

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 88A/10  
5161112

BETWEEN JOANNE MARIE DOUGLAS  
Applicant  
A N D MILLBROOK COUNTRY  
CLUB LIMITED  
Respondent

Member of Authority: Philip Cheyne  
Representatives: Simon Stammers-Smith, Counsel for Applicant  
Don Rhodes, Representative for Respondent  
Submissions Received: 12 May 2010 from the Respondent  
28 May 2010 from the Applicant  
Determination: 30 June 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In an earlier determination dated 9 April 2010 I dismissed most of Ms Douglas' personal grievance claim but accepted that Millbrook had failed to act as a fair and reasonable employer when it dismissed her as redundant without offering her appropriate support such as a reference, help with job search and preparation of a CV and access to counselling.

[2] Soon after the determination was released the respondent brought to the Authority's attention the applicant's failure to supply the recording covertly made by her support person during one of the meetings prior to Millbrook's redundancy decision. I was told that the respondent wanted to review that recording and make submissions about events at the meeting as they related to the personal grievance finding. After giving Ms Douglas the opportunity to comment on such a course of action I decided to reopen the investigation for this purpose. Ms Douglas provided

the recording to Millbrook and the Authority and I have received submissions from both parties.

[3] It is worthwhile repeating in full the finding in favour of Ms Douglas:

*[31] There is one aspect of the dismissal where Millbrook fell below the standard of a fair and reasonable employer in a redundancy situation, especially given Ms Douglas' long service. Millbrook should have offered Ms Douglas a reference, support with searching for alternative employment and constructing a CV and access to counselling or similar support to help with losing her job. This support has been well recognised in the law as a reasonable obligation on a relatively well resourced employer. I find that Millbrook's failure to attend to any of this gives rise to a personal grievance which could be categorised as either unjustified dismissal or unjustified action causing disadvantage. This is the only grievance established by Ms Douglas.*

[4] The recording is of a meeting held on 21 November 2008. The exchanges were to the effect that Millbrook wanted to consult with Ms Douglas about a proposal that might result in her redundancy and Ms Douglas believed Millbrook had predetermined its decision. There was no discussion about how any redundancy might be implemented. In the earlier determination I rejected Ms Douglas' assertion about predetermination. There is nothing in the recording to cause any different outcome on that point.

[5] Millbrook submits that Ms Douglas did not discuss during this meeting what she expected from it if she was to be made redundant. I am reminded that she was an HR practitioner and had access to legal advice at the time. This fact, now apparent from the transcript of the meeting, does not affect the conclusion expressed at paragraph [31] of the earlier determination. The obligation was on Millbrook to conduct itself as a fair and reasonable employer, not on Ms Douglas to prompt Millbrook to behave in that manner.

[6] Two further submissions are made about the failure to offer Ms Douglas a reference. First it is submitted that it is Millbrook's policy not to provide *To Whom it may concern* references. Secondly, it is submitted that Ms Douglas' attitude was such that any offer would have been treated with derision. All that was required was a statement confirming Ms Douglas' position, length of service and the reason for its end. Even if that was contrary to Millbrook's policy the other support should have been offered. It was not for Millbrook to second guess Ms Douglas' response at the time. Millbrook's responsibility was to implement its decision in a considerate way.

[7] There is a submission that Ms Douglas' behaviour in allowing her brother to covertly record the meeting shows her to be (at worst) malicious and deceitful. I agree that it does her no credit. It was a factor in other findings in the earlier determination that went against Ms Douglas. However, the fact of a covert recording came to light during the investigation meeting and Millbrook had ample opportunity to make any submissions based on that fact at the time. The point should not be revisited now.

[8] The final point raised by Millbrook concerns publication of the earlier determination in a local newspaper. Authority meetings are open to the public and determinations are publicly available. There is no reason to think that Ms Douglas did anything improper so as to cause some media attention.

[9] There is a submission made by counsel that needs to be addressed. It is submitted that Ms Douglas has suffered further humiliation and injury to her feelings because of the submission from Millbrook attributing the media attention to actions by Ms Douglas. Ms Douglas might be aggrieved by the apparently false accusation but it provides no basis for any reconsideration of the compensation awarded for her personal grievance based on Millbrook's failure to act as a fair and reasonable employer in ending the employment relationship.

[10] Costs are further reserved. If either party needs a determination on costs they may lodge and serve a memorandum within 28 days and the other party may lodge and serve a reply within a further 14 days.

Philip Cheyne  
Member of the Employment Relations Authority