

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 111
5293803

BETWEEN TRACY HILL
Applicant

A N D TURNERS & GROWERS
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Georgina Burness, Advocate for Applicant
Penny Swarbrick, Counsel for Respondent

Investigation Meeting 18 May 2011 at Christchurch

Date of Determination: 29 July 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Hill) alleges that she was unjustifiably dismissed from her employment by the respondent (Turners & Growers) on 23 December 2009 and that she also suffered disadvantage as a consequence of allegedly unjustified actions of Turners & Growers as well.

[2] Those claims are resisted by Turners & Growers.

[3] Ms Hill was employed by Turners & Growers in its Christchurch branch and had been employed there since March 2007. There is a dispute between the parties as to the nature of her role at Turners & Growers, but her employment agreement refers to her position as a Grade 3 Store Person. That role included some quality assurance tasks.

[4] A final written warning was given to Ms Hill on 28 September 2009 for the misuse of the company's IT system. The final written warning was expressed to be

“alive” for a 12 month period and therefore was still in force at the time of Ms Hill’s dismissal.

[5] There was a restructure in the Christchurch branch in the second half of calendar 2009 which amongst other things created the role of Quality Assurance Controller. Ms Hill applied for that position but was unsuccessful. Another employee, Ms Jude Will was appointed to the position and that decision was announced by the employer on 18 November 2009. The following day, Ms Hill made clear her distaste at the new appointment and walked off the job. Turners & Growers counselled Ms Hill, but did not take disciplinary action as a consequence of her behaviour.

[6] On 15 December 2009 Ms Hill left work before her stipulated finish time and she was spoken to about that early departure the following day. Again, Ms Hill was counselled by Turners & Growers but no action was taken against her.

[7] On 18 December Ms Hill again left the workplace before the end of her stipulated time. An investigation commenced the following Monday (21 December) and a disciplinary process was initiated by Turners & Growers which resulted in Ms Hill’s dismissal for cause.

Issues

[8] The central issue for determination is whether Turners & Growers were justified in reaching the conclusion that they should dismiss Ms Hill. However, there are subsidiary issues that also need to be dealt with. The first of these is Ms Hill’s contention that she was employed as “a quality controller” and the second is her claim that she was subjected to disadvantage in the consequence of unjustified actions of Turners & Growers. I deal with the subsidiary issues first in the succeeding sections.

What was Ms Hill’s role?

[9] This matter can be quickly disposed of because it bears not at all on the central claims made by Ms Hill. However, as she has raised it and seems to be wedded to her conclusion on the matter, it is appropriate that the Authority dispose of it.

[10] Ms Hill’s evidence, as I have just noted, is that she was employed as a quality controller. This is simply not right. Ms Hill was employed as a Grade 3 Store Person

as her employment agreement sets out. That role of Grade 3 Store Person contains some quality assurance tasks, but it is not a quality controller role as Ms Hill asserts.

[11] Ms Hill acknowledged that she had signed the employment agreement when she commenced her employment and a copy of that documentation was made available to the Authority as part of its investigation. The terms of the employment documentation are clear, as is Ms Hill's signature attached to it.

[12] There can be no doubt whatever that Ms Hill was employed as a Grade 3 Store Person and not, as she claims, as a Quality Controller. However, whatever her role in the Turners & Growers organisation, the nature of it has no bearing whatever on the personal grievances that she raised.

Was Ms Hill unjustifiably disadvantaged?

[13] I am satisfied Ms Hill was not unjustifiably disadvantaged. She claims that the employer took a succession of actions against her consequent upon her commencing a relationship with a salesperson who also worked for Turners & Growers, but who subsequently left that employment and brought a personal grievance against Turners & Growers.

[14] Ms Hill is adamant that her employment relationship started to deteriorate from the point at which she commenced this relationship and that Turners & Growers took various actions against her in consequence.

[15] I do not accept that there is any evidence of either unjustified actions by Turners & Growers or of disadvantage suffered by Ms Hill. The evidence discloses that there were various exchanges between the parties but nothing in the evidence suggests that Turners & Growers behaved unjustly towards Ms Hill or dealt inappropriately with any of the issues that arose. Furthermore, no action was taken against Ms Hill that was in any way improper and she suffered no disadvantage. She remained on full pay, remained in the employment, and the warnings that she received during the employment were, I am satisfied, given for good reason after a proper investigation.

[16] It follows that I am satisfied Ms Hill's claim of disadvantage must fail.

Was Ms Hill unjustifiably dismissed?

[17] Ms Hill was dismissed by letter dated 8 January 2010. That letter refers to the disciplinary meeting held between the parties on 23 December 2009 to inquire into Ms Hill's unauthorised work absence on Friday 18 December 2009.

[18] The letter recites the context in which the early departure had to be viewed, namely that there had been "*repeated misconduct*" of the same factual kind. It is common ground that Ms Hill had been absent without authority on two previous occasions before the instance of unjustified absence which led to her dismissal. On those two previous occasions, as I noted earlier in this determination, Ms Hill was counselled by Turners & Growers but not subject to any disciplinary proceeding.

[19] It is difficult to see how Ms Hill could possibly have failed to receive the message that early departures from the workplace were not acceptable to Turners & Growers and in particular that there was a process to go through if she wanted to seek authority to leave early.

[20] This last point is referred to specifically in the letter of dismissal with Turners & Growers noting that on the previous occasion that Ms Hill had left work early (a matter of days before the incident which led to her dismissal) as part of Turners & Growers' counselling of Ms Hill, they got Ms Hill's agreement that she would notify her Manager, Ms Tanerau-Love, if she wanted to seek permission to leave early.

[21] In respect of the early departure by Ms Hill on 18 December 2009, it is common ground that Ms Hill relied on notifying her supervisor (not her Manager) that she was leaving early, but even that notification was no more than a notification, because I am satisfied on the evidence before the Authority that her supervisor told her she should not leave early and was then somewhat startled when Ms Hill carried through with her stated intention. The Authority is clear that it prefers the evidence of Ms Virginia Blair, the supervisor, to Ms Hill's own evidence on this point. Ms Hill said that "*Virginia could have told me not to go if she had a particular problem with me going*". But Ms Blair's evidence is that that is precisely what she did and it made no difference at all to Ms Hill's attitude.

[22] In a sense, though, the real issue is that Turners & Growers had gone to some lengths to try to convince Ms Hill that her hours of work were the hours of work stipulated by the employer and that Ms Hill could not vary those hours of work

without her employer's specific consent and that that consent was only to be obtained by engagement with Ms Hill's Manager, Ms Tanerau-Love. Despite two previous occasions where Ms Hill had left the workplace early without authority and had been counselled by Turners & Growers, and one of those previous occasions was a handful of days before the event leading to her dismissal, and on that penultimate occasion, Ms Hill had agreed to consult Ms Tanerau-Love if she wanted to leave early, Ms Hill again left the workplace without authority on 18 December 2009, again without the permission of her Manager, and ignoring the advice of her supervisor.

[23] Given the history of insubordination that Ms Hill has amply demonstrated by this behaviour pattern, it is difficult to see how any employer, having established the facts as Turners & Growers did, could conclude that a fair and reasonable employer was not justified in reaching a conclusion to dismiss. I am satisfied that Turners & Growers' decision was in the circumstances a robust one and it follows that Ms Hill's claim of having been unjustifiably dismissed fails.

Determination

[24] I am satisfied that Ms Hill was not subject to disadvantage as a consequence of unjustified actions of Turners & Growers. I have also concluded that Ms Hill was justifiably dismissed by Turners & Growers for persistently failing to fulfil her obligations in terms of appropriate time keeping notwithstanding Turners & Growers efforts to draw her failings to her attention prior to dismissal.

[25] I should have reached the same conclusion even if Ms Hill was not on a final written warning at the time that she was dismissed for misconduct. In all the circumstances of the present case and the persistent insubordination around time keeping, I think a fair and reasonable employer could properly have dismissed without needing to place any reliance at all on the pre-existing final written warning.

[26] However, given that that final written warning existed and Turners & Growers quite properly referred to it in their dismissal letter and in their consideration of the question of whether dismissal was the appropriate penalty, the conclusion seems to me all the more unassailable.

Costs

[27] Costs are reserved.

James Crichton
Member of the Employment Relations Authority