IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA139/08
5103089

	BETWEEN	JENNIE GAMBLE Applicant
	AND	AGRESEARCH LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Francis Wall, Advocate for Applicant Philip Skelton, Counsel for Respondent
Submissions received:	25 May 2008 from Applicant 16 June 2008 from Respondent
Determination:	18 September 2008

DETERMINATION OF THE AUTHORITY

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[1] Jennie Gamble was made redundant from her position as a technician for Canesis Network Limited at the end of 2006, bringing to an end a period of service spanning some 34 years.

[2] Mrs Gamble was clearly a skilled and valued technician but Canesis no longer required her services in that position because it had sold the business to another company, that is AgResearch Limited.

[3] AgResearch offered employment to 100 of the 117 staff previously employed by Canesis in the business. Mrs Gamble was one of the 17 employees not offered jobs. Instead Canesis made her redundant.

[4] She worked some of her notice period but was then paid for the balance of that period, along with three months pay as additional notice and a further 44 weeks' salary as redundancy compensation.

[5] Some three months later AgResearch advertised a vacancy for a job that Mrs Gamble says was the same or similar to her previous position with Canesis.

[6] She seeks to contest AgResearch's decision not to employ her. Her personal grievance application seeks remedies from AgResearch of reinstatement, distress compensation and payment of lost remuneration.

[7] AgResearch says that, having never employed Mrs Gamble, she has no standing to raise a personal grievance against it. Further, it denies the position advertised in March 2007 was the same as Mrs Gamble's previous job at Canesis. It also notes that Mrs Gamble did not even apply for the advertised position.

The issue

[8] The Authority must determine as a preliminary question whether Mrs Gamble does have standing to pursue her grievance against AgResearch. It is a legal question over whether Mrs Gamble's circumstances come within the statutory definition of an employee in order to be able to pursue a personal grievance about an action of their employer or former employer.

[9] With the agreement of the parties, this preliminary question is decided on the basis of the statement of problem and the statement in reply and the written submissions lodged by their representatives.

[10] I record that those documents set out the background of Mrs Gamble's employment by Canesis, including the process of notification and consultation followed by it before she was advised of her redundancy. For the purposes of this determination I have not needed to set out more about the relationship between Mrs Gamble and Canesis. The present matter concerns only what may be investigated of the relationship, if any, between Mrs Gamble and AgResearch.

Does Mrs Gamble have standing as an employee?

[11] Mrs Gamble's advocate set out his argument in a 21-page statement of problem and a 15-page submission – most of which is a general critique of orthodox

tenets of New Zealand employment law. In the course of this exposition Mr Wall asks this particular question about Mrs Gamble's case: "*How can she possibly bring a personal grievance against a company she has never even worked for?*"

[12] The answer is she cannot. The reasons for that view are set out in the submissions of AgResearch's counsel which I accept entirely. I summarise them below.

[13] To have standing to pursue a grievance against AgResearch, Mrs Gamble would need to have been an employee of that company. This is because s103(1) of the Employment Relations Act 2000 ("the Act") defines a personal grievance as being "*any grievance that an employee may have against the employee's employer or former employer*" (emphasis mine).

[14] Neither does she meet the extended definitions of employees also given in s6 as being either a homeworker or a person intending to work. The latter category applies only to those who have been offered and accepted work by the employer and there is no dispute that AgResearch did not offer employment to Mrs Gamble.

[15] Mrs Gamble's advocate submits that Part 6A of the Act applies to Mrs Gamble's circumstances. It does not. Her work and position at Canesis did not involve providing any of the services for which the statutory right of election to transfer to a new employer is created for certain categories of employees as specifically set in Schedule 1A of the Act.

[16] Neither do the provisions of subpart 2 of Part 6A of the Act, regarding other employees, create any other statutory right of election or transfer for Mrs Gamble as there is no information suggesting that Canesis negotiated with AgResearch for the transfer of staff as a condition for sale of the business.

[17] For these reasons, I confirm that the Authority cannot proceed to investigate and determine the Applicant's personal grievance application because she was not an employee of AgResearch and does not have standing to pursue such an application against it. The application is dismissed.

Costs

[18] AgResearch seeks an order that Mrs Gamble pay $1000 as a contribution to its costs in replying to this application. It advised in its statement in reply in November 2007 that costs would be sought. Applying the conventional principles and the usual tariff-based approach of the Authority I accept an order for costs of that sum is probably appropriate but provide an opportunity for Mrs Gamble to be heard before costs are determined.

[19] If she wishes to do so, Mrs Gamble may lodge a memorandum on costs within 14 days of the date of this determination. The Authority will then determine costs.

Robin Arthur
Member of the Employment Relations Authority