

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Sandra June Campbell (Applicant)
AND Auckland College of Education (Respondent)
REPRESENTATIVES Paul Pa'u, Counsel for Applicant
Ray Parmenter, Counsel for Respondent
MEMBER OF AUTHORITY R A Monaghan
INVESTIGATION MEETING 7 September 2004
SUBMISSIONS RECEIVED 10 September 2004
DATE OF DETERMINATION 27 September 2004

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Sandra Campbell says she was unjustifiably and constructively dismissed by her former employer, Auckland College of Education (“ACE”). She also says she has a personal grievance on the ground that her employment was affected to her disadvantage by unjustifiable actions of her employer.

[2] ACE says Ms Campbell was not dismissed, rather she resigned, and denies that she has a grievance on the ground of disadvantage.

Background

[3] Ms Campbell began her employment at ACE in 1995, as a customer liaison person in the school of advanced studies. The school was later renamed the Centre for Advanced Qualifications (“AdQual”). Ms Campbell’s duties included giving advice to qualified teachers on professional development courses, and enrolling them for papers for higher, advanced, or specialist diplomas. For a time she was one of two people who carried out such duties, but on the resignation of the second she carried the duties out herself with additional clerical support at peak enrolment times.

[4] In 1999 AdQual was affected by a restructuring aimed at centralising the enrolment process for the whole of ACE. Accordingly Ms Campbell’s duties were absorbed into the functions of a ‘contact centre’. Jan Menzies was the manager of the centre. In November 1999 Ms Campbell was appointed to the position of customer service consultant at the centre. She reported to the team leader Leigh Beever, who in turn reported to Ms Menzies.

[5] According to a draft job description dated May 2000, Ms Campbell's job purpose was to: "provide ... customer service for internal and external customers to build and maintain a high degree of customer satisfaction for the recruitment, selection, enrolment and graduation of students. This position is part of the team for teachers, with particular focus on Ad Qual programmes."

[6] The chain of events which led directly to this employment relationship problem began in July 2001. A staff development day for all staff at the contact centre was planned for Thursday 12 July 2001. The centre would close for the purpose. Ms Campbell understood it was a requirement that staff members attend, but was concerned because she felt the date had been set on the assumption that staff would not be busy yet she was very busy. On Wednesday 11 July she informed Ms Beever that she would not have time to attend the staff development day, but was advised that attendance was not negotiable. She explained to Ms Beever that she felt other work was pressing, and characterised the associated discussion as an attempt to negotiate. There was no dispute that she was instructed to attend the staff development day, and indicated her intention not to do so.

[7] The exchange she and Ms Beever had on the point led to Ms Beever preparing a written complaint dated 12 July 2001. In the complaint, Ms Beever set out her view that the work Ms Campbell was intending to carry out instead of attending the staff development day was not part of Ms Campbell's normal duties, described the exchange in which she instructed Ms Campbell to attend the staff development day and Ms Campbell indicated she would not, and ended by alleging that Ms Campbell began shouting and saying: "All you ever say is no, you never let me do anything, it is always NO NO NO." Ms Beever recorded that shortly after that there was another outburst in a similar vein, in front of someone else. She ended by saying Ms Campbell's generally unacceptable behaviour had become intolerable.

[8] Ms Campbell attended for part of the staff development day on 12 July, having decided she would leave at about lunch time to carry out the other work she had planned. Ms Menzies observed her leaving at about midday, and asked where she was going. Ms Campbell advised she had an appointment with a class. Ms Menzies advised it was not appropriate to go to a class instead of staff development, and asked Ms Campbell to cancel the appointment and return. Ms Campbell replied that she would try. She did not return.

[9] This matter led Ms Menzies to forward a complaint of her own to her manager, Anne Buzeika, the general manager - information services. Ms Menzies considered it was not appropriate to deal with the matter herself because of difficulties she was having with Ms Campbell. Ms Menzies also forwarded Ms Beever's concerns, including Ms Beever's written complaint. Ms Menzies' complaint described Ms Campbell's behaviour in respect of the staff development day as "the final action in a series of actions of willful (sic) refusal to action instructions." Ms Menzies also listed several additional examples of what she saw as refusals to follow instructions. She requested an investigation.

[10] After she had carried out her other activities Ms Campbell did not return on the afternoon of 12 July. Instead she went home sick. She did not advise Ms Menzies of her illness before leaving and did not report for work the following day. She had developed a severe migraine headache, and said at the investigation meeting she believed it was a result of a build-up of pressure over the preceding two months. She did not recall whether she called in sick on Friday 13 July and there was no suggestion that a medical certificate was forwarded to ACE that day.

[11] By letter dated 13 July 2001 Ms Buzeika asked Ms Campbell to attend a meeting to discuss the exchange with Ms Beever on 11 July, as well as the alleged continued refusal to adhere to instructions with the most recent incident being on 12 July. The letter attached Ms Beever's and Ms Menzies' written complaints, and advised that while the interview was not a disciplinary action, disciplinary action may be an outcome.

[12] Ms Campbell remained absent on sick leave. She also consulted her then-solicitors, who by letter dated 19 July advised that Ms Campbell was medically unfit to attend a meeting and attached a medical certificate saying she was unfit for work. The letter also said: “Our client has taken sick leave as a result of the stress to which she has been subjected because of the actions of her employer and unfairly raising these matters with her.” Soon afterwards an exchange between the parties’ lawyers addressed aspects of Ms Campbell’s entitlement to sick leave, and whether mediation would be appropriate.

[13] Matters stalled for several weeks, in part while a conflict of interest on Ms Campbell’s solicitors’ part was addressed. Ms Campbell remained on sick leave. Eventually she instructed new solicitors and in September 2001 there were further exchanges between the parties’ lawyers about entitlements to sick leave and the possibility of mediation.

[14] Meanwhile, during Ms Campbell’s absence her duties were reallocated. During that time a number of what she considered poor work practices came to Ms Menzies’ attention. She listed them in a memorandum dated 31 August 2001 which she forwarded to Ms Buzeika. They concerned the non-enrolment of students, students being enrolled but not invoiced for fees, outstanding requests for payment not being actioned, and other matters of a clerical nature. A letter to Ms Campbell dated 17 September listed these and asked Ms Campbell to attend a disciplinary meeting to address them. The letter advised that a first or final warning might follow. It also sought further information about Ms Campbell’s state of health, since she had been off work for two months and the medical certificates she had provided stated only that she was unwell and unable to attend work.

[15] By letter dated 25 September 2001 Ms Campbell’s then-solicitors raised a disadvantage grievance, indicating the grievance concerned ‘the disciplinary matters which your client has raised concerning our client’. It also referred in that context to ACE’s expressed intention of dispensing with a preliminary investigation into the July complaints and moving directly to a disciplinary meeting. It alleged ACE was unfair in persistently seeking out disciplinary issues in respect of Ms Campbell despite her being on sick leave. It urged mediation and more exchanges about mediation followed.

[16] For its part ACE repeated the request for details of Ms Campbell’s medical condition. After more exchanges on that point, by letter dated 19 October 2001 Ms Campbell’s solicitors advised that the reason for Ms Campbell’s ill health was the ‘extreme stress that she has been under as a result of the dispute between the parties ... The distress felt by our client since your client first gave her notice of disciplinary matters in mid-July has been considerable, to the point of making her unwell.’ An attached medical certificate repeated no more than that Ms Campbell was unwell and unable to attend work, and stated she should be fit to return on 31 October 2001. ACE continued to press for more detailed information from Ms Campbell’s doctor.

[17] On the assumption that Ms Campbell would return to work, ACE sought to arrange a disciplinary meeting for 31 October. By letter dated 26 October 2001 counsel advised of the date and time of the meeting, as well as raising as an issue the breakdown in trust and confidence resulting from the ongoing failure to respond to requests for information from Ms Campbell’s doctor about Ms Campbell’s state of health.

[18] By letter dated 29 October Ms Campbell’s solicitors advised that Ms Campbell’s doctor would provide a full medical report, and attached a medical certificate saying Ms Campbell remained unable to attend work, and her condition would be reviewed on 30 November 2001. They suggested a meeting on 31 October to discuss the medical situation, but ACE wanted to see the medical report first. A brief report dated 30 October 2001 included the statements: “[Ms Campbell] has had a number of health problems all apparently related to the conflict which seems to have reached crisis point in July.” and: “I have agreed that her health is likely to deteriorate even further in an environment of conflict and confrontation. However her long term prospects as far as employment is concerned are not compromised.”

[19] The letter dated 29 October also provided particulars of Ms Campbell's disadvantage grievance. The grievance was said to concern ACE's "pattern of behaviour ... culminating in July 2001." No further detail of the 'pattern' was provided in the letter although a generalised reference was made to Ms Campbell's qualms about the restructuring in 1999 and her feeling that the qualms had proved justified. The change associated with the restructuring has not itself been the subject of any personal grievance, and there was an appropriate acknowledgement that the time limit for raising such a grievance had long since passed.

[20] The letter went on to say Ms Campbell felt there were a number of areas in which the operation of the contact centre could be improved and a number of areas where, with the proper support of management, her role could be performed more efficiently. They were: proper training and support from management; adequate consultation by management; co-ordination of Ms Campbell's and others' responsibilities within the contact centre by management; and a fairer allocation of workloads. It was said that when Ms Campbell sought to raise these matters she was ignored, or accused of aggressive conduct and failure to adhere to instructions.

[21] A series of other matters directly associated with the attempts to initiate a disciplinary process were also alleged to amount to unjustifiable actions disadvantaging Ms Campbell in her employment. They were:

- . the failure to reasonably address Ms Campbell's concerns (which I understand to be a reference to the concerns Ms Campbell was raising with Ms Menzies and Ms Beever and which became the subject of the complaints about Ms Campbell), and purporting to raise disciplinary issues instead;
- . if the disciplinary investigation proceeded, there would still be a 'black mark' on Ms Campbell's employment with ACE even if no warning resulted;
- . ACE's purporting to find more 'disciplinary matters' to raise against Ms Campbell amounted to harassment and an attempt to force her out of employment;
- . ACE had already pre-judged the outcome of the disciplinary investigation, indicative of an attitude towards Ms Campbell that was not supportive.

[22] By letter dated 1 November 2001 ACE agreed to attend mediation on the basis that it now had something to mediate. What it meant was that a dispute had been identified with some specificity, beyond mere broad assertion as to the existence of a dispute, and ACE therefore had something to address. Mediation eventually went ahead on 29 November.

[23] Apparently the mediation was not successful. By letter dated 6 December 2001 Ms Campbell informed ACE of her resignation as of that date. The letter did not set out her reason for resigning.

Determination

[24] While it was plain there were difficulties in Ms Campbell's relationship with Ms Menzies and Ms Beever (and probably at least one colleague) in the period leading up to July 2001, it was equally plain from the lawyers' correspondence that the request that she participate in the investigation into Ms Menzies' and Ms Beever's written complaints precipitated what followed. In much of the correspondence Ms Campbell's ongoing state of stress was linked expressly with the employer's wish to arrange a meeting to investigate the complaints, and the effect that had on her. In her brief of evidence Ms Campbell said that from the time of receipt of the complaints she 'knew with certainty that ACE was an unsafe place to work.' She went on to say the effect on her 'became severe'.

[25] ACE was entitled to respond to Ms Beaver's and Ms Menzies' complaints by seeking the meeting it did. I do not accept the allegations to the effect that seeking to investigate the complaints, and subsequently the performance concerns, amounted to unfair treatment of Ms Campbell. Indeed the matters raised in the complaints in particular were serious, and required investigation. I do not accept there was anything unjustified in ACE's attempts to bring to Ms Campbell's attention the concerns it had about her or to seek to discuss them with her. Nor do I accept the outcome was prejudged.

[26] Moreover on Ms Campbell's own evidence she had more than once refused lawful and reasonable instructions regarding her attendance at the staff development day on 12 July. Her attitude was that she had something more important to attend to, and she retained the right to make that assessment. She failed to recognise or accept to any degree that the employer was at least entitled to raise these and other matters with her, let alone that she could have raised any concerns of her own in the process.

[27] As a background to the problem, it was apparent that Ms Campbell had not settled comfortably into her role after the restructuring in 1999. The fundamental difference was that she worked less autonomously than she had at AdQual, and this did not suit her. At the same time Ms Campbell made much in her evidence of factors such as what she called the environment of praise and encouragement in her workplace prior to the restructuring in 1999, and contrasted it adversely with the environment she said was created by the management of the contact centre. Even if Ms Campbell's assessment was accurate, and I make no finding that it was, this does not necessarily amount to a breach of duty on the employer's part. Her more specific complaints about not being praised or thanked at worst were no more than insensitive management and did not amount to breaches of duty. The same goes for other factors such as her view that there was no collective problem-solving and a failure to set clear goals.

[28] Ms Campbell also criticised the communication style adopted at the contact centre, none of which disclosed any breach of duty but was rather indicative of Ms Campbell's view of the style adopted. Ms Campbell had a particularly firm view to the effect that the management approach was dictatorial and during the investigation meeting she commented bitterly about her feeling that she was required to be obedient. She wanted to feel free to evaluate things and suggest improvements, but believed she was perceived as a trouble-maker instead. She may have had some basis for perceiving an adverse reaction when she raised matters of concern, but her evidence about her attitude suggests there may also have been something in her own approach to cause the adverse reaction.

[29] One example of this, discussed in the evidence, concerned the publication of \$425 as a fee for a course which fell within Ms Campbell's purview. Computer-generated invoices showed the fee as \$425.14. Ms Campbell would change the figure manually before issuing the invoice. Obviously this was not satisfactory from anyone's point of view. Ms Campbell raised the matter with Ms Buzeika, suggesting that a change be made to the database so that the computer-generated invoices would show the fee as \$425. Ms Buzeika was not aware of the matter until Ms Campbell raised it, and took steps to correct the matter. The correction was made within 24 hours. Ms Campbell did not find this process satisfactory.

[30] The real problem here lay in the communication of the need to make the correction and the parties' perceptions of that communication. Ms Campbell said in her brief of evidence that Ms Buzeika gave 'many spurious reasons that it could not be changed'. At the investigation meeting she said she had to 'go through Anne lecturing me about why it couldn't be changed'. Actually Ms Buzeika explained how the difference had arisen, and gave valid reasons as to why she could not correct the problem immediately and in the way Ms Campbell was suggesting. She merely sought to address the

problem but did feel frustration at Ms Campbell's unwillingness to accept that the change could not be made immediately. Ms Campbell's characterisation of the reasons as 'spurious' was not reasonable, and her description of Ms Buzeika's explanation as a 'lecture' was not fair. The attitude thus revealed tended to support the employer's view that Ms Campbell wanted things done as she thought they should be and was not prepared to listen or compromise.

[31] For her part Ms Campbell went as far as to offer the incident as an example of an adversarial and defensive style of management, to refer to a view that in the past she would have been praised for being observant and helpful, and suggest she was now being seen as an insubordinate troublemaker. That stance was not warranted.

[32] At the same time I accept the likelihood that there were difficulties created by changes being made to information management systems. The example of the computer-generated invoices was one, but the nature of the communication about it made it more of a problem than was necessary. I was given another example involving the engagement of a consultant to work with Ms Campbell to develop a more efficient electronic method of incorporating necessary information automatically into an invoice. Once that was achieved, Ms Campbell's clerical duties would be lessened. The task proved more complicated than anticipated but was subsequently completed. Ms Campbell was unjustifiably critical of that effort.

[33] The flavour of this and similar evidence means I would be unlikely to accept the allegation in support of Ms Campbell's disadvantage grievance to the effect that, when she sought to raise matters of concern, she was ignored or accused of aggressive conduct and failure to adhere to instructions. However in the present context, even if there was a grain of truth in the allegation, that was not the end of the matter because it was for ACE to consider further whether the accusations were made at all, the background to them and whether they had substance. In turn a decision would have to be made about how to address the full picture disclosed by the information available. That was the purpose of the intended investigation and it was valid. Instead, however, the allegation appeared to have been raised in support of an argument that, because of the employer's responses as Ms Campbell saw them, it was not appropriate to have embarked on a disciplinary process at all and it was unfair of ACE to have done so. I do not accept that position.

[34] Reference was also made to workload. As far as her workload was concerned, Ms Campbell worked hard but enjoyed the sometimes high level of customer contact that entailed. One aspect of her workload which caused her a destructive form of stress was the component she preferred not to carry out. Providing customer service was a high motivator, basic clerical aspects of the work were not. Indeed Ms Campbell expressed strong resentment at being asked to carry out certain clerical activities and said she was not interested in them. She said she was told she had to carry them out so she did, and expressed bitterness in saying she was again 'obedient'.

[35] Overall from the correspondence and her written brief of evidence I consider it likely that Ms Campbell's workload was raised not because she was unable to cope with it, but primarily because she was critical of workload management practices and her expression of that criticism had in part given rise to the complaints about her. The feeling that the practices were inadequate led to stress and conflict which was more appropriately resolved by discussion in the course of the investigation into the complaints rather than by the effective refusal to participate in that process.

[36] Much the same applies to the generalised allegations concerning lack of support, lack of training, and inadequate consultation. To the extent that any associated detail can be identified, the allegations were closely connected with the incidents which originally formed the foundation for the complaints.

[37] For these reasons I find Ms Campbell does not have a personal grievance on the ground of unjustified disadvantage.

[38] For similar reasons I not accept ACE was in breach of duty to Ms Campbell in the sense required to support a constructive dismissal so do not believe she was dismissed. Accordingly she does not have a personal grievance on the ground of unjustified dismissal.

Costs

[39] Costs are reserved.

[40] Ms Campbell is in receipt of legal aid. However the parties are invited to agree on the matter themselves and if they are unable to do so they shall have 14 days from the date of this determination in which to file and serve memoranda on the matter. If either wishes to reply to anything in the memorandum of the other, there shall be a further three working days from the date of receipt of the relevant memorandum in which to file and serve such reply.

R A Monaghan
Member, Employment Relations Authority