

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**CA 61/07
5041229**

BETWEEN PETA-MARIE McLEOD
Applicant

AND INTERSPACE AIRPORT
ADVERTISING NEW
ZEALAND LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Michael Vesty, Counsel for Applicant
Kylie Dunn, Counsel for Respondent

Investigation Meeting: 29 March 2007 at Nelson

Determination: 14 June 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant (Ms McLeod) was employed by the respondent, Interspace Airport Advertising New Zealand Limited (Interspace) from 19 September 2005 as an airport advertising sales consultant. She alleges that she suffered unjustified actions to her disadvantage at the hand of Interspace on or about 6 February 2006 and then was unjustifiably dismissed, either constructively or otherwise, on 9 February 2006.

[2] Interspace resist those claims, denying both an unjustified action to her disadvantage and a dismissal, constructive or otherwise. Interspace says that Ms McLeod voluntarily resigned her employment on 7 February 2006.

[3] It is common ground that the role performed by Ms McLeod was a stressful one being involved in the commission selling of airport advertising space. In that regard, Ms McLeod's remuneration comprised a modest salaried retainer together

with performance-based commission. As at 7 February 2006, Ms McLeod told the Authority that she had outstanding commission owing to her of \$8,763.13.

[4] On 7 February 2006, there was what is called a “values” meeting wherein the participants, including Ms McLeod and other sales staff, were required to use “training flash cards” to register their response to various matters during the meeting by holding appropriate cards up. Ms McLeod had previously expressed her dissatisfaction at this process.

[5] At the 7 February meeting, she attended without her cards. She was told by Ms Christine Dixon, who was taking the meeting, that she must “get your cards”. There was then an altercation between the two women which ended, according to Ms Dixon, with her indicating by a shooing motion that, if Ms McLeod was not prepared to “play by the rules”, then she should not participate in the meeting.

[6] Ms McLeod, on the other hand, took this shooing motion as evidence of her being “sent away” from her employment, that is that she was effectively dismissed by this process.

[7] There is argument about whether Ms Dixon, in making her shooing motion, directed Ms McLeod towards her desk where the cards were (which is in one direction) or to the outside door, which is in another direction.

[8] Ms McLeod left the workplace and subsequently contacted a senior manager, Ms Anders (who did not give evidence at the investigation meeting) and in an email sent by Ms McLeod to Ms Anders that evening (7 February 2006), Ms McLeod said, amongst other things:

... I will let you know that I left Interspace this morning. This was done with a great deal of sadness on my behalf as I had intended on being there for a very long time. ... I am extremely sad to be leaving Interspace.

[9] Ms McLeod then telephoned Mr Tony Watkins who was her immediate manager and who she was reluctant to contact because he had a close relationship with Ms Dixon who she considered had “dismissed” her. Mr Watkins encouraged Ms McLeod to take some sick leave.

[10] On 9 February 2006, Mr Watkins indicated to Ms McLeod that the American parents of Interspace had, via their legal team, determined that Ms McLeod's email of 7 February 2006 to Ms Anders was a resignation.

[11] Ms McLeod told Mr Watkins that she considered that a line had been taken out of her email to Ms Anders which altered its tone and she accused Interspace, through Mr Watkins, of making that improper alteration.

[12] In its consideration of the question whether Ms McLeod had in fact resigned by her email of 7 February 2006, Interspace took into account an earlier email dated 29 January 2006 from Ms McLeod to Mr Watkins wherein she indicated that she was not happy in her role and that she intended to resign in the near future.

Issues

[13] It will be convenient to analyse the factual matrix by considering in turn each of the salient events which led up to the termination of Ms McLeod's employment with Interspace.

[14] On that basis, the following matters need to be considered:

- (a) Was Ms McLeod "sent away" on 6 February 2006?
- (b) Did Ms McLeod resign by email on 6 February 2006?
- (c) Did Interspace deal appropriately and lawfully with the resignation issue?

The values meeting

[15] At the values meeting on 7 February 2006, Ms McLeod says that she was directed to leave when she refused to participate in the use of the training flash cards.

[16] Ms McLeod accuses Ms Dixon of making a "shooing" motion and indicating to her to "leave the building". Ms McLeod was adamant in her oral evidence that the impression she gained from Ms Dixon's behaviour was to depart the premises rather than "leave the meeting". She said that she believed that "she had been fired".

[17] Ms Dixon was very clear that she told Ms McLeod that *if she did not want to be involved in the meeting that she should leave the meeting and go back to her desk.*

Ms Dixon said that she did not direct Ms McLeod to leave the building, either by word or hand gesture.

[18] Of particular importance is the fact that Ms Dixon had no authority of a disciplinary or employment nature in respect to Ms McLeod and certainly had no power to dismiss Ms McLeod.

[19] Interspace contends that Ms McLeod would have known that Ms Dixon had no authority in that regard, but Ms McLeod's evidence was that *I didn't know she [Ms Dixon] wouldn't have had the right to fire me.*

[20] Ms McLeod went on in her oral evidence to say that she understood that Ms Dixon *had a lot of authority when neither of the managers were present* as was the position on this particular occasion.

[21] Further, Ms McLeod argued that because Ms Dixon had a close relationship with Mr Watkins (Ms McLeod's direct manager), that fact influenced "how powerful" Ms McLeod thought Ms Dixon was.

[22] On the balance of probabilities, I prefer Ms Dixon's evidence on this point to Ms McLeod's. I do not think the evidence supports the conclusion that Ms McLeod could reasonably have reached the conclusion that she had been dismissed by Ms Dixon.

[23] I accept Ms McLeod's evidence that she, in effect, overrated Ms Dixon's authority and importance in the hierarchy of Interspace but, notwithstanding that, I am not persuaded that it was reasonable for Ms McLeod to believe that she had been "sent away".

[24] It would be a quite extraordinary dismissal for a person to be dismissed in such cavalier circumstances and Ms Dixon impressed me as a sensible, straightforward woman who would simply not be given to such dramatic gestures. I am satisfied that what Ms Dixon intended was that Ms McLeod should not participate in the meeting, not that she should not participate in the employment. I am further satisfied that Ms McLeod was unreasonable in reaching the conviction that she had been sent away from the employment by Ms Dixon's shooing motion.

The “resignation” email

[25] Ms McLeod sent an email to Ms Anders, one of Interspace’s managers, in which she relayed to Ms Anders her take on the events earlier that day involving Ms Dixon. The thrust of the message, which I have quoted above, is that Ms McLeod wanted Ms Anders to hear directly from her, rather than second or third hand, what had happened earlier that day and what Ms McLeod thought the consequences of that were.

[26] Ms McLeod, in essence, tried to interest me in an interpretation of the email which she sent to Ms Anders, the thrust of which was that the email simply recorded an event which had happened to her (namely that she had been dismissed) rather than communicating her intention to resign her employment.

[27] However, given my finding that there was no reasonable basis for her to reach the conclusion that she had been dismissed, the only message that she could reasonably be found to be communicating in her email to Ms Anders is one that indicates her own intention to bring the employment relationship to an end. There is no other factual element relied on by Ms McLeod which would constitute a severing of the employment relationship by Interspace.

[28] Further, the email to Ms Anders comes in the context first of an earlier email to which I have already alluded which Ms McLeod sent to Mr Watkins on 29 January 2006, which indicated her intention to resign in the near future, and Ms McLeod’s behaviour when she left Interspace’s premises after allegedly being “sent away” by Ms Dixon.

[29] In unchallenged evidence given by Ms Dixon at the investigation meeting, Ms Dixon indicated that as Ms McLeod left the premises, she *effectively said goodbye to us*.

[30] It follows that I consider the evidence available supports the conclusion that the only logical meaning which can be derived from Ms McLeod’s email to Ms Anders, given my earlier finding that it was not reasonable for Ms McLeod to believe that she had been “sent away”, is that the email to Ms Anders ought properly to be considered as a resignation, having particular regard to the context in which that email would have been considered by Interspace.

Did Interspace behave appropriately?

[31] Ms McLeod encourages me to reach the conclusion that the email to Ms Anders was a cry for help and not confirmation of her intention to leave Interspace, as it had concluded. Ms McLeod's counsel presses on the Authority the view that this was a case where it is appropriate to give Ms McLeod the opportunity to retract her resignation.

[32] I have considered the submissions in that regard but have formed the view that the present case is not an example of the kind of case where an employer ought properly to give an employee a "cooling off period".

[33] On the facts as they were presented to the Authority, this case involved an indication on 29 January 2006 of an intention to resign followed by an email barely seven days later and other repudiatory conduct by Ms McLeod at the same time indicating that the employment relationship had come to an end.

[34] In the absence of a finding that Ms Dixon had in truth sent Ms McLeod away, the only other rational explanation for the email to Ms Anders and the other repudiatory behaviour of Ms McLeod is that **she** intended that the relationship come to an end.

[35] In the same general connection, I am not persuaded that there are here any elements of a constructive dismissal. There is plainly no evidence of a "resign or be dismissed" situation, nor have I found any evidence of a course of conduct by Interspace designed to extract a resignation nor have I heard any evidence of a breach of duty by Interspace which could reasonably foreseeably lead to Ms McLeod's resignation.

Determination

[36] It follows from the foregoing analysis that I have not been persuaded that Ms McLeod has made out her claim to have a personal grievance against Interspace and on that footing I am unable to assist Ms McLeod further.

Costs

[37] Costs are reserved.

James Crichton

Member of the Employment Relations Authority