

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 164
5354483

BETWEEN TIA KING and PAUL
 EDWARDS
 Applicants

AND HOHEPA HOMES TRUST
 BOARD
 Respondent

Member of Authority: G J Wood

Representatives: Stuart Webster for the Applicants
 Dave Robb for the Respondent

Investigation Meeting: 20 November 2012 at Hastings

Submissions Received: 20 November 2012

Determination: 21 December 2012

DETERMINATION OF THE AUTHORITY

[1] Hohepa Homes Trust Board (Hohepa Homes) runs a series of homes to assist young people with disabilities. Ms King and Mr Edwards were employed as house manager and assistant house manager for the Board respectively, a charitable trust, for around 10 years. As a result of an employment relationship problem they raised with Hohepa Homes in 2011, filed in the Authority, records of settlement were reached with both of them, of which one result was them resigning their positions with Hohepa Homes. The terms of settlement were confidential, except for an agreed joint statement, for the purpose of providing appropriate notice to staff, parents and the wider community. The agreed statement was as follows:

Tia King and Paul Edwards have resigned their positions with Hohepa Homes to further their career opportunities elsewhere. Tia and Paul have been at Hohepa for a long time and we wish them both well in their future endeavours.

[2] Unfortunately, Hohepa Homes' general manager, Mr Andrew White, did not comply with the terms of settlement. Instead, in the newsletter provided to staff and parents, he added another sentence, between the two agreed sentences, stating:

Tia's last day was yesterday and Paul leaves on August 21 2012, at which point they will be moving offsite.

[3] Hohepa Homes objected to the claims being made without the filing of a new statement of problem. While this may be technically correct, it was agreed to pursue the matter by way of an amended statement of problem and statement in reply, in order to bring closure to the issues between the parties more promptly.

[4] The applicants sought compliance orders requiring Hohepa Homes to only disclose what has been specifically agreed, and a penalty for breach of the record of settlement, together with costs.

[5] Hohepa Homes stated that the inclusion of the additional sentence was "regretted" but that it was done with the best of intentions to alleviate any speculation, and in any event was information already in the public domain.

[6] In its amended statement in reply, Hohepa Homes raised allegations that the applicants, or at least Ms King, had breached the records of settlement as well. I declined to investigate this issue, which was not properly raised as a separate claim. Rather it seemed to be some sort of equity and good conscience claim in that the applicants allegedly did not come with clean hands. I declined to investigate these claims because it would not serve to assist the resolution of the longstanding problems between the parties, which have continued to exist beyond the full and final settlements.

[7] Ms King and Mr Edwards took exception to the unauthorised sentence, which they considered personally embarrassing and insulting. In their evidence, given by way of video conference, they stated that there was no need for the statement giving details of their exit from Hohepa Homes. They considered that their place of work and personal homes had been tainted by the comment. The applicants also claimed that they had been told by staff that Mr White's message was his "victory dance". They were unprepared, however, to name any such staff member.

[8] An additional statement was provided by the applicants after the investigation meeting, stating that they had not properly explained when questioned at the

investigation meeting why they felt so affected by the additional statement. They then stated that it was retribution by Mr White because of their involvement in sleepover cases - Hohepa Homes being one of those organisations providing disability services potentially affected by the litigation known as *Dickson v. Idea Services Ltd.*

[9] Mr White denied the allegations. He said that he took advice and simply added the information because it was the first question that people would ask.

[10] Having heard Mr White, I accept his explanation, even although he should never have added the extra sentence. It is fundamental to the working of the employment relations system that settlements are adhered to. Adding an extra sentence, however innocent it may appear to the writer, was fundamentally in breach of the parties' agreement.

[11] I conclude, however, that this is not a case for compliance orders or a penalty. I am satisfied from Hohepa Homes' undertakings, both in the amended statement in reply and to the Authority, that it will not breach the terms of settlement again. Similarly, it has expressed its regret for having made the statement. I do not consider that any reasonable staff member or parent receiving the newsletter would have attributed to it the serious negative implications that the applicants genuinely believed it held. That is not to minimise the impact that the breach of settlement has had on them, but these are implications drawn by applicants who feel these matters strongly. I do not consider that a reasonable person in a co-worker or a parent's position would have taken this as a victory dance by Mr White, as they claim, particularly as they were not prepared to name people who took that view.

[12] Similarly, there was nothing in the amended statement of problem or the applicants' oral evidence that this matter had anything to do with whatever had occurred with the sleepover issue at Hohepa Homes. It is significant for deciding this disputed matter on the balance of probabilities that they did not refer to this claim until after the investigation meeting. I conclude instead that this was a genuine mistake by Hohepa Homes. In the circumstances of a genuine error, which would not have had any major impact on a disinterested person a penalty, is not necessary to discourage further non-compliance.

[13] The applicants have established a breach of the settlement agreement, but that was never disputed by the respondent. They have not been successful in gaining any

of the remedies they have sought. Given these circumstances, it is appropriate that costs should lie where they fall and I so order.

G J Wood
Member of the Employment Relations Authority