

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN	Carolyn Hodgkiss (Applicant)
AND	MidCentral District Health Board (Respondent)
REPRESENTATIVES	Alan Millar for Applicant Jonathan Coats for Respondent
MEMBER OF AUTHORITY	G J Wood
INVESTIGATION MEETING DATE OF DETERMINATION	10 March 2005 29 March 2005

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

1. At issue here is whether the actions of the respondent (MidCentral Health), in unjustifiably terminating the pay of the applicant, Ms Carolyn Hodgkiss, warrants compensation, and if so, at what level?

Background

2. Ms Hodgkiss was employed at MidCentral Health as a financial accountant on 10 May 1999. In mid-2004 she took sick leave on the grounds of work-related stress. She believed that the principal cause of that stress was the attitude of her Corporate Services Manager, Mr Stuart Wilson, towards her.
3. MidCentral Health was aware that Ms Hodgkiss was suffering from depression and what she believed were the causes of it. Paid stress leave continued throughout the latter part of 2004.

4. During October Mr Millar, Ms Hodgkiss' representative, raised a possibility that Ms Hodgkiss might resign from her employment were an exit package agreed by the parties. In the meantime Ms Hodgkiss' doctor gave her an extension to her sick leave until 28 November.
5. Negotiations had not been completed when Mr Wilson, who stated that he believed that settlement was imminent, instructed his personal assistant to inform the payroll department not to process Ms Hodgkiss' next pay, being for the two weeks ending 14 November, payable on 18 November.
6. Ms Hodgkiss keeps her finances under close scrutiny, particularly as she has a mortgage and an overdraft to meet. She noted on 18 November that she had not been paid. Ms Hodgkiss was unable to contact anyone at MidCentral Health that day about the matter. She then rang Mr Millar. He told her that it was most likely to be an administrative error.
7. Ms Hodgkiss was extremely concerned about her financial situation and spent the weekend worrying about not having any money, particularly as she had bills to pay. She raised her concerns with a small number of friends. She considered that she had been dismissed, despite Mr Millar's assurance otherwise. Ms Hodgkiss was already on anti-depressants. She did not consider it necessary to seek any further medical intervention, despite her distress.
8. On the afternoon of Monday, 22 November Ms Hodgkiss was able to contact the payroll department and she was told that her that non-payment had been requested by Mr Wilson. This really upset Ms Hodgkiss, because she believed he had done so deliberately as an act of intimidation. This confirmed to her that she had been dismissed.
9. Approximately three hours later she spoke to Ms Sharessa Langley, a human resources adviser at MidCentral Health, who undertook to look into the matter. Ms Langley did so, but in the meantime Ms Hodgkiss lodged by fax a grievance claiming that the non-payment amounted to an unjustified dismissal. Later that day Ms Langley rang Mr Millar to tell him that the cancelling of Ms Hodgkiss' pay was an error and that her

pay would be reinstated as soon as possible. Ms Langley also apologised on behalf of MidCentral Health.

10. The next day a manual payment was paid into Ms Hodgkiss' bank account replacing the missing payment, although it was not available to Ms Hodgkiss until the next day.
11. The matter was filed with the Authority on 16 December 2004, seeking urgent mediation. By the time a statement in reply was received on 23 December, mediation had been scheduled for 27 January 2005.

Agreed Position of the Parties

12. The parties agreed, before the commencement of the investigation meeting, that the Authority would determine this matter on the evidence of Ms Hodgkiss about how the termination of her pay affected her and on the terms of a letter agreed between the parties. The letter, signed by Mr Wilson, states –

“MidCentral District Health Board accepts that its action in terminating your pay was unjustified, and would be seen by you to be to your disadvantage. MidCentral acknowledges that your perception is a legitimate one. MidCentral apologises to you for its action. MidCentral notes that on you informing it of the cessation of your pay MidCentral made a manual payment to reimburse you for the missed pay and your salary was reinstated”.

Determination

13. It is implicit from the above agreed position of the parties that Ms Hodgkiss has a personal grievance, however categorised, even although her salary was reinstated reasonably promptly. The sole issue therefore is one of remedies.
14. MidCentral Health considered that any disadvantage Ms Hodgkiss may have suffered was remedied in full and thus the grievance was resolved. It was submitted on behalf of Ms Hodgkiss that the termination was done unilaterally and secretly despite a medical certificate being in force. It was submitted that it was foreseeable that distress would result to Ms Hodgkiss, and that this was compounded by delay in MidCentral Health dealing with this matter.
15. This is a matter for compensation, I hold. This was a deliberate action taken by Mr Wilson without the knowledge of Ms Hodgkiss, which was inappropriate. Therefore

MidCentral Health took the risk that if settlement of an exit package was not reached then Ms Hodgkiss' pay would be terminated unjustifiably. It must now compensate Ms Hodgkiss for this turn of events. MidCentral Health was aware of Ms Hodgkiss' fragile state. It therefore took the risk that if it wrongly terminated her pay it would cause her distress. In this regard MidCentral Health must take Ms Hodgkiss as it found her. This is despite the fact that many other workers would not have been greatly affected, if at all, by the terminating of their salary for the period in question.

16. Compensation must of course be directed towards the harm caused by the personal grievance. The fact is that MidCentral Health reasonably promptly restored Ms Hodgkiss' payment, so that she only bore the financial impact of MidCentral's actions for one week. I reject Mr Millar's argument that the actual period was three weeks because Ms Hodgkiss had no expectation that she would be paid until 14 November, even although that payment related to the working period of two weeks previous. Furthermore, it was only for a few days that Ms Hodgkiss could believe that she had been dismissed, and even during that period she was assured by Mr Millar that this was most unlikely to be the case.
17. I also take into account the facts that there is no loss of reputation to Ms Hodgkiss over this matter, which was only known to a few people; the acceptance of unjustifiable actions by MidCentral Health; that Ms Hodgkiss has received a public apology; and that she did not seek further medical assistance over the period.
18. I distinguish *Pacifica Fishing (Christchurch) Ltd v Buckingham* [1999] 2 ERNZ 621, relied on by MidCentral Health. This is in part first because it is not necessary for this employment relationship problem for there to be a finding of dismissal. Second, unlike in *Buckingham*, here there was no notice given of the termination of the pay and therefore MidCentral Health was unable to remedy its actions before they impacted irretrievably on Ms Hodgkiss. Also relevant is that Ms Hodgkiss was severely affected by the termination of her pay.
19. In all the circumstances of this case I consider the appropriate award of compensation is \$3,000. I therefore order the respondent, MidCentral District Health Board, to pay

to the applicant, Carolyn Hodgkiss, the sum of \$3,000 in compensation under section 123(c)(i) of the Act.

Costs

20. Costs are reserved.

G J Wood
Member of Employment Relations Authority