

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Puti Hauraki (Initiating party)  
**AND** Te Awa O Te Ora Trust (Responding party)  
**REPRESENTATIVES** Jeff Goldstein, Counsel for Initiating party  
Ian Thompson, Advocate for Responding party  
**MEMBER OF AUTHORITY** Helen Doyle  
**INVESTIGATION MEETING** 21 January 2005  
**DATE OF DETERMINATION** 25 January 2005

DETERMINATION OF THE AUTHORITY

[1] The applicant, Puti Hauraki, had her employment terminated by the respondent, Te Awa O Te Ora Trust ("the Trust") on 1 December 2004. Ms Hauraki seeks interim reinstatement to her former position as Manager of the Trust. She had been employed with the respondent since 14 January 2002. Ms Hauraki provided the required undertaking with respect to damages.

[2] The Trust operates to provide welfare and assistance to Maori with mental health illness and is funded by the Ministry of Health and the Canterbury District Health Board. In her former role as Manager Ms Hauraki reported to the Trust Board. Employees reported directly to Ms Hauraki. Clients were able to report any concerns or queries directly to the Board.

[3] The respondent opposes Ms Hauraki's reinstatement to the Trust.

[4] The application for interim reinstatement was dealt with on the basis of the affidavits filed and submissions that I heard at the investigation meeting.

[5] The following facts are supported by the documentation and are not in dispute from my reading of the affidavits.

[6] Ms Hauraki was asked by letter dated 15 October 2004 to attend a meeting to discuss allegations that she had not been performing her duties to the required standard. The specific allegations in that letter were specified to be:

- .....
- *The board has received reports that other members of staff are fearful of your behaviour. We are currently carrying out an investigation into these allegations. You will be advised at your meeting the outcome of this investigation.*
  - *Sustained incompatibility.*



- *Failure to take the steps to ensure a safe and healthy work place for yourself and others.*
- *Aggressive management style.*

.....  
The letter advised that Ms Hauraki had a right to have a support person or representative at the meeting.

[7] Notes were provided to Ms Hauraki prior to the meeting about a discussion between Robert Thompson, who represented the Trust and two employees of the Trust including Jill Greig.

[8] A meeting duly took place on 29 October 2004. Ms Hauraki was represented by Mr Goldstein. Her husband also attended. Mr Thompson and Matiu Te Huki, the chairperson of the Trust was present with Garry Mackay, a board member.

[9] There was no decision made at the conclusion of the meeting.

[10] On 5 November 2004 Mr Thompson sent a further letter to Ms Hauraki raising three further allegations. The first was that Ms Hauraki misled the disciplinary meeting with untrue information, the second that she sought the address of an employee in order to visit that employee at home and give the employee instructions and the third was that she had breached instructions not to discuss issues with staff. There was a request in the letter to have a further meeting to discuss the matters.

[11] In a letter dated 15 November 2004 Mr Goldstein sought further details of the allegations contained in Mr Thompson's letter of 5 November and raised a grievance on Ms Hauraki's behalf of unjustified action causing disadvantage.

[12] In a letter dated 18 November 2004 Mr Thompson wrote to Mr Goldstein and advised that Ms Hauraki would, in the interest of health and safety, be on paid garden leave until Monday 29 November 2004, such leave commencing at the end of the working day of 18 November. He referred in his letter to the situation becoming untenable in the employment environment given issues of incompatibility and disruptive actions.

[13] Mr Goldstein responded by letter dated 19 November 2004. He expressed on Ms Hauraki's behalf concern about the Board's unilateral decision to place his client on garden leave. He sought details of the allegations of incompatibility and disruptive actions and suggested a way forward for the whole Board, the management team and Ms Hauraki to meet and discuss all areas of concern.

[14] Mediation with a mediator from the Employment Relations Service took place on 24 November 2004. Matters were not resolved.

[15] On 27 November 2004 Mr Thompson wrote a handwritten facsimile to Mr Goldstein advising, amongst other matters, that the *garden leave* was to be extended to 5pm Tuesday 30 November 2004.

[16] On 1 December a Board member of the Trust delivered to Ms Hauraki at her home a letter of dismissal. The letter provided the reasons for dismissal as below:

*Dear Puti*

*You are aware that the Trust, over the last two months, has consulted with you on the break down of the employment relationship.*

*We have tried meetings, letters and mediation to find a way forward.*

*The problems between us are as follows:*

- *You have not presented us with a contract re Chelsea whilst Chelsea was in an acting management role while you were away in Australia.*
- *You did not provide your staff with positive team building strategies within the two month time frame.*
- *You have not been attending supervision twice per month until further notice, as required by the Board.*
- *You ignored instruction given by the Board to write to the Australian Immigration authorities regarding the inappropriate treatment of the tangata whaiora deported by the Australian Immigration Authority.*
- *Failing to accept a formal request from the Board of Trustees asking you to provide the Administrator with access to all necessary records and office equipment to enable her to furnish a full monthly financial report.*
- *Due to the above decision you crossed your professional boundaries by providing the Like Minds Like Mine team with financial assistance from your personal monies.*
- *You failed to advise your Lawyer of your intentions to ask a tangata whaiora to uplift property from Te Awa O Te Ora namely Like Minds Like Mine presentation equipment. This caused anxiety between staff and tangata whaiora which raised concerns of safety within Te Awa O Te Ora. On your request a taiaha and patu were returned.*

*We are entitled to have trust and confidence in you as our Manager. We have reached the point whereby it is a unanimous decision of the Board to terminate your employment which will take effect as of 1 December 2004.*

.....  
*Yours sincerely*

*Matiu Te Huki  
 Chairperson  
 Te Awa O Te Ora Trust*

### ***Determination***

[17] An injunction requires the exercise of a discretion. It is recognised that the answer to an interim injunction is not in the rigid application of a formula but there are two broad enquiries; first whether there is a serious issues to be tried and secondly, where the balance of convenience lies. The final question requires the Authority to stand back and ascertain where the overall justice lies – *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA).

[18] I have little difficulty in this matter in concluding that there are serious and arguable issues from the affidavit evidence.

[19] There is an issue as to whether Ms Hauraki's suspension was justified and the reasons for the suspension.

[20] There is an arguable issue as to whether the alleged issues of incompatibility were put to Ms Hauraki with sufficient particularity to enable her to respond to them and whether such issues of incompatibility formed part of the reason for Ms Hauraki's dismissal.

[21] It is strongly arguable that Ms Hauraki was dismissed summarily on 1 December 2004 for matters that were not put to her for her explanation. There are arguable issues with respect to procedural and substantive fairness in that respect and whether there was compliance with the disciplinary process set out in the employment agreement between Ms Hauraki and the Trust.

[22] I am satisfied that there is an arguable case on the basis of the untested affidavit evidence with respect to unjustified suspension and unjustified dismissal.

***Balance of convenience***

[23] The Authority is required to look at the relevant detriment or injury that the parties will incur as a result of the interim injunction being granted or not in terms of considering the balance of convenience. That involves weighing up the hardship to Ms Hauraki if interim relief is not granted and I then determine that she has a just case and the hardship to the Trust if interim relief is granted and it were later found to be justified in acting as it did.

[24] Ms Hauraki has lost her position of manager and her income. She deposes in her first affidavit to her financial commitments and to the fact that her husband has retired. Ms Hauraki has commitments in terms of rent, car payments and living expenses. Ms Hauraki says that if she is reinstated then she will be prepared to take instruction as required and to fully co-operate with the Board.

[25] Ms Hauraki has already been without an income from 1 December 2004. Although I put the possibility of an early February date to the representatives for a substantive hearing Mr Goldstein was unavailable that particular week. I also have to consider the time between the matter being dealt with on a substantive basis and the issuing of a determination which could be a delay of several weeks.

[26] The respondents' affidavits depose to difficulties if the applicant returns. Several of the respondents' affidavits refer to the applicant's commitment and caring nature with respect to clients but consider her management ability to be lacking. One of the particular issues that I have to weigh up carefully in this case is the practical difficulty of Ms Hauraki and Ms Greig working together. There are issues between the two clearly from the affidavit evidence before me and they will need to be worked through probably with the intervention of a third party if Ms Hauraki is reinstated.

[27] Mr Thompson also submitted that the Trust does not have the ability to pay compensation which is another matter that I have to take into account.

[28] I am acutely aware of how the Board members and Ms Greig view the possibility of Ms Hauraki's reinstatement from reading the affidavits. They have concerns for the future of the Trust. Against that however I have weighed that Ms Hauraki has deposed that she will co-operate with the Board including following instructions and in her affidavit in reply has said *I will be loyal to the Trust and diligent on all matters relating to decision making and respectful of the kaupapa*. I have also weighed these concerns with the fact that Ms Hauraki is without a job or an income and that the Trust is not in a position to pay compensation. Weighing up therefore the matters that I have set out and the other points made to me in submissions I am of the view that the balance of convenience favours Ms Hauraki.

[29] I now stand back and look at the overall justice of the case and have regard to it in a more general way. Although I am aware that the evidence is untested I have considered the relative strengths of the cases of the applicant and respondent and conclude that the applicant's arguable

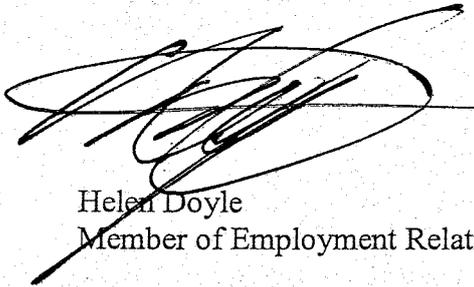
case of unjustified dismissal is a strong one. I have regard to the fact that reinstatement is now the primary remedy under the Employment Relations Act 2000 and that the balance of convenience favours Ms Hauraki. I have also considered that Mr Goldstein said he would co-operate to have the substantive matter investigated promptly. I am satisfied that the overall justice favours the applicant.

[30] I make an interim reinstatement order that Ms Hauraki be reinstated on Thursday 27 January 2005 to the position of manager of the Te Awa O Te Ora Trust. I have delayed the reinstatement for a short time so that consideration can be given as to how best to deal with the working arrangements between Ms Greig and Ms Hauraki including third party intervention if necessary.

[31] A support officer will contact Mr Goldstein and Mr Thompson within the next few days to arrange a telephone conference so that the matter can be set down for a substantive investigation meeting.

*Costs*

[32] I reserve the issue of costs to be dealt with after the substantive matter has been determined.



Helen Doyle  
Member of Employment Relations Authority



10/1/05