

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 180/08
5103877

BETWEEN

AMANDA LEYDEN
Applicant

AND

COMMISSIONER OF POLICE
Respondent

Member of Authority: Yvonne Oldfield
Representatives: Applicant in person
Raewyn Schmidt for Respondent
Investigation Meeting: 2 May 2008
Determination: 14 May 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This problem has arisen, sadly, at the very end of a long and previously successful employment relationship. Ms Leyden worked for the New Zealand Police as a non-sworn administrative assistant for approximately nine years before resigning because she and her husband had decided to move to Canada. After confirming the date of her last day at work, she offered to return to the Police in a temporary capacity, and was disappointed that this offer was declined. She alleges that the refusal to re-employ her and associated conduct towards her give rise to a personal grievance of unjustified disadvantage. The issues for determination are therefore whether either of these allegations amounts to an unjustified action to her disadvantage.

(i) The refusal to re-employ.

[2] Ms Leyden first tendered her resignation in January 2007 and advised that she intended to finish work on 27 June 2007. In March and June of that year respectively

she advised that she wished to defer her resignation, first to late September and then to late December. On both occasions this was agreed to. There is no dispute that Ms Leyden had been a valued member of staff and I was told by the person to whom she reported, Eastern Area Commander and Chief Inspector John Palmer, that he was pleased to have her services for longer than he had expected when she first advised that she would be leaving.

[3] After making the decision to emigrate, Ms Leyden arranged to pack up her furniture for shipping to Canada and move into furnished Police accommodation from 31 March to 28 September 2007. On 15 June Ms Leyden requested that her tenancy be extended through to the end of the year. It was explained to her that because the amount of Police accommodation was limited, tenancies were usually restricted to a maximum of six months and she had already had a house for this period.

[4] Nonetheless, during June, July and August Ms Leyden persisted with her request that she be permitted to remain in the accommodation until late December. The circumstances behind this (and the postponement of Ms Leyden's resignation) appear to have been that Ms Leyden was waiting for her adult daughter who had decided to go to Canada as well. The matter was eventually referred to the District Human Resources Manager who confirmed that the tenancy could not be extended beyond 28 September.

[5] Ms Leyden was very unhappy with this decision. On 3 September, a few days after it was finally confirmed, she wrote to Payroll saying that "*I now advise Payroll that I will in fact NOT BE resigning from the N.Z. Police in December 2007*" and that her final day at work would instead be Monday 17 September 2007. Ms Leyden cited the fact that her tenancy had not been extended as the reason for her bringing forward her resignation and noted "*It is just too bad that over a matter of 3-months extension to my tenancy being declined, I am resigning from the N.Z. Police on this note.*"

[6] This latest change to Ms Leyden's plans meant that there would not be a full month's notice before her final day of work, as required by her terms of employment. However Payroll accepted the change in arrangements and was able to pay all her entitlements in full upon termination.

[7] On Friday 7 September Ms Leyden notified Chief Inspector Palmer that she would be leaving on 18 September. He asked her to reconsider her decision over the weekend. However, Ms Leyden's mind was made up and on Monday 10 September she confirmed that her final day of work would be 18 September.

[8] Ms Leyden's evidence was that she asked Chief Inspector Palmer:

“what would be done about my job now that I had resigned. His response was that he would...make arrangements with H-R to advertise the position. I stated that I could apply for the job and offered to return...as a temp to fill the position. The EAC refused my offer

[9] Ms Leyden told me that she was “stunned” by this refusal which she says was made “without any hesitation and certainly no consideration of my 9 years of service.” She told me: “I recall thinking he can't get away with treating me like this surely? It is completely unfair and unacceptable.”

[10] Chief Inspector Palmer told me that he declined Ms Leyden's offer to return to work in a temporary role because “it was the Department's desire to fill this position permanently and without undue delay.” He also told me that the office was not busy at that time and that he did not expect it to be difficult for Ms Leyden's work to be managed in the interim. He told me that this proved to be correct. Even though the job had to be advertised twice because of a shortage of suitable applicants and was not finally filled until April of this year only part time temporary assistance was needed to cover the vacancy in the meantime.

[11] In submissions for the respondent, Ms Schmidt has argued that there is no obligation on an employer to take a former permanent employee back into his or her position in a temporary contractual capacity. She notes that in this case it was the applicant's decision to resign and to terminate her employment when she did. Ms Schmidt notes that Ms Leyden only sought to return on a temporary basis once her resignation had become effective.

[12] In addition Ms Schmidt says that the respondent had good reason to want to fill Ms Leyden's position on a permanent basis. The Chief Inspector had been pleased

when Ms Leyden deferred her departure date, but once she had confirmed her resignation, he wanted to get on with the business of finding her replacement.

Determination

[13] I accept Ms Schmidt's submission that the respondent was under no legal obligation to engage Ms Leyden in a temporary role. I also accept that the Chief Inspector's explanation for declining her offer was reasonable. No personal grievance arises out of the refusal to re-employ Ms Leyden in a temporary capacity.

(ii) Conduct towards Ms Leyden.

[14] It is not in dispute that Ms Leyden and the Chief Inspector were not working closely together around the time of these events because he was covering two positions and was spending only a small part of his time at the office where Ms Leyden was based. However she alleges that the Chief Inspector's refusal to re-employ her was compounded by what she describes as his "*workplace bullying*" of her. Ms Leyden says that even before 7 September she felt that his attitude towards her had become "*impersonal*." She told me that upon hearing the news that she was leaving on 18 September he appeared "*shocked, agitated...and more than a little annoyed*." She suspected he felt she should have honoured her original departure date. She told me that he indicated that "*he would have to phone Human Resources first*". Ms Leyden did not think this was necessary. As she pointed out to me, she had already advised Payroll of her intentions.

[15] After their brief meeting of 10 September, they were in each other's company only once (at a staff meeting on 12 September) before Ms Leyden left. The Chief Inspector was overseas on Ms Leyden's final day of work. The Chief Inspector denies any bullying and denies that he was annoyed at Ms Leyden's news. He reminded me that he was already well aware that she was leaving.

Determination

[16] The matters outlined above are the sum total of Ms Leyden's assertions against the Chief Inspector. None of them amount to bullying. Although she is correct

in asserting that she had already contacted Payroll about changing her departure date, there is nonetheless nothing wrong in the person to whom she reported speaking of her departure with Human Resources, especially where it was sought to reduce the normal notice period. Even if I were to accept that the Chief Inspector was “*more than a little annoyed*” I am not satisfied that this amounts to bullying especially against a background where Ms Leyden has been accommodated in making several changes to her plans.

[17] Ms Leyden’s employment has not been affected to her disadvantage by any unjustifiable action of her employer. Her concerns do not give rise to a personal grievance and there is nothing more I can do to assist her.

Costs

[18] The issue of costs is reserved. Any application for costs should be made within 28 days of the date of this determination.

Yvonne Oldfield

Member of the Employment Relations Authority