IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2021] NZERA 550
3113712

	BETWEEN	ZOE BRAZIER Applicant
	AND	THE MOTORCARE CENTRE CHRISTCHURCH LIMITED Respondent

Member of Authority:	David G Beck
Representatives:	Paul Mathews, counsel for the Applicant Graeme Riach, counsel for the Respondent
Investigation Meeting:	28 and 29 September 2021 in Christchurch
Submissions Received:	8th and 19th October 2021 from the Applicant 15th October 2021 from the Respondent
Date of Determination:	9 December 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Zoe Brazier was employed by The Motorcare Centre Christchurch Limited (Motorcare) as a car groomer in Christchurch from early 19 August 2019 until 10 February 2020 when her employment ended in disputed circumstances.

[2] Ms Brazier claims she was the subject of unreasonable treatment amounting to a disadvantage claim which was exacerbated by her employer's failure to resolve co-worker

conflict. Ms Brazier claims this led to her decision to involuntarily resign and she is claiming she was constructively dismissed.

[3] By contrast Motorcare contend they took reasonable actions to investigate and resolve Ms Brazier's concerns and that she voluntarily resigned and was not unjustifiably disadvantaged or constructively dismissed.

[4] The parties attended mediation but the matter remained unresolved.

The Authority's investigation

[5] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence. I have likewise carefully considered the helpful submissions received from both parties and refer to them where appropriate and relevant.

[6] Zoe Brazier, her partner Blair Ervine, Peter Baggaley (Motorcare Director and General Manager), Anne Byrne, Tony Wills, Murtle Paraone-Chettle, Tamami Furukawa (current employees of Motorcare) and an ex-employee of Motorcare who I will identify as Mr O provided written briefs and gave evidence at the investigation meeting.

Issues

[7] The issues I have to determine are:

(a) Prior to her resigning on 10 February 2020, was Ms Brazier the subject of actions and/or omissions by Motorcare that caused her detriment sufficient to establish a disadvantage grievance?

(b) Did Motorcare breach terms of employment or duties owed to Ms Brazier and if so, was it reasonably foreseeable that she would resign and the ending of her employment be categorised as a constructive dismissal rather than a resignation?

(c) If any of Ms Brazier's claims are established what remedies should follow?

(d) If Ms Brazier is successful in all or any element of her claims should the Authority reduce any remedies granted as a result of contributory conduct?

(e) An assessment of the level of costs to be awarded to the successful party.

What caused the employment relationship problem?

[8] Motorcare operates an established Christchurch car grooming business mainly servicing local car dealers/rental companies. Ms Brazier worked on the grooming garage floor alongside up to six others with allocated grooming bay spaces. Mr Baggaley has an open office space adjacent to the grooming bays and he is a 'hands on' manager, including assisting with training new employees. Mr Baggaley indicated that Ms Brazier was initially doing a good job but recalls just before Christmas 2019 her performance had begun tailing off a bit. As a result he asked Ms Byrne, an experienced groomer, to work alongside Ms Brazier. Mr Baggaley says it was reported back to him that Ms Brazier struggled to take criticism from Ms Byrne and also her supervisor Ms Furukawa. He described Ms Brazier as prone to being occasionally volatile but capable of doing a good job.

[9] Ms Brazier accepted she had discussed her tendency to overreact at times with Mr Baggaley and she felt comfortable discussing external work stressors that she considered causative factors. Ms Brazier recalled having a problem with a female co-worker around Christmas 2019 that Mr Baggaley helped resolve by mediating which resulted in mutual apologies and no ongoing issues thereafter.

[10] Ms Brazier indicated her ongoing concern was negative interactions with her co-worker Mr O from early 2020. Ms Brazier described the working relationship with Mr O as initially fine and that she once invited him to board with her and her partner. After the 2019/20 Christmas/New Year break, Ms Brazier says she had cause to speak to Mr Baggaley about Mr O invading her personal space and acting in an intimidating manner including making openly misogynist comments to her. Ms Brazier recalled speaking to Mr Baggaley about her concerns and him having a word with Mr O that led to matters improving for a short period. Ms Brazier says Mr O resumed invading her space and she had cause to go back to Mr Baggaley and describe her unease. Ms Brazier recalled getting a further assurance

Mr Baggaley would deal with the matter but says he never got back to her on what this entailed.

[11] Mr Baggaley said he recalled the initial conversations regarding Ms Brazier's concerns about Mr O, including her relating she felt 'intimidated'. Mr Baggaley says he approached Mr O informing him that Ms Brazier felt intimidated or frightened by him and he told him to desist. Mr Baggaley recalled Mr O denied his actions. Up until this point Mr Baggaley said he did not notice anything untoward and considered the parties to be friends and Mr O "easy going" but a bit of a "joker".

[12] As context, Mr Baggaley disclosed he knew that Mr O had significant issues involving domestic violence and assault (up to the year 2017) before he hired him to the extent that although Mr O had been recommended by a previous employer, they had had to let him go. Mr Baggaley understandably says he did not disclose these matters to any of his employees.

[13] There was then an incident on Wednesday 22 January 2020 at 3:50 pm, captured on a video camera recording, involving Mr O driving slowly but very close to Ms Brazier as he returned a car into her grooming bay space. The parties are then seen to remonstrate with each other as Mr O gets out the car (there was no audio on the recording). Just prior to the car stopping, Ms Brazier can be seen sweeping her bay floor space then holding out her hand to signal Mr O to stop. Ms Brazier says she exclaimed to Mr O "what the fuck" as he got out the car and he responded with profanities personally directed to her and then walked away to his nearby grooming bay.

[14] Ms Brazier did not immediately report the incident to Mr Baggaley, who initially said he was at his desk across the workspace but did not witness the incident. During the investigation he recalled he was probably outside checking the security fence before closing up for the day. Ms Brazier left for the day and then texted Mr Baggaley at 4:06 pm indicating:

> You need to have a chat with [Mr O] again. As he was pulling that Suzuki into my bay I asked to stop as I was sweeping the floor, he refused and kept driving the car in to the point it hit my leg. He was making eye contact with me and smirking the whole time. He then got out and told me to shut the fuck up and that in [sic] a piece

> of shit and he has no respect for me. Not o my [sic] is that incredibly rude and disrespectful it's also dangerous.

[15] Mr Baggaley said he viewed the video footage on his phone as his computer screen was being repaired so he decided to discuss the matter first with Mr O the next morning.

[16] Mr O arrived at work early on 23 January. There was some conflicting evidence of the sequence of events. Mr Baggaley says he spoke to Mr O first as he came in early. Mr Baggaley says he did not show Mr O the above text or the video footage and he did not ask about it but Mr Baggaley sought his response to an accusation that he had hit Ms Brazier with the car. Mr Baggaley says Mr O said "no" he had not driven into Ms Brazier and he admitted to reactively telling Ms Brazier to "shut the fuck up" but denied further obscenities directed at her. Mr Baggaley said "he was not very happy about it" but did not ask to see the video and I said to him I wanted to talk to him later.

[17] Either before or after the initial meeting with Mr Baggaley on 23 January, Mr O approached his supervisor and asked to see the video recording as he had been accused of hitting Ms Brazier with a car, but he was told it was not available. Mr O had also approached Mr Ervine either before or after the exchange with his supervisor and asked why his partner, Ms Brazier, was causing trouble for him. Mr Ervine says Mr O used strong language and was intimidating but this was not at the time, brought to Mr Baggaley's attention.

[18] Ms Brazier states that Mr Baggaley met with her in the afternoon to ascertain what had occurred but he did not show the video recording. Mr Baggaley recalled meeting Ms Brazier alone first but says he showed her the video. He says he put to Ms Brazier he would get Mr O over to sort it out and she said she was scared of him.

[19] Mr Baggaley nevertheless resolved, after reviewing the video footage, to proceed with convening a meeting between Ms Brazier and Mr O. Mr Baggaley arranged for Ms Byrne to attend as Ms Brazier's support person. It was not clear that this was with Ms Brazier's concurrence.

[20] There was a suggestion from Ms Brazier and the supervisor that, before he got the parties together, Mr Baggaley went back and showed Mr O the video recording (Mr Baggaley says he did so after the joint meeting).

[21] The meeting held later that day did not go well and Ms Brazier got very angry and walked away after it was suggested by Mr Baggaley opening the meeting, that Mr O had denied the extent of his profanities towards Ms Brazier. Ms Brazier's perspective was that she was not being listened to during the meeting and that Mr Baggaley was partisan toward Mr O's position. Suffice to say, those who overheard recalled Ms Brazier raising her voice and being very angry.

[22] After Ms Brazier had been comforted, calmed down somewhat and moved across to her work bay Mr Baggaley approached her and a further heated conversation ensued. Mr Baggaley says he tried to calm the situation and he also suggested Ms Brazier's work station be moved away from Mr O but he says she was too upset to respond rationally. Ms Brazier says she was frustrated because Mr Baggaley would not confirm what action he would take against Mr O and she suggested he at least be stood down for the rest of the week. Mr Baggaley then refused to discuss any action he intended to take saying this was 'private' between himself and Mr O. He suggested Ms Brazier be 'stood down' on pay to calm down and he then walked away. Mr Baggaley recalls that when Ms Brazier was walking away from the meeting, Mr Ervine, who had been present supporting Ms Brazier, made an oblique reference to further action by saying "right we have got him" to Ms Brazier.

[23] Mr Baggaley says in the interval between the joint meeting and him going over to Ms Brazier, he admonished Mr O and "made it clear that, whether or not he had actually done it, verbal abuse would not be tolerated".

[24] By contrast, although his written brief was 'word for word' the same as Mr Baggaley's written evidence on how Mr Baggaley had admonished him; Mr O said during the investigation meeting that he was shown the video by Mr Baggaley at the first meeting of 23 January but not the text and he could not recall what questions he was asked. Mr O says he accepted some of what he said to Ms Brazier "and denied the rest". Mr O recalled being told by Mr Baggaley that it was not acceptable to swear at Ms Brazier but he indicated he got no written warning and confidently did not consider Mr Baggaley admonishing him as a 'verbal' warning.

Assessment

[25] When asked about his impression of the video, that was carefully reviewed during the investigation meeting and was of reasonable visual quality, Mr Baggaley noted it seemed a "silly thing' that Mr O did not stop when Ms Brazier was signalling him to do so. When pressed on whether he considered Mr O's actions to be dangerous as water was also around the floor (and a frequent hazard), Mr Baggaley said: no, he was being silly and I did not think it was done to deliberately intimidate Ms Brazier. When pressed further, Mr Baggaley then suggested he showed Mr O the video and said to him "it was a bit crazy why not just stop?" and in response Mr O reiterated he did not hit Ms Brazier.

[26] On reviewing the video during the investigation meeting, Mr Baggaley conceded the car was driven very close to Ms Brazier (in fact it was difficult to tell whether contact was made but Ms Brazier was not knocked over or moved back by the car).

[27] In objectively assessing the evidence and viewing the video, it is apparent that Mr Baggaley did not consider this was a "near miss" health and safety incident and he minimised it in his approach to Mr O. Mr Baggaley seemed to concentrate more on whether Ms Brazier had actually been struck by the car and the verbal exchange. Mr Baggaley's own diary notes confirm no mention of health and safety concerns were put to Mr O. Quite simply put, Ms Brazier could have sustained a nasty injury and Mr O was not encouraged to accept responsibility for this and at least apologise to Ms Brazier.

[28] In concentrating on the verbal exchange, I find Mr Baggaley paid little heed to the suggestion that Mr O's action was intimidating from Ms Brazier's perspective. Whatever the conclusion, it was clear that Mr Baggaley did not consider it a potential misconduct issue (serious or otherwise) and later Mr O considered he had suffered little consequence for his actions.

[29] Further, although having earlier reassured Ms Brazier he was not prepared to tolerate Mr O intimidating her, the manner in which Mr Baggaley handled the car incident was,

although I accept well-meaning, objectively deficient. Mr Baggaley says he sought no legal advice before he approached the matter or shortly thereafter.

[30] I have to objectively assess whether the actions Mr Baggaley took were what a fair and reasonable employer could have done in all the circumstances. This includes assessing how the initial concerns Ms Brazier raised were dealt with by Mr Baggaley in early January 2020 (before the car incident) when Ms Brazier expressed initial unease regarding her interactions with Mr O. In this context I find, given what Mr Baggaley knew of Mr O's past history, he objectively should have been more cautious in his assessment of the car incident and more understanding of Ms Brazier's concerns.

[31] I accept that Mr Baggaley's initial informal intervention was appropriate in early January 2020 when Ms Brazier was expressing unease but after the car incident, Mr Baggaley manifestly failed to deal with Mr O and inexplicably failed to notice a pattern of negative behaviour was emerging. Against this, I observed Ms Brazier to be pretty forthright and she may have given the wrong impression that she was capable of 'standing up' to Mr Baggaley. I make the latter comment in a very limited context (Ms Brazier's reaction during the car incident) as my investigation could not ascertain from Mr Baggaley that he took Ms Brazier's concerns seriously.

[32] What Mr Baggaley appeared to be doing in his interventions was 'buying the peace' rather than recognising that Mr O had engaged in avowedly intimidating and dangerous actions and was the protagonist. I was struck by Mr Baggaley's response to my question "why did you decide to get Mr O and Ms Brazier together after the car incident?" – his reply was he "did not see it as serious". Mr Baggaley also said he did not think about giving Mr O a written warning. Mr Baggaley indicated he had no written policies on employee complaints or procedures but he had accessed legal advice in recent years to deal with other employee grievances.

[33] I find that Ms Brazier has not made out her disadvantage claim in the lead up to the car incident as by her own admission Mr Baggaley took some action to apprise Mr O of her concerns and at the time she took it no further. However I find Motorcare's Mr Baggaley breached his duty to provide Ms Brazier with a safe work place by failing to properly handle

and resolve the aftermath of the car incident that also caused her additional and ongoing distress. Mr Baggaley carried out only a cursory investigation before he resolved the matter was not 'serious'. Whether this ineffective approach to Ms Brazier's concerns was sufficient to bring the employment relationship to an end, and whether it was foreseeable that she would later resign, I will explore further after traversing the next events.

The aftermath leading up to Ms Brazier's resignation

[34] Mr Baggaley did not push his suggestion of sending Ms Brazier home on 23 January and he moved Mr O to another grooming bay. Ms Brazier continued working for the rest of the day and the following day and so did Mr O. Ms Brazier says during these two days Mr O continued to intimidate her with unnecessary eye contact and snide remarks, some directed to other co-workers. Ms Brazier says she brought these concerns to Mr Baggaley's attention on 24 January (a Friday) and he initially said he would deal with it but then later said there was nothing further he could do as the workspace was so small. Ms Brazier believes no further approach was made to Mr O. Mr O did not allude to any further conversation of these allegations being brought to his attention.

[35] Mr Baggaley accepted he did not go back to Mr O after he had completed discussions with Ms Brazier on 23 January as he thought he could not do anything further to resolve the situation. In his written evidence Mr Baggaley did not challenge Ms Brazier's assertions that she raised continuing issues on 24 January with him but during the investigation Mr Baggaley says he was sure she did not.

[36] Ms Brazier and Mr Erskine took sick leave on the following Monday and Tuesday (27 and 28 January) indicating they had both had a stomach bug.

[37] On 28 January by email of around 4pm, Mr Mathews on behalf of Ms Brazier, emailed Mr Baggaley and raised a personal grievance of unjustified disadvantage claiming Motorcare had failed to "properly investigate" Ms Brazier's concerns over the 22 January car incident, that this had rendered her workplace unsafe and that Ms Brazier had been off work on stress leave (unpaid) as a result. Mr Mathews' email stated: "You are on notice that if this matter cannot be resolved urgently then Zoe may have no choice but to resign". The email content was 'open' and proceeded to outline as 'remedies' that Ms Brazier sought monetary

compensation and payment for her unpaid sick leave. The email ended with an offer to enter without prejudice discussions and stated that if not responded to "my instructions are to file the matter with MBIE and request mediation".

[38] Despite the above, Ms Brazier returned to work on Wednesday 29 January. Although she claimed further issues occurred with Mr O 'staring her out' both at and after work, Mr Baggaley says he was not apprised of the continuing issues and in a response to Ms Brazier's personal grievance made through counsel on 4 February, it was suggested "… upon her return to work on 29 January, no further issues have occurred and the team is working co-operatively". The response pointed out Mr O had been "admonished" and Mr Baggaley had "made clear that verbal abuse would not be tolerated". The response described the impracticality of doing anything further by indicating "there is nothing more that could be reasonably expected of the employer".

[39] It was noted in the response, that on 27 January Mr O had sought to be moved to a work station away from Ms Brazier as he felt uncomfortable being in close proximity to her and this request was granted by Mr Baggaley. I observe this was a move that Mr Baggaley had earlier failed to initiate. The remedies sought were denied and counsel noted Motorcare "sees no point in attending mediation. Any proceedings that may be issued will be defended".

[40] Ms Brazier continued at work up until and including 7 February, which was her last day, then by way of an email from Mr Mathews of 9:56 am Monday 10 February 2020 tendered her resignation with immediate effect. She cited Mr Baggaley's response to the car incident, his reply to her grievance and ongoing negative interactions with Mr O including an unspecified "further incident with him on Friday" as reasons. The email concluded with an unjustified (constructive) dismissal claim. Counsel in submissions suggested Mr Baggaley was taken by complete surprise by the resignation. Objectively viewed I find that proposition, in the circumstances, to be untenable.

[41] By coincidence on the same day (10 February), Mr O signalled he was also resigning. He told Mr Baggaley to keep this confidential and he worked out his notice period. Ms Brazier recalls becoming aware of Mr O's resignation at some point on the same day from a co-worker but indicated had she been advised of such immediately, she would not have

considered returning, essentially implying that her trust and confidence in Motorcare had been fatally eroded. Likewise, Mr Baggaley says he did not approach Ms Brazier to seek to discuss her resignation or repair the damage to their relationship due to his anger and his perception that Ms Brazier had blown the situation "out of all proportion".

Assessment: a constructive dismissal?

[42] Having found objectively that Motorcare's Mr Baggaley took insufficient steps to properly investigate and resolve what were evidently serious concerns expressed by Ms Brazier about her ongoing security at work. I turn to the question of whether it was foreseeable that Ms Brazier would resign, and if she can establish that she was constructively dismissed.

[43] A 'constructive dismissal' can be found if an employer's conduct compels an employee to resign in circumstances, where although on the surface the employee appears to have voluntarily resigned, it can be held to constitute an unjustified dismissal. One instance of this doctrine is where the resignation is caused by a breach of a duty owed to the employee and the employer could reasonably foresee that rather than put up with the breach, the employee chose to resign - effectively signalling a belief that their employment agreement has been repudiated by the employer. The Court of Appeal has stated the legal test as:

> In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach. [1]

[44] The overarching duty that is now statutorily recognised as a component of 'good faith' [2] is that an employer should not, without proper cause, act in a manner calculated to, or

---

[1] *Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 2 NZLR 415 (CA), [1994] 1 ERNZ 168, 172.
[2] Section 4 (1A)(a) and s 4(1A)(b).

likely to, destroy or seriously damage the relationship of trust and confidence between the parties to the employment relationship.

[45] In the leading Court of Appeal authority of *Auckland Shop Employees etc IUOW v Woolworths* three well known categories of potential constructive dismissal are defined and Mr Matthews suggested this matter fell into the third category - breach of duty owed.[3] As such a causative link has to be established between Motorcare's failure to properly investigate and resolve the 22 January incident and its surrounding context and Ms Brazier's disadvantage personal grievance, with obligations owed to Mr Brazier. I find such a link on the evidence not to be too remote and that Motorcare's actions and omissions amounted to a repudiation of the employment agreement duty to provide a safe work environment. Further I find that when Ms Brazier initially signalled she could not continue to work in the face of this breach and was contemplating resigning, Motorcare missed an opportunity to resolve the situation by spurning the offer of mediation and offering nothing in the alternative so, it was reasonably foreseeable that Ms Brazier would then proceed to resign.

Was the dismissal justified?

[46] As I have concluded a dismissal occurred I must adopt an objective approach to determine whether the dismissal was justifiable having regard to s 103A of the Act and accompanying good faith principles. In short, Motorcare had to convince me that its actions were what a fair and reasonable employer could have done in all the prevailing relevant circumstances.

Applying factors identified by the Act

[47] I first assess the resources and experience available to the company when they embarked upon a response to Ms Brazier's identified concerns. My initial finding is that Motorcare, whilst being a small enterprise, is a well-established company with (it emerged in evidence) enough experience of employment disputation to know that legal advice should have been sought once Ms Brazier identified her concerns. Based on the video evidence and contextual matters I was presented with, this warranted a careful investigation and potentially

---

[3] *Auckland Shop Employees Union v Woolworths (NZ) Ltd* [1985] 2 NZLR 372.

a disciplinary process. Rather than embark upon such, Mr Baggaley wrongly minimised the health and safety aspects of the incident and placed too much emphasis on judging the situation as a simple 'personality clash' or an exchange of obscenities. Simply put, Motorcare completely failed to get to the central issue - that was a presentation of Mr O's reckless conduct in a context of earlier enmity between the parties.

[48] Motorcare's Mr Baggaley asserted Ms Brazier's response prevented him from resolving the situation and this was beyond his control and had placed him in a difficult position. I find however, that the history of the relationship and what he knew of Mr O should have alerted Mr Baggaley to a much more cautious approach.

Procedural fairness?

[49] In applying s 103A (b) – (d) of the act to assess procedural fairness I am conscious that the factors detailed that constitute a "Test of Justification" normally apply to conventional dismissal situations involving disciplinary and/or performance concerns and none of those factors feature in this situation. However, s 103A(4) of the Act allows that "the Authority or Court may consider any other factors it thinks appropriate". Therefore when I turn to considering procedural fairness and what good faith obligations were owed to Ms Brazier, I do so in the context of the external pressures placed on both parties.

[50] Having assessed all the contextual factors (including the totality of the employment relationship), examined correspondence and heard evidence from the parties, I find that the overall handling by Mr Baggaley of the 22 January incident and its aftermath, were not actions open to a fair and reasonable employer in all the circumstances. I find that a fair and reasonable employer could have approached this situation more carefully and paused to consider wider factors, including the dynamics of the situation of Ms Brazier expressing an objectively likely concern that she feared for her ongoing physical safety with good reason.

[51] I also find that Ms Brazier was not properly apprised of the purpose of the hastily convened 22 January meeting nor given the time and option to seek legal advice. These defects in process were not minor as envisaged in s 103A(5) of the Act, they did result in Ms Brazier being treated unfairly and they breached owed good faith duties.

[52] I appreciate that co-worker conflict is an extremely difficult issue to resolve for any employer in a small workplace and that Motorcare's Mr Baggaley clearly thought he was engaged in a genuine attempt at resolution, but his narrow categorisation of the issues led to Ms Brazier suffering significant distress and there were other viable alternatives that may have preserved the employment relationship.

Finding

[53] I objectively conclude from the evidence that Ms Brazier was constructively dismissed but that she was not unjustifiably disadvantaged.

[54] Having obtained a finding of unjustified constructive dismissal, Ms Brazier is successful in her personal grievance and is entitled to remedies.

Remedies

Compensation for Hurt and Humiliation

[55] Ms Brazier gave evidence of distressing impact of the dismissal on her well-being that included bewilderment as to how her former employer appeared to blame her for raising legitimate concerns. Ms Brazier's partner spoke of her misplaced sense of guilt in raising issues that led to her loss of job and financial impact, her disrupted sleeping patterns and the strain on their relationship and loss of self-confidence.

[56] I consider the impact of the dismissal to be significant and Ms Brazier's feeling of humiliation at essentially not being taken seriously to be acute and disempowering.

Finding

[57] Taking into account the evidence proffered, awards made by the Authority and Court in similar situations, and surveying cases brought to my attention in submissions, I consider that Ms Brazier's evidence warrants compensation of a reasonably significant nature and I fix that at $18,000 under s 123(1)(c)(i) of the Act. [4]

[4] See summary of compensatory approaches in comparable cases in *Richora Group Ltd v Cheng* [2018] ERNZ 337 at [65] – [66].

Lost wages

[58] Having found that Ms Brazier was unjustifiably dismissed she is entitled to a consideration of lost wages. Mr Brazier indicated that she secured alternative work in late March 2020 and IRD records evidenced this. Ms Brazier also indicated that with her partner they had been informally operating a small car-grooming operation from home that they incorporated in July 2020. Ms Brazier provided the business bank account statements that show sporadic earnings from 31 July 2020 onwards. Ms Brazier seeks an award of six weeks lost earnings in the amount of $4,313.35 (gross) from the period of her resigning (10 February 2020) to taking up alternative employment with her first payment from her new employer being made on 31 March 2020. In the circumstances pursuant to s 123(1)(b) of the Act I see no reason not to grant the sum of lost wages sought.

Contribution

[59] Section 124 of the Act states that I must assess the extent to which, if any, Ms Brazier's actions contributed to the situation that gave rise to her personal grievance and then assess whether any calculated remedy should be reduced. To assess whether remedies should be reduced I have considered the relevant factors recently summarised by the Employment Court in *Maddigan v Director General of Conservation*[5].

[60] Counsel for Motorcare suggested I consider Ms Brazier's "irrational reaction" and failure to consider alternative resolution strategies Mr Baggaley put to her after the 22 January incident. Although Ms Brazier failed to constructively engage with Mr Baggaley's attempts to resolve her concerns, however misguided they were, I find it is a stretch to say Ms Brazier's actions contributed or gave rise to the breaches that led to her personal grievance.

[61] On balance, I consider no reduction in the remedies awarded is warranted.

Summary

[62] I have found that:

---

[5] *Maddigan v Director General of Conservation* [2019] NZEmpC 190 at [71] – [76].

(a) Zoe Skye Brazier was constructively dismissed by The Motorcare Centre Christchurch Limited.

(b) The Motorcare Centre Christchurch Limited must pay Zoe Skye Brazier:

(i) $18,000 compensation without deductions pursuant to s 123(1)(c)(i) Employment Relations Act 2000.

(ii) $4313.35 (gross) lost wages pursuant to s 123(1)(b) Employment Relations Act 2000.

Costs

[63] Costs are reserved.

[64] The parties are encouraged to make an agreement on costs that needs to take into account that the Authority, whilst having discretion to assess costs, must be persuaded that circumstances exist to depart from the Authority's application of daily tariff based costs for an investigation meeting that took one and a half days.

[65] If no agreement is achieved, Zoe Skye Brazier has fourteen days following the date of this determination, to make a written submission on costs and The Motorcare Centre Christchurch Limited has a further fourteen days to provide a response. I will then determine what costs are appropriate.

David G Beck
Member of the Employment Relations Authority