

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 402
3288000

BETWEEN

CHRISTINE MASSOFF
Applicant

AND

THE CHIEF EXECUTIVE OF
INLAND REVENUE
DEPARTMENT
Respondent

Member of Authority: Claire English

Representatives: Tim Blake, counsel for the Applicant
Susan Hornsby-Geluk and Sophie Logie, counsel for the
Respondent

Investigation Meeting: 5 March 2025 in Wellington

Submissions received: 20 March and 10 April 2025 from Applicant
2 April 2025 from Respondent

Determination: 8 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Christine Massof, was employed by the respondent (IR) in its compliance team. She had worked for IR for some 14 years. Ms Massof made a comment on an internal IR forum, and was spoken to by her team leader about professional communications in the workplace. On 20 December 2023, her team leader issued her with a letter of expectations reminding her about IR's code of conduct. Ms Massof continued working as before.

[2] On 2 April 2024 Ms Massof filed a statement of problem in the Authority raising a claim of unjustified disadvantage. She resigned on 8 April 2024 with her last day of work being 3 May 2024. On 27 August 2024 after the Authority's process had commenced, she amended her claim to include a claim that she had been unjustifiably constructively dismissed.

[3] IR refutes the claims and states that Ms Massof suffered no disadvantage in her employment by being reminded of her employer's reasonable expectations of behaviour in the workplace, and that her resignation did not and cannot amount to a dismissal.

The Authority's investigation

[4] For the Authority's investigation, written witness statements were lodged from Ms Massof, Ms Jill Ovens, and Ms Di Landy. Neither Ms Ovens or Ms Landy had ever worked with Ms Massof or at IR. For IR, witness statements were lodged from Ms Leah Galbraith (Ms Massof's team lead at the relevant time); Ms Tracey Zeier (Group Lead); Ms Shirley-Anne Evenson; Mr Gary Thomas; and Mr Jason Ratima. All witnesses answered questions under affirmation from me and the parties' representatives. The representatives also gave closing submissions.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination were:

- (a) Was Ms Massof unjustifiably disadvantaged by the issuing of a letter of expectations?
- (b) Was Ms Massof unjustifiably constructively dismissed?
- (c) If IR's actions were not justified (in respect of disadvantage and/or dismissal), what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act;

- (d) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Massof that contributed to the situation giving rise to her grievance?
- (e) Should recommendations be made to IR?
- (f) Should either party contribute to the costs of representation of the other party.

Background

[7] Ms Massof was an experienced employee at IR, having worked there for some 14 years.

[8] Ms Massof became aware that IR was providing period products to staff by placing them in both male and female bathrooms. She made a post about this on IR's internal intranet, stating:

This is awesome but a shame it took so long coming. And interesting, now that men can menstruate, free period products are available in IR bathrooms.

[9] Ms Massof's team leader and manager Ms Galbraith became aware of this comment when it was reported to her by one of the Chairs of IR's rainbow network, who explained that some employees were upset or offended by this comment.

[10] Ms Galbraith took advice from her internal HR team. She also noted that this was not the first conversation that she had had with Ms Massof about the need to be aware of the potential impacts her comments in the workplace could have on her colleagues. Ms Massof denies this, saying that although she was spoken to previously, the context was different.

[11] Ms Galbraith decided the appropriate action was for her to meet with Ms Massof to discuss, and to set expectations for the future. This meeting occurred on 19 December 2023. No support person was offered as Ms Galbraith considered this not necessary for an informal conversation with an informal outcome.

[12] Ms Galbraith considers that the meeting proceeded calmly, she introduced her concerns, gave Ms Massof opportunity to speak in return, and then proceeded to outline her expectations going forward. Ms Massof considered in contrast that she was not given much opportunity to speak, and that Ms Galbraith essentially did more talking.

[13] The outcome of this meeting was set out in a letter dated 20 December 2023, headed “Expectation of behaviour”. The letter relevantly stated:

I am...merely reminding you of your employee obligations under the Inland Revenue (IR) Code of Conduct (CoC) and our Te Pou o te Tangata values....
[Y]our comments...were seen as a “dig” at gender diversity at IR...
While everyone is entitled to their own opinions, it’s essential to exercise discretion when expressing your views to colleagues, particularly in situations where those views could potentially cause offence or division among peers...
Sharing views that upset people, is not in line with IR’s core values, which prioritise fostering a respectful and inclusive environment and workforce. It is important to be mindful of the impact your opinions might have and refrain from sharing them in contexts that could lead to conflict or upset amongst colleagues....
If you are unsure...I suggest that you take a prudent approach and refrain from sharing your opinions altogether. Choosing to remain silent can prevent unintentional harm...

[14] The letter concluded by stating: “If you do not follow these expectations, I will discuss this with you”. It also referred to existing expectations set out in Ms Massof’s employment agreement and the code of conduct.

[15] Ms Massof took approved sick leave over the Christmas and New Year period, although IR’s understanding was that this was related to a serious illness of a family member. Ms Galbraith’s evidence was that her day to day interactions continued as normal, and she considered, and kept, her discussion with Ms Massof confidential.

[16] On 12 February 2024, Ms Massof began reporting to a different team leader as part of a staff reorganisation, and her contact with Ms Galbraith came to an end as a result.

[17] Ms Massof says that following the 19 December meeting with Ms Galbraith, she was upset and anxious. She said that on her return to work she considered she “remained vulnerable” and this “must have been obvious”. Ms Massof says she was “ostracised” because Ms Galbraith did not “acknowledge” her following her change in reporting line, and other members of staff did not say “good morning” to her. These allegations are general in nature. Ms Massof also raises a concern that the 20 December letter harmed her chances of promotion within IR.

[18] On 2 April 2024, Ms Massof filed a statement of problem with the Authority. She claimed that she had been unjustifiably disadvantaged in her employment, and that IR had not acted in good faith.

[19] On 8 April 2024, Ms Massof resigned, giving 4 week's notice.

[20] Ms Zeier was at the time of Ms Massof's resignation her one-up manager. She spoke briefly to Ms Massof just before she left IR. Ms Massof told her that she was leaving IR because she did not agree with a lot of changes that had occurred at IR, and she did not like having a non-technical lead. It was explained that the changes to non-technical leads in relation to Ms Massof's role had occurred some time earlier in around 2017.

[21] On 27 August 2024, Ms Massof raised a claim that she had been unjustifiably constructively dismissed.

Analysis

[22] I will first consider Ms Massof's claim that she suffered an unjustified disadvantage in her employment, then her claim she was unjustifiably dismissed.

[23] Ms Massof says that the letter dated 20 December 2023 amounted to an unjustifiable disadvantage in her employment. She describes various ways in which she believes she was disadvantaged, which may be summarised as: that the letter was disciplinary in nature and she was not offered the opportunity to bring a support person, that it impacted her prospects for promotion or otherwise within IR, that it "silenced" her, and that IR imposed a "bathroom policy" on her without consultation (which is not a matter mentioned in the 20 December letter and was only raised later during this process).

[24] Section 103 of the Act defines an unjustifiable disadvantage grievance as a claim that the employee's employment or 1 or more conditions of the employee's employment was affected to the employee's disadvantage by some unjustifiable action of the employer. Accordingly, the question then becomes:

- a. Was any condition of Ms Massof's employment affected by the 20 December letter:
- b. If so, was any such change to Ms Massof's disadvantage?
- c. If so, was that disadvantageous change an unjustifiable action by IR?

[25] The starting point is the 20 December letter. The letter makes certain requirements of Ms Massof. These may be set out as follows:

- a. To exercise discretion with colleagues, particularly in relation to views that could potentially cause offence or division among peers;
- b. To be mindful of the impact your opinions might have on colleagues;
- c. To refrain from sharing opinions in contexts that could lead to conflict or upset among colleagues.

[26] In addition, the 20 December letter sets out Ms Galbraith's view that these requirements reflect the terms of the employment agreement and code of conduct that already apply to Ms Massof, and states that if there is a concern in the future that Ms Massof has not followed these expectations, Ms Galbraith will discuss this with her.

[27] I have no hesitation in finding that the 20 December letter was not a disciplinary outcome, nor did it impose disciplinary consequences on Ms Massof. The letter itself states that these are "expectations" and is headed "expectation of behaviour". The stated outcome if further concerns were raised in the future was further discussion. There is nothing in wording used in the letter itself to support the submission that this was a disciplinary outcome.

[28] There is also nothing used in the requirements or expectations themselves to support the submission that this was a disciplinary matter. They may be described as requirements to treat colleagues respectfully in the workplace and to bear in mind that colleagues may have different views to yourself. The key requirements were to "exercise discretion", "be mindful", and to "refrain from sharing" in ways that might lead to "conflict or upset". There is no suggestion in these requirements or the language used which would indicate a disciplinary-type matter. Rather the focus is on professional and business-like behaviour in the future.

[29] IR is entitled to require certain minimum standards of behaviour from its employees. These standards must be reasonable, but nevertheless, IR is entitled to require its employees to act in certain ways in the workplace. The requirements I have set out above are reasonable and proportionate requirements in a professional workplace. In addition, I find that they "reflected the principles" of the employment

agreement and code of conduct that already bound Ms Massof rather than being separate or new requirements.

[30] Insofar as Ms Massof complains that she was not offered the opportunity to bring a support person to the 19 December meeting, and that no formal process was followed, I accept Ms Galbraith's evidence that this was not required. It was not disputed that these were (generally speaking) process requirements to support disciplinary action, and that they had not in fact occurred. Ms Galbraith's evidence was that she considered this, and decided at an early stage that this was not a disciplinary matter and it would not be appropriate to proceed in the same manner as for a disciplinary matter. The lack of any disciplinary type processes supports the view that this was not a disciplinary matter, and does not support Ms Massof's submission that she was subject to disciplinary action.

[31] Taking all this into account, I answer the questions above as follows:

- a. The 20 December letter did not affect any term or condition of Ms Massof's employment. No disciplinary outcome occurred. The requirements communicated to Ms Massof in that letter reflected the minimum standards of professional behaviour that she was already bound to follow.
- b. The 20 December letter did not make any changes to Ms Massof's employment that were to her disadvantage. Even if I had found that the 20 December letter made changes to Ms Massof's conditions of employment (which I have not), I would have found that those changes were ones that IR was entitled to make and which were reasonable and proportionate, rather than adverse. In particular, I note that there is no evidence of any sort that the 20 December letter impacted Ms Massof's prospects for promotion or her status within IR. Ms Massof provided no evidence to support such a supposition. Ms Galbraith provided evidence of how letters of expectations from team leaders were kept confidential and did not impact a staff member's personnel file which was supported by Ms Zeier. Their evidence satisfied me that no such consequences were reasonably to be apprehended.

- c. The 20 December letter was not an unjustifiable action by IR. IR's actions in discussing its reasonable expectations of behaviour with an employee in an informal manner is not unjustifiable. Insofar as Ms Massof refers to process failures by IR, I have found none occurred in circumstances where no disciplinary action was proposed or eventuated. Insofar as Ms Massof refers to the idea that she had been "silenced", I have found that this was not a requirement placed on her by IR.

[32] Accordingly, I find that Ms Massoff's claim of unjustified disadvantage is not made out.

[33] I also need to consider Ms Massof's separate claim that she was subject to a new bathroom policy by IR. Ms Massof was not entirely clear as to what this was.

[34] Insofar as Ms Massof complains that IR's provision of free sanitary products by IR in the bathrooms was an unjustified disadvantage, this claim cannot be made out. The provision of free product to all staff with no requirement for use or engagement by staff cannot be categorised as a disadvantage, much less an unjustified one.

[35] The submission by Ms Massof that IR implemented a new "policy" of allowing staff to use bathrooms of their choice and that this amounted to an unjustified disadvantage to her due to a lack of consultation with staff is also not borne out on the evidence. Ms Massof worked for IR for some 14 years. She was not able to explain when or how this policy was either implemented or changed by IR.

[36] On IR's behalf, I received evidence from Ms Zeier, an experienced senior manager, that IR does not have any formal policies on bathroom use, and all staff and visitors to IR are free to use bathrooms as needed and as they feel comfortable doing. Ms Zeier's evidence was that there has been no change in approach that would trigger or require any consultation with staff.

[37] Ms Massof's claim of unjustified disadvantage in relation to this matter must fail in the face of her own lack of evidence that a policy existed at all or had been changed such that staff consultation was required. Ms Massof has not been able to demonstrate that any term or condition of her employment was affected. No claim is made out under this head either.

Was Ms Massof Unjustifiably Constructively Dismissed?

[38] Ms Massof resigned on 8 April 2024, and her last day at work was 3 May 2024. She first raised her claim of constructive dismissal in her amended statement of problem dated 27 August 2024.

[39] The basis for this claim is best set out in the submissions filed for Ms Massof following the investigation meeting. It is submitted that there were serious breaches of duty committed by IR sufficient to justify her leaving her employment which may be summarised as follows:

- a. Emails between members of IR's management team disparaged Ms Massof, breaching her privacy and "inevitably damaged her reputation".
- b. The 20 December letter and the meeting that lead to it on 19 December were not consistent with good faith and fair process.
- c. The 20 December letter and the meeting that lead to it were substantively unjustified.
- d. Ms Massof was "effectively silenced" in respect of an evolving issue of workplace practice, and this was in breach of a contractual right to be party to exchanges of views.
- e. She felt shunned and ostracised;
- f. That she took paid sick leave; and
- g. That IR offered her little or no support.

[40] Although Ms Massof resigned, a resignation can be considered a dismissal. The essential questions to be addressed in a constructive dismissal claim have been described as¹: what were the terms of the contract, and was there a breach of those terms by the employer that was serious enough to warrant the employee leaving?

[41] I have already set out above the reasons why I consider the 20 December letter did not create any unjustified disadvantage in the terms and conditions of Ms Massof's employment. It therefore follows that I do not consider the issuing of the 20 December letter was in breach of any obligations owed to Ms Massof or that there was an issue of sufficient seriousness that it would warrant her leaving her employment.

¹ In *Wellington etc Clerical etc IUOW v Greenwich (t/a Greenwich and Associates Employment Agency and Complete Fitness Centre)* (1983) ERNZ Sel Cas 95 (AC) at 112–113.

[42] The claim that she was “effectively silenced” in breach of a contractual right to be party to exchanges of views also stems from the wording in the 20 December letter. In particular, this claim relates to the idea that the references in the 20 December letter that Ms Massof “refrain from sharing” views “in contexts that could lead to conflict or upset among colleagues”, and that this expectation was in breach of clauses 2.3, 3.1 and 3.2 of the relevant collective agreement.

[43] These clauses relevantly provide:

- a. IR is committed to “encouraging and engaging in open two-way communication (clause 2.3);
- b. IR will encourage the collective participation of members through their union in decision making in IR (clause 3.1); and
- c. The process of consultation and participation should be adequately resourced and acknowledge the equal commitment of the parties concerned (clause 3.2).

[44] It is submitted for Ms Massof that “the Respondent failed to honour its commitments in respect of the present issues”.²

[45] It is important to consider what the requirements of the 20 December letter are from Ms Massof’s perspective. She was asked to refrain from sharing” views “in contexts that could lead to conflict or upset among colleagues”. She was not asked to refrain from sharing views at all or to change any views that she already held. Ms Galbraith explicitly states in that letter “I am not trying to change your philosophical beliefs...Everyone is entitled to their own opinions”. However, Ms Galbraith then goes on to say it is important for Ms Massof to “be mindful” of her colleagues and the impact of sharing her views with them.

[46] Asking a long-serving employee with some 14 years’ experience in the workplace to “be mindful” of her colleagues when having conversations in the workplace is not “effectively silencing” Ms Massof. It asks her to consider the perspectives of others in the workplace when having conversations in that workplace. It does not suggest that IR has failed to “encourage and engage in open two-way communication”. It tends to suggest the opposite, and that Ms Massof is being

² Paragraph 37 of the Applicant’s Closing Submissions dated 20 March 2025, with references to the clauses of the collective quoted above in paragraphs 34 to 36.

encouraged to consider matters from the other side, in support of and in accordance with clause 2.3.

[47] There is no suggestion that IR has failed to encourage Ms Massof to participate in collective decision making via her union. Ms Massof was not represented by a union, but chose other representation from an early stage, without any involvement of IR. There is also no suggestion that this was an issue that had or would require “collective decision making” referred to in clause 3.1 and 3.2.

[48] Considering the requirements of clauses 2.3, 3.1, and 3.2 of the collective, I find that IR has not acted in breach of those obligations. Rather, its actions in issuing the 20 December letter may be said to be in line with those obligations, in so far as they are relevant to a conversation between Ms Massof and her manager about minimum standards of behaviour in the workplace, which is what occurred.

[49] As such, there is no breach of the collective agreement, and certainly not one of sufficient seriousness that would warrant the ending of the employment relationship.

[50] I will now turn to the claim that there were emails between members of IR’s management team which disparaged Ms Massof, breaching her privacy and “inevitably damaged her reputation”. The issue of Ms Massof’s comments was brought to the attention of Ms Galbraith as her manager, by an email sent to another senior manager, and copied to Ms Galbraith and three others who I am advised were also managers at IR. Ms Galbraith replied that she would be very disappointed “if” Ms Massof has continued to make inappropriate comments, as she had had discussions previously with her.

[51] Ms Galbraith then sought advice from IR’s human resources function. In that email (which was not copied to the previous recipients) she stated “it appears she just can’t stop getting digs in”.

[52] Ms Massof objects to both these emails, including the suggestion that Ms Galbraith had previously spoken to her about such matters. She accepts that Ms Galbraith had previously spoken to her about keeping her comments on IR’s forums appropriate, and says she understood that she had previously been asked to keep her comments “positive”, which she accepted.

[53] Ms Galbraith was a manager who had received a complaint about a particular staff member, which was at the same time circulated to four others as the person making the complaint was asking that someone to look into and resolve the matter. In replying, Ms Galbraith took responsibility for following up with her staff member, which was appropriate. In doing so, she acknowledged that this was a matter which needed to be actioned in some way, by saying that she would be disappointed if the complained of conduct had occurred. She reached no conclusion about the conduct, which was clear by her use of the word “if”. This does not disparage Ms Massof. Although Ms Massof disagreed with Ms Galbraith’s statement that there had been previous discussions about forum comments, this was in fact something she accepted in her evidence had occurred between her and Ms Galbraith. This is a factual statement, and was not disparaging.

[54] The matter was then taken off-line, as Ms Galbraith’s next email was to seek human resources advice. Ms Galbraith’s statement “it appears she just can’t stop getting digs in”, was a colloquial expression of what she saw as repeated low-level behaviour in the context of seeking professional advice. Following this advice, Ms Galbraith proceeded to discuss matters with Ms Massof as she had said she would, including raising with Ms Massof that she considered similar matters had been discussed before. In all the circumstances, this was not disparaging nor was it public.

[55] There is no evidence before me that these emails impacted Ms Massof’s reputation, or that the matter ever came up again with the exception of the meeting between her and Ms Galbraith on 19 December. I am also not persuaded that any breach of privacy occurred and note this was only raised in submissions. No claim is made out.

[56] Ms Massof refers to feeling shunned and ostracised as a result of the 20 December letter. Again, I note I have found that the 20 December letter was not an unjustified action on the part of IR. However, in relation to this claim I also note that Ms Massof’s evidence on this point was lacking, and she pointed in particular to a reduction in communications with her manager Ms Galbraith in support of this claim. Ms Galbraith’s evidence was that this coincided with an unrelated reorganisation within ID where Ms Massof began reporting to another team leader, therefore her interactions with Ms Massof naturally reduced at this time. I find that Ms Massof’s claim under this head is not made out on the evidence.

[57] Ms Massof also claims in support of her claim that she was constructively dismissed that she took or needed to take approved paid sick leave and that she received insufficient support from IR. It is arguable that these are more properly effects of what is said to be the above breaches rather than breaches themselves. Nevertheless, I will consider whether these issues might support the claim of constructive dismissal.

[58] Ms Massoff took several days of approved paid sick leave over the Christmas and New Year period and took paid bereavement leave in March. She spoke with her one up manager about this, as the requested paid leave was significant. Once that conversation occurred, her one-up manager approved the requested leave, with no employment issues arising. Even if I accepted that the only reason for her taking sick leave was in response to the 20 December letter as opposed to a combination of things including her caring responsibilities and the internal restructure which was occurring at the same time, the granting of a relatively significant amount of paid leave is an action that is supportive of Ms Massof rather than a breach of obligation. This cannot support a claim of constructive dismissal.

[59] In regards to the claim that IR did not provide sufficient support, this claim must fail due to lack of evidence. Ms Massof did not make clear what it was that IR should have done or refrained from doing, in order to better support her. Insofar as she had a general complaint about the 20 December letter, this letter concluded with an explicit offering by her manager to provide further discussion and to essentially act as a sounding board if desired. There is nothing inappropriate about this. This claim, such as it is, is not made out.

[60] Standing back and considering the matter as a whole, Ms Massof was spoken to by her manager about being mindful of the impact her comments might have on her colleagues. She objects strongly that she was asked to remain mindful of others when expressing her views in the workplace, and says that this amounts to constructive dismissal.

[61] Ms Massof's in-person evidence on what occurred was that she wanted to congratulate IR on its initiative to provide free period products, and she also wanted to make a point and "stand up to them" by commenting that this had only occurred in her view when it was "a men's issue". She explained to me that she wanted to make the second point at least as much as the first, and the pointed nature of her comment was

not an afterthought. At a later point in her evidence, Ms Massof then changed her stance and described her comment as sarcasm, which was deeply inconsistent with her previous evidence that expressing this view was so important to her she had ended her employment over it.

[62] In addition to the above, Ms Massof gave consistent and repeated in-person evidence about how she did not like the way IR was run, did not agree with its ethos and values, felt that there had been a change in IR that she couldn't agree with and she couldn't work there anymore. She said the change started back in 2017. This was consistent with the evidence of Ms Zeier who said that Ms Massof spoke briefly to her before she left IR, and Ms Massof gave as her reason for leaving that she did not agree with a lot of the changes that had occurred at IR, including having a non-technical leader, which was a change that occurred back in 2017.

[63] For a claim of constructive dismissal to succeed, the dismissal must occur at the initiative of the employer. Ms Massof's evidence is that she did not want to continue in the workplace, not due to any breach of obligation by her employer, but because she fundamentally disagreed with workplace changes over a period of many years, and no longer wished to work there as a result. This does not amount to a constructive dismissal.

[64] Ms Massof's claim of constructive dismissal is not made out. No orders are made.

Costs

[65] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[66] If the parties are unable to resolve costs, and an Authority determination on costs is needed, IR may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the applicant will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[67] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.³

Claire English
Member of the Employment Relations Authority

³ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1