

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 153/10  
5276163

BETWEEN

JEANNIE HORN  
Applicant

A N D

WELL DUNEDIN/DUNEDIN  
PRIMARY HEALTH  
ORGANISATION  
Respondent

Member of Authority: James Crichton  
Representatives: Jon Beck, Counsel for Applicant  
John Farrow, Counsel for Respondent  
Investigation Meeting: 12 and 13 April 2010 at Dunedin  
Determination: 29 July 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Ms Horn) alleges that she was disadvantaged by unjustifiable actions of her employer, the respondent (Well Dunedin) and constructively dismissed as well. Those claims are resisted by Well Dunedin.

[2] Ms Horn commenced duties on 1 September 2008 as Clinical Services Coordinator, with a mental health focus. There were a succession of fixed term agreements. In early 2009, Ms Horn sought permission to adjust her working hours so that she could commence a private practice. This proposal was supported by Ms Horn's immediate manager, but not approved by Well Dunedin's chief executive officer.

[3] Ms Horn considered that another employee had been given the right to operate a private practice in circumstances similar to the request that she had made and she claimed that she was treated differently and therefore unfairly. She says that from the

point at which that matter was raised with Well Dunedin, the employment relationship began to deteriorate and there were a series of attempts made by the parties to resolve those difficulties. Eventually, Well Dunedin decided that Ms Horn was stressed and therefore not able to work with patients and she was required to perform only administrative duties. In that context, Ms Horn resigned her employment on 20 July 2009 and immediately raised an allegation of having been constructively dismissed from that employment.

[4] During the notice period there was a warning given by Well Dunedin to Ms Horn in respect of Well Dunedin's contention that Ms Horn had breached her employment agreement by commencing a private practice without authority. Further, deductions were made from Ms Horn's final pay to recoup training fees met by the employer and able to be recovered from Ms Horn if she resigned within two years of being appointed.

### **Issues**

[5] It will be useful for the Authority to analyse first the allegation that Ms Horn was disadvantaged by unjustifiable actions of her employer and second to look at her contention that she was constructively dismissed.

### **Was Ms Horn disadvantaged?**

[6] The essence of Ms Horn's disadvantage allegation is that she was denied the opportunity to develop a private practice alongside her obligations to Well Dunedin. I do not find that allegation made out.

[7] Ms Horn claims that she was treated unfairly because another employee of Well Dunedin, Ivan Criglington, was allowed to continue with a private practice while he was employed by Well Dunedin. In fact, the evidence is that when Mr Criglington was hired by Well Dunedin, he was told to cease his private practice and he did so, except to the extent that Mr Criglington was given latitude by Well Dunedin to conclude his attendances on two clients within three months of commencement. Mr Criglington's evidence (which I accept) was that he in fact achieved this goal within one month.

[8] Mr Criglington also provided student supervision to one student who had a practical placement with another agency (that is, not Well Dunedin). The process of

supervision is a common arrangement amongst the therapeutic professions and Mr Criglington's evidence was that this arrangement was not only approved by Well Dunedin but was specifically explained to Ms Horn privately, although she did not accept the arrangement.

[9] Ms Horn's view was that Mr Criglington was unprofessional and difficult, but that is not a view which Mr Criglington accepted nor was it the view of Well Dunedin. Mr Criglington impressed me as a sensible and level headed man and his background includes 15 years as the head of the social work department for the Otago District Health Board so I think it likely that if there were issues around professional boundaries in respect of Mr Criglington's professional practice, they would have been evident earlier in his career. I do not accept Ms Horn's judgment of Mr Criglington and must say that where there is a difference in the evidence between the two protagonists, I greatly prefer the evidence of Mr Criglington.

[10] Mr Criglington acknowledged that there were personal difficulties between him and Ms Horn, but he puts that down to different professional standards. She was English and English-trained and by profession a counsellor, while he was a social worker. He also indicated in his evidence that there were some differences in approach between the English pattern and ours. He also thought that the pair of them had different communication styles and just had different ways of doing things.

[11] I accept all that, but suspect that the underpinning of the difficulties between Ms Horn and Mr Criglington was her belief that he had a benefit which was denied to her. Specifically, I suspect that she was disgruntled about the fact that she perceived Mr Criglington as having advantages in salary and in privileges (the ability to have some private work), which were denied to her. It is the case that Mr Criglington was paid more than Ms Horn, but that is a function of Mr Criglington having the requisite New Zealand qualifications whereas Ms Horn, certainly when she commenced employment with Well Dunedin, did not.

[12] I have already dealt with the perception that Mr Criglington was allowed private work when Ms Horn was not. That is just a perception and is not the reality. Mr Criglington did give professional supervision to one social work student during his employment. He was doing that with the specific approval of the employer, which approval was granted because of the employer's conviction that there was no prospect of conflict between the work of professional supervision provided by Mr Criglington

and his work for Well Dunedin. What is more, Mr Criglington was not paid for that supervision work so his only income was from Well Dunedin. Again, that is a significant difference from what Ms Horn was proposing.

[13] Ms Horn wanted a day off to run a private practice. She was employed for a five day week by Well Dunedin and she sought its consent not to work Tuesdays so she could run her private practice on that day. In my opinion, Well Dunedin's refusal to grant Ms Horn's request is absolutely reasonable and is the action of a fair and reasonable employer. The effect of what Ms Horn was proposing would have required Well Dunedin to hire additional temporary staff to cover the day that Ms Horn would not be available and the work that Ms Horn was doing in her private practice would have been in direct conflict with the selfsame work that she was doing for Well Dunedin. There was a real risk that patients would be confused about who they were seeing and in what capacity. As I have already made clear, I do not accept Ms Horn's argument that she was the victim of disparate treatment as a consequence of any alleged advantages given to Mr Criglington.

#### **Was Ms Horn unjustifiably dismissed?**

[14] The essence of Ms Horn's position is that she was forced into resigning her role because Well Dunedin mismanaged the difficult interpersonal relationships in the office and particularly between Ms Horn on the one hand and Mr Criglington on the other. I do not think that allegation is made out either.

[15] It is apparent from the evidence of the two protagonists that they had very different ways of working. They also had different professional backgrounds and were trained in different countries. Mr Criglington is a social worker trained in New Zealand and Ms Horn was English and had been trained in counselling. Mr Criglington, rather charitably I thought, attributed some of the differences between the two as simply a different professional framework, but it is clear that there were also communication difficulties because of different communication styles and also different expectations the one had of the other.

[16] It is apparent on the evidence before the Authority that there were difficulties in the mental health team of Well Dunedin. Those difficulties could perhaps be described as personality conflicts but sadly I have been forced to conclude that the principal reason for those conflicts was Ms Horn's personality. In a real sense, I find

that she was an architect of her own misfortunes. Well Dunedin's witnesses who worked in and with the mental health team are all very clear that Ms Horn was just difficult. Ms Skinner, for example, who became the senior project manager for Well Dunedin, referred to Ms Horn's default behaviour in the following way:

*Unless everyone agreed with Jeannie [Ms Horn] she would decide that everyone was against her.*

[17] Again, Ms Diane Noone, a mental health practitioner at Well Dunedin who also worked with Ms Horn, told me that Ms Horn was *difficult to work with as a team player. She always wanted her own way.* She described Ms Horn as being aggressive in her dealings with Mr Criglington and critically she told me that Ms Horn had effectively threatened legal action against not just Well Dunedin but also individuals who were employed there. Ms Horn denies the latter allegation particularly and says that she simply spoke of getting legal advice, but Ms Noone was very clear about what she heard.

[18] Part of the difficulty seems to have been that Ms Horn believed that she had a management or supervisory role which encompassed, amongst other things, managing Mr Criglington. Ms Baines, the chief executive of Well Dunedin, simply denied that that was the case and said Ms Horn had no such authority. She acknowledged, however, that the arrangements when a former line manager had left the organisation may have been less tidy than they ought to have been.

[19] Despite my factual finding that Ms Horn brought the difficulties in the office on herself by her strident style and refusal to compromise, it is still Well Dunedin's obligation to endeavour to provide Ms Horn with a safe workplace. I am satisfied on the evidence before the Authority that it did as much as it could to achieve that goal. Ms Horn started complaining about Mr Criglington within a matter of days of arriving at the workplace and the evidence is plain that Well Dunedin tried very hard to improve the working relationship between Ms Horn and the rest of the team, but the factual position, I am satisfied, is that Ms Horn made no effort whatever to modify her own behaviour and so there is simply no basis on which there could be a genuine improvement. There were regular team meetings convened by Well Dunedin at which these difficulties were ventilated, there were emails to staff and various engagements with the protagonists individually to try to address matters, directives from the chief executive about employees treating each other respectfully, arranging for an

independent mediator to engage in the issue, and meetings between Well Dunedin and Ms Horn supported by her husband with a view to trying to make some progress. In the result, I am satisfied Well Dunedin did what a fair and reasonable employer would do in those circumstances and that there was nothing more that Well Dunedin could have been expected to do that it did not do.

[20] It is clear that despite Well Dunedin's efforts to address the issue, Ms Horn's health continued to deteriorate. She makes that clear in her own evidence. She also made clear to me in answer to my question that she did not tell the employer about her failing health. Immediately after the independent mediation organised by Well Dunedin, and apparently as a consequence of what she heard in that mediation, Ms Horn developed chest pains and was assessed in the emergency room at Dunedin Public Hospital. The diagnosis that the chest pains were *possibly stress related* was not communicated to Well Dunedin nor did the subsequent GP's certificate putting Ms Horn off work mention the nature of the illness or identify in any way any relationship between the illness and the workplace.

[21] While Ms Horn was off work ill, the employer divided up her duties amongst other staff and, on her return on 9 June 2009, Ms Horn was told that she would not have clinical responsibilities until further notice.

[22] This decision was taken by the chief executive of Well Dunedin while Ms Horn was away ill. The fundamental reason for removing Ms Horn from clinical duties was, I am satisfied, a telephone discussion between Ms Baines and Ms Horn on 4 June in which Ms Baines was told for the first time that Ms Horn's sickness might be stress-related. In particular, during that conversation, I am satisfied Ms Horn told Ms Baine about the *chest pain* incident and the views expressed by the emergency room doctors at Dunedin Public Hospital. Ms Horn's evidence is that she protested about being removed from clinical duties although that view is not supported by Ms Baines' evidence who says that in the first discussion after Ms Horn returned to duty, she seemed to understand why the decision had been taken.

[23] In any event, Ms Baines determined to maintain the removal from clinical duties on the basis of reports from colleagues in the mental health team about Ms Horn being *teary* and suffering from *mood swings*.

[24] Then on 16 July 2009, Ms Horn emailed Ms Baines and sought an attendance with the chief executive on the following Monday. Ms Baines was away from Dunedin but emailed Ms Horn on the Sunday night and in a considered and helpful email dated 19 July, Ms Baines set out what she wanted to do in respect of getting Ms Horn back to work in a clinical sense and how she was to address Ms Horn's other issues. She did, however, make clear that her commitments were such that Monday would be impossible for her to devote any significant time to a meeting, but that she was keen to do it as a matter of urgency. Ms Horn promptly resigned on 20 July 2009 alleging that Ms Baines inability to engage with her on that day was *the final straw*.

[25] I am satisfied that none of the elements of a constructive dismissal have been made out. First, I am satisfied that there is no course of conduct by Well Dunedin designed to bring about a resignation nor has there been a breach of Well Dunedin's duty. It is plain on the facts that Well Dunedin did everything it reasonably could to deal with Ms Horn's various complaints and that it dealt with those complaints in a timely and effective manner.

[26] Next, it is clear on the facts that Well Dunedin had no idea until 4 June 2009 that Ms Horn was suffering from stress as a consequence of workplace issues (or may have been) and it is conceivable that if Well Dunedin knew how difficult Ms Horn was finding the environment from a health perspective, Well Dunedin might well have taken even greater steps than it actually did. Clearly, an employee has an absolute obligation to advise an employer of health issues which the employee believes are a consequence of the workplace and in this particular case, it is apparent that no attempt was made by Ms Horn to provide that information until the eleventh hour. Even had she done so, it is difficult to think of what Well Dunedin might have done in addition to the steps it had already taken. The difficulty was that Ms Horn had trouble accepting that views that were not held by her were nonetheless legitimate views.

[27] Next, it seems perfectly plain on the facts that Ms Horn's resignation was not reasonably foreseeable. She had sent Ms Baines a perfectly tranquil email seeking the meeting on 20 July 2009 and Ms Baines had responded in kind with a thoughtful and considered approach agreeing to deal with all of the issues and indicating how she sought to deal with them. All she said that was in any way negative in tone was that she could not meet with Ms Horn the day that Ms Horn had specified. Ms Horn

immediately resigned her position and I am satisfied that that timeline simply does not demonstrate the necessary degree of foreseeability to sheet home culpability to the employer for the termination of the employment.

### **Determination**

[28] It follows from the foregoing analysis that Ms Horn has not satisfied me that she has a personal grievance, either by reason of having suffered a disadvantage because of unjustified actions of the employer or a personal grievance by reason of constructive dismissal.

[29] A consequence of this finding is that the deduction from Ms Horn's final pay is perfectly legitimate. On the Authority's analysis, she did in fact resign her position within two years of appointment.

[30] Ms Horn's case is accordingly dismissed.

### **Costs**

[31] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority