

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH OFFICE**

**BETWEEN** Carolyn Edmonds  
**AND** Glenelg Rest Home Ltd  
**REPRESENTATIVES** Jenny Beck Counsel for Applicant  
No appearance for Respondent  
**MEMBER OF AUTHORITY** Philip Cheyne  
**INVESTIGATION MEETING** Dunedin Tuesday 7 November 2006  
**DATE OF DETERMINATION** 10/11/2006

**DETERMINATION OF THE AUTHORITY**

***Employment Relationship Problem***

[1] Carolyn Edmonds worked for Glenelg Rest Home Limited from December 2005 until she was dismissed in February 2006. In a statement of problem lodged in August 2006, Ms Edmonds says that the dismissal is procedurally and substantively unjustified. A statement in reply was lodged on 12 September 2006. It says that Ms Edmonds was justifiably dismissed and a response was given point by point to the various factual allegations in the statement of problem. To resolve the problem, it is necessary to determine some major factual disputes.

[2] Arrangements were made with both representatives for a phone conference. Before the conference, the representative acting for the company wrote to the Authority to advise that it no longer had instructions, that the company had sold its business and that the director of the company had shifted to Australia.

[3] Mr Merton Fraser is the director of the company. Neither he or anyone else on behalf of the company made any attempt to contact the Authority after the withdrawal of the company's representative. The phone conference proceeded with just Ms Edmonds representative and arrangements were made for an investigation meeting.

***No appearance by the respondent***

[4] I am satisfied that the respondent was properly served with the statement of problem, the notice of directions made during the phone conference and the notice of the investigation meeting. Despite that, there was no appearance for the respondent at the investigation meeting.

[5] There being no good cause shown for the respondent's failure to attend, I proceeded with the investigation meeting.

***Justification for the dismissal***

[6] There is no dispute that Ms Edmonds was dismissed. Justification for that decision must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred.

[7] Ms Edmonds gave evidence on oath and responded to my questions. She impressed generally as reliable in her evidence. I am satisfied that her dismissal was not what a fair and reasonable employer would have done in the circumstances.

[8] Ms Edmonds received a warning on 13 February 2006. I have seen a copy of the letter given to Ms Edmonds by her supervisor (Renal Kennedy). Mr Fraser did not talk to Ms Edmonds about this matter and Ms Edmonds accepts that the warning was fair and reasonable.

[9] Ms Edmonds made arrangements for another employee to work a night shift for her starting on Saturday 18 February. There is some dispute about whether this was approved or whether there had been a specific instruction to Ms Edmonds not to do this. However, I see no reason to doubt Ms Edmonds' evidence that there had not been any such instruction, that the other employee agreed to cover the shift and that Ms Edmonds rang and told the weekend supervisor of the arrangements.

[10] Subsequently, Ms Kennedy learnt of these arrangements and there was some communication from the weekend supervisor to Ms Edmonds. Again, there is no reason to doubt Ms Edmonds' evidence that she told the weekend supervisor that she would attend for her Sunday shift as usual.

[11] Later, Ms Edmonds heard that her name had been removed from the roster. When Ms Edmonds went to work on Sunday, she was told by the weekend supervisor that Mr Fraser had given instructions for her name to be removed from the roster and for her to contact Mr Fraser on Monday. Later on Sunday evening, Ms Edmonds received a message asking her to come to a meeting at the rest home that evening and to bring her uniform. Ms Edmonds did not attend, partly because of the short notice, partly because her uniform was not clean but mostly because she was apprehensive about what would happen.

[12] Ms Edmonds did go into work on Monday 20 February 2006. Ms Edmonds saw Mr Fraser there but he disappeared leaving Ms Kennedy to talk to Ms Edmonds. I accept Ms Edmonds' evidence that she asked Ms Kennedy why her name had been removed from the roster and was told that she was unreliable and could not be trusted. Ms Edmonds said that they could not do that but Ms Kennedy did not relent. Ms Edmonds left the office and was told by Ms Kennedy that she was not welcome back on the premises. Ms Edmonds says and I accept that she was dismissed as a result of this exchange. She left.

[13] Later on Monday 20 February, Mr Fraser left a message for Ms Edmonds that he wanted to meet with her and her lawyer on Wednesday 22 February. Mr Fraser had apparently received a report that Ms Edmonds was getting advice about what had happened. Ms Edmonds instructed a solicitor to represent her and confirmed arrangements for the meeting. The meeting took place on Wednesday 22 February 2006 at about 9.00 am at the rest home.

[14] I have been given the notes made by Ms Edmonds' solicitor during the brief meeting on 22 February 2006. There is no reason to doubt that they convey an accurate picture of what happened at the meeting. The solicitor, Ms Edmonds and Mr Fraser were present. Mr Fraser referred to the earlier warning. There is no dispute about justification for that warning. He then said that Ms Edmonds had been instructed not to get other staff to work for her and produced an unsigned letter dated 14 February 2006 warning her on precisely that point. Ms Edmonds said that she had never seen that letter before or received the warning that it conveys. Mr Fraser called her a *liar* and an *absolute liar*. He said he could not trust her and he dismissed her. Ms Edmonds protested that she had already been dismissed but Mr Fraser claimed that there had been no dismissal on the Monday. The meeting ended. Mr Fraser several times told Ms Edmonds that she was not welcome on the premises ever again.

[15] Ms Edmonds' evidence which I accept is she saw the unsigned letter dated 14 February 2006 for the first time at this meeting and that she had never been given any warning regarding the issues complained of in the letter.

### ***Justification***

[16] The employer apparently had a concern about whether Ms Edmonds had misconducted herself by making the arrangements she did over cover for the Saturday night. A fair and reasonable employer would have given her notice of this concern and made arrangements to discuss with her the sequence of events including any relevant work rules and earlier incidents. That required some direct communication with Ms Edmonds. Ms Edmonds was entitled to an opportunity to explain or mitigate. These things did not happen.

[17] A fair and reasonable employer would not have removed Ms Edmonds from the roster for Sunday night leaving her to hear a rumour to that effect and for it to be confirmed upon her arrival to begin her shift.

[18] The inference from the message for Ms Edmonds to bring her uniforms with her to the Monday meeting is that the employer intended to dismiss her. As noted above, Ms Edmonds was dismissed by Ms Kennedy on Monday. There was a complete failure to give her any chance to explain or mitigate. That too supports my finding of predetermination. A fair and reasonable employer would not have predetermined its decision.

[19] The purported dismissal on Wednesday is no more than a sham to try and rescue the company from the consequences of its unjustified action in dismissing Ms Edmonds on the Monday. Even if that conclusion could not be supported by the evidence, it is clear that the Wednesday meeting was conducted in a manner that falls far below the standard of a fair and reasonable employer. Ms Edmonds was not given an opportunity to explain.

[20] For the foregoing reasons, I find that the dismissal is unjustified and that Ms Edmonds has a personal grievance.

### ***Remedies***

[21] There is a claim for \$300.00 being the lost wages. Ms Edmonds was able to find other work quickly. I order Glenelg Rest Home Limited to pay Ms Edmonds compensation of \$300.00 for lost remuneration.

[22] There is a claim for compensation for distress amounting to \$8,000.00. Ms Edmonds gave evidence about the stress and trauma caused by being dismissed for no good reason in such a brutal manner. In particular, she was distressed by the repeated instructions not to

return to the premises given in circumstances where residents, who she had cared for, could overhear. Ms Edmonds is also upset because of the underhand attempt to contrive justification for the dismissal. However, the effects have not been devastating or long lasting because Ms Edmonds was able to find other work so promptly and the employment was of short duration. In the circumstances, she is entitled to an award of \$6,000.00 to compensate her for the proven distress.

[23] In the absence of evidence from the company I cannot reach any positive finding that Ms Edmonds contributed in a blameworthy manner to a situation giving rise to the grievance. Mr Fraser apparently took exception to Ms Edmonds arranging her own replacement. There is also a suggestion that Ms Edmonds misrepresented the situation to the weekend supervisor. However, there is no reliable evidence to warrant a finding of blameworthy conduct by Ms Edmonds.

[24] There is a claim for costs. The meeting lasted a little over half an hour, a statement of problem (with fee) and a reasonably brief statement of evidence were lodged and the statement in reply had to be reviewed. Some document preparation was required. In these circumstances, I order Glenelg Rest Home Limited to pay Ms Edmonds \$500.00 as a contribution to these costs.

Philip Cheyne  
Member of Employment Relations Authority