

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 288
5312979

BETWEEN RAEWYN LAWLOR
 Applicant

AND BAY OF PLENTY DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: Vicki Campbell

Representatives: Anne-Marie McNally for Applicant
 Gail Bingham for Respondent

Investigation Meeting: 11 April 2011

Submissions Received: 29 April 2011 from Applicant
 18 April 2011 from Respondent

Determination: 5 July 2011

DETERMINATION OF THE AUTHORITY

A Ms Lawlor has not established to my satisfaction that she was subject to an unjustified disadvantage in her employment.

B Costs are reserved.

[1] Ms Raewyn Lawlor is employed by the Bay of Plenty District Health Board (BOPDHB) at the Whakatane Hospital where she works in the Laundry. On 26 March 2010 Ms Lawlor attended a 'Team Building Day'. On 7 April 2010 Ms Lawlor was invited to a meeting with Ms Sherida Cooper, non Clinical Services Manager, and Ms Sharon Stevenson, Human Resources Advisor.

[2] During the meeting Ms Lawlor claims she was locked in the office which amounted to an unlawful imprisonment and that her employment has been affected to

her disadvantage as a result of this unjustifiable action by BOPDHB. The BOPDHB denies the claims.

[3] The issue for the Authority is to determine whether Ms Lawlor's employment or 1 or more conditions of her employment is or are or was affected to her disadvantage by an unjustifiable action by BOPDHB.

The incident

[4] On 7 April 2010 Ms Lawlor says Ms Cooper approached her and invited Ms Lawlor to talk with her. Ms Lawlor says she was taken to Ms Cooper's office where Ms Stevenson was already present.

[5] Ms Lawlor says she was told the meeting was "off the record" and that it was to discuss her anger towards another employee. The issue had arisen as a result of a comment Ms Lawlor had made to another employee that she did not appreciate her private life being brought up in a case against her Manager and a comment made by her at the team building day which had led to the facilitator raising concerns about Ms Lawlor's anger towards that employee.

[6] Ms Lawlor says she was told that her private life was being discussed by many, including managers at the hospital. Ms Lawlor says this made her upset and she began to cry. While still crying, a customer came into the office and Ms Lawlor was made to serve the customer. She says that after she returned from serving the customer the door to the office was locked. Ms Lawlor says she found the whole situation frightening, humiliating and embarrassing for both herself and the customer.

[7] Ms Lawlor says that other employees, after seeing the state she was in, and that the door had been locked, rang her manager to let him know that she was locked in with Ms Cooper and Ms Stevenson.

[8] Ms Lawlor says that her manager knocked on the door, and after receiving no response asked for the keys, unlocked the door, at which time Ms Lawlor left quickly.

[9] In a report written by her Manager, Mr Kevin Marden, Mr Marden confirms that he approached the office but found the door locked. In his report Mr Marden says that as he was trying a second key in the lock, the door was opened and Ms Lawlor exited looking distressed. The next day Ms Lawlor rang in sick and then on Friday 9 April

2010 Ms Lawlor presented a medical certificate relieving her from work for two weeks.

[10] As a result of the incident Ms Lawlor completed a formal complaint form referred to as a Reportable Event Form (REF). The completion of the REF invoked a formal investigation process by BOPDHB. As part of the investigation Ms Lawlor was interviewed on 27 April 2010. The file notes from that interview show that Ms Lawlor was still feeling distressed from the 7 April 2010 incident.

[11] As a result of the investigation Ms Lawlor received a written apology from Mr Gordon Mackay the General Manager Human Resources, for the distress and anxiety the meeting on 7 April 2010 may have caused her. Mr Mackay acknowledged that the meeting was not related to a formal investigation and that in hindsight a representative from HR should not have been part of the meeting. Mr Mackay stated that the investigation, and subsequent actions represented closure for the DHB on the REF.

Unjustified disadvantage

[12] There is a two step test to establish a disadvantage grievance. Firstly, I must ascertain whether BOPDHB's actions disadvantaged Ms Lawlor in her employment, and secondly, whether that disadvantage has been shown to be justified or unjustified pursuant to section 103A of the Act.¹

[13] Disadvantage alone is not prohibited by law. It must be a disadvantage that is unjustified. If BOPDHB can establish justification for a disadvantageous action, there is no grievance.²

[14] Finally, disadvantage is not identified narrowly and solely in terms of wages and conditions of employment. Rather it broadly considers effects on the total environment of the employee's employment. A claim for disadvantage depends upon an act or omission by an employer causing disadvantageous consequences, not merely an employee's subjective dissatisfaction at their circumstances.³

[15] Ms Lawlor was required to attend a meeting that had the appearance of a formal disciplinary meeting but without all the requisite preamble such as prior notification

¹ *Mason v Health Waikato* [1998] 1 ERNZ 84

² *McCosh v National Bank*, unreported, AC49/04, 13 September 2004

³ *NZ Storeworkers IUW v South Pacific Tyres (NZ) Ltd* [1990] 3 NZILR 452; *Bilkey v Imagepac Partners*, unreported, AC65/02, 7 October 2000

and the setting out of allegations or concerns to be discussed. This much was admitted by the BOPDHB in its report following the investigation into Ms Lawlor's REF.

[16] Exacerbating the situation was the fact that the door to the meeting room was locked after the meeting was interrupted by a customer needing service. While it is accepted by the Authority that Ms Cooper felt she had genuine reasons for locking the door, this action contributed to Ms Lawlor's distress. I find that Ms Lawlor was, however, situated close to the door, and to unlock the door simply required the turning of the handle which would simultaneously open and unlock the door at once. At no stage did Ms Lawlor attempt to leave, something which she could have done with no restraints.

[17] I also find that Ms Lawlor was not required to serve the customer when approached in the room, rather, Ms Lawlor took it upon herself, in her distressed state, to serve the customer rather than take time to explain to another employee what needed to be done to assist the customer fully.

[18] The meeting discussed not only issues of Ms Lawlor's understanding of what another employee may or may not have advised management about Ms Lawlor's relationship with her Manager, Mr Marden, but also her upcoming annual leave. Ms Lawlor says she was so distressed by the way the meeting was conducted that she had to take two weeks sick leave. At the investigation meeting Ms Lawlor acknowledged that her travel plans to Australia went ahead and that due to her producing a medical certificate for the two weeks, her annual leave was converted into paid sick leave.

[19] Ms Lawlor also told the Authority that although she felt distressed while on leave she assisted her brother in his lawn mowing business while in Australia as it was a way of making sure she saw him during the day.

[20] I find Ms Lawlor was not disadvantaged in her employment by an unjustifiable action of the BOPDHB. Ms Lawlor was certainly unhappy about the fact that people were discussing her personal relationship with Mr Marden and it was this that caused her distress, not the fact that after the interruption, the door was locked to prevent further interruptions.

[21] The evidence showed that Ms Lawlor was upset before the door was locked and I am satisfied Ms Lawlor was free to leave at any time and could easily have left by turning the door handle which would have unlocked the door at the same time.

[22] I am also satisfied that after Ms Lawlor lodged her complaint through the REF process it was fully investigated and an apology provided to Ms Lawlor for the way the meeting had been conducted.

[23] Ms Lawlor has not established to my satisfaction that she was subject to an unjustifiable action in her employment which led to her disadvantage. I can be of no further assistance to Ms Lawlor.

Costs

[24] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If they are not able to reach agreement on the matter of costs, BOPDHB may lodge and serve a memorandum as to costs within 28 days of the date of this determination. Ms Lawlor will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[25] In order to assist the parties with resolving costs themselves, I can indicate (subject to any submissions) that a tariff based approach to costs is likely. In which case the usual starting point would be around \$3,000 (GST inclusive) per day. That figure would then be adjusted in light of the particular circumstances of this case.

Vicki Campbell
Member of Employment Relations Authority