

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Gail Williams (Applicant)  
**AND** The Warehouse Limited (Respondent)  
**REPRESENTATIVES** John Burley, Counsel for Applicant  
Penny Swarbrick, Counsel for Respondent  
**MEMBER OF AUTHORITY** Dzintra King  
**INVESTIGATION MEETING** 2 November 2005  
**SUBMISSIONS RECEIVED** From applicant, 18 November 2005  
From respondent, 21 December 2005  
**DATE OF DETERMINATION** 23 December 2005

**DETERMINATION OF THE AUTHORITY**

The applicant, Ms Gail Williams, says she was unjustifiably dismissed by the respondent, The Warehouse Limited. The respondent says she was dismissed for serious misconduct as several of her staff had complained about her derogatory and intimidatory behaviour.

Ms Williams maintains that the decision to dismiss her was predetermined as her direct manager, Ms Linda Turner, who took part in the dismissal, was biased. Ms Williams also says that the respondent failed to investigate claims of bullying against Ms Turner and that this has resulted in disparate treatment.

**Staff Complaints**

In October 2004 Ms Victoria Jackson advised Ms Liz Watchman, The Human Resources Account Manager, that since she had resigned she had been bullied and intimidated by Ms Williams. Ms Watchman told Ms Jackson that she could not act unless a formal complaint was made. Ms Jackson said she did not want to "take on" Ms Williams but three days later she told Ms Watchman she wanted to make a formal complaint. She told Ms Watchman that Ms Williams had called her a liar, that she did not want to have any further meetings with Ms Williams and wanted to shorten her notice period. She also said she was considering bringing a personal grievance. Ms Jackson gave Ms Watchman a formal, written complaint dated 26 October 2004.

At about the same time Ms Linda Turner, Manager Head to Toe in Quality Assurance, had a team meeting with Ms Williams' staff while Ms Williams was on leave. During the meeting staff raised concerns about Ms Williams' behaviour. Ms Turner then advised Ms Watchman that there had been complaints from some of Ms Williams' team about what they perceived as bullying and

humiliation of some of the team. Particular reference had been made to Ms Williams' treatment of Mr Tony Dodge and a last minute denial of annual leave for Mr Dodge by Ms Williams.

### **Investigation**

After having received two unrelated complaints Ms Watchman sought advice and, understandably, formed the view that she should conduct an investigation. Over the next few days she spoke on an individual basis with members of the Merchandise and the Quality Assurance Teams. She interviewed Ms Liddington and Ms Lunt, both buyers, Mr Tony Dodge, Ms Linda Hulse, Ms Rebecca Mayston (who had resigned by that stage) and Ms Carol-Anne Haines. The feedback Ms Watchman received was consistent: Ms Williams' manner was overbearing and intimidating, she talked down to people and publicly reprimanded staff. Most of the people she spoke to were apprehensive about Ms Williams knowing that about what they had said. However, three people agreed to provide statements: Ms Mayston, Mr Dodge and Ms Jackson (all of whom had resigned). Other staff were afraid that Ms Williams would retaliate if they made formal complaints. She made notes of the interviews and then made a summary which was given to Ms Williams prior to the disciplinary meeting.

After receiving this feedback Ms Watchman spoke with her manager, Ms Helen Sedcole, Mr Hamish McKenzie, the General Manager of Human Resources and Ms Turner. At the time of the investigation Ms Williams was on sick leave and staff had said that if she returned they would walk off as they could not work with her.

### **Suspension**

Ms Turner was away for a week and Ms Watchman was very concerned about the health and safety of Ms Williams' team were she to return to work without her direct supervisor being there to supervise until a disciplinary meeting could be arranged. She therefore met with Ms Sedcole, Mr McKenzie and Ms Emma Kirkland, a solicitor, who said that they might need to look at suspension until Ms Turner returned.

Ms Williams was due to return on 28 October and to have a regular one on one meeting with Ms Turner on that day. As that meeting was scheduled for 9.00am Ms Watchman and Ms Turner were unable to discuss the nature of the meeting prior to its taking place. The allegations were put to Ms Williams. They then talked to her about the possibility of suspension and told her the meeting was her opportunity to comment on it. Ms Williams said she believed she had done a good job, that at times things were busy and that there were deadlines to meet and that she did not believe she had ever bullied staff. They asked if there was anything she wanted them to consider. She did not. Ms Watchman and Ms Turner then discussed the matter with Ms Kirkland and Ms Mary Marshall, the People Relations Manager, who agreed that Ms Williams should be suspended. That action was then approved by Mr McKenzie. They returned after the adjournment and asked Ms Williams whether there anything further she wished to add. She did not and was then told she would be suspended. Staff were told she was unwell and had gone home. The contract contains no provision for suspension.

### **Disciplinary Process**

A letter setting out the allegations was provided to Ms Williams and she was asked to attend a meeting on 9 November, to be preceded by a meeting on 8 November.

## **Meeting 8 November**

Prior to that meeting taking place Ms Williams and her representative, Mr Len Brown, were given the specific allegations and the statements that had been made by the complainants.

Ms Mayston stated that Ms Williams did not treat her staff with respect, that she had a derogatory manner and would denigrate people in public. She made reference to an incident when she had asked for assistance and had been told "I'm not here for questions and answers, go figure it out for yourself."

Mr Dodge, whose complaint is very balanced, said his intention was not to pick on Ms Williams but was made in the hope that things would improve. He referred to being dressed down in public and to Ms Williams using stand over tactics and having an intimidatory manner. He said he had felt his employment had been threatened by some of her comments and that he had got to the point where he no longer felt like coming to work.

Ms Jackson said Mr Dodge and Ms Toumar had been treated in a different manner to the rest of the staff – they had been spoken to rudely and told off in front of other staff. She herself had been spoken to aggressively and called a liar in July, in August she had been told she was immature, in September she had been threatened with a record being kept of her breaks if she refused to work overtime and on 22 October she had been criticised openly in front of another person.

Mr Burley submitted that the original resignations had made no reference to problems with Ms Williams. This was put to me as being indicative of the lack of substance of the later attribution of the resignations to Ms Williams' behaviour. Given the nature of the complaints, I do not find it surprising that other reasons may initially have been given.

## **Disciplinary Meeting 9 November**

Ms Williams was represented by Mr Brown. Mr Brown said the purpose of the meeting was to review the complaints and respond to the issues. The meeting focused on the allegations relating to Mr Dodge, Ms Galina Toumar, Ms Jackson, Ms Haines and Ms Mayston. Ms Williams said she had had to performance manage Mr Dodge, that Ms Toumar had resigned because of her home circumstances and denied that she had accused Ms Jackson of lying. The high turnover of staff was also discussed. Ms Williams gave what she understood were the reasons for the resignations, which were many and varied. Mr Brown noted that Ms Williams had nine years' service and that there had been no previous complaints. Mr Brown referred to the six principles of the Warehouse Way and said Ms Williams had not been treated fairly, particularly regarding her suspension. Mr Brown said that at the very worst Ms Williams should be subject to performance management.

Ms Williams said the inquiry was "like the pot calling the kettle black". This was a reference to the fact that Ms Williams alleged that she herself had been bullied by Ms Turner, who was now leading the disciplinary meeting.

This claim related to an issue that had arisen in February 2004 at a time when the two women were in different departments and were not in a reporting relationship. Ms Watchman said she had been involved and did not believe what had occurred could be described as bullying. Furthermore, she understood the issue had been resolved.

Towards the end of the disciplinary meeting it was agreed to adjourn until 11 November to enable the company to consider Ms Williams' responses, clarify any further information if needed; and to provide a decision.

### **Alleged bullying by Ms Turner**

Ms Turner had questioned the way Ms Williams was operating her department and her use of resources, including staff. Ms Williams had taken this personally and had become upset.

A couple of months later Ms Jane Gammon, at that time Ms Williams' manager, went to see Ms Watchman and said she should come and get Ms Williams, who was crying because she felt the company was trying to get rid of her and that Ms Turner was trying to undermine her. Ms Watchman spoke to Ms Williams. Ms Watchman was aware, although Ms Williams was not, that a restructure of the department was imminent and Ms Watchman felt Ms Williams had misconstrued events. She asked Ms Gammon to leave as she thought she could calm Ms Williams down better in Ms Gammon's absence. She arranged for Ms Williams to meet with Mr Matt Campbell who reassured her that her role was safe. Ms Williams then took a couple of days off. Ms Watchman said she had never received a complaint about Ms Turner and she thought the matter had been resolved.

The parties agreed that Ms Williams had been very upset and that she had referred to taking a personal grievance. It is clear that Ms Williams was upset – she saw her doctor and the file note makes reference to Ms Williams saying that she had been dressed down in public by her new manager. Although it was agreed that Ms Gammon, and not Ms Turner, was Ms Williams' manager at that stage, I accept that the reference in the doctor's notes was to Ms Turner.

Ms Williams said in her evidence:

*However Liz Watchman refused to act on my complaints about Linda Turner's bullying behaviour towards me and others because of Linda's intricate involvement in the company's restructure plans, which I genuinely believe the company did not want derailed through an investigation of my complaints*

I agree with Ms Swarbrick's submissions that Ms Williams reacted to the uncertainty surrounding the proposed restructuring and became distressed. There is no evidence that any failure to follow up on complaints – and Ms Williams accepted that she had not made a formal complaint – had anything to do with a desire not to disturb any restructuring plans. In fact, Ms Gammon and Ms Turner ended up competing for the same position.

Ms Williams also deposed that she believed the Warehouse was aware of Ms Turner's bullying behaviour and that her complaints about it had deliberately not been included on Ms Turner's personal file by Ms Watchman. No cogent explanation for this allegation was given.

### **Dismissal**

Ms Watchman and Ms Turner discussed Ms Williams' responses. They went back and rechecked Ms Williams' denials and assertions with the relevant staff. A letter was sent to her stating:

*At the meeting, we will put our findings to you and give you an opportunity to respond to our findings. If you fail to attend this meeting we will make a decision without you in relation to your employment.*

Ms Turner felt that Ms Williams had behaved in the manner alleged. They consulted with senior HR staff and Ms Watchman and Ms Turner decided to dismiss Ms Williams. Ms Turner said they based their decision on information from four staff who had stated that they had been subjected to

and/or had witnessed bullying behaviour. That information was supported by the fact that those staff had resigned and that they had independently advised the employer of their views after they had resigned. There had been a significant turnover rate in the QA team from March 2004 to October 2004 when Ms Williams managed that team and before the meeting in November 2004 there were only two original staff remaining.

On 11 November Mr Brown notified them that he would be attending the meeting but that Ms Williams would not. He was told that Ms Williams was to be dismissed. The verbal notification of dismissal was confirmed by letter dated 11 November signed by Ms Turner.

## **DECISION**

### **The Suspension**

There was no contractual entitlement to suspend and I have no doubt that Ms Williams was, as she said, shocked and surprised when she was suspended. Because she was shocked she may well have given an impression of being in control which did not mirror her underlying feelings.

I do not accept the claim that the suspension was predetermined. There was consultation with senior personnel. I do not accept the submission that consultation did not take place. While it would have been preferable for Ms Williams to have been told the purpose of the meeting beforehand, this was a difficult situation for the employer. In addition to the need to be fair to Ms Williams there was also an obligation to ensure the wellbeing of the complainants. The employer was right to err on the side of caution and make the decision to suspend in order to protect other staff.

### **November 9 Meeting**

Mr Burley submitted that Ms Williams had not been told that staff were fearful of her return although he did concede that both Ms Williams and Mr Brown recalled reference being made to the fear that Ms Williams might take some reprisal against staff who had complained. There is also reference to a fear of repercussions in document "D", attached to the Statement in Reply. In any event, it must have been very clear to Ms Williams that staff felt intimidated by her; people who feel intimidated feel fearful.

Mr Burley also submitted that statements made by some staff in support of Ms Williams, which were attached to the Statement of Problem, were in stark contrast to the allegations made the complainants and that they did not appear to have been taken into account in the making the decision to dismiss. That is because the respondent did not have these statements at the time the decision was made. Mr Brown stated in an email to the respondent on 11 November that:

*My client's position with regard to her style and manner of management will be supported by clear and strong statements of recommendation and support by her former manager Jane Gammon and three former team members, Debbie Dempsey, Susan Wilson and Val Faulkner.*

I asked whether he had requested that the meeting be adjourned until he could supply this information for consideration. He said he had not. Mr Burley also expressed concern that Ms Gammon, as Ms Williams' one time manager, had not been interviewed.

At the Investigation Meeting statements supportive of Ms Williams were produced. The issue, however, was not how Ms Williams had behaved towards those people but towards the

complainants. While I would not totally discount evidence of contrary behaviour, human beings can and do behave differently towards different people. The behaviour will be modified by the nature of the relationship. Men who abuse their wives may appear charming, helpful and kind to others.

### **Ms Turner**

Mr Brown raised the question of Ms Turner's involvement in the process in his email:

*She has serious concerns as to the sincerity of the motives of her senior manager Linda Turner, having herself been publicly threatened and belittled by Ms Turner. Ms Turner's behaviour, as a senior manager for the Warehouse will be in turn the subject of future consideration in this matter.*

I have considered whether Ms Turner's involvement biased the investigation and the outcome. I have concluded that it did not. It is evident that Ms Williams, Ms Gammon and Ms Turner had had what were sometimes stormy relationships because they disagreed about how certain work matters should best be done.

I do not think that the evidence I heard relating to those relationships can be described as constituting bullying. Furthermore, Ms Turner, although the ultimate decision maker, was not the only person involved in that process, which involved consultation with a number of senior personnel.

### **Substantive Justification**

The employer was entitled to conclude, on the evidence it had, that serious misconduct had taken place. I have no doubt that this view was genuinely held by the employer. The investigation was occasioned by two separate, unsolicited complaints. Further investigation bore out the tenor of those complaints. Ms Williams denied the accuracy of the complaints. She denied, for instance, that she had called Ms Jackson a liar but said she had told Ms Jackson she was telling "porkies". Clearly, lying and telling porkies are synonymous. Often there are situations where an employer has to choose between one person's word and another's. Here, the employer was faced with Ms Williams' denial and consistent allegations made a number of people.

Mr Burley asked me to note the lack of previous complaints. I do not see this as surprising. People are often reluctant to complain about such matters and such behaviour can continue for lengthy periods before someone complains.

Mr Burley also submitted that Ms Williams should have been performance managed. I think that had Ms Williams given any indication that she accepted that there might be a problem that would have been an option that would have been considered.

The employer was entitled to make the decision to dismiss. Ms Williams does not have a personal grievance.

**Costs**

If the parties are unable this, leave is reserved for the respondent to file a memorandum within 42 days of the date of this determination. The applicant should then file a memorandum within 14 days of receipt of the respondent's memorandum.

Dzintra King  
Member of Employment Relations Authority