

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

[2012] NZERA Christchurch 235  
5325544

BETWEEN            KERRI GRAY  
                                 Applicant

AND                    MURRAYS VETERINARY  
                                 CLINIC LIMITED  
                                 Respondent

Member of Authority:    Helen Doyle

Representatives:        Ben Nevell, Counsel for Applicant  
                                 John Farrow, Counsel for Respondent

Submissions received:    28 September 2012 from Respondent  
                                 8 October 2012 from Applicant

Determination:            29 October 2012

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**PRELIMINARY DETERMINATION OF THE AUTHORITY  
WITH RESPECT TO ADMISSIBILITY OF EVIDENCE**

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[1]    I determined an earlier issue on this file about the admissibility of a letter in this employment relationship problem in determination [2012] NZERA Christchurch 192. Member David Appleton will be the member investigating the substantive issues between the parties.

[2]    Mr Farrow has asked that another issue regarding the admissibility of evidence of Bronwyn Miles be placed before another member for determination prior to the substantive investigation meeting commences. Member Appleton was prepared to allow submissions to be made for that purpose.

[3]    Submissions have now been received from Mr Farrow and Mr Nevell.

**The submissions**

**The respondent's submissions**

[4] Mr Farrow submits that Ms Miles evidence is propensity evidence and that when compared with the specific claims made by the applicant do not have a tendency to prove or disprove the applicant's claims as the circumstances are of an entirely different nature. He accepts that there appears to be what he describes as peripheral similarities but submits they do not amount to anything of consequence.

[5] Mr Farrow submits that the Authority has, in a determination dealing with whether Ms Miles grievance was raised within 90 days and an application to extend time already made credibility findings – *Miles v Murrays Veterinary Clinic Limited* CA 164/09 Member James Crichton. Mr Crichton found that Ms Miles had not raised her grievance within time and that it was not just to grant leave to bring the grievance out of time. Mr Farrow submits it would be improper for the Authority to allow the same evidence again in a fresh proceeding.

[6] Mr Farrow acknowledges s160(2) of the Employment Relations Act 2000 that enables the Authority to take into account such evidence and information as in equity and good conscience it thinks fit whether strictly legal evidence or not. He submits that the Authority should also be guided by the provisions of the Evidence Act 2006 and refers to sections 7 and 8 of that Act. He submits that the evidence is not relevant and therefore inadmissible. He submits the evidence lacks detail and is of insufficient probative value to justify its admission. Further he submits there is a risk it will have an unfairly prejudicial effect on proceedings and will needlessly prolong the proceedings. For those reasons he submits the evidence is inadmissible.

### **The applicant's submissions**

[7] Mr Nevell submits that the evidence of Ms Miles is relevant as it tends to show a propensity for the respondent to act in a particular manner and it is relevant therefore to the applicant's claims and remedies.

[8] He submits that any issues the Authority may have around the prejudicial and probative value of the evidence should be left to the Authority member investigating the matter to deal with.

[9] Mr Nevell submits that there was no determination of credibility of Ms Miles evidence in Member Crichton's determination because the sole issue was whether Ms Miles had raised a grievance within time or should be given leave to raise outside of the time period.

[10] He submits that the evidence would not be unfairly prejudicial and if probative then deserved time spent on it and, if not, then the Authority member can conduct his investigation accordingly.

### **Determination**

[11] The Authority under s 160(2) of the Act is able to take into account such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not. *The Authority* under that subsection means the member who is investigating the matter and that is Member Appleton.

[12] Mr Farrow wants another member to reach a view on whether Ms Miles evidence should be taken into account. He raises concerns about relevancy and prejudice. I accept Mr Nevell's submission that any concerns about the prejudicial or probative value of Ms Miles evidence should be left for Member Appleton to decide under s160(2) of the Act.

[13] The investigation meeting is now only a few weeks away. Mr Appleton should be given a copy of the submissions I have had to read as well as Ms Miles evidence. If there are any issues arising for Mr Appleton then he will no doubt deal with them at an appropriate time during the investigation meeting.

### **Costs**

[14] Mr Nevell has asked that costs be fixed. Costs are normally reserved in the Authority. I am inclined to think it more appropriate that they be dealt with after the substantive determination and accordingly I reserve them on that basis.

Helen Doyle

Member of the Employment Relations Authority