

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Bronwyn Humphries (Applicant)  
**AND** Princes Gate Hotels Limited (Respondent)  
**REPRESENTATIVES** Tom Mounsey, Counsel for Applicant  
Peter Lewis, Counsel for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**INVESTIGATION MEETING** 10 May 2001  
**INVESTIGATION  
COMPLETED** 14 June 2001  
**DATE OF DETERMINATION** 15 June 2001

DETERMINATION OF THE AUTHORITY

Ms Humphries was employed as receptionist at the Princes Gate Hotel from late January 2000 until November of the same year. She then resigned abruptly. Ms Humphries claims that her resignation was in fact a constructive dismissal. Through her solicitor she immediately raised her claim of personal grievance with Brett and Vlasta Marvelly, proprietors and operators of the hotel, and advised that she would not work out her notice.

She lodged the problem with the Authority in March 2001. Her statement of problem described the respondent as "Princes Gate Hotel." The matter was defended by Counsel acting on instructions from Mr and Mrs Marvelly. Before issuing this decision I required the identity of the respondent to be clarified. Following inquiries from the Authority, both Mr Lewis and Mr Mounsey have been able to confirm that the respondent is "Princes Gate Hotels Ltd." I therefore amend the description of the respondent by consent.

Ms Humphries requested that her problem be remedied by reimbursement of wages lost as a result of having left her employment, along with compensation of \$8,000.00 for the injury to her feelings.

The employment problem.

In her statement of problem and in further particulars supplied at the request of the respondents, Ms Humphries says that she was unable to continue her employment at the hotel because Mr and Mrs Marvelly treated her in a humiliating and rude manner and subjected her and others to abusive

language and aggressive and domineering behaviour, sometimes reducing her to tears. In addition she claimed to have worked split shifts with no breaks and to have at times been required to work eight days or more without a day off.

The further particulars formed the basis of the applicant's evidence. At the meeting she expanded on what she had said there and answered questions on it from the Authority. Mr and Mrs Marvelly did the same in respect of their statements and further statements in reply.

In relation to hours of work, Ms Humphries acknowledged that although hours were not discussed at her interview, she expected to work rostered shifts as this was standard in the accommodation industry. (She had worked as a hotel receptionist since leaving school, a period of three years.) She says she understood she would have to work occasional split shifts, but made it clear to Mr and Mrs Marvelly, early in the employment, that she preferred 'day' shifts. Day or early shifts involved a start at around 6.00am and finished at 2.30pm. The 'evening' or late shift ran from this time until about 10.30pm. Rosters were for a period of one week and were posted a few days prior to the beginning of the week, sometimes less. In the first months of her employment Ms Humphries was regularly working well over forty hours per week (sometimes as much as sixty) but this dropped down to forty over the winter months. Ms Humphries told the Authority that she did not object to the total number of hours she worked, but to the fact that she did not get the day shifts she had requested. She felt that reception was understaffed and that she did not get proper breaks. Mr Marvelly said that tea breaks were taken informally in free moments and that the reception area was not always busy. (However breaks of 15 minutes or more were treated as meal breaks and were not paid.) He also said that those on split shifts qualified for meals in the same way as those on other shifts. Ms Humphries says she rarely got meals.

Split shifts usually ran from about 6.00 until 10.00 or 11.00am and then again from about 5.00pm until 10.00 or 11.00pm. Mr Marvelly told the Authority that in the winter 'off' season he had one receptionist working a split shift, with office staff covering reception in the middle of the day when it was very quiet. Occupancy rates during this time were so low, he said, that there was not enough work for a receptionist during the day. Ms Humphries was the only person employed specifically as a receptionist during that period and he could not take her off split shifts. Ms Humphries agreed that Rotorua was 'dead' at this time. Another receptionist was taken on in October, partly as a result of Ms Humphries reluctance to work split shifts. After this Ms Humphries concedes she worked fewer split shifts. However, she said she still did mainly evening shifts and was not happy with this.

Around 22-24 November, shortly before she finally left the job, Ms Humphries had gone as far as writing a resignation letter but did not give it to Mr Marvelly. This letter was precipitated by her dissatisfaction over the evening shifts, and over the Xmas roster. (The evidence was somewhat confused on this point, but it seems that there were probably two separate conversations, one about the Xmas roster and one about the night shifts, very close together.) She said she felt unable to go through with the resignation because she had seen others resign and have an uncomfortable time working out their notice. However she did tell Mr Marvelly what she had intended. He responded with the question: "*what can I do to make you stay?*" Ms Humphries replied that she wanted to do day shifts. There is no disagreement that on either this occasion, or the earlier one relating to the Xmas roster, Mr Marvelly responded heatedly, thumping the board on which the roster was posted and saying that if she wanted days, he would give them to her. He immediately swapped her hours for the coming week with those of the other receptionist. Ms Humphries said this made her feel 'awful.'

At my request, during the meeting, the respondent provided to me all the rosters and timesheets from the entire period of employment. I have now been through them all and have provided to both parties, for their comment, a summary of what I found to be the shift patterns.

That summary shows that Ms Humphries' day off was not fixed. On occasions the rostering was such that she did work as many as eight days or nine days in a row. (She worked six days a week more often than not.) Up until the end of May Ms Humphries had worked 52 day shifts, 31 evening shifts and 26 split shifts. Then, as they moved into the off season she began to work a greater proportion of split shifts. Between the beginning of June and the end of September she worked 21 day shifts, 4 evening shifts and 33 split shifts. The second receptionist started in the second week of October, just as the busy season was getting underway. From the beginning of October until the end of her employment, Ms Humphries worked 6 day shifts, 20 evening shifts and 9 split shifts. During the final four weeks of her employment, she worked 17 evening shifts. Her final rostered week, had it been completed, would have consisted of 1 split shift and 4 evening shifts.

From this analysis I think it is clear that the arrival of the second receptionist did signal the end of the split shifts, but that they were replaced by evening shifts rather than day shifts. This, along with an unsatisfactory Xmas roster, was what triggered the writing of the first letter of resignation, and discussions with Mr Marvelly around the 22-24 November. Mr Marvelly's position is that whatever the tone of his response, he wanted to accommodate her preferences in regard to Xmas and shifts. He says she had initially preferred evening shifts and once he knew that this had changed, he would have accommodated her as he did not want to lose his best and most experienced receptionist. He says he did not have a chance to put changes into effect as Ms Humphries resignation intervened only a few days later.

It was clear that for Ms Humphries the issues she had with her employers were two-fold. First, she had an on-going concern about her hours of work and believed that they should have been changed to suit her better. Second, she found it very difficult to talk to Mr Marvelly about this or any other issue. Either he did not pay attention, or he became heated. By way of further illustration, she told me that she had a problem with the night manager, whom she could not always locate when she needed back-up on the night shift. When she told Mr Marvelly he arranged for the three of them to sit down together and talk it over. However nothing changed as a result and he was unprepared to take any further action.

Ms Humphries also said that Mrs Marvelly had an intimidating manner, and was rude and sarcastic especially when she made a mistake. She said Mrs Marvelly constantly made jokes at the expense of others. She gave an example of being the butt of "blonde" jokes (although she is not blonde) over a minor mistake. On another occasion where Ms Humphries had made an error in paperwork, and had been spoken to about it, Mrs Marvelly included a comment about the error in a general memo to all staff. Although it was expressed as a general caution, and she was not identified, Ms Humphries was offended.

Mrs Marvelly denies ever having intended any offence and maintains that any comments of the sort alleged were made in a humorous manner.

### The end of the employment

On her final morning, Sunday 26 November, Ms Humphries arrived at work at 8.00am for the first section of a split shift. She was given the task of ironing napkins and continued at it for four hours before going home exhausted and in tears. She rang her mother who in turn rang the hotel and said that her daughter would not complete the evening part of her shift. The next day Ms Humphries

took advice and decided to resign. Her solicitor prepared a resignation letter for her and sent it to the respondents. She did not work out a notice period. In that letter she alleged that her employer had deliberately coerced her into resigning. That claim has now been withdrawn. Ms Humphries accepts that the Marvellys did value her services and did not wish her to leave. Instead, she alleges that her resignation arose out of breaches by them of the duties of a fair and reasonable employer.

Mr and Mrs Marvelly both stressed that Ms Humphries was an excellent worker and that they had told her that they considered her their best receptionist. She had received a warning letter in May relating to a failure to follow security procedures but at the time her employment ended this was no longer an issue. They said that she was a great loss to them when she left. However they said she was a fragile person and easily upset. They found her difficult to deal with if issues did arise. In addition, she had serious personal problems during her employment at the hotel, and the Marvellys believe these were the most likely cause of her stress and tiredness, rather than her employment situation. In order to protect Ms Humphries' privacy I do not intend to provide the detail of these problems but I note that they were conceded and that I accept they would have had an effect on her at the time. I also note that she did not appear to me to be a confident person and would I believe have found it difficult to approach her employer about concerns.

Mr Marvelly said that when he received Ms Humphries solicitor's letter, he wanted to talk over the problem and rang her solicitor the same day. He suggested that they meet together with the local union organiser (whom Ms Humphries had consulted about her problems) as a chairperson for that meeting. At that stage, he was still keen to have Ms Humphries back. Unfortunately, nothing happened immediately, the Christmas period intervened and it was the end of January before the parties actually sat down in mediation together. The matter was not resolved.

### Conclusions

I do not consider there was any breach of duty towards Ms Humphries in relation to her shift patterns. Ms Humphries does not deny that she was employed to work rostered shifts. Winter split shifts were necessary to the operation of the hotel. Mr Marvelly could not offer her work that was not available through the off season and there was not enough work for a day-shift receptionist at that time. As for the solid block of evening shifts she worked in November, this does not represent a breach of duty (although I accept it was onerous) as Mr Marvelly agreed to rectify it once it had been brought to his attention. The applicant left before this intention could be carried out.

In relation to hours of work there was also a further concern was that she sometimes worked eight days in a row. Again, I cannot conclude that these findings amount to breaches of the employers' duties towards her. She worked long hours, often six days a week, at her own wish. Indeed at one point she expressed concern that her hours declined over the winter period. She never had a fixed day off and at least implicitly, must be taken to have agreed to this. This led to her working eight days in a row without a break, certainly a heavy burden, but something that happened off and on from the time she started and must be taken to form part of her conditions of employment.

The other specific matters raised by Ms Humphries were that she did not have any meals provided when on split shifts, and did not get regular tea breaks. Although not desirable, it is common practice for workers to take a quick break 'on the go' or when they have a quiet moment. As to the meals, Ms Humphries was not able to be specific about this, and it seems she sometimes got meals and sometimes not. Although I accept that it had become a term of her employment, I am not able to make any firm findings on the evidence I was able to obtain. Neither of these issues give rise to breaches, or at least, not breaches sufficiently serious as to throw the whole employment agreement into jeopardy.

To summarise, I do not accept that the problems Ms Humphries had in relation to her shift patterns and hours of work generally were sufficient to give rise to a claim of constructive dismissal.

Ms Humphries says she resigned because of a lack of understanding and a poor working relationship between herself and her employer. She appears to hold the view that other issues between them could have been resolved if Mr Marvelly, in particular, had a more positive and professional attitude.

I accept some of what Ms Humphries says. It was reasonable (subject to the operational needs of the hotel) for Ms Humphries to expect to have input into the hours she worked and to have her needs met where possible. She was also entitled to be heard, and spoken to, with respect by her employer, and this was not always her experience. Mr Marvelly appears to have had a blunt and abrupt manner towards Ms Humphries, and I accept that this went beyond what is appropriate in terms of management style. Ms Humphries was entitled to discuss her hours and holidays with her employer without encountering the sort of reaction she got in the discussions described here. I accept that it was accurate to describe that reaction as "rude and aggressive." Likewise, Mrs Marvelly needed to take care that she did not give offence by making remarks of a personal nature to staff.

However, there is no clear evidence that this behaviour happened on other occasions. I pressed Ms Humphries as to whether there had been other examples of such behaviour. Although she said there were, she could give no specifics, except in relation to him asking her a question of a personal nature that she objected to. Although I accept that the question was inappropriate, Mr Marvelly explained that it was asked in the context of her having discussed some of her personal problems with him, and I am satisfied with this explanation. Similarly, there was only one example (beyond the blonde joke) of offensive behaviour by Mrs Marvelly. This related to the memo circulated to all reception staff, and was not, in my view, something at which offence could be taken. It is reasonable for an employer to take the opportunity, following a slip by one worker, of making sure that others are aware of what is required of them and not at risk of making the same mistake.

Although I know that Ms Humphries sees the examples she gave as representative, I would have needed more evidence before I could confidently conclude that there was an on-going pattern of such behaviour.

Were the instances given enough on their own to lead to a constructive dismissal? The threshold for a finding of constructive dismissal is high. It is not enough to show that the respondent was difficult to work for, or even a poor employer. It must be shown that no reasonable person could have been expected to continue in the situation. In this case, neither of the examples given led directly to the resignation, which took place well after Mrs Marvelly's offensive jokes and at least a couple of days after the discussions with Mr Marvelly. Neither were therefore so serious that Ms Humphries was unable to continue working at the time. She was also going through stress in her personal life which may have reduced her ability to deal with the situation. I cannot find that either Mr Marvelly's behaviour, or that of his wife, amounted to repudiatory conduct. It did not amount to breaches that left Ms Humphries no option but to resign. For completeness I note that I place no great significance on the fact that Ms Humphries was asked to iron serviettes. I accept that in a very small enterprise there may sometimes be a cross-over of duties. In this instance, it is not disputed that Mrs Marvelly and the other receptionist were doing cleaning that morning. In light of this, asking Ms Humphries to do some ironing while things were quiet is not unreasonable.

The applicant is not entitled to the remedies she claims and there is nothing more I can do to assist with her employment problem.

Costs

The parties are invited to attempt agreement on this issue between themselves. If that is not possible, the Authority will determine the issue. Any request for a determination (along with supporting submissions) must be lodged with the Authority, and copied to the other party, within fourteen days of the date of this decision.

Y S Oldfield  
Member of Employment Relations Authority