

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Betty Inglewood (Applicant)
AND West Christchurch Women's Refuge Society Inc (Respondent)
REPRESENTATIVES Julian Moran for Applicant
David Beck for Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Christchurch, 8 February 2005
DATE OF DETERMINATION 24 February 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. Betty Inglewood, the applicant, has requested an investigation into the termination of her employment with the West Christchurch Women's Refuge Society Incorporated (WCWRS) (the respondent), on 9 May 2003.
2. Mrs Inglewood is seeking remedies that relate to a personal grievance for constructive dismissal, or, in the alternative, the alleged unjustified actions on the part of the WCWRS affecting her employment to her disadvantage.
3. The WCWRS has denied Mrs Inglewood's claims and denied any remedies that she has sought from the Authority.
4. The parties attended mediation assistance with the Department of Labour in an attempt to resolve the problem on 3 October 2003. This was unsuccessful and the parties have been unable, despite attempts by the Authority, to settle the problem. Thus a determination is required.

The facts

5. Mrs Inglewood commenced her employment with WCWRS on 23 October 2000. She had an Employment Agreement. She resigned her employment on 9 May 2003.
6. She worked 35 hours per week and was paid \$18.50 per hour, gross. She was in receipt of one day's paid leave for stress every fortnight. Her professional supervision costs were paid by the Society. She met with her professional supervisor (Roma Finlay) about once a fortnight.
7. She was also a member of the Society's collective, having met the requirements to belong to the collective, and was bound by the Society's code of behaviour and ethics.
8. The WCWRS is a body incorporated pursuant to the Incorporated Societies Act 1908. The WCWRS has a Constitution that was lodged with the Registrar of Incorporated Societies on 24 January 1986.
9. Issues developed between Mrs Inglewood and another employee soon after Mrs Inglewood commenced her employment in the Refuge. She says she raised her concerns about that employee's conduct and behaviour, but says that those people responsible on the Collective were unwilling or unable to resolve the matters she raised.
10. These problems got worse and by October 2002 the suggestion was made that Mrs Inglewood and the other employee attend mediation to try and resolve their differences.
11. A mediator was arranged by Indira Sirisena, a barrister and solicitor and co-opted member of the WCWRS Employment Committee and at the time she was the only member of this committee. Mrs Inglewood says that she raised with Mrs Sirisena on 29 October 2002 her intention to take her professional supervisor to the mediation to assist. Mrs Sirisena denied that Mrs Inglewood raised this with her at that time. Mrs Sirisena says that she was told by Mrs Inglewood the day before the scheduled mediation on 5 March 2003 that she was taking her professional supervisor to the mediation. Roma Finlay, Mrs. Inglewood's professional supervisor says that she knew early on that Mrs. Inglewood wanted her assistance at the mediation.
12. For a number of reasons that nothing turns on, this mediation did not take place. When the mediation broke down Mrs Inglewood and Roma Finlay went back to Ms Finlay's office. From there, Mrs Inglewood says she telephoned Mrs Sirisena for an appointment to meet in regard to the unsuccessful mediation.

13. Mrs Sirisena denied receiving a telephone call at that time. Mrs Inglewood and Ms Finlay say they went to Mrs Sirisena's office to speak to her in person. They say that Mrs Sirisena told them that disciplinary action would have to be taken against the employee and that this would result in her employment being terminated. Mrs Sirisena denied raising this prospect and says she would not have done so because it was not within her power to do so. Ms Finlay told the Authority that this was the implication she took from the comments Mrs Sirisena made.
14. Mrs. Inglewood says that she also raised the issue of the cost of the mediation with Mrs Sirisena when they arranged the mediation. But, Mrs. Inglewood says, Mrs. Sirisena held the view that this should be treated as a confidential matter and the collective should not be told. This was not challenged by Mrs. Sirisena. Subsequently the respondent paid for Ms Finlay's attendance at the mediation session.
15. In the meantime, further complaints concerning the employee were made from a number of residents at the Society's Refuge safe house. The complainants were advised to put their concerns in writing.
16. Subsequently disciplinary proceedings were conducted by the Society through its Employment Committee that involved the employee. The employee was written to on 13 March with an outline of at least one of the complaints that involved an alleged breach of confidentiality (13 March 2003 letter produced).
17. The Employment Committee met on 18 March 2003 (minutes produced) where it was decided that the various matters concerning the employee's conduct would be dealt with by a written final warning with certain conditions applying in respect to her ongoing employment.
18. On the same day (18 March 2003) the collective met and the outcome in regard to the employee's employment was put forward. The Committee's decision was the cause of much discussion. Mrs Sirisena raised the issue that the affairs involving personnel matters of the Society were not working in a collective structure and everybody agreed with a show of hands that this was the case. The minutes recorded the following:

"Indira suggested that the Refuge is run by a Management Committee.

Who does the day to day management?

It wouldn't work to have paid workers on the Management Committee.

It was unanimously agreed that the Collective is not an effective way to run the Refuge.

This is a big decision. Are we following correct process?

Only people absent are F, M – to be consulted.

[M arrived at the meeting while it was taking place and Mrs Inglewood agreed to consult F].”

19. The minutes also indicate that there was a discussion amongst the collective about other options. For example, Mrs Gloistein, another member of the collective, suggested the employment of a paid manager to work 40 hours per week but not hold decision making powers as an alternative to the Management Committee. It was agreed that Mrs Inglewood was to find out what a paid administrator earns in other Refuges.
20. The minutes of the Collective meeting on 18 March 2003 recorded the decision of the Employment Committee in regard to the action to be taken on the other employee. The employee was given an opportunity to speak at the meeting.
21. On 20 March 2003 Betty Inglewood and Shelley Clark, another employee at the Refuge, wrote to the Employment Committee expressing their dissatisfaction with the conduct of the collective meeting on 18 March 2003. They alleged that the outcome turned out to be quite different to what they had been told in regard to informal consultations with Mrs Sirisena beforehand where they believed Mrs. Sirisena agreed that employee’s employment needed to end. In their letter Mrs Inglewood and Ms Clark outlined their concerns in regard to some issues relating to the other employee. They requested a written response to their concerns and requested that that be done within one working week for them to consider their position. Clearly, they were dissatisfied with the decision that the Committee had reached in regard to the discipline imposed on the other employee and subsequently raised at the collective meeting on 18 March 2003.
22. The Employment Committee responded to the letter on 29 March 2003 and provided a decision on various complaints and issues raised by residents at the Refuge. In addition, the Committee decided that

“A mediator from the Employment Section of the Labour Department should decide these matters. The Committee will make the necessary arrangements. Each of the parties is allowed to engage an employment advocate if they so wish. The sum of \$500 per person will be allocated from the funds of the Refuge. The decision of the mediator will be final and the Employment Committee will entertain no further communications on these matters.”
23. The letter included a summary of decisions, the relevant ones being as follows:

- “2. A mediator from the Employment Tribunal (sic) will be engaged to deal with the matters raised in the letter of 20 March 2003 and the response to it. The mediator’s decision will be final and the Committee in this regard will entertain no further communications.
3. The Committee will undertake a complete overhaul of the Refuge and its structure and working with assistance either from the paid workers, volunteers or outside.
4. Whilst waiting for a date for mediation, all paid workers, volunteers and others involved in the Refuge will work together, putting aside personal issues and conflict to carry on the work of the Refuge.”

24. On 1 April 2003 the Employment Committee provided a notice that reads as follows:

“West Christchurch Women’s Refuge

April 1, 2003

To the Members of the Collective of West Christchurch Women’s Refuge.

“As you may or may not be aware there are issues currently being investigated by the Employment Committee regarding WCWR.

At the Collecting meeting 18 March 2003 a decision was made to replace the Collective with a Management Committee as the administrating body.

Until a Management Committee can be formed and a new structure can be put in place all decisions concerning the running of the Refuge will be made by the Employment Committee.

All requirements and inquiries are to be directed to the Employment Committee. Can all Subcommittees submit a written report informing the Committee on what is happening with them and anything they may be anticipating putting into place.

There will be an information meeting on the third Tuesday of the month at 5.30pm giving all members an opportunity to share and receive support and to organise rostered duties.

We appreciate your contribution and acknowledge that under the new regime we all hope to have a better working relationship and continue the good work of creating a safe and happy place for women and children and all associated with the West Christchurch Women’s Refuge.”

25. On 10 April 2003 Mrs Inglewood wrote to the collective expressing her dissatisfaction with the developments particularly in regard to the matters concerning the other employee. She raised a possible conflict of interest in regard to Fiona Teesdale, the collective’s treasurer, being the support person for the other employee on the Employment Committee determining the complaints about the person concerned. She also made allegations that the Employment Committee had been operating “*unethically not to mention illegally*”. She pointed out that the Employment Committee’s role under the constitution was to make recommendations only

and to convey these to the collective so members could make an informed decision in accordance with the constitution.

26. On 11 April 2003 Mrs Inglewood and Shelley Clark and three others attempted to convene a special general meeting on notice under clause 11 of the constitution. They called the meeting to be held on Monday 14 April 2003 and gave their reasons in accordance with clause 11.2 of the constitution as follows:

- *To discuss initiative of the Employment Committee as set out in letter dated 1 April 2003 to take over the running of the Refuge – “with all decisions concerning the running of the Refuge will be made by the Employment Committee”. It would appear a lost sight as to how a society is run.*
- *To consider a resolution to the effect that the decision of the Employment Committee to issue The other employee with a written warning as set out in letter 13.03.2003 was invalid as the nature and importance of the matter required determination by the Collective as a whole.*

27. On 14 April 2003 the Employment Committee responded to Betty Inglewood and Shelley Clark and the other signatories. It informed them that they were acting in contravention of the constitution and in opposition to the duly authorised Employment Committee which was considered as an interim body overseeing the running of the Refuge. The letter went on to say:

“At a meeting of the Collective on the 18 March 2003, it was proposed that the Collective of WCWR be dissolved as the Collective arrangement was not working and a management committee be appointed, (The meeting was called because the paid workers were in conflict and the stability of the Refuge itself was threatened by the ongoing conflict).

All persons present voted in favour, which was a unanimous vote. There were two persons who were to be informed of the decision. One person arrived later on and gave her consent in person. Betty undertook to contact the other person. The management committee was to comprise professional persons and in your own words (Betty) persons from the social work services. While suitable candidates for the management committee were being approached, it was further proposed and agreed that the Employment Committee that was democratically elected and in existence, manage the affairs of the WCWR.

As is constitutionally required, the Registrar was notified of the change in structure of the Refuge.

28. As an aside, Mrs Sirisena says that she wrote to the Registrar in a letter that was produced dated 10 April 2003. It was established by Mrs Inglewood that it appeared that this letter had not been received by the Registrar. The whereabouts of this letter sent to the Registrar remains unexplained. However, the Registrar wrote to Mrs Inglewood’s representative

outlining that the Companies Office, Ministry of Economic Development, was unable to find any record of the letter being received or acted on. The letter dated 16 December 2004 indicated that the Registrar would not have accepted Mrs Sirisena's letter as an amendment to the Rules of the Society and that her letter was not acceptable and it may be that she was advised of this at the time, but no record of any reply could be found (letter 16 December 2004 produced).

29. Various people, including members of the collective: Fiona Teesdale, Bridget Scott, Shelley Keach and Keetha Montgomery, wrote letters to whom it might concern in response to Mrs Inglewood's letter dated 10 April and did not attend the special general meeting that was called.
30. The collective met on 15 April 2003 with the purpose of informing members and answering questions raised in regard to the need for information. The minutes of that meeting record the following:

“Indira raised that there was an omission in the previous minutes – what Indira proposed was that the Collective structure was not working and that it be replaced by a Management Committee. A vote was taken and it was unanimous.”

31. Mrs. Gloistein attended the meeting and says that she remained silent but opposed this matter. At this point, Shelley Clark read the letter with legal advice from her and Mrs Inglewood's lawyer about the constitution and undertook to leave a copy of the letter the next day. The minutes also recorded that another member moved:

“That we undo the decision of dissolving the Collective on 18.03.03 until everyone has a chance to discuss and vote.”

32. The minutes also recorded that the meeting of 18 March:

“Wasn't called for the purpose of voting on dissolving the Collective – Barbara people needed to be well informed before they make decision. It was wrong that that was decided there and then.”

33. A motion was then moved and seconded that the Refuge:

“Is obviously in crisis. That in the interim the present Employment “Steering Committee” – act as the interim Management Committee until members of the Refuge can democratically decide on the new structure of the Refuge.

This will include the “democratically” elected Treasurer on the “Steering Committee”. Unanimous vote in support of this.”

34. The Committee also confirmed the decision regarding the complaint that the other employee had breached confidentiality was final and that the other issues in regard to her had been referred to an Employment Tribunal (sic) mediator and their decision would be final.
35. The minutes also recorded that a meeting would be called to discuss the future structure of the Refuge and that everybody would be notified by mail of the motions passed at the meeting and a date of the meeting for further discussions within a fortnight.
36. A memorandum was sent to all Refuge members on Monday, 21 April signed by Fiona Teesdale on behalf of the “Steering Committee”. This recorded the decisions and that

“Indira explained that the Incorporated Societies legislation provided for the legitimacy of “crisis” decision-making, without the usual requirement of prior notification to all members.”

37. Mrs Inglewood did not reply to either this or the earlier letter advising her of the decision that there would be a final mediation.
38. When the “Steering Committee” next met, the decision was made to provide Mrs Inglewood with a written notice of warning from the “Steering Committee”. The letter dated 6 May sent to Mrs. Inglewood read as follows:

“The purpose of this letter is to issue you with written notice of warning from the Steering Committee.

The reason we have taken this action is you’re (sic) inappropriate and unprofessional letter dated 10 April that was mailed to refuge staff and volunteers.

The letter demonstrates an inability to raise concerns regarding your work in an appropriate manner, and further demonstrates an inability to deal with conflict in a way that is respectful of other parties involved.

The accusations made against members of the Steering Committee were unfounded, unsubstantiated and irresponsible.

Further the Steering Committee considers that the attendance of your supervisor at the mediation session on 10th April was your decision, and was done without prior arrangement for payment of her costs. It was not made clear that she was going to invoice the refuge for her time, and her invoice for \$195 (3 hours @ \$65) exceeds that of the mediator who charged the refuge the reduced rate of \$85 in recognition of our status as a community organisation. The refuge is not willing to pay for your supervisor’s attendance at mediation. Although the invoice has been paid, as the Treasurer was unaware at the time of the circumstances, we feel that you should reimburse the refuge for costs that you incurred on our behalf.”

39. The members were advised of the situation in another memorandum written by Fiona Teesdale dated 7 May 2003, including the decision to give Betty Inglewood the notice of warning.
40. There was no process involving Mrs Inglewood with her notice of warning and how it could be addressed.
41. On 9 May 2003 Mrs Inglewood resigned. She wrote to the Refuge on the following terms:

“My compassion for justice, basic human rights and integrity has been compromised while being employed by West Christchurch Women’s Refuge. It is professionally and personally impossible for me to work for an organisation that ignores policies and procedures and involves itself in unsafe practice and put their clients in dangerous and abusive situations. I will not be part of such practices and will hereby resign from my position as women’s care worker. My last day of work will be 23 May 2003.

I enjoyed working with the women and the children and felt fortunate to be part of their lives while they were in refuge and help them facilitate positive change when they felt ready. My thoughts are with the women and children who will be using this Refuge in the future and hope they will be safe.

For the unpaid staff, who gave their time freely to help and supported the women and children who needed Refuge assistance, thank you, you are all amazing women.

I will collect my personal items from the office and hand over my keys on 23 May at 3.45pm. I expect a cheque ready for me with holiday pay owing to me from last year and this year as calculated on the enclosed form. I would also like to receive written confirmation of my earnings over the past years, since in the 2½ years that I have been working for the Refuge I never received a pay slip.”

42. Her letter of resignation was accepted on 15 May 2003. She was thanked for her past service and commitment and her final cheque for pay was confirmed including calculations for the amount of pay owing until 23 May, having regard to sick leave and holidays. Mrs. Inglewood went on three weeks’ sick leave from 28 April, which was extended for a further 4 weeks on 8 May after she visited her doctor (medical certificates produced).

Determination

43. There is evidence that the applicant’s complaints about the other employee were taken up and dealt with by the respondent in the employment committee and referred to the collective, albeit the applicant was not satisfied about the outcome and how the matter was handled. In this regard Mrs. Inglewood was participating as part of the collective.
44. There is an issue between the parties about the correct decision making body and it seems the difficulties between the employment committee and the collective blurred the accountability

lines as to where the decision should have been correctly made. This has nothing to do with Mrs. Inglewood's employment except that there is a link between Mrs. Inglewood's claims that her work environment was not safe because of the confusion and interpersonal difficulties on the Employment Committee and the collective not following policies and procedures (as they seem to relate to the complaint matter) that in turn raised an issue for Mrs. Inglewood about the potential quality of the disciplinary decision for the person concerned. Mrs. Inglewood has not established her claim that the respondent was unwilling or unable to resolve the matters she raised in regard to the complaints about the other person.

45. The complaints were dealt with even if Mrs. Inglewood did not like the outcome although how it was handled was allegedly in contravention of the constitution because the collective did not make a decision (see complaints policy and constitution). The matter was put to the collective as a decision (from the Employment Committee) and not a recommendation as required by the constitution. These are constitutional matters and not employment matters in the management of the collective and have nothing to do with the applicant's employment except as follows.
46. It is my conclusion that the collective was still bound by its constitution because the constitution had not been amended. The applicant whilst being accused of acting unconstitutionally was within her rights to call a special general meeting but this related to her membership of the collective and not as an employee.
47. When the meeting did not take place because of poor attendance the alternative was for Mrs. Inglewood to attend the regular collective meeting scheduled for 15 April. However, Mrs. Inglewood had no advance notice of the agenda for that meeting, and in any event was unable to attend. She was not consulted on the items to be discussed. Therefore the respondent's unilateral decision to place the complaint matter in mediation and have a mediator's final and binding decision without Mrs Inglewood's input on the outstanding matters concerning the complaints about the other person was unreasonable, although it would not have been an issue for Mrs. Inglewood to resign over, since it had potentially nothing to do with Mrs. Inglewood's employment, but for the opinion that she had that she was required to work in an unsafe workplace because of the failure of the collective to follow its policies and procedures in dealing with the substance of the complaints.
48. The respondent's attempt to deal with the complaints about the other person involved decisions within the range of decisions open to the respondent. The process for determining the outstanding issues would have required consultation since they involved Mrs. Inglewood's

employment with her allegations of an unsafe workplace, albeit the decision to involve employment mediators might have confused the issues of the management of the collective and dealing with the complaints and Mrs. Inglewood's employment.

49. The decision to put the applicant on notice of a warning for sending her letter dated 10 April in regard to her behaviour was unjustified in her employment on substantive grounds since she had no advance notice and opportunity to comment on the decision to put her on notice of a warning. Such a warning put in jeopardy her employment because the "*Steering Committee*" related it to her work by referring to the letter demonstrating "*an inability to raise concerns regarding your work in an appropriate manner, and further demonstrates an inability to deal with conflict in a way that is respectful to other parties involved*". I determine that there is a linkage between the warning and Mrs. Inglewood's employment.
50. The warning raised an issue about the "*Steering Committee's*" decision to revisit the payment of Ms Finlay's fee for attending the failed mediation. This appears to have come from nowhere and certainly was not raised on any notice for Mrs Inglewood's comments at the time. She seems to have reasonably concluded earlier that the matter had been dealt with by Mrs Sirisena much. The fact that Mrs. Inglewood did not refer to it as a part of the problem until her reply makes it a matter that was not causative of her resignation and being generous to the respondent maybe it was raising the matter for a discretionary repayment given the early secrecy. It certainly was not open to the respondent to unilaterally change it since Mrs. Inglewood reasonably believed the mediation would be paid by the respondent and the payment for Ms. Finlay's attendance was made by the respondent.
51. The respondent's unilateral decision related to the process of a final and binding mediation that involved the complaints made about the other employee was linked to the respondent's alleged failure to follow its policies and procedures causing Mrs. Inglewood to have a concern about the safety in the workplace. Also Mrs. Inglewood was given a warning relating to her employment without her having an opportunity for some input and comment, including what it might have meant. These were serious enough to cause Mrs. Inglewood to decide to resign. It was not necessary for her to reply given the decision that had been reached without her input. I conclude that she has established that she was constructively dismissed.
52. The seriousness of the respondent putting in place a unilateral process and giving a warning to Mrs. Inglewood in regard to her employment without any notice of an opportunity to have her input made Mrs. Inglewood's resignation sufficiently foreseeable.

53. Mrs. Inglewood has a personal grievance. I now turn to remedies to resolve the employment relationship problem. Mrs. Inglewood has claimed lost wages, compensation and costs.
54. There is no contribution. The applicant's loss could be calculated over 18 months. However, the claim for lost wages is affected by the fact that Mrs. Inglewood went on sick leave and the notice that she gave included holiday pay. She did not obtain a medical clearance and decided to turn down a full time position and did not follow up her medical situation with her doctor after the sick leave period had expired. I order the respondent to pay the sum of 8 weeks (2 months) lost wages at \$18.50 per hour for 35 hours per week in the sum of \$5,180 to Mrs. Inglewood.
55. I also order the respondent to pay Mrs Inglewood the sum of \$3,000 compensation under section 123 (c) (i) of the Act for humiliation, loss of dignity and injury to feelings as it relates to the impact on her of her termination of employment on the employment matters.
56. Costs are reserved.

P R Stapp
Member of Employment Relations Authority