

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 198/09
5158590

BETWEEN GAIL EADES
Applicant
AND HMS AIRPORT TERMINAL
SERVICES INC.
Respondent

Member of Authority: James Crichton
Representatives: Mark Henderson, Counsel for Applicant
Shauna McClelland, Counsel for Respondent
Investigation Meeting: 29 October 2009
Determination: 17 November 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Eades) claims to have been unjustifiably disadvantaged and unjustifiably constructively dismissed from her employment by the respondent employer (HMS). Both those claims are resisted by HMS.

[2] Ms Eades was employed as a cafeteria assistant at Christchurch International Airport by HMS with effect from 4 February 2009. She was paid an hourly rate of \$13 per hour and, by virtue of the roster system operated by HMS, her hours of work varied but approximated 30 per week.

[3] At a meeting between Ms Eades and two managers of HMS, Lynette Horne and Lynda Kerr held on 26 February 2009, Ms Eades alleges that she was told that her work was not up to scratch and that she must resign or be dismissed. Ms Eades also contends that because the same meeting was a disciplinary one, and she was not advised of that in advance, not told to bring a support person, and not advised of the

subject matter to be discussed, that HMS also disadvantaged her by unjustifiable actions in the holding of that meeting.

[4] For its part HMS acknowledges that the meeting took place but denies any wrongdoing. Its position is that Ms Eades resigned her position at that meeting having told work colleagues previously that she was unhappy in the job and contemplated leaving. HMS also contend that Ms Eades was offered the opportunity to withdraw her resignation the following day but declined to do so. HMS also deny wrongdoing in respect to the nature and extent of the meeting. HMS deny that the meeting was disciplinary in character and contend that the meeting was essentially a discussion about improving Ms Eades' performance and identifying any impediments to that performance and was *counselling* in tone rather than performance based or of a disciplinary nature.

[5] A personal grievance was raised by Ms Eades on 24 March 2009. A mediation took place between the parties but they were unable to resolve their differences. The matter then proceeded to the Authority in the usual way.

Issues

[6] The only issue for determination is what happened at the meeting between the parties on 26 February 2009. There are two competing views about the nature of that meeting and it is necessary to investigate what actually happened there.

What happened at the meeting on 26 February 2009?

[7] Ms Lynda Kerr an Assistant Manager of HMS was one of HMS's representatives at the meeting. Ms Eades frequently worked in Ms Kerr's team at the airport. Ms Kerr said that Ms Eades was enthusiastic in the beginning but did have some difficulty in picking things up. Ms Kerr was one of the people that Ms Eades told that she (Ms Eades) did not wish to work for HMS. I accept Ms Kerr's evidence on this point as truthful. I also accept Ms Kerr's evidence that Ms Eades told her that there were *too many bosses* at HMS. Ms Eades own evidence on this point is that she felt that she got conflicting instructions from different supervisors. This was a complaint that Ms Eades made to a number of people, including the Human Resources Manager, Ms Coe. Ms Coe raised it with Ms Kerr and Ms Kerr tried to clarify the issue again with Ms Eades.

[8] There was also an issue about an advance on Ms Eades' wages where she sought (unsuccessfully it turned out) an advance on her wages in order that she could get a warrant of fitness for her car and pay for the work necessary to get the warrant of fitness from her mechanic.

[9] Matters came to a head on the morning of 26 February 2009. Ms Kerr's evidence (which I accept) was that Ms Eades charged into Ms Kerr's office on that morning, said *you are all a pack of bitches* and repeated that she did not wish to be there.

[10] Ms Kerr tried to calm Ms Eades down by amongst other things giving Ms Eades a cigarette and telling her to enjoy a smoke outside. Ms Kerr subsequently joined Ms Eades (she also was a smoker) and Ms Kerr says that Ms Eades repeated the *bitches* comment and reiterated that she was only working for HMS because *WINZ forced her to*.

[11] Ms Kerr suggested to Ms Eades that the pair of them needed to sit down and chat about the issue and that discussion took place later that day. In the meantime, Ms Kerr had met Ms Coe, the Human Resources Manager and relayed to her the nature of the conversation. Ms Coe indicated that she would ring the broker at Work and Income New Zealand and report Ms Eades' apparent unhappiness.

[12] Ms Kerr then reported to Mr Haggerty, the Operations Manager. Mr Haggerty asked when Ms Eades' appraisal was due and having been told by Ms Kerr that it was due in a couple of weeks, Mr Haggerty suggested that Ms Kerr and Ms Horne should sit down with Ms Eades and find out what the problem was.

[13] Ms Horne came on shift later on and there was then a three-way discussion between Ms Horne, Ms Kerr and Mr Haggerty and the suggestion that Ms Horne and Ms Kerr meet with Ms Eades was confirmed by Mr Haggerty.

[14] Mr Haggerty has the employer's delegation to hire and fire and to undertake any formal disciplinary process with staff. Ms Horne and Ms Kerr had no such delegation.

[15] The meeting with Ms Eades proceeded early that afternoon. The evidence from HMS is that the two assistant managers raised the *bitches* comment with Ms Eades and three other more general matters, one of Ms Eades pulling faces,

another of her borrowing money and cigarettes from other staff and a third of failing to follow instructions. Ms Eades denies that any of those matters were raised and even denies the *bitches* comment. Ms Eades says that the meeting was simply a critique of her work performance and nothing else.

[16] Ms Kerr is adamant that the *bitches* comment was made, and I believe her. I cannot imagine why she would make up such an extraordinary claim if it was untruthful. There was no need for Ms Kerr to create a fictional observation in such a way and I believe her when she says that this is what Ms Eades said. I confess I did not find Ms Eades a believable or particularly trustworthy witness. It seemed to me that she simply quarrelled with any evidence that did not suit her argument.

[17] Ms Eades says that Ms Kerr told her that her work was not up to scratch and that she should resign her position or that she would be dismissed. Ms Kerr absolutely denies saying any such thing and points out amongst other things that she and Ms Horne had no authority to make such a proposal in any event. The only person who could have adopted that approach was Mr Haggerty or potentially his superior Mr Stansfield. But neither of those men met with Ms Eades at all on this final occasion. For the sake of completeness I confirm that I prefer the evidence of Ms Kerr to Ms Eades; I do not think that Ms Kerr threatened Ms Eades with dismissal unless she resigned.

[18] Ms Kerr's evidence was that she and Ms Horne discussed with Ms Eades how they might support her to achieve better results, including perhaps getting more training. However, Ms Kerr reports that Ms Eades seemed fixated on the prospect that she might be dismissed despite that not being in prospect. I think it likely that Ms Eades attended at the meeting with a fixed belief that she was in trouble and no amount of discussion with the two assistant managers disabused her of that erroneous belief.

[19] Ms Kerr reports Ms Eades asking, during the meeting, if she was being dismissed and was then reassured that that was not the case, but it simply does not seem to have sunk in. I accept that Ms Eades made the *pack of bitches* comment again during the meeting as Ms Kerr claims and that Ms Eades also said that she did not need the job and had only taken it because WINZ had made her.

[20] Ms Kerr reports (and I accept) that Ms Eades asked what would happen to her pay if she resigned and having been reassured that she would be paid up to the point of the resignation, she immediately took a pen and paper which was laid out in front of Ms Kerr (who had been taking notes) and wrote out her resignation. That resignation simply says:

I Gail Eades wish to resign from HMS Host as from today 26-2-09.

*G Eades
26.2.09*

[21] Again, I have to say that I do not accept Ms Eades' evidence that she was given a piece of paper by Ms Kerr and told to write out her resignation. I prefer Ms Kerr's evidence that the initiative came from Ms Eades.

[22] I am satisfied also that the day after these events took place, Ms Eades came into the workplace and met with Ms Kerr again and there was a discussion in which Ms Eades again claimed that she had been dismissed from her employment, a claim which Ms Kerr of course denied. Notwithstanding that exchange, Ms Kerr said that she offered Ms Eades the opportunity of withdrawing her resignation but Ms Eades did not want to. I am satisfied this exchange took place and that Ms Kerr's evidence on the matter is truthful.

[23] I note for the sake of completeness that Ms Horne did not give evidence in person. Ms Horne regrettably is seriously unwell and filed her affidavit in support of the employer's position in this matter. I declined to order Ms Horne to appear and give evidence and while her evidence has not been tested by the typical investigation meeting process, her affidavit is consistent with Ms Kerr's evidence and for its corroborative value alone, I think it proper to take account of Ms Horne's evidence. Despite that, my reliance is primarily on Ms Kerr's oral testimony before the Authority which impressed me as straightforward and truthful.

[24] I also think it proper to place some reliance on the evidence of Mr Haggerty, who although he was not directly involved in the meeting with Ms Eades, as the senior manager to whom the two assistant managers reported, was involved in determining the parameters of the meeting between Ms Horne and Ms Kerr on the one hand and Ms Eades on the other. Mr Haggerty told me (and I accept) that in the discussions he had with both Ms Horne and Ms Kerr there was no discussion at all

about dismissal and that the whole point of the meeting was to try to get to the bottom of what Ms Eades' concerns were about her employment and to help her to be a stable and contributing member of the staff. Mr Haggerty said in relation to the suggestion that Ms Horne and Ms Kerr had actively sought Ms Eades' resignation, that he ... *found it difficult to believe that either Linda or Lynette (Ms Kerr or Ms Horne) would agree to one thing in meeting with me and then do the reverse when they met with Ms Eades.*

[25] I was also struck by the evidence of Ms Eades herself who was adamant that Ms Horne, Ms Kerr and Ms Coe were all lying in what they told me, that the description given to me by Ms Horne and Ms Kerr of the 26 February meeting was also *a lie*, that she never used the description *a pack of bitches*, that she never burst into Ms Kerr's office, that she told no one at HMS that she did not want to work there, that the notes of the managers relating to the meeting on 26 February were manufactured, and that she was never offered an opportunity to withdraw her resignation.

[26] As I have already indicated, I did not find Ms Eades a credible witness; conversely, it seemed to me that the evidence of the employer was credible and that the various witnesses for HMS tended to corroborate the evidence of other such witnesses for the employer. Furthermore, I could find no basis on which HMS would derive a benefit from letting Ms Eades go. All HMS's evidence suggested that Ms Eades had the basics of the employment right, was capable of turning up at the crack of dawn, and was therefore reliable about the very early starts required, but that she seemed unhappy in her work and if that could be resolved, the evidence suggested that HMS believed she could be a useful member of the permanent team. Given the straightforward evidence from HMS that recruiting staff for those early starts was problematical particularly because their hourly rate structure was not especially attractive, it seems to me inconceivable that HMS would deliberately connive at a constructive dismissal of an employee who, they felt, had promise.

Determination

[27] I am satisfied on the balance of probability that Ms Eades has not proved either of her personal grievances. There is little doubt in my mind that her resignation was in truth a voluntary one, perhaps based on a misunderstanding about what might happen in the future. In essence, it seems to me axiomatic on the facts that Ms Eades

initiated the termination of the employment herself and that nothing which HMS did contributed in any material way to that event: *Wellington Clerical IUOW v. Greenwich* [1983] ERNZ SEL CAS95 applied.

[28] Further, I do not think there is a shred of evidence to suggest that the resignation was forced on the basis that it was resignation or dismissal, which is the claim that Ms Eades makes. There simply is no evidence to support Ms Eades's claim in this regard.

[29] The position is similar in relation to the allegation of Ms Eades having suffered a disadvantage as a consequence of unjustified actions of the employer. Applying the objective test required by s.103A of the Act, I am satisfied that the nature and extent of the 26 February meeting was simply not of the character that Ms Eades sought to have me believe, but rather was the kind of meeting which HMS described to me. It follows that I do not accept that Ms Eades was disadvantaged by that meeting at all and the fact that she chose to resign during the course of it was not a consequence of any improper conduct of HMS.

[30] It follows that Ms Eades's claims both fail in their entirety.

Costs

[31] Costs are reserved.

James Crichton
Member of the Employment Relations Authority