

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Paulette Ford (Applicant)
AND Nadetwa Clothing Limited (Respondent)
REPRESENTATIVES Paul Brown, Advocate for Applicant
Frank Wall, Advocate for Respondent
MEMBER OF AUTHORITY Philip Cheyne
INVESTIGATION MEETING 14 December 2004
DATE OF DETERMINATION 28 January 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Paulette Ford says that she was unjustifiably dismissed from her employment with Nadetwa Clothing Limited (Nadetwa). Nadetwa says that Mrs Ford simply resigned.
- [2] Despite mediation, the parties were not able to resolve the problem.

Facts

- [3] Mrs Ford worked fulltime for Nadetwa as a machinist from April 2000 until the termination of her employment on 16 April 2004. Nadetwa is a small family owned clothing factory with a loyal and long serving workforce. With the exception of the circumstances of the termination of her employment, Mrs Ford enjoyed a good working relationship with other employees and with the business owners.
- [4] Nadetwa is owned by Kees Van Beers and Johanna Van Beers and both are actively involved in the daily management and operation of the business. Mr and Mrs Van Beers emigrated from the Netherlands to New Zealand in 1982. English is not their first language.
- [5] Mrs Ford's poor state of health in the lead up to the termination of her employment was apparent to Mr and Mrs Van Beers and her work colleagues. There was evidence that Mrs Ford was sometimes taken home from work because of her poor health, that she sometimes needed a walking stick to get around work and that she could only move slowly. Mrs Ford gave evidence about health problems over the last few years but said that they did not affect her work performance and that she had never received any warnings for poor work performance. I accept that no warnings were ever given to Mrs Ford. It is clear that Nadetwa did not see this matter as a disciplinary issue. There was a personal concern for Mrs Ford's state of health and whether her continued work made her health worse.

[6] In the several months leading up to the termination of Mrs Ford's employment, Mrs Van Beers had several discussions with Mrs Ford about her health and the possibility of her retiring. From Mr and Mrs Van Beers' observations, Mrs Ford's state of health was becoming worse so they agreed that Mr Van Beers should talk to Mrs Ford. On 31 March 2004, Mr Van Beers asked Mrs Ford to see him. They met in Mr Van Beers office for about 10 or 15 minutes that morning. No-one else was present or overheard the conversation.

[7] Mr Van Beers started by saying that it was difficult but he had to talk to Mrs Ford about a matter. He observed that her health had been going down-hill and that staff were concerned about her. He said that maybe it was a good idea for her to retire, go to WINZ and get a sickness benefit. Mrs Ford said that she thought she was not entitled to a benefit because her husband was working. Mr Van Beers said that he understood that it was everyone's right to get a sickness benefit and Mrs Ford said that if she had known that, she would have retired years ago. Mrs Ford said that she would go to the doctors and WINZ to see what they could do. Mr Van Beers said for her to ...*take 4, 5, 6 weeks – as long as it takes...* but that she had to do something because otherwise ...*you might drop dead in the factory*. The meeting then ended. Mrs Ford confirmed in evidence that Mr Van Beers's demeanour during the brief discussion was no different from his usual self and that she had always got on well with him. In evidence, Mrs Ford also said that Mr Van Beers told her that he was firing her but I find that she is mistaken about that.

[8] Mrs Ford did go to her doctor within a day or so of this discussion but I accept that was for her usual tablets. She also made an appointment to see WINZ. Mrs Ford told Mrs Van Beers about going to the doctor and she also told Mr Van Beers that she had received some papers from WINZ. As a result of this exchange, Mr Van Beers thought that his understanding about Mrs Ford's benefit entitlement was correct.

[9] However, the WINZ appointment was cancelled by WINZ and Mrs Ford did not make another one. By that time, Mrs Ford had been told by several people that her employer could not dismiss her in the circumstances as recounted by Mrs Ford and she was also told by her sister to get the reasons in writing for the dismissal. Mrs Ford also understood that a benefit application could not be processed while she was still in employment. All that combined into her asking Mr Van Beers to confirm her finish date for her benefit application and to put the reasons for the termination of her employment in writing. Mr Van Beers and Mrs Ford talked about an appropriate finish date and agreed on 16 April 2004. Mr Van Beers then wrote a note as follows:

*TO WHOM IT MAY CONCERN
PAULETTE FORD*

PAULETTE HAS BEEN EMPLOYED WITH ME FROM 12/4/00

*HER HEALTH IS IN THE LAST 6 MND'S GONE DOWN SO FAR THAT I HAVE NO OTHER
CHOICE THAN TO LAY HER OF ON THE 16/4/04*

*SEVERAL TIMES IN THE PAST 6 MND'S ONE OF MY STAFF HAD TO DRIVE HER HOME
BECAUSE SHE WAS NOT BE ABLE TO DRIVE HERSELF*

*LAST WEEK SHE CAME TO WORK ON A WALKING STICK BECAUSE SHE WAS NOT BE ABLE TO
WALK BY HERSELF*

I AM CONCERNED THAT ONE DAY SHE WILL GET SOMETHING AT WORK

HER PRODUCTION IS AROUND 50% AT THE MOMENT

*YOURS FAITHFULLY
C. VAN BEERS
(signed)*

[10] Mrs Ford did finish up on 16 April 2004 and there was the usual ceremony that day to mark her departure.

[11] There was nothing between 31 March 2004 and 16 April 2004 to cause Mr and Mrs Van Beers to think that Mrs Ford's departure was anything other than a consensual arrangement. However, Mrs Ford sought advice from Employment Dispute Services who wrote a letter dated 23 April 2004 on her behalf to Nadetwa setting out her personal grievance claim. The letter particularly referred to the claim that Mrs Ford's production was at only 50%, that there had been no forewarning of the meeting on 31 March 2004 which was characterised as disciplinary, and that Nadetwa had no objective basis for its view about Mrs Ford's medical situation. The letter said *If you dispute this view of events, please reply in writing. This may prevent matters going further.* A claim for compensation and other monies was made.

[12] Mr Van Beers wrote back on 26 April setting out his account of the relevant events. He also contacted his own representative who wrote to Employment Dispute Services on 29 April 2004. The letter expressed the view that the meeting on 31 March had not been disciplinary, that the matter was not a *performance issue* and that Mrs Ford had nominated the termination date and asked for a letter for her WINZ application. It was suggested that Mrs Ford may have changed her mind about leaving and the letter conveyed an offer to reinstate Mrs Ford to her former position and consider paying a contribution towards her reasonable (legal) costs. Mr Van Beers also said in evidence, and I accept, that they would have reinstated without any loss of wages on Mrs Ford's part.

[13] I asked Mrs Ford why she did not accept the offer of reinstatement. She told me that she did not because she thought it was *not a very good atmosphere*. She had been advised that she did not have to accept the offer of reinstatement so she did not *due to the atmosphere*. I find that, as at April 2004, the relationship between Mrs Ford and Mr and Mrs Van Beer was mostly unaffected by the events from 31 March 2004. Mrs Ford could easily have returned to work and the relationship could have continued without any difficulty.

[14] The medical evidence proffered by Mrs Ford is that her illnesses are usually well controlled and she is quite capable of working as a machinist.

Analysis and Conclusion

[15] The first issue is to determine whether Mr Van Beers dismissed Mrs Ford on 31 March 2004. I find that he did not. His was a well intentioned approach out of concern for Mrs Ford's well being in order to raise the possibility that she might finish work and claim a sickness benefit. He did not give Mrs Ford notice of dismissal and the matter was left in her hands to make inquiries of her doctor and WINZ.

[16] The initiative next came from Mrs Ford in conveying to Mr Van Beers that WINZ would not progress any benefit application while she remained in work so she required a date for finishing her employment. Mrs Ford suggested 16 April and Mr Van Beers agreed. At that point, the employment relationship was to terminate on 16 April 2004 by mutual consent. That is not a dismissal. The phrase in the 5 April 2004 letter *...I have no other choice than to lay her off on the 16/4/04* did not alter the reality of what had been agreed. The wording of the letter is perhaps unfortunate but is unsurprising from someone such as Mr Van Beers.

[17] Because Mrs Ford was not dismissed, she is not entitled to any remedies. There is however a second reason which on its own would have caused me to decline any remedies for Mrs Ford.

[18] It became apparent to Mr and Mrs Van Beers that there was a problem with what they thought had been agreed for Mrs Ford's best interests and they promptly offered to reinstate her. There are cases where such offers have been seen as an answer to any personal grievance claim so disentitling an applicant to remedies: see for example *NZ Engine Drivers etc IUOW v West Coast Area Health Board* [1990] 1 NZILR 619 and *Finau v Carter Holt Building Supplies* [1993] 2 ERNZ 971. Generally, in those cases, the underlying rationale relates to a failure on the part of the applicant to properly mitigate their loss where they have unreasonably declined a genuine offer of reinstatement.

[19] The Employment Relations Act 2000 emphasises that employment involves more than a contractual relationship. The Authority is obliged to support successful employment relationships and further the objects of the Act, which include promoting good faith and reducing the need for judicial intervention. There is no doubt that Mrs Ford's had been a successful employment relationship and there would have been no need for judicial intervention if she had accepted the prompt and genuine offer of reinstatement. In the same way that an employer cannot necessarily rely on a resignation which an employee quickly seeks to revoke, an employee should not necessarily be able to rely on the consequences of a dismissal (if such had happened to Mrs Ford) which is quickly and genuinely rescinded.

Summary

[20] For the reasons expressed above, I find that Mrs Ford does not have a grievance and if she did, I would not award any remedies in her favour.

[21] Costs are reserved.

Philip Cheyne
Member of Employment Relations Authority