

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Dorothy May Lynch (Applicant)  
**AND** Asteron Life (NZ) Limited t/a Asteron (Respondent)  
**REPRESENTATIVES** Graeme Gowland for applicant  
Michael Quigg for respondent  
**MEMBER OF AUTHORITY** P R Stapp  
**INVESTIGATION MEETING** On the papers  
**DATE OF DETERMINATION** 21 April 2005

DETERMINATION OF THE AUTHORITY

*Employment relationship problem*

1. Dorothy Lynch is employed by Asteron Life (NZ) Limited in the client services business unit.
2. In August 2003 Asteron announced its intention to restructure. The restructuring had its origins in May 2003 when a proposal was announced to staff by the then General Manager Operations, Gail Costa. This was done in a memorandum dated 6 May 2003 (produced). Assurance was given to the team members there would be no loss of positions.
3. Dorothy Lynch was sent a letter dated 22 August 2003 seeking her preferences. She replied by completing the necessary form. In September 2003 Ms Lynch was informed by her newly appointed team leader, Adriana Hamilton of her new functions. The respondent says the new functions, functional responsibilities representing a change in focus and emphasis of the duties and responsibilities, fell within the position description for the applicant.
4. Ms Lynch says that she met with Adriana Hamilton to discuss her role under the restructuring on or about 11 September 2003. Ms Lynch says she reacted with "*utter disbelief*" when Ms Hamilton told her that her total job would be to action all changes of address and deleting obsolete addresses. She says this was work that staff set aside until students were available in

holidays, to get rid of it. She said that she felt angry, badly let down and humiliated. She says she was actually embarrassed to tell others what her new job was when they asked.

5. She says she told Ms Hamilton at that meeting that she was not a bit happy about what had happened, and that Ms Hamilton certainly understood how she felt. Ms Lynch says that she made it clear that it was humiliating and unfair and that “*she intended to take further action over a grievance*”. Ms Lynch says that Ms Hamilton told her that Natalie Medway, another employee, was working on the purchase of a Baycorp database which would make Ms Lynch’s work a lot more interesting as she would be able to search the database for new addresses for clients.
6. Ms Lynch was still upset and says she then met with Lorraine Mettrick, the client services manager, on Monday 15 September, and raised a grievance with her about how the restructuring had affected her. She says that Ms Mettrick asked her to wait and see what happened when the new Baycorp database arrived and to give it a go. Ms Lynch accepted that advice.
7. As it turned out, the company eventually decided it would not go ahead with the purchase of the Baycorp database and no dates have been provided. Instead the company negotiated with New Zealand Post for their database it intended the applicant to use. However nothing eventuated and Ms Lynch says she was left to perform what she considered to be the most trivial, humiliating and boring job in the company.
8. Ms Lynch says that the last straw occurred in the week following Easter weekend when the team leader, Liz Bennett told her that her job was the lowest priority job. She says “*I was to leave it for that week and carry on with work being done by someone who was away for that week.*” Ms. Lynch says the staff member concerned was a student who worked part time, when he had no lectures. This is an entirely different matter and the basis on which another grievance could have occurred. It has not been argued.
9. On 30 April 2004 Ms Lynch wrote to Catherine Dickson, Asteron’s HR manager, in regard to the reorganisation of the client services team in September 2003. In the letter she says that she protested quite strongly at the time and after meetings with the new administration manager and team leader. She requested that Asteron make an offer of a redundancy package based on –
  - her role had changed significantly;

- her previous role has in effect been disestablished;
- the lack of consultation about the changes affecting her;
- the proposed solutions (Baycorp and New Zealand Post) have not been followed through or delivered.

### **What is in issue in this problem?**

10. The Authority is required to give consideration to whether the applicant raised her personal grievance within the period of 90 days “*beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee*”.
11. The applicant relies on her meetings with Lorraine Mettrick and Adriana Hamilton on 11 and 15 September 2003. These are the dates Ms. Lynch deposes she raised a grievance. The issue is, did she?
12. She further says that her letter dated 30 April 2004 formally raised the grievance and was written when the grievance came to her notice when the respondent did not deliver the promised initiatives to make her work more interesting. The issue is whether Ms. Lynch was formalising a grievance or raising it for the first time with it coming to her notice?
13. The respondent says that the second limb of section 114(1) of a grievance being raised up to 90 days after the action “*came to the notice of the employee*” is not relevant in this situation.
14. The applicant has proposed that her employment relationship problem be resolved as a personal grievance. The respondent has not consented to her bringing a grievance out of time.
15. For completeness, not only has the applicant proposed that her problem be resolved by way of a personal grievance: she is also seeking declaration of her entitlement to redundancy compensation according to the terms and conditions of the applicable collective agreement and a penalty for breach of the terms of the collective agreement by Asteron. These matters of course can proceed without being affected by a timeframe except for me to note that any action for a penalty for a breach of an employment agreement must be brought within twelve months of the alleged breach.

**What is the timeline of the personal grievance being raised or coming to the notice of the employee?**

16. The date on which the action alleged to amount to a personal grievance occurred was at least 11 and 15 September 2003 when Ms. Lynch met with Ms. Hamilton and Ms Mettrick to discuss the applicant's role.
17. Ms Lynch deposes that when the promises did not eventuate in regard to her role she wrote to Asteron on 30 April 2004 raising a grievance that had come to her notice because the promise in regard to Baycorp and New Zealand Post did not eventuate. The respondent says that the letter was 228 days out of time to raise a grievance.

**The 11 and 15 September meetings and 30 April 2004 letter**

18. I am satisfied that the applicant raised a personal grievance about her job. I accept that she told Ms. Hamilton that she was "*not a bit happy*" and that "*she intended to take further action*". This is confirmed by Ms Hamilton's evidence that the applicant "*felt aggrieved by this change and was going to take the matter further*".
19. Alternatively the applicant told Lorraine Mettrick on 15 September that "*I would wait and see what happened*". She also deposed saying that she intended to "*wait and see how the role transpired*". The applicant was signalling her deferment of pursuing a personal grievance when her employer suggested certain initiatives that might resolve the problem and the applicant agreed to wait and see what happened.
20. Catherine Dixon says that she was "*unaware as to the applicant ever raising the suggestion that her position was redundant or that she was entitled to the redundancy compensation prior to my receiving a letter from her dated 30 April 2004*". She goes on to say that she "*simply wanted more interesting work and Asteron was trying to accommodate this*".
21. The applicant's complaint and the initiative taken by the respondent whereby the applicant agreed to wait and see what happened is sufficient to enable the employer to be on notice of a grievance. One of the purposes of raising a personal grievance with the employer is to enable the employer and the employee to discuss and come to a resolution of the problem together. The above supports this but any action being taken by the applicant was put on hold.
22. In conclusion, I hold:

- Ms Lynch's employer was on notice of her grievance when she agreed to defer taking any action but where it was not going to be progressed immediately or until Ms Lynch could be sure the role worked out in practice.
- That the applicant raised a personal grievance by notifying her employer of being aggrieved by the changes made to her job and discussed at the meetings on 11 and 15 September. Her comments in response to her employer were enough, to put the employer on notice of a personal grievance, given she decided to "*wait and see how the role transpired*", and where the employer suggested that certain proposed initiatives might resolve the problem, and Ms Lynch should wait and see, what happened.
- When the initiatives were not realised, to the applicant's satisfaction, she was free to pursue her problem as a grievance as to whether or not the job had changed sufficiently to claim redundancy. Therefore, the applicant is entitled to pursue her grievance that was raised in the 90 days required under the Act.

23. Costs are reserved

P R Stapp  
Member of Employment Relations Authority