

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Donald Nortier (Applicant)  
**AND** Order of St John (Respondent)  
**REPRESENTATIVES** Peter Macdonald, Advocate for Applicant  
Penny Shaw, Counsel for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**INVESTIGATION MEETING** 22 March 2005  
21 June 2005  
**DATE OF DETERMINATION** 19 December 2005

DETERMINATION OF THE AUTHORITY

***Employment relationship problem***

[1] The applicant is employed by the respondent as a paramedic in the Christchurch Station and claims that he has been unjustifiably disadvantaged in his employment by the action or inaction of the respondent. He seeks reimbursement of lost wages following what he alleges is a demotion, compensation resulting from the alleged procedural unfairness, the inability of the respondent to resolve the conflict at Timaru, and hurt and humiliation, and costs.

[2] The respondent denies the claims alleged by the applicant saying it has attempted earnestly to deal with a range of issues that have arisen between the parties over the period in question but has been unable to resolve them due to the applicant's refusal to cooperate or participate.

[3] The parties jointly sought an adjournment at the initial investigation meeting to explore prospects of resolution in mediation. This was unsuccessful and the meeting reconvened on 21 June 2005.

[4] Initially, Mr Nortier had sought interim reinstatement to the position he had previously held as Station Officer in Timaru, a position he relinquished by requesting a transfer to Christchurch because of ongoing difficulties with the Station Manager and the other Station Officer. In a determination issued on 21 December 2004, I declined that application.

***What caused the problem?***

[5] Mr Nortier was a sponsored immigrant and was thoroughly experienced as a senior paramedic prior to his arrival in New Zealand. As he was sponsored by a member of the senior management of the Order in Christchurch, the applicant began his employment with an induction programme in Christchurch before taking up his position as Station Officer in Timaru in May 2001.

[6] Soon after the applicant took up employment he says the Station Manager became uncooperative and unsupportive. Further, Mr Nortier says that the other Station Officer became obstructive. To put it mildly, serious conflicts emerged involving the three senior people at the Timaru Station and in October 2002 the respondent undertook a review of the Station designed to identify the conflict between the two Station Officers and ordered the managerial performance of the Station Manager.

[7] Following this review, the respondent undertook a number of initiatives involving the skills of a facilitator to address the conflict situation, team building with the total staff and the deployment of both Station Officers to a New Zealand Institute of Management leadership development programme. Also, the respondent set up a programme involving meetings between the Station Officers to facilitate hand-over at the beginning and end of shifts and also regular meetings between the Station Officers and the Station Manager on the first day of each shift.

[8] In order to review what progress had been made, the respondent instigated a follow-up in February 2003 but found that there were ongoing difficulties. A report from the facilitator indicated that while the Station Manager and the other Station Officer showed a willingness to adapt their behaviours, the applicant declined to engage in the conflict resolution process and showed signs of inflexibility.

[9] As a result of the applicant walking from a meeting with the Station Manager, the applicant was issued with a warning on 8 May 2003. The warning stated that failure to demonstrate a positive, proactive attitude on the part of the applicant and failure to follow the lawful instructions of his manager might result in his position being terminated.

[10] A meeting was held on 14 August 2003 to address allegations that the applicant had continued to behave in an obstructive manner and an investigation was begun. In the course of this investigation and prior to any decisions being made, the applicant wrote to the respondent requesting a transfer to Christchurch.

[11] It seems that the respondent took the view that by permitting the transfer of Mr Nortier to Christchurch the applicant would be given the opportunity to start afresh. As there were no Station Officer positions available in Christchurch at the time, Mr Nortier was offered a position as Advanced Paramedic which he accepted. The respondent, to reinforce its support for the applicant, discontinued the investigation into the situation in Timaru.

[12] In mid-October the Christchurch District Manager, Mr Dowell, received complaints about the applicant's clinical practice from Mr Nortier's supervising officer, Mr Cowan.

[13] The issues surrounding evaluation of a paramedic's clinical practice centres on professional competence to operate at a particular level in the respondent organisation. Each paramedic, as I understand it, is required to undergo re-validation procedures to ensure that he or she has the appropriate skills to perform professional duties in the field. The complaints received about the applicant's performance in a series of incidents is less on a disciplinary focus than on one designed to develop appropriate professional skills.

[14] While these complaints and their aftermath induced considerable differences of opinion between the respondent and the applicant, the actual complaints need not detain us here.

[15] Owing to the respondent's concerns about the applicant's clinical practice, it reduced his position from that of Advanced Paramedic to that of Ambulance Officer. It then proposed a course of action to assist Mr Nortier in preparing for re-validation which would enable him to return to the position of Advanced Paramedic. The proposal was put together by the Order's Education Services

Unit and was explained to the applicant by Paul Davey, the Clinical Skills Tutor. The Ambulance Training Manager, Mr Barry Howell, was also involved in a meeting with the applicant and Mr Davey on 10 September 2004 to put the proposal to the applicant.

[16] The respondent says its objective was to ensure that the programme was completely impartial and was to be operated apart from day-to-day operations. Mr Nortier was asked to review the programme documentation and to comment on the programme's suitability. However, the applicant replied that he did not wish to view or make any comment on the programme at that time, stating that he would consult his lawyer before reading and commenting on the programme. It is clear from the file note taken following the meeting of 10 September 2004 that Mr Nortier was clearly told that the Order was unable to proceed until the applicant had agreed to the content of the programme.

[17] Following on from this, Mr Dowell, the District Operations Manager, wrote to Mr Nortier and said in his letter:

*I am anxious to proceed with this as soon as possible and understand that you were asked to review the programme but declined on the grounds that you wanted to seek legal advice. I would like you to respond to this proposal by September 19th 2004.*

*If at that time we have not received a reply then I will presume that you are not willing to proceed with such a process.*

*Donald, you need to be aware that failure to accept the support to upskill may result in your advanced paramedic qualification being removed and an adjustment of your salary to paramedic level.*

*Yours sincerely,*

*Tony Dowell*

[18] On 22 October 2004, Mr Nortier's then solicitor lodged papers in the Authority seeking his client's reinstatement to his position in Timaru and notifying a personal grievance of unjustified disadvantage.

### ***The issues***

[19] The Authority in this matter is required to determine the following issues:

- Was the applicant unjustifiably disadvantaged by the action or inaction of the respondent in regard to the conflict in the Timaru Station; and
- Did the respondent undertake a full and fair investigation regarding the disharmony in that Station and take action which it saw as appropriate; and
- Was the alleged demotion in the context of a disciplinary setting or was it in a professional competence setting; and
- If the applicant is entitled to compensation, at what level should that be set; and
- Is the applicant entitled to be reimbursed the remuneration he has lost while employed by the respondent in the Christchurch Station?

### ***The investigation meeting***

[20] At the reconvened investigation meeting, the Authority heard from the applicant in person and on behalf of the respondent from Mr Dowell, Mr Haines, Dr Richards, the respondent Medical Director, and Michelle Pringle, formerly the Human Resources Manager who was responsible for the review of the situation in Timaru.

[21] This particular meeting was valuable in that it gave the Authority the opportunity to observe the demeanour of the key players in this rather sorry saga.

[22] In his submission, Mr Macdonald refers to the applicant as a *forthright individual to whom honesty and sound principles are paramount*. That is certainly an accurate description of the applicant, however, I would go further and observe that he appeared to me to be intransigent and inflexible when voicing his views on contested matters. That said, Mr Nortier was fluent and consistent in his description of events and I had no reason to doubt his honesty.

[23] The witnesses appearing on behalf of the respondent conveyed to me a very strong impression of persistent frustration in the face of their efforts to resolve the difficulties. I found them also to be open and honest in response to the Authority's questions.

### ***Analysis and discussion***

[24] Section 103(1)(b) of the Employment Relations Act 2000 states:

- (b) *That the employee's employment, or one or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) effected to the employee's disadvantage by some unjustifiable action by the employer.*

[25] The role of the Authority in this particular matter is to apply that section of the Act to the facts in this case.

[26] Clarification of the applicant's claims was provided by Mr Macdonald in his closing submissions where he says:

*The applicant requests that the Authority grants the following remedies;*

- 1 *Compensation as a result of the procedural unfairness, the inability of the respondent to resolve the conflict at Timaru and the emotional hurt, humiliation and distress in the amount of \$15,000. (Employment Relations Act 2000: section 123 (c)(1)).*
- 2 *Lost wages from the time the applicant's wages were decreased through to the present.*
- 3 *Costs.*
- 4 *A recommendation to the respondent from the Authority that all letters of complaint be removed from the applicant's file and that, in order to facilitate a genuinely "fresh start" all issues relating to the dispute between the party [sic] be removed from the applicant's personal file.*

[27] If ever an employment relationship took off on the wrong foot, then this was it. The applicant was put into a difficult situation in the Timaru Station as the Station Manager was not involved in the appointment and clearly took umbrage at this, refusing to acknowledge even basic courtesies such as returning greetings and delaying providing the applicant with the appropriate equipment to enable him to carry out his tasks. Further, strong antipathy arose between the applicant and the other Station Officer in Timaru.

[28] Following the transfer, Mr Nortier was demoted to the position of Ambulance Officer. This, he claims, led to a drop in his remuneration and he seeks to have that compensated for by way of an order from the Authority.

[29] Returning briefly to the transfer from Timaru to Christchurch, this move was undertaken at the request of the applicant and his acceptance of an offer to be employed in Christchurch as an Advanced Paramedic. There can therefore be no legitimate claim for reduced wages in that context.

[30] It is also clear from the evidence that, having discovered the extent of the conflict that existed in the Timaru Office, the respondent moved to address it. It has to be said that this was perhaps done at a considerably more dilatory pace than Mr Nortier considered reasonable.

[31] In his closing submissions, Mr Macdonald on behalf of the applicant makes considerable reference to sections of Ms Pringle's report and moves on to opine that inadequate management practice lies at the feet of the respondent.

[32] Within a relatively short period of time of arriving in Christchurch, concerns were raised as to the adequacy of Mr Nortier's clinical skills. I do not intend to canvass all of those concerns or the complaints on which they were based. Having considered each of those complaints with some care, I am clearly of the view that they do not relate to any matter other than clinical competence. That is, they are not matters relating to a disciplinary process.

[33] Following the surfacing of these concerns and the investigation of them by the respondent, the Order made it clear that it wanted to assist Mr Nortier in re-validating his qualifications up to advanced paramedic level. The Order made two significant efforts to assist the applicant. First it put in place a mentoring programme whereby Mr Nortier was crewing with another advanced paramedic for a specified time and was undertaking supervised case studies as part of that programme. The applicant says the programme failed to meet the objectives set for it due to the inadequate input of his mentor.

[34] Having had no success with this initiative, the Order instigated the development of a programme tailored to assist Mr Nortier in re-validating his qualifications at advanced paramedic level. The inclusion of the Education Services Unit, a unit detached from ambulance operations in which the applicant was employed, was in my view a genuine attempt to ensure impartiality was guaranteed in bringing the applicant up to the required standard. As I indicated above, Mr Nortier declined to become involved and began these proceedings.

### ***The determination***

[35] The object of the Employment Relations Act is set out clearly in s.3 and states:

*The object of this Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.*

[36] In this case, we have an ongoing employment relationship between the parties and the Authority has borne in mind its obligation to promote productive employment relationships.

[37] Turning to the issues set out earlier in this determination, I find that the applicant was unjustifiably disadvantaged by the respondent's failure to address the difficulties in the Timaru Station in a prompt and timely manner.

[38] In a letter to the Order in Christchurch the applicant's solicitor wrote on 13 October 2003 raising a personal grievance claim on behalf of Mr Nortier. Given that Mr Nortier transferred to Christchurch on 27 September 2003 to remove himself from the difficulties existent in the Timaru Station, it is clear that he has fulfilled his obligation to raise the matter within 90 days.

[39] Turning to the question of whether the respondent undertook a full and fair investigation regarding the disharmony and conflict in the Timaru Station, I find that it did take such action as it saw to be appropriate, including enlisting outside assistance in an attempt to resolve the problems. The only criticism I make is that the situation called for considerable urgency and strong management.

[40] I turn now to the question of whether in fact the applicant was demoted from his position as Advanced Paramedic. The evidence is clear that he was, and that for a time he was operating as an Ambulance Officer while undergoing a mentoring programme. I find however that this was not a punitive measure on the part of the respondent but rather a legitimate reaction to seriously voiced concerns as to the applicant's clinical proficiency. Further, I find that in assembling a programme specifically to provide the applicant with the opportunity to re-validate at Advanced Paramedic level, the respondent acted in a mature and considered way. The fact that Mr Nortier declined to participate in it except on his own terms is regrettable, but clearly this was his decision and his alone. In the event that Mr Nortier continues to decline to participate in the retraining and validation process as set out in the respondent's proposal, and as a result of this remains on the income of an Ambulance Officer, then the remedy for that situation lies completely in his own hands.

### ***Remedies***

[41] Having found that Mr Nortier was disadvantaged by the respondent's failure to act promptly and decisively in addressing the Timaru situation, he is entitled to compensation. The applicant seeks \$15,000 under this head of his claim. Having regard to his evidence of the humiliation he suffered and his need to take leave because of the stressful employment situation, I think it just to award the applicant the sum of \$4,500 under s.123(c)(i) of the Employment Relations Act 2000.

[42] The applicant's amended claim as set out above refers to disadvantage suffered while Mr Nortier was based in Timaru. I have made a compensatory award on that basis. The fourth head of the claim seeks a recommendation from the Authority that all letters of complaint and all issues relating to the dispute between the parties be removed from the applicant's file.

[43] It is clear from extensive precedents in the employment jurisdiction that it is not for the Authority nor for the Court to direct or advise on how a respondent should organise its business affairs. While I decline to make such a recommendation I earnestly urge both parties to address this issue without delay if they have not already done so. This issue is more a matter for negotiation between the parties than for a directive from the Authority.

[44] In the absence of any accurate financial evidence to establish the applicant's claim for lost wages, I decline to make an award under this head. However, leave is reserved for the applicant's

representative to lodge a specific and detailed wages claim with the Authority and to serve a copy of such documentation on the respondent's representative. I will then consider the matter on the papers.

***Costs***

[45] Costs are reserved. In the event that the representatives are unable to agree on the matter of costs, Mr Macdonald is to lodge and serve his memorandum within 28 days of the issue of this decision. Ms Shaw is to have a further 14 days in which to lodge and serve her reply on behalf of the respondent.

Paul Montgomery  
Member of Employment Relations Authority