

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Antoinette Amos (Applicant)  
**AND** Canterbury District Health Board (Respondent)  
**REPRESENTATIVES** Andrew McKenzie, Counsel for Applicant  
Penny Shaw, Counsel for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**INVESTIGATION MEETING** 2 August 2005  
3 August 2005  
**DATE OF DETERMINATION** 19 April 2006

DETERMINATION OF THE AUTHORITY

*Employment relationship problem*

[1] Ms Amos is a registered staff nurse employed at the relevant time at the Kennedy Detoxification Unit at Hillmorton Hospital. Ms Amos continues to be employed by the respondent and is now employed in the Pipiri Acute Inpatient Service at the same hospital.

[2] The applicant alleges she has been unjustifiably disadvantaged in her employment by the actions of the respondent. Ms Amos says there are five actions giving rise to the alleged personal grievance, namely:

- The respondent reporting her alleged activities/deficiencies to the New Zealand Nursing Council; and
- The respondent suspending her from the Kennedy Unit after a meeting on 3 December 2003; and
- Her loss of income because she lost shifts; and
- The loss of her preferred position in the Kennedy Unit; and
- Being subjected to other unfair actions by the respondent.

### *The relevant facts*

[3] Ms Amos worked in her chosen field of detoxification in the Kennedy Unit, specialising in alcohol and drug rehabilitation. She worked a fortnightly total of at least 83 hours in this unit and in other related areas.

[4] On 1 December 2003, Ms Amos received a phone call from a Mr Chris Alleyne, the Unit Manager of the Alcohol and Drug Unit, two hours before commencing her rostered shift. Mr Alleyne told the applicant that he needed to meet with her before she went back into the Kennedy Unit. She was also told of the respondent's concerns regarding illicit drug consumption. Ms Amos was also advised that she was required to attend the meeting with the respondent.

[5] On 3 December 2003, Ms Amos attended a meeting with the respondent and was accompanied by her Union representative to discuss a number of matters raised by her clinical coordinator and by anonymous staff members.

[6] To cut to the issues, the respondent, in spite of its efforts to have the individual complaints of the Kennedy staff reduced to writing, failed to achieve this. In spite of this failure, the respondent told Ms Amos that the Kennedy staff were not prepared to have Ms Amos return to the Kennedy Unit and the respondent, having no formalised complaint, advised Ms Amos on 9 December 2003 that it believed *it is necessary to carry out a formal investigation*, that she was entitled to representation and that an outcome may involve disciplinary action.

[7] On 16 December 2003, Ms Amos received a letter from the respondent rejecting the explanations she had put forward at the earlier meeting and stating that the respondent **believed** her to be under the influence of drugs **and** alcohol (emphasis is mine). The respondent also advised that it would report her to the New Zealand Nursing Council.

[8] A further meeting occurred on 18 December 2003. It was defined as an *investigation meeting*. At that meeting, the respondent set out developments including its perception of staff concerns, issues of safety of the applicant working with staff, safety issues of working with clients and the concern about Ms Amos' relationship with a former client.

[9] It is clear throughout the process thus far, Ms Amos was not advised from which individual staff these allegations emanated, yet was called on to explain her views of those allegations.

[10] Following the 18 December 2003 meeting the applicant was advised by the respondent that she was to be transferred to a Monday to Friday unit without being given the requisite notice under the collective employment agreement, and to cease all overtime and to attend supervision with the Nurse Practice Consultant while the investigation was in progress.

[11] On 23 December 2003, the respondent's Service Manager, Mr George Schwass, reported Ms Amos to the New Zealand Nursing Council for suspected drug and alcohol abuse.

[12] On 5 February 2004, Mr Schwass convened a meeting attended by the applicant and her representative. The purpose of the meeting was for the respondent to advise Ms Amos of the outcomes of the investigation. In summary, Mr Schwass told the applicant that the staff at Kennedy were standing by their original statements, that the Service Manager and Unit Manager had no issues about her performance or behaviour in the Community Alcohol and Drug Service Unit, (CADS) that it was time to move on and to get back to where the applicant was happy to work, that he needed an independent assessment from the Nurse Practice Consultant and that the applicant's weekly supervision was to continue for a further three months. In his evidence in front of the Authority, Mr Schwass says:

*I told Antoinette that the staff stood by the allegations, but that I would not be taking the matter any further. I emphasised to her that her performance at CADS had been really good and she could return to Kennedy. Antoinette was adamant that she did not want to return to Kennedy and requested that a position be found for her in an acute unit (except at the Manuka Unit). I made it clear that I was committed to facilitating her return back to Kennedy. At Nadine's (Marshall) request I also agreed to update the Nursing Council ... Antoinette commenced in the Pipiri (Acute) Unit on 15 February 2004. On 15 February 2004, I wrote to the Nursing Council and advised them that there had been no difficulties with Antoinette's performance and she was offered the ability to return to her place of work in the Kennedy Detoxification Unit.*

### **Discussion and analysis**

[13] The issues to be decided in this case are set out at the beginning of this determination.

[14] The applicant takes strong issue with her being reported to the Nursing Council on two grounds, namely that Mr Schwass was not a person authorised by the Nurses Act 1977 to make such a report, and that he could not have reached the necessary conclusion to permit notification. The respondent argues the Authority lacks jurisdiction to interpret and apply the Nurses Act and it would be against the public interest for the Authority to place any fetter on the Nursing Council complaint procedure.

[15] There is no need to interpret the Nurses Act nor to fetter the Nursing Council's complaint procedure to resolve this issue. I am unconcerned whether Mr Schwass was or was not a person designated under the Nurses Act to make a report to the Council. My concern lies in his making that report before he had concluded the respondent's internal investigation. In closing his letter to the Council, Mr Schwass wrote:

*I am reporting under mandatory reporting conditions of s.34 of the Nurses Act 1977 that she **may** have a suspected disability. (Emphasis is mine)*

[16] The wording clearly indicates that the internal investigation had reached no certainty that a suspected disability existed. It is also of note that Mr Schwass does not advise the Council that the internal investigation was not completed at the time of writing. This, it appears to me, is a breach of natural justice particularly in the light of the decision to take matters no further which was communicated to the applicant at the 5 February 2004 meeting.

[17] Turning to the suspension from Kennedy after the meeting on 3 December 2003, it is clear that given the situation and the attitude of staff within that Unit, a return while the allegations were investigated would have been imprudent. It was incumbent on the respondent however, to ensure that Ms Amos did not suffer financially during her temporary redeployment to CADS. Regrettably, she did.

[18] I fully accept that the respondent made it very clear that following its findings in the investigation it would support the applicant in her return to Kennedy. I understand that Ms Amos elected to move to Pipiri rather than return to work with staff who had initiated this matter, regretted she was unable to return, but nonetheless had undertakings of support if she had chosen to do so. To some extent, her choice was forced, but not by the respondent's management.

[19] The other issue raised was that of a number of allegations later made after the applicant moved to Pipiri. These incidents were investigated and no fault found with Ms Amos. An employer is entitled, where serious incidents occur or serious allegations are made, to undertake investigations. Such inquiries always involve some stress and discomfort, but the respondent cannot be punished simply because an employee feels such discomfort.

[20] The Authority accepts that the respondent was somewhat caught in the horns of a dilemma as it needed to balance its obligations to Ms Amos and to its patients while attempting to deal with the staff at Kennedy. However, a more thorough investigation on the part of the respondent at the outset would, on the balance of probabilities, have resolved the respondent's concerns.

### ***The determination***

[21] I find that Ms Amos was unjustifiably disadvantaged by the actions of the respondent, and in particular by the premature reporting to the Nursing Council. I find the applicant was unnecessarily subjected to the Nursing Council's investigative processes which heightened her feelings of hurt and humiliation.

[22] I find that the applicant was unjustifiably disadvantaged financially in the period between 3 December 2003 and 15 February 2004 when she commenced working at Pipiri.

### ***Remedies***

[23] In an attempt to encourage the parties to resolve issues in an ongoing employment relationship, I conducted a telephone conference to advise my findings. My objective was to have the parties themselves agree, given my findings, to an equitable solution of which both could take ownership and then move ahead. The Authority offered and arranged mediation assistance in this process which was however, declined. The parties were unable to agree on remedies and consequently I have issued this determination.

[24] In respect of the unjustified disadvantage suffered by Ms Amos, the respondent is ordered to pay the applicant the sum of \$6,000. This is compensation under s.123(c)(i) of the Employment Relations Act 2000 and its amendments.

[25] I order the respondent to pay the applicant the remuneration lost as a result of the redeployment to CADS up until her transfer to Pipiri. I understand from the evidence in front of the Authority that this may have been attended to at least in part. I leave it to the parties to calculate the appropriate payment and leave is reserved in the event that they are unable to agree on quantum.

### ***Costs***

[26] At the request of counsel, costs are reserved.