

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN	Justine Camp (Applicant)
AND	Arai Te Uru Kokiri Centre Inc (Respondent)
REPRESENTATIVES	Barry Dorking, Counsel for Applicant Grant Walker, Advocate for Respondent
MEMBER OF AUTHORITY	Helen Doyle
INVESTIGATION MEETING	31 May 2005
APPLICANTS SUBMISSION	10 June 2005
RESPONDENTS SUBMISSIONS	10 June 2005 20 June 2005
DATE OF DETERMINATION	5 July 2005

DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] Ms Camp commenced employment with the Arai Te Uru Kokiri Centre Incorporated (“the Centre”) as a tutor in Te Reo Maori in June 2002. She was interviewed and appointed by the then manager of the Centre, Kua Langsbury.

[2] Ms Camp says that there was a serious breach of her employer’s duty of fair and reasonable treatment which led to her resignation on 17 July 2003 and that she was unjustifiably constructively dismissed. Ms Camp seeks lost wages, compensation and costs.

[3] The respondent says that Ms Camp left her employment voluntarily and without notice. It claims from Ms Camp a sum equal to one week’s wages in lieu of notice.

[4] The Centre has provided courses to students in Dunedin in various subjects including Te Reo Maori since 1982. The Centre is funded by Skill New Zealand. Some students who attend at the Centre have failed in the mainstream education system and have generally had difficulties in the past with achievement.

[5] The Centre operates within the rohe of Ngai Tahu and applies Ngai Tahu values.

[6] Shortly after Ms Camp commenced her employment with the Centre there was a change in the management of the Centre from Mr Langsbury to Lynette Collins. Mr Langsbury is currently the chairperson of the Management Komiti operating the Centre.

[7] Ms Camp felt from early on in her employment that Ms Collins took a dislike to her. Ms Collins did not see her relationship with Ms Camp in this way and said that she could have a decent conversation with Ms Camp and as she put it *a laugh*.

[8] Ms Camp says that the negative attitude Ms Collins had toward her and the events around negotiating a new employment agreement led her to the view that her relationship with Ms Collins was beyond repair. Ms Camp also said that the situation was not assisted by an exchange with Mr Langsbury when he asked her to translate her course outlines from Maori into English on 16 July 2003 in a manner which frightened her. Ms Camp said that she made a decision on 17 July 2003 not to return to work after attending mediation that day. In making that decision Ms Camp, I find, decided her relationship with Ms Collins was beyond repair rather than her relationship with Mr Langsbury.

[9] Ms Camp contends that there was a breach of duty on the part of the respondent which caused her to resign from her employment.

[10] The issues for me to determine are:

- Was Ms Camp's resignation caused by a breach of duty on the part of her employer to treat her fairly and reasonably?
- If Ms Camp's resignation was caused by a breach of duty on the part of her employer then was the breach of duty of sufficient seriousness to make it reasonably foreseeable by the Centre that Ms Camp would resign.
- If there was a breach of duty and it was of sufficient seriousness to make resignation reasonably foreseeable, whether Ms Camp contributed to the situation that brought about her resignation.
- In the event that it is found Ms Camp was not unjustifiably constructively dismissed whether she should be required to pay one week's wages in lieu of notice to the respondent.

Was Ms Camp's resignation caused by a breach of duty on the part of her employer?

Relationship with Ms Collins

[11] Ms Camp said that her relationship with Ms Collins was an unhappy one and beyond repair as at 17 July 2003. She relies on a series of events throughout the employment relationship. It is well established that general discontentment is insufficient to establish a constructive dismissal and I have considered whether the conduct toward Ms Camp was such that she could not longer be expected to put up with it.

[12] Ms Camp was given a written warning in November 2002 by Ms Collins. Ms Camp said there was an absence of fair procedure prior to the warning. Ms Camp did not take action with respect to the warning but it no doubt had an impact on how she saw her relationship with Ms Collins and led her to conclude that she was viewed negatively by Ms Collins.

[13] In February 2003 Ms Camp was given a draft employment agreement to sign. She was not happy with all the provisions in the agreement. Ms Camp had been given a draft employment agreement when she commenced employment in June 2002. She had requested that a provision be included in the employment agreement with respect to picking her daughter up from school. That was agreed to but Ms Camp was never given the amended agreement to sign. There is no dispute as to the terms and conditions of her employment.

[14] On 4 March 2003 Ms Camp attended a hui with Maori staff from Otago University. Ms Camp was concerned that Ms Collins was at the hui without invitation as she is not Maori. I accept that this was a concern for Ms Camp but it was not one that she discussed with Ms Collins before 17 July 2003. Ms Collins provided evidence that her attendance was welcome at the hui and was appropriate. This issue was one of misunderstanding that could have been clarified if discussed.

[15] On 10 March 2003 a meeting took place between Ms Camp, Ms Collins and the programme manager at the Centre Graham Wicken to discuss the employment agreement handed to Ms Camp in February 2003.

[16] There were some matters in the agreement that required further discussion at that meeting. It was Ms Camp's right not to sign the agreement and maintain her existing terms and conditions of employment. I am not persuaded by the evidence that Ms Camp was placed under undue pressure to sign the document in a way that would amount to a breach of duty or that there was a complete refusal by Ms Collins or Mr Wicken to discuss or negotiate the provisions in the agreement. Ms Camp was given clarification on some matters. Ms Collins did agree at that meeting to cover costs of and allow time for Ms Camp to gain a certificate in adult teaching and she also agreed to cover her costs in obtaining her full drivers licence.

[17] Ms Camp told Ms Collins and Mr Wicken at the 10 March meeting that she would not sign the agreement there and then and wanted to seek advice from her union representative, Kristine Smith of the Association of Staff in Tertiary Education. Ms Camp felt that this was agreed to begrudgingly by Ms Collins and that Ms Collins behaviour then became hostile toward Ms Camp. Ms Collins vehemently denied that her behaviour was hostile and said that she was relieved that with Ms Smith's involvement negotiations were going to get underway. Although Ms Collins may not have expressed this relief to Ms Camp there is no evidence for me to conclude that Ms Collins was hostile or even unhappy about Ms Camp seeking advice from a union to assist with her negotiations. Indeed on at least one occasion Ms Collins initiated contact with Ms Smith in an endeavour to get negotiations underway.

[18] On 4 and 7 April 2003 there were staff meetings. I do not think that Ms Collins was aware of the level of dissatisfaction Ms Camp felt about their relationship until Ms Camp raised her concerns at these meetings. An issue was initially raised by another tutor that Ms Collins treated staff inconsistently. Ms Camp also raised concerns that Ms Collins had been ignoring her and that she had become hostile toward Ms Camp when she and another tutor joined the union.

[19] There is some disagreement as to the exact response to the concerns expressed by Ms Camp but it is common ground that words were said by Ms Collins to the effect that *it was fair comment that no communication makes a situation worse*. Ms Collins did not accept that she had a problem with anyone joining a union having been a union member previously herself. The staff meetings in early April ended on a positive note. It appeared to me from the nature of the exchange that Ms Collins could accept criticism even if she did not necessarily agree with it. Ms Camp said that things were more positive following the meeting. She gave evidence though that she still did not feel that she could walk into Ms Collins' office to talk to her.

[20] Following the April staff meetings the next matter of concern for Ms Camp was that she felt belittled by a comment from Ms Collins about her union representative and how busy she was. Ms Collins did not accept that it was anything but a genuine enquiry about when Ms Smith would be available. She says in her evidence that how Ms Camp could turn it into something that made her feel belittled is beyond her. I think both Ms Collins and Ms Camp perceived the exchange quite differently, Ms Collins as a genuine enquiry and Ms Camp as Ms Collins asserting her power. If I accept that it was possible for Ms Camp to view the matter in the way she did it is still not in my view sufficient to amount to a breach of fair and reasonable treatment by Ms Collins.

[21] Shortly before 16 July 2003 Ms Collins asked Ms Camp to provide her with a weekly course outline of what she proposed to teach. Ms Camp wrote her course outlines in Maori and gave them to Ms Collins. Ms Collins was not pleased at receiving the documentation in that form as she does not speak Te Reo Maori. Ms Collins' evidence is that she handed the weekly plans back to Ms Camp and asked if she could translate them into English as she was unable to understand them. I prefer Ms Camp's evidence that Ms Collins retained the plans as that is clear from subsequent events. Ms Camp said that she felt again belittled and threatened by Ms Collins' behaviour when she handed her the plans.

[22] Although no further discussion took place between them Ms Collins felt that Ms Camp had submitted the form in Maori to aggravate the situation between them as ordinarily documentation related to the course Ms Camp tutored was submitted in English. Ms Collins said in her evidence that it was becoming obvious to her that Ms Camp did not approve of her position within a Maori organisation.

[23] Ms Camp did not accept that she submitted forms in Maori to aggravate the situation and said that her concerns about Ms Collins' position within the Centre related to her lack of qualifications and experience not her inability to speak Maori.

Exchange with Mr Langsbury

[24] On 16 July 2003 Mr Langsbury was shown the course outlines by Ms Collins. Mr Langsbury went almost immediately to talk to Ms Camp in her classroom. Mr Langsbury spoke, it was agreed, gruffly to Ms Camp but he did not yell at her. Mr Langsbury asked Ms Camp to translate the report. Mr Langsbury said that he used the word *please* but Ms Camp did not recall that. Mr Langsbury did not dispute Ms Camp's description that he was shaking with anger and he said that he was *truly upset* as Ms Camp was aware that Ms Collins had no fluency in Te Reo Maori and would not be able to read the report. One of the students laughed and Mr Langsbury turned to the student and yelled words to the effect *how dare you laugh at me*. Mr Langsbury then turned and left the room. I accept Mr Langsbury's evidence that Ms Collins was not aware that he was going to confront Ms Camp.

[25] Ms Camp said that she was very scared and left the Centre shortly afterwards at lunchtime. Sensibly a mediation was arranged for the following day on 17 July. On that day, after the mediation, Ms Camp decided that her relationship with Ms Collins was irreconcilable and it would be difficult with Mr Langsbury. Mr Langsbury and Ms Collins did not share this view and felt that things could be worked through.

Conclusion

[26] Ms Camp is both intelligent and personable. Contrary to the allegations in the statement of reply, the evidence of Ms Collins, Mr Langsbury and the staff meeting minutes support that she was

performing well at her role at the Centre and was co-ordinating all the tutors with respect to lesson plans. It was also recorded in the minutes of the staff meeting of March 2003 that Ms Camp presented with some good ideas about funding.

[27] I had the clear impression that Ms Camp and Ms Collins perceived their relationship differently. I believe that Ms Collins genuinely believed that she was supportive toward Ms Camp. Ms Camp clearly did not see Ms Collins as supportive. Ms Camp's response to the cheque that Ms Collins wrote for her at the meeting on 10 March to enable Ms Camp to get a full birth certificate for her drivers licence and for the adult certificate course, was that she never used the cheque, presumably by choice, and that she was given the clear impression that her contract was not up for negotiation.

[28] Ms Collins gave evidence that she paid Ms Camp a full years holiday pay in 2003 when she had only been at the Centre for six months as Ms Camp was a single income earner with a child. Ms Camp said that she was not told this was the reason for the payment and further she says that Ms Collins did not factor in her situation when she forgot to pay everybody at the Centre on two occasions.

[29] Ms Camp was made unhappy at times by things that happened at the Centre and there was no doubt that some things could have been dealt with better. It seemed to me that it was difficult for Ms Camp to communicate effectively with Ms Collins and that must have been made more difficult by Ms Camp's view that Ms Collins lacked the experience and qualifications for the position of manager of the Centre. There was no evidence that Ms Collins held similar views about Ms Camp in terms of her position as tutor. There was no further discussion of relationship issues at staff meetings following the April meeting.

[30] It was a situation in my mind that was ripe for the misunderstandings and misinterpretations that occurred. There needed to be some further discussion about Ms Camp's concerns with respect to her relationship with Ms Collins. Ms Smith's involvement in that as Ms Camp's union representative would have helped. I am not of the view however that the stage had been reached at 17 July 2003 where Ms Camp could conclude that the relationship between her and Ms Collins was irreconcilable or that there had been breaches by Ms Collins of the duty to be a fair and reasonable employer let alone breaches substantial enough to destroy or seriously undermine Ms Camp's trust and confidence.

[31] Mr Langsbury is an important person in the Centre. He is in his late sixties and known to Ms Camp not only from the Centre but also from their involvement in other organisations. Mr Langsbury spoke of an extensive family history although Ms Camp may not have been fully aware of this at the material time. It is accepted that Mr Langsbury spoke gruffly to Ms Camp on 16 July 2003 when he asked her to translate the outlines. He explained that he was upset. He accepted that it was Ms Camp's right to submit the course outlines in Maori but he questioned the reason that this was done. There was no evidence that Ms Camp would have objected to a request that she translate the course outlines although it was probably not appropriate for him to instruct Ms Camp to translate the course outlines in the hearing of students.

[32] Mr Langsbury was surprised that Ms Camp was so frightened of him and even if speaking gruffly to someone in the circumstances of this case could be seen as a breach, I do not consider it to be a breach that is so serious in its destruction or undermining of trust and confidence as to amount to a constructive dismissal. The issue should have been discussed and the parties could, in my view, have moved forward.

[33] In conclusion therefore Ms Camp's resignation was not brought about by a breach of duty serious enough to cause a reasonable employee to resign but was voluntary. It was in my view a premature resignation. I am not required therefore to make any findings with respect to the second and third issues.

Counterclaim

[34] There is no provision in Ms Camp's employment agreement to the effect that it was agreed between the parties that she would forfeit or pay one week's wages in the event of a failure to give notice as a genuine pre-estimate of damages. In those circumstances the respondent is not entitled to claim against Ms Camp a sum equal to one week's wages.

Determination

[35] Ms Camp resigned from her employment with the Kokiri Centre on 17 July 2003. I have found that the resignation was not an unjustified constructive dismissal. Ms Camp does not have a personal grievance and is not entitled to the remedies that she seeks.

[36] The counterclaim against Ms Camp for one week's wages in the absence of notice is dismissed.

[37] If there is any payment owing to Ms Camp by way of holiday or final pay then that shall be paid to her. If there are difficulties with that then leave is reserved to come back to the Authority.

Costs

[38] I reserve the issue of costs. Both parties have submitted that they will attempt to resolve these by agreement. In the event that is not possible then submissions may be lodged with the Authority.

Helen Doyle
Member of Employment Relations Authority