

would undermine the Court's order so I make an order prohibiting the publication of the applicant's name or of any identifying details.

No appearance by the respondent

[4] After receiving the statement of problem, counsel for Mr Mason wrote to the Authority saying that the applicant had recently been charged with theft as an employee of Mr Mason. Counsel said that the grievance should be adjourned pending disposition of those charges. Counsel for the applicant disagreed and a phone conference was convened. After I heard from both counsel, I set an investigation meeting for 26 July 2007 with statements of evidence to be lodged no later than 11 July 2007. A notice of directions and a notice of investigation meeting were served on Mr Mason by sending them to his counsel.

[5] On 16 July 2007 counsel for Mr Mason alerted the Authority that he doubted whether he could continue to act *given that [Mr Mason] has not instructed me*. Nothing was heard from Mr Mason directly. The applicant wanted to proceed so the investigation meeting was not adjourned.

[6] Mr Mason did not attend the meeting nor was he represented. There being no reason known at that time to explain Mr Mason's non-appearance, I decided to proceed with the investigation meeting. The applicant confirmed her statement of evidence and answered my questions. I told the applicant that the determination would await the disposition of the criminal charges against her, at that time set for a hearing in early September 2007.

[7] On 4 April 2008 the police sought leave to withdraw the charges against the applicant and leave was granted by the District Court.

Events following the Investigation Meeting

[8] On 8 August 2007 Mr Mason sent an email to the Authority saying that *Due to a misunderstanding where I was led to believe that any determination of this matter would wait until after the criminal charges had been dealt with (against [the applicant]) I missed the opportunity to respond ... and would therefore request an opportunity ...* Mr Mason gave counsel's address for all correspondence.

[9] The Authority replied to Mr Mason's email saying that any document lodged must include his current address; that if the solicitor advised that he was now instructed we would communicate through the solicitor but the solicitor's office would thereafter be the address for service even if the solicitor later withdrew; and that once Mr Mason had attended to these matters the Authority would consider the request for a further opportunity to respond to the claims. There was no response from Mr Mason.

[10] On 14 August 2007 the Authority received a phone call and an email from another Dunedin solicitor ("the second solicitor"). The second solicitor advised that she had been approached by Mr Mason, that (on his instructions) he should have an opportunity to respond to the applicant's claims but that she could not act for him until an intended application for legal aid had been made and approved. At my instruction, the support officer told the solicitor that for Mr Mason's earlier request to be considered he needed to provide an address for service and a solicitor's address would remain as the address for service even if the solicitor later withdrew.

[11] On 20 August 2007 Mr Mason sent an email to the Authority giving the address of a third solicitor as his address for service. The Authority contacted that solicitor to confirm that he was instructed and so he knew that his address would be thereafter used as an address for service. The solicitor was to confirm in writing that he was instructed on this basis but nothing has since been received by the Authority.

[12] Meantime, in late August and early September there were some communications between the Authority and the second solicitor about the state of her involvement. She was apparently unaware that Mr Mason had approached the third solicitor. That led to her trying to clarify the situation with Mr Mason. The Authority has not heard further from the second solicitor.

[13] On 13 September 2007 Mr Mason wrote to the Authority asking us to send our file to the third solicitor. Mr Mason did not include his own address in this letter despite having been told from the outset by the Authority that he needed to provide his address with any documents lodged. The Authority told Mr Mason in an email that he needed to provide his address or have a solicitor confirm in writing that he or she was acting on the basis that their address would then remain the address for service.

[14] On 18 October 2007 the Authority received written advice from a fourth solicitor (Andrew Belcher) that he was acting for Mr Mason and that his address was now the address for service. Mr Belcher was advised that Mr Mason had failed to appear at the earlier investigation meeting and if he wanted another opportunity to be heard by the Authority in relation to the grievance claim there needed to be an appropriate application supported by an affidavit explaining the earlier non-appearance. Mr Belcher asked for three weeks to take instructions about this which was agreed. The Authority followed up with Mr Belcher in November and again in December. The Authority also confirmed that there would be no determination until after the disposition of the criminal charges facing the applicant.

[15] After the Authority received advice that the criminal charges against the applicant had been withdrawn I reviewed the file and decided I would give Mr Mason one final chance to properly explain his non-attendance at the investigation meeting and make an application for a further chance to be heard on the substance of the grievance. Advice to that effect was sent to Mr Belcher's office, that being Mr Mason's address for service. There has been no response.

Personal grievance

[16] I find that Mr Mason constructively dismissed the applicant. By sexually harassing the applicant in the way complained of by her, Mr Mason seriously breached his obligations to her. The applicant resigned in response to the ongoing harassment and it was reasonably foreseeable that a person might resign in such circumstances.

[17] The harassment included groping the applicant, making comments of a sexual nature about her body and her clothing and propositioning her for sex. The applicant found all of this offensive and resigned on 5 December 2005.

Remedies

[18] I accept the applicant's evidence that she lost 13 weeks worth of wages as a result of her grievance. I order Mr Mason to pay the applicant \$6,240.00 (gross) to compensate her for that loss.

[19] I also accept that the applicant suffered distress as a result of her grievance. There is a claim in the statement of problem for \$10,000.00 compensation. In the

circumstances that is a modest claim and I will award it in full. I should note that I am aware that the District Court made an order for victim compensation as a result of Mr Mason's conviction for the indecent assaults. The compensation ordered by the Authority relates to the effects of the dismissal. Mr Mason is to pay the applicant \$10,000.00 compensation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.

[20] There is a claim for costs. Mr Mason is to pay the applicant \$1,500.00 costs.

[21] Mr Mason obstructed rather than facilitated the Authority's investigation.

Philip Cheyne
Member of the Employment Relations Authority