or redeployed, if required, to take on the senior financial accountant position. Ms Ali was undertaking a significant number of the duties of the senior financial accountant role and she was being paid within the salary band for a senior financial accountant role. The actual requirements of the board in terms of financial reporting were such that with some upskilling, in my view, Ms Ali could have been considered for redeployment and would more than likely have been redeployed to the role. She was not considered.

Redundancy not genuine

[62] In my view, the redundancy was not genuine. Rather, for a combination of reasons including Ms Ali being on parental leave and her replacement leaving, it was determined by Ms Goh that a restructure would enable her to remove Ms Ali from the position. Ms Ali was unjustifiably dismissed by Millcorp and is entitled to remedies.

Second Issue

If Ms Ali was unjustifiably dismissed, what remedies are available to her?

Hurt and humiliation

[63] Ms Ali gave extensive evidence about the hurt and humiliation she suffered as a result of the redundancy process undertaken by Millcorp which led to her dismissal, particularly the way Ms Goh and Ms Baird engaged with her, the speed with which the process was undertaken, and the failure by Millcorp to consider redeployment and upskilling.

⁵ [2010] ERNZ 468 at [42].

[64] Ms Ali says that at the time of the events leading up to her dismissal and the dismissal itself, she had a four month old baby. This in itself was a challenging time for her and Millcorp failed to properly accommodate this situation.

[65] She was stressed by the way in which Millcorp engaged with her, which was by phone calls and often last minute. Ms Ali says that she and her husband had struggled to have a second child for seven years. They were both really looking forward to time with their new baby. However, because of the stressful situation she found herself in at work, Ms Ali says she was unable to breastfeed and had to bottle-feed her baby. This was extremely upsetting for her. She also felt that she did not have quality time with her baby because she was worried about her job. This precious time, she says, she will never have back and feels a sense of guilt about it. Ms Ali says she began suffering from migraines and attended counselling to manage her feelings about her dismissal and its impact on her.

[66] Ms Ali's husband also gave evidence of the stress that they were under already as a result of having a young baby and having sleepless nights. He says he watched as his wife's health deteriorated during the events leading up to her dismissal and the impact the dismissal had on her.

[67] In all the circumstances I consider compensation of \$30,000 for the humiliation, loss of dignity and injury to feelings suffered by Ms Ali is appropriate.

[68] I order Millcorp to pay Ms Ali the sum of \$30,000 compensation within 21 days of the date of this determination.

Reimbursement of Lost Remuneration

[69] Ms Ali seeks reimbursement of lost remuneration as a result of her unjustified dismissal pursuant to s 123(1)(b) of the Act. Ms Ali had the benefit of income protection insurance which lessened the financial impact of her dismissal. However, the total income from her income protection policy was less than what she would have received had she remained employed by Millcorp. Ms Ali spent four months applying unsuccessfully for various positions. She was finally successful on 3 January 2019.

[70] Ms Ali was due to return to her position at Millcorp on 23 October 2018. Therefore, Ms Ali was out of work for ten weeks and two days. Based on the salary that the senior financial accountant was earning, namely Ms Dodge, of \$103,600 gross, Ms Ali would have

earned \$20,720.10 gross. Ms Ali received an insurance payout totalling \$15,218.50 gross. Therefore, her loss of earnings amounts to \$5,501.60 gross.

[71] I order Millcorp to pay Ms Ali the sum of \$5,501.60 gross in lost remuneration together with KiwiSaver contributions within 21 days of the date of this determination.

Third Issue

If Ms Ali was unjustifiably dismissed and remedies are available, did she contribute towards the situation giving rise to the personal grievance concerned?

[72] Section 124 of the Act requires the Authority to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance. If those actions so require, the Authority may reduce the remedies that would otherwise have been awarded accordingly. I do not consider that Ms Ali's actions contributed towards the situation that gave rise to her personal grievance. There will be no reduction in respect of the remedies awarded.

Fourth Issue

Did Millcorp breach ss 41 and 49 of the Parental Leave and Employment Protection Act 1987 (PLEPA) by terminating her employment while on parental leave without proper reason?

[73] Ms Ali claims that in terminating her employment while she was on parental leave, Millcorp breached ss 41 and 49 of the PLEPA. Section 41 of the PLEPA presumes that an employee's position can be kept open until the end of the employee's parental leave. This presumption is subject to various exceptions including that the employee's position cannot be kept open because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee; or because of the occurrence of a redundancy situation.

[74] Section 49 of the PLEPA prohibits an employer from terminating the employment of a female employee by reason of her pregnancy or her state of health during her pregnancy, unless her state of health during her pregnancy is materially affected by causes not related to her pregnancy.

[75] Section 51 of the PLEPA sets out special defences for an employer when dismissing an employee during parental leave. One of the defences is in the situation of a redundancy which has occurred in the employer's business after the employer gave the employee notice that it would keep the employee's position open.

[76] On 18 December 2017, Millcorp gave Ms Ali notice in accordance with s36(1)(c)(i) of the PLEPA that it would keep her financial accountant position open until the end of her parental leave. At the time of the restructure in August 2018, Ms Ali was informed that the rationale for restructure was the "appointment of a new external board, and organic business growth resulted in increased scope in volume of finance requirements". Three new board members were appointed on 3 January 2018 in addition to three existing board members. There was insufficient evidence of "organic business growth". These events occurred after the notice from Millcorp that it would keep Ms Ali's position open.

[77] In my view, there is insufficient evidence for the Authority to establish, on the balance of probabilities, that Millcorp breached its obligations to Ms Ali under the PLEPA. If I am incorrect in this view, I consider compensation for any such breach would be doubling the compensation which has been ordered in respect of the unjustified dismissal claim.

Costs

[78] Costs are reserved. Ms Ali has fourteen days from the date of this determination to file a memorandum as to costs. Millcorp has fourteen days from the receipt of Ms Ali's memorandum as to costs in which to respond.

Anna Fitzgibbon
Member of the Employment Relations Authority