

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 17/09
5134870

BETWEEN MICHAEL MACKIE DAVIS
 Applicant

AND FAMILY START MANUKAU
 Respondent

Member of Authority: R A Monaghan

Representatives: M Davis in person
 P Diver and N Dowling advocates for Respondent

Investigation Meeting: 11 and 12 December 2008

Determination: 21 January 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Michael Davis says his former employer, Family Start Manukau (a registered charitable trust) dismissed him unjustifiably.

[2] Family Start Manukau says the dismissal was justified on the ground of Mr Davis' continuing failures to follow required record-keeping procedures, and the falsification of particular records.

The development of the problem

[3] The purpose of Family Start Manukau is to provide support services to families whose social and family circumstances put at risk the good health, education and welfare of their children. More particularly it provides home-visiting services to families at disadvantage who have a baby aged less than 12 months or a pregnant mother.

[4] It is funded by contract with the Ministry of Social Development. The obligations it undertakes in return for the funding are detailed in the service specifications in the funding contract. These are reasonably prescriptive, and Family Start Manukau also has detailed reporting obligations in respect of them.

[5] Family Start Manukau employed Mr Davis as a whānau advocate, commencing in September 2006. A whānau advocate's responsibilities include: working with families to develop their strengths and parenting capabilities by developing individualised family plans and monitoring the carrying out of the plans; assisting in the development of good parent-child relationships; encouraging families to take part in community activities and develop their own networks of support; assisting families to access healthcare, and providing information and assistance in accessing other advisory or support services; providing families with Parents as First Teachers Educational Programme; and maintaining records and providing reports as required.

[6] Families are referred to Family Start Manukau by a referring agency. The referring agency, such as the Plunket Society for example, may have met the family and identified particular concerns. The concerns are specified on a referral form, but the whānau advocate carries out a more comprehensive needs assessment on behalf of Family Start Manukau.

[7] After an initial meeting with the family, the assessment process begins. According to the relevant service specification, completion will occur over several visits and take 4 - 6 weeks. A lengthy needs assessment form, including details of family, economic and social circumstances, is completed as part of this process.

[8] As well as their relevance in forming goals and progress plans for the family, these assessments are used to determine whether a family's needs should be treated as high, medium or low intensity, or whether the family should be referred to another agency. The assessment of intensity level is set in consultation with a supervisor and must be signed off by the supervisor. The intensity level determines the frequency of the visits to be made to the family and the number of contact and non-contact hours to be spent with the family - being matters also identified in the service specifications - and internal issues such as the distribution of families' files among the advocates.

[9] Further to the families' goals and progress plans these were to be discussed and set in consultation with the family, documented, and signed off by the family as well as the advocate.

[10] A high degree of documentation was required overall. Hard copy was kept on the file kept for each family and most of the information was also recorded on a database. This included in particular information from the needs assessment form, and details of family contact and non-contact hours. Proper maintenance of the database was important not least because the data in it was used to generate the reports required as part of Family Start Manukau's funding contract.

[11] Mr Davis was to work in a team of no more than 8 advocates, reporting to a supervisor. Joycelyn Tauevihi was Mr Davis' supervisor from early 2007. Notes of her supervisory meetings with Mr Davis, commencing in April 2007, referred consistently to the number of Mr Davis' files for which needs assessments had not been completed, and noted the discussions about why particular files were not complete. Further, Ms Tauevihi would list for Mr Davis the Corrective Action Responses ("CAR") to be carried out in respect of specified files, and the responses were reviewed and noted in subsequent meetings.

[12] In May 2007 Ms Tauevihi placed Mr Davis on 'task contract' - a method of performance management involving close monitoring by Ms Tauevihi - because of Mr Davis' failure to complete several needs assessments within the required time. Ms Tauevihi noted that Mr Davis' administrative practice did not meet Family Start Manukau's standards, although she acknowledged his practical strengths. When certain needs assessments had still not been completed in July 2007, Ms Tauevihi referred the matter to her then-practice manager. The three had a meeting. According to Mr Davis, the outcome was that the practice manager encouraged him to work with Ms Tauevihi and complete his files.

[13] Ms Tauevihi did not give evidence, but Mr Davis did not dispute that the notes were hers or that the contents reflected their discussions. At the same time he provided additional explanation and comment, to which I will refer where appropriate.

[14] In September 2007 Mr Davis approached the CEO of Family Start Manukau, Colleen Fakalogatoa, saying he had a grievance. The grievance was unrelated to the present problem and is not before the Authority. Ms Fakalogatoa arranged a meeting to address the grievance, and a further meeting to discuss the continuing concern about Mr Davis' client files. There was a second concern which I take no further because it was not pursued as a reason for dismissal.

[15] Both meetings went ahead on 1 October.

[16] Regarding his client files, Mr Davis explained at the time that there was a problem with training and with communication. He said that although the use of the database had been explained to him, he needed someone to sit down with him and work through the transfer of data from his case files to the database. He also said he needed assistance in updating hours of work on the database.

[17] In response to Mr Davis' comments about training Ms Fakalogatoa arranged for another supervisor who was also the database trainer, Dallas Pickering, to provide database training to Mr Davis on 30 October. Ms Pickering's evidence was, in effect, that she could not see what the problem was. It was common ground that Mr Davis brought some of his files with him to the training session. Some information had already been entered, and Mr Davis entered more during the session. Ms Pickering did not note any difficulties with that process.

[18] Mr Davis also said on 1 October that Ms Tauevihi was often absent. Indeed her leave record shows that she had been absent on various forms of leave for most of September 2007 and the first two weeks in October, as well as on some other occasions during the year. However in all of the circumstances I consider it unlikely that her absences contributed in a material way to the present problem, and it was clear from her notes that she had expended considerable effort in assisting Mr Davis to meet the standard of administrative practice she sought.

[19] Finally Mr Davis raised a concern that, as a male, he was obliged to attend certain clients accompanied by a female co-worker. He alleged he had difficulty in finding a co-worker who was available to attend his clients with him. One co-worker

in particular was his usual companion, but Mr Davis said he was frequently unable to find her when he needed her.

[20] It was not clear how far that allegation was taken at the time. However it was made in a similarly broad way at the Authority's investigation meeting and Mr Davis was unwilling to provide specifics. His evidence at the investigation meeting was to the effect that he would arrange for his co-worker to accompany him on a visit, but when he went to find her so that they could leave, he could not find her. He acknowledged there were occasions when he made visits alone, saying that the circumstances of those visits meant it was not appropriate to take a female with him.

[21] Meanwhile, Ms Tauevihi's notes indicate that she continued her supervisory meetings with Mr Davis but that the same issues continued to arise.

[22] Then another difficulty arose when, on 8 October 2007 one of Mr Davis' clients, M, approached a third supervisor to voice a concern that Mr Davis had provided her with written records of home visits that did not occur. Also, M alleged that the contents did not reflect interactions that had occurred at any other time.

[23] That approach, together with Mr Davis' continued failure to complete the documentation required, led Ms Fakalogatoa to seek a further meeting with Mr Davis. Because she sought assistance with the technical aspects of the whanau worker's duties, she also referred Mr Davis' files to the then-acting practice manager Paul Watkin for a report. Mr Watkin had himself become aware of the nature of the difficulties during his own supervision meetings with Ms Tauevihi. As reported to him, the difficulties concerned Mr Davis' database entry and file management.

[24] Mr Watkin obtained a list of Mr Davis' client files, copies of some of Ms Tauevihi's notes of her meetings with Mr Davis, and hard copies of Mr Davis' files. He prepared his report with reference to this material. The report summarised the contents of each file, and posed a number of questions for Mr Davis to answer in respect of each file. It was immediately apparent that, although Mr Davis had not completed the standard needs assessment process for many of the files, he had nevertheless allocated an intensity level himself. The records indicated he had done so after one visit. Further, some of the files included signed and dated goals and

progress plans, yet there was no corresponding record either of contact or non-contact hours for the family concerned.

[25] Accordingly Mr Watkin's questions centred on the length of time Mr Davis had taken for the assessments of the families concerned, why intensity levels had apparently been set without consulting the supervisor, why the contracted number of visits associated with the intensity level Mr Davis had set had not been made, and why the dates on family goals and progress plans did not correspond with the associated records of contact or non-contact hours.

[26] Ms Fakalogatoa's written request for a meeting was dated 6 November 2007. It summarised M's concern and attached Mr Watkin's report. It asked Mr Davis to prepare answers to Mr Watkin's questions.

[27] The meeting went ahead on 14 November 2007.

[28] Mr Davis answered the concern M had raised by saying he had difficulty catching her at home. He admitted that, although he had completed detailed written notes in respect of certain home visits, the visits had not occurred. He said he believed it was more important that he 'got her [M] out of the gutter', found her somewhere to live and obtained a benefit. Indeed he had assisted M to find accommodation, and had given other assistance as well, but he had not carried out the activities he said he had in his home visit record.

[29] Mr Watkin then spoke about the concerns indicated by the questions posed in his report. Mr Davis had not prepared any answers. When responses were sought during the 14 November meeting his approach was to question Mr Watkin's understanding and criticise aspects of the way Family Start Manukau was run. At a very early stage he asserted that it was a waste of time answering the questions. He was critical, aggressive and combative, and took the same approach during the Authority's investigation meeting. Nothing in the evidence about the 14 November meeting indicated Mr Watkin or Ms Fakalogatoa responded in kind, and they remained restrained and courteous before the Authority. Further both they - and in the supervisory context, Ms Tauevihi - sought consistently to acknowledge Mr Davis'

practical strengths while attempting to address the significant deficiencies in his administrative work.

[30] Even so, Mr Davis provided some explanations. He: alleged his colleagues were worse than he was; repeated that he was not able to find a co-worker to accompany him on home visits when he needed one; alleged cars were not available when he needed them; repeated that the supervisor was not available and he was not properly trained; and said any mistakes were not deliberate.

[31] Ms Fakalogatoa conducted further enquiries after the meeting, reinterviewing Ms Tauevihi and re-reading the supervisor's notes. She noted that, in several files, Mr Davis had implied that he understood the relevant instructions, and said he would make the necessary corrections and place them on Ms Tauevihi's desk. He would then fail to do so.

[32] There was a further meeting on 21 November. Ms Fakalogatoa advised of Family Start Manukau's conclusions by saying:

- a. in the light of Mr Davis' own statement, M's complaint was upheld;
- b. Mr Davis had not consulted with his supervisor regarding intensity levels, despite being asked repeatedly to do so;
- c. on certain files, Mr Davis had carried out assessments too quickly;
- d. the number of visits required in respect of the assessed intensity levels had not been carried out;
- e. although the goals and progress plans on the files had been signed by the families concerned, the dates of signing did not correspond with recorded contact or non-contact hours also on the relevant files.

[33] Ms Fakalogatoa explained to Mr Davis why she did not accept his explanations and gave him an opportunity for further comment.

[34] In particular, if Mr Davies' colleagues also failed to follow specifications their behaviour would be addressed, but in any event no-one had failed to follow specifications to the extent Mr Davis had and no-one had received the input he had. Regarding the availability of a co-worker, there was a query about why no-one else in

the team had the same problem and it was noted that the supervisor had a responsibility to find a co-worker if another co-worker was absent. Regarding the availability of cars, that difficulty had arisen only in the last two weeks, and otherwise there were sufficient cars for the team. Regarding training, Mr Davis had received similar induction to the other employees as well as considerable assistance from Ms Tauevihi. As to whether Mr Davis' conduct was deliberate Ms Fakalogatoa did not expressly draw conclusions to that effect but rather pointed out that Mr Davis' behaviour had not changed despite the input he received, and that he had defended his actions.

[35] Overall Ms Fakalogatoa concluded that Mr Davis continued to disregard procedures and do things his way. This, as well as his conduct in respect of M, amounted to serious misconduct. The work at Family Start Manukau was heavily prescribed, and Mr Davis was not free to work with the independence he would like.

[36] For those reasons, Mr Davis was dismissed, with one month's salary in lieu of notice and an offer of EAP services and career planning.

[37] The dismissal was confirmed in letter dated 29 November 2007.

Whether the dismissal was justified

[38] While it might have been open to Family Start Manukau to pursue Mr Davis' administrative practices as a disciplinary matter on the ground of Mr Davis' performance, in the context of the dismissal it has treated them as a disciplinary matter on the ground of misconduct. Although the distinction is not always easy to draw, Family Start Manukau was entitled to treat the practices as misconduct here.

[39] Recording visits to M which did not occur amounted to misconduct. Mr Davis did not misunderstand the recording requirements. He chose to complete the record as he saw fit. His response was: that he could not carry out the required visits because he could not find M at home; to emphasise the assistance he had given her; and to expand on aspects of her lifestyle which were not relevant to why he had completed the record as he did. None of that was an adequate explanation of his creation of records of a visit or visits that did not occur.

[40] Similarly Mr Davis did not misunderstand Family Start Manukau's requirements regarding documentation. He did not accord importance to them and consistently ignored Family Start Manukau's procedures. When his practices were questioned in a disciplinary context he became critical or abusive, or made allegations which proved to be more opportunistic than substantial.

[41] I find that, following a fair and reasonable investigation, Family Start Manukau was entitled to conclude that the conduct of concern had occurred. It was also entitled to conclude that the conduct was misconduct warranting dismissal.

[42] I conclude that a fair and reasonable employer would have dismissed Mr Davis. Accordingly his dismissal was justified and no remedy is available to him.

Costs

[43] Costs are reserved.

[44] The parties are invited to resolve the matter themselves. If either seeks a determination from the Authority there shall be 28 days from the date of this determination in which to file in the Authority, and copy to the other party a written statement of the party's position on costs. The other party shall have 14 days from the date of receipt of the statement in which to file and copy a written response.

R A Monaghan

Member of the Employment Relations Authority