

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Christine Susan Carlton (Applicant)
AND Ian Geary (Respondent)
REPRESENTATIVES Gary Clarke, Counsel for Applicant
James A Firth, Advocate for Respondent
MEMBER OF AUTHORITY Paul Montgomery
INVESTIGATION MEETING 28 November 2005
DATE OF DETERMINATION 13 January 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant claims she was summarily dismissed by the respondents from her employment as a vineyard worker. Mrs Carlton says she was given no written employment agreement to consider and was dismissed without notice.

[2] The respondents say the applicant was not a permanent employee, but was engaged on a job-by-job basis. They say when the tasks required of the applicant had been completed, they no longer needed Mrs Carlton's input.

[3] The applicant says that she was originally told she was working a trial period of two months, but as nothing was said to her two months after starting work, she continued believing she was a permanent employee.

What caused the problem?

[4] The applicant and the respondents had been acquainted for some 20 years. The respondents owned a property close to Washdyke, part of which is a moderately sized vineyard. Mrs Carlton is a qualified secondary school teacher who had completed a post graduate diploma in viticulture and oenology at Lincoln University in 2004.

[5] In late 2004 a chance meeting of the Gearys with the applicant's son at a wedding took place. In the course of discussions Mrs Carlton's son advised the respondents that his mother had completed her post graduate diploma and the Gearys replied that they may have some work for her if she cared to drop in and see them at some stage. The applicant visited the vineyard in March 2005 and found it in a run-down state and needing attention.

[6] Following the visit the applicant prepared a report outlining a three year programme for the restoration of the vineyard and provided additional information on canopy management at no cost to the Gearys.

[7] A short time later Mrs Carlton approached the Gearys and offered her services if they had not already made arrangements to attend to the vineyard.

[8] The parties agree that there was some brief discussion regarding an employment agreement and also that eventually an agreed hourly rate was established. Regrettably, the written employment agreement did not eventuate and this, in large measure, has given rise to the difficulties between the parties.

[9] The applicant maintains that there was no discussion on a two month trial period, while the Gearys insist that this was discussed and agreed to at the time that the applicant's employment was discussed. In June 2005 the applicant invited Dr Glen Leroy Creasy of Lincoln University to inspect the vineyard and Dr Creasy completed a report essentially agreeing with that prepared previously by Mrs Carlton. No charge was made for the provision of this report.

[10] At the heart of the problem is the fact that the respondents were not attempting to restore the vineyard to commercial production standard, but merely wished to have it tidied and then to be maintained. The applicant's objective was to restore the vineyard to commercial standards which she realised would require on-going maintenance over a proposed three year period in order to have the property reach that standard. Mrs Carlton took the view, and expressed it to the Authority, that she believed that, all other things going according to plan, her task would take at least those three years. Clearly, the parties in this matter had totally different goals and when the work the respondents required to be done to achieve the standard of presentation they found acceptable, they advised Mrs Carlton that her services were no longer needed.

[11] Compounding the situation was an essentially unrelated event. Mrs Carlton was looking for accommodation and advised the respondents that she was to look at two or three prospects in the town when Mrs Geary advised her that one of the cottages on the property was vacant and available if she were interested. Mrs Carlton inspected all the prospective properties and agreed to rent the cottage on the respondents' property as she believed it would enable her to live close to her workplace. There is no question that the accommodation was provided by the Gearys on a normal rental basis and did not form part of any employment package with the applicant.

[12] Essentially, once the weeding under the canopies was completed and the pruning largely completed for the season, Mr Geary advised Mrs Carlton that they would have no further work for her in the foreseeable future. Surprised and taken aback at this information, the applicant proceeded to advise the respondents of her personal grievance claiming to have been instantly dismissed on Thursday, 14 July 2005.

The issues

[13] In this particular matter the Authority is required to resolve the following issues;

- What was the nature of the employment; and
- Was there a trial period agreed to by the parties; and
- Was the dismissal of the applicant unjustified; and
- If so, what remedies are appropriate in the circumstances?

The investigation meeting

[14] The investigation meeting was attended by Mr and Mrs Geary and by the applicant and Dr Creasy. I found each of the witnesses to be responsive and eager to assist the Authority in coming to its determination. I would like to record the Authority's thanks to Mr Clarke and Mr Firth for their assistance in keeping the investigation meeting progressing smoothly.

Analysis and discussion

[15] This case highlights yet again the difficulties experienced by parties where no written employment agreement has been put in place. The certainty of terms is a critical component in any contract and an employment agreement is no different in this respect. Had the respondents provided a draft agreement for the applicant's consideration, it is almost certain that the misunderstanding over what the respondents required from the arrangement and what the applicant believed she was expected to achieve would almost certainly have come to light. Once on the table, that issue could have been clearly spelled out and agreement reached between the parties on the matter.

[16] As the Employment Relations Act 2000 requires details of trial periods to be in writing, it is highly likely that this condition of employment would again have come to light.

[17] At the nub of this particular case is the perception of the applicant that her employment was permanent in the sense that it was ongoing, which is in stark contrast to the requirements expressed by the respondent, namely, that once certain tasks had been achieved, there would be little further need for the applicant's involvement.

[18] Further, the issue of notice of termination is likely to have featured in any written documentation between the parties. This again would have made clear to all concerned the rights of obligations of those involved.

[19] It was clear from discussions and responses at the investigation meeting that Mr Geary saw the role offered to the applicant as on a "job-by-job" basis. I gained the impression that he believed that he had engaged Mrs Carlton on a casual basis and would deploy her on a range of tasks as they arose. Mrs Carlton, on the other hand, no doubt encouraged and even enthused at the prospect of becoming involved in the viticulture industry so close to her home town, may have failed to hear clearly the objectives that the respondents had set for this part of their property. Mr Geary was clear that he had made it plain to Mrs Carlton that he and his wife did not require restoration to commercial production standards and it would seem that if such information was given to the applicant, it fell on inattentive ears.

The determination

[20] As referred to earlier, the Authority is required to determine certain issues. I find that the nature of the employment was in fact a fixed term agreement which would come to an end when the tasks set out for the applicant had been completed. Having considered the matters, it is clear that the employment could legitimately have been offered on a fixed term basis. To that extent I find that the applicant was neither a casual employee nor was she offered ongoing employment.

[21] In addressing as to whether a trial period was agreed verbally between the parties, I refer to the background information provided by Mrs Carlton in support of her application. At the end of para.1 Mrs Carlton states

They now maintain that I was there on a two month trial “to see how things worked out”. I have no recollection of this.

[22] Further down in the same document Mrs Carlton says

By this date I had been working on the vineyard for nearly four months – hardly a trial period. Believing that the trial period was over and that employment was to be ongoing in mid June I rented a granny cottage at the vineyard from the Gearys.

[23] The statements are clearly incompatible and from this I accept that the applicant was relying on the expiry of an agreed trial period to establish her claim to ongoing employment.

[24] I find that the dismissal of the applicant was not unjustified because the work required of the applicant when hired by the respondents had come to an end. However, I find that the applicant was unjustifiably disadvantaged in her employment in that the respondents’ failure to provide a written employment agreement led directly to the confusion that followed. There is no question that the question as to the standard to which the respondents wanted to restore the vineyard was solely theirs to make, and it was not open to the applicant to impose her perceptions of what she thought best and to transfer those perceptions into an employment arrangement without authority. I would also add that the failure of the respondents to provide appropriate and clear documentation was not caused by any ill will towards Mrs Carlton but rather suggests a muddled and casual approach to the arrangement.

Remedies

[25] Having considered all the issues and the relationship background to this particular matter, I think it fair in the circumstances to award the applicant the sum of \$500 as compensation for the disadvantage she suffered. I direct the respondents to pay Mrs Carlton that sum within 28 days of the issue of this Determination.

Costs

In order to avoid putting the parties to further expense, I think it just to award the applicant the sum of \$400 as a contribution to her reasonably incurred costs.

Paul Montgomery
Member of Employment Relations Authority