

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

[2012] NZERA Christchurch 221
5374464

BETWEEN SHONA MIRIAM MCLEOD
Applicant

AND WEST COAST DISTRICT
HEALTH BOARD
Respondent

Member of Authority: Mike Loftus

Representatives: Applicant in person
Penny Shaw, Counsel for the Respondent

Investigation Meeting: 11 October 2012 at Christchurch

Submissions received: At the investigation meeting

Determination: 12 October 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms McLeod, asks that the respondent, West Coast District Health Board (the DHB), be required to comply with two provisions of a settlement the parties concluded.

Background

[2] During October 2011, Ms McLeod raised various concerns with the DHB. She is of the view they were inadequately addressed and this, along with other events, led to a period of sick leave, followed by mediation on 21 March 2012.

[3] The mediation failed to resolve the issues. It also led to correspondence and discussion between the lawyer then retained by Ms McLeod and the DHB to address Ms McLeod's goal of attaining an arrangement under which she could exit the DHB's employ.

[4] Ms McLeod's lawyer advised agreement in principle on 4 May 2012 and that he would draft a record of settlement to be forwarded for the DHB's consideration.

[5] This was done with Ms McLeod and the DHB both signing the agreement by 10 May 2012. The agreement was signed by a mediator on 18 May. It is a comprehensive document containing 15 provisions.

[6] In the interim, and over the weekend of 12-13 May 2012, Ms McLeod went to the DHB's premises and removed her belongings. That led to an email from the DHB's Christchurch based human resources manager to Ms McLeod's lawyer on 14 May. It reads:

The Coast has called me today very concerned as it appears that Shona has been in and cleared her belongings.

I have not been able to communicate yet as I am not sure what our agreed communication is. This has left me in an uncomfortable position.

Can you please confirm that the DOL has or is signing off and the forward me a communication that would be acceptable from Shona's perspective please. We will also need keys etc.

Thanks,

[7] The word *communication* refers to the issue of notifying Ms McLeod's resignation to her colleagues. The DHB considered Ms McLeod's response, conveyed through her lawyer, to be inappropriate. They chose not to use it but simply told those who had worked with Ms McLeod of her resignation in an informal manner as the need arose.

The claim

[8] As already said Ms McLeod claims the DHB failed to comply with two provisions of the settlement and seeks an order that it does so. The provisions in question are:

- (a) A requirement Ms McLeod be given *an agreed written reference* within 7 days of the settlement being signed by a mediator (Point 6 of the signed record of settlement); and

- (b) A requirement the DHB advise staff of her resignation as she contends it should have.

[9] The DHB responds to the claim, of which it first became aware when it received the statement of problem filed in the Authority, by admitting it failed to provide the reference, along with advice it was an unfortunate oversight. Attached to the statement in reply filed in the Authority was a draft reference provided in an attempt to rectify the failure. The DHB responded to the second alleged failure by stating there was no requirement or obligation to notify staff of Ms McLeod's resignation.

[10] Ms McLeod responded with alacrity. She advised, by email, she considered the draft reference deficient and asked for the inclusion of a paragraph expanding on an explanation of her roles and responsibilities. The DHB accepted the proposed change with the exception of one small alteration. Unfortunately, the DHB failed to advise Ms McLeod of its response which was not communicated till the day before the investigation meeting and, by then, over two months had passed since Ms McLeod sought the changes.

[11] This was discussed further during the investigation meeting and, as a result, the DHB accepted Ms McLeod's original request. The parties now have, albeit belatedly, an agreed reference.

Discussion

[12] As already said, Ms McLeod seeks an order the DHB comply with two provisions of the agreed settlement she contends it has not. She clearly states she is not interested in any other remedy, nor does she seek a penalty.

[13] Ms McLeod's contends that while a reference has now been offered, it was not an agreed one. She is correct, but the deficiency has now been rectified. All that remains is for the DHB to type and sign the agreed document. This it has undertaken to do.

[14] The second alleged deficiency pertains to the DHB's alleged failure to notify staff of Ms McLeod's resignation. The response is the DHB is not required to do so.

[15] Ms McLeod accepts there is no express provision contained in the terms of settlement. She does, however, contend such communication was an implied term of the settlement as a result of the parties having discussed the matter along with *an implied duty of fair dealing to advise staff of the resignation rather than letting them believe that she remained on sick leave.*

[16] On this, I must agree with the DHB. As already acknowledged by Ms McLeod, there is no express provision requiring notification. Furthermore, there is no evidence of any agreement (or even discussion) in this regard at the time the parties agreed they had a settlement and signed the terms thereof. The issue appears to have arisen subsequently. While it was perhaps tardy of the DHB not to conclude the discussion it was having with Ms McLeod's lawyer as a result of her having removed her possessions from their premises and advise it was not going to use the form of communication she proposed, I can only reiterate there was no express requirement it do so. In any event the DHB did inform, albeit informally and orally, those who needed to know.

Conclusion and orders

[17] Ms McLeod has claimed the DHB failed to comply with the terms of settlement through two omissions. The first, relating to a failure to provide an agreed reference, is conceded by the DHB but short of the provision of a finalised document has now been addressed. For the sake of completeness, I order the DHB to provide the agreed reference as it has undertaken to do.

[18] The second claim, namely the DHB failed to advise Ms McLeod's former colleagues of her resignation as required is not, for the reason above, sustainable.

Costs

[19] Costs are reserved though given the outcome, the fact Ms McLeod was unrepresented at the investigation meeting and that a costs award can be amended I indicate to the parties an initial view they should lie where they fall.

Mike Loftus

Member of the Employment Relations Authority