

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Carolyn Olsson (Applicant)  
**AND** Keith Matheson Limited (Respondent)  
**REPRESENTATIVES** Carl Howard-Smith, Counsel for Applicant  
No appearance for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 22 March 2006  
**DATE OF DETERMINATION** 4 April 2006

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] Carolyn Olsen was employed by Keith Matheson Limited (“KML”) from July 2000 until November 2004. Ms Olsen says she was unjustifiably dismissed, either summarily or constructively, on 11 November 2004 when a director of KML, Keith Matheson, called her a liar and ordered her to “get out”. She seeks the following remedies; reimbursement of lost wages, to the sum of \$3000 (gross), compensation for hurt and humiliation to the sum of \$10,000 and an apology and reference.

[2] In its statement in reply KML says Ms Olsen walked out of a meeting on 11 November 2004 and did not return to work. KML says the meeting was held to discuss a threat of resignation Ms Olsen had made earlier in the day, and that by letter dated 15 November 2004 KML gave Ms Olsen the opportunity to withdraw that resignation and return to her position with KML.

[3] No representative of KML attended the scheduled investigation meeting. I commenced the investigation meeting at 10.30am once I was satisfied that KML had been properly served with the notice of investigation meeting. The notice was couriered to KML’s advised address for service at 1.08pm on 23 December 2005 and was signed for by “Lee”. I record also that KML filed witness statements in accordance with the timetable set for the investigation meeting. Prior to the investigation meeting commencing the support officer assigned to this application contacted KML’s offices. She was advised that Mr Matheson, who lodged the statement of reply on behalf of KML and filed the only witness statement in support of the respondent’s position, was away from Auckland and that the investigation meeting was not entered in his diary.

[4] During the investigation meeting I received evidence from Ms Olsen and her partner, Chris Mason. At the conclusion of the investigation meeting Mr Howard-Smith presented closing submissions. Those submissions have been very helpful in considering the issues presented by this employment relationship problem.

[5] To resolve this employment relationship problem the Authority must consider the following issues:

- (i) did Ms Olsen threaten to resign on 11 November;
- (ii) was Ms Olsen dismissed;
- (iii) if so, was her dismissal unjustified.

**(i) Threat to resign?**

[6] On 11 November 2004 Mr Matheson met with staff individually to discuss Christmas leave. He wished to direct all staff to take leave at that time. These meetings were informal.

[7] Ms Olsen told Mr Matheson that she had not planned to use all her annual leave entitlement at Christmas. She told him she intended to take her annual leave at Easter to attend a friend's wedding at which she was to be a bridesmaid. Mr Matheson asked Ms Olsen what she would do if she was directed to take leave at Christmas and she responded that she would be forced to leave.

[8] Ms Olsen said that during her lunch break that day she discussed the issue with Mr Mason and decided she would take the Christmas leave as proposed by Mr Matheson and take unpaid leave at Easter. She did not advise Mr Matheson of this decision on her return from lunch.

[9] Ms Olsen said that her comment to Mr Matheson that she would leave was not a threat to resign and was in reaction to Ms Matheson's direct question, which she felt had put her in a position where she had to answer quickly. I accept Ms Olsen did not intend to resign but made a flustered reply which she later reconsidered.

**(ii) Dismissal?**

[10] Towards the end of the working day on 11 November 2004 Mr Matheson called Ms Olsen into his office. His daughter was present. Mr Matheson told Ms Olsen that this was the second time she had threatened to resign in the past year, that such threats were unacceptable and that he wanted to discuss a dignified exit for her from KML.

[11] Ms Olsen refuted that she had threatened to resign earlier that year. Ms Olsen said Mr Matheson then said "You are a liar". When she challenged this statement he called her a liar again and, in an agitated manner, told her to "get out".

[12] Ms Olsen said that when Mr Matheson told her to "get out" she understood she was dismissed. She said she was very upset by the meeting and slept little that night. Ms Olsen visited her doctor on 12 November 2004 because she was upset and needed to sleep. Her doctor prescribed her a two-week course of sleeping pills, which she completed.

[13] On 12 November 2004 Mr Mason spoke with Jenny Subritzky, KML's financial controller, and advised her that Ms Olsen would not be in that day. He said he made the call because Ms Olsen was upset about the discussion with Mr Matheson the previous day and felt she no longer had a job.

[14] Also on 12 November 2004 Ms Olsen wrote to Mr Matheson:

"Dear Keith

I refer to our meeting last night.

I am completely distressed as a result of your conduct and your summary dismissal of me, after four years of

faithful service, in conditions that were at times stressful.

Would you please set out the reasons for your conduct and dismissal of me.

I would ask you for a copy of my employment records, together with my final pay and holiday pay owing, to be posted to my address, as above.

Keith, I am saddened by what has transpired. I believe that I have been an honest and loyal employee of your company and have always had your company's interests at heart.

Yours sincerely

Carolyn Olsen"

[15] On 15 November Mr Matheson wrote to Ms Olsen:

Dear Carolyn

**Re: Your letter dated 12 November, 2004**

I too am distressed by your threat to resign again; the second time this year. I offered you a "dignified exit" in light of your four years employment.

If your threat to resign was a heat of the moment thing, I suggest you return to work immediately and we put this behind us –

Yours sincerely

Keith Matheson"

[16] Ms Olsen received her final pay that week.

[17] Ms Olsen replied to Mr Matheson's 15 November 2004 letter by letter dated 26 November 2004, written on her behalf by her solicitor, Mr Howard-Smith, raising a personal grievance for unjustified dismissal.

[18] Ms Olsen's threat to resign is a side issue. It was overshadowed by Mr Matheson's summary dismissal of her on 11 November 2004. Ms Olsen's evidence that Mr Matheson repeatedly called her a liar on the evening of 11 November 2004 and told her to "get out" was unchallenged. She wrote to him the following day asking him to explain why he summarily dismissed her.

[19] Was it reasonable for Ms Olsen to consider she had been summarily dismissed? I find that it was:

- (i) Mr Matheson called the meeting to discuss Ms Olsen's exit from KML. This is clear evidence that it was Mr Matheson's intention that the employment relationship should end;
- (ii) When Ms Olsen disputed the basis of the exit offer, ie, that she had threatened to resign twice that year, Mr Matheson called her a liar; and
- (iii) When Ms Olsen disputed that she was a liar Mr Matheson told her to "get out", which in the circumstances, was a clear sending away.

**(iii) Was the dismissal unjustified?**

[20] Ms Olsen's dismissal was unjustified; it was not for reasonable grounds and did not follow the accepted standards of procedural fairness. It was reasonable that Mr Matheson should draw to Ms Olsen's attention actions which he reasonably believed were unacceptable and give her an opportunity to comment. However, this is not what occurred and it is not fair or reasonable to

dismiss an employee, in the circumstances described, because they refute being called a liar.

[21] Ms Matheson's offer to Ms Olsen to return to work does not mitigate the effect of the dismissal for two reasons. First, the dismissal was not on notice, the effect of which was to immediately end the employment relationship. Second, Mr Matheson's offer to return was conditional on Ms Olsen withdrawing her resignation. There was no evidence that Ms Olsen resigned, indeed Mr Matheson characterised her comments as threats to resign. A threat to resign and a resignation are not the same. As I have stated above Ms Olsen's threat to resign was not the grounds for dismissal and Mr Matheson's did not resile from calling her a liar.

### **Remedies**

[22] Ms Olsen has mitigated her losses. She immediately secured employment with Mr Mason's business. I accept that this situation is not entirely satisfactory. Ms Olsen is entitled to be reimbursed for the difference between what she earned during the three months following her dismissal from KML and what she would have earned but for her unjustified dismissal. The evidence I received was that Ms Olsen's salary at KML was \$53,000 and her new salary level is \$52,000.

[23] **Keith Matheson Limited is ordered to pay Ms Olsen \$250 (gross) to reimburse wages lost as a consequence of her dismissal.**

[24] Ms Olsen and Mr Mason gave evidence of the hurt and humiliation she suffered as a consequence of her dismissal. Ms Olsen said it was particularly hurtful that, as a trusted employee, she was treated in this way. She said her dismissal still sits heavily with her.

[25] **Keith Matheson Limited is ordered to pay Ms Olsen \$5000 in compensation for hurt and humiliation caused as a consequence of her dismissal.**

[26] I am required by section 124 of the Act to consider whether Ms Olsen contributed, in a blameworthy manner, to the events leading up to her dismissal. While I do not think Ms Olsen's comment to Mr Matheson that she would be forced to leave if she was directed to take her holidays at Christmas was wise, I do not see that this comment contributed, in a blameworthy way, to the events which resulted in her dismissal. From the evidence received Ms Olsen was dismissed following her challenge to being called a liar in regard to the alleged threat to resign made prior to 11 November 2004. In the circumstances, it was not unreasonable for Ms Olsen to refute being addressed in this manner.

[27] Costs are reserved. Mr Howard-Smith may file and serve a memorandum of costs within 21 days of the date of the determination. KML may file and serve any reply within a further 14 days.

Marija Urlich  
Member of Employment Relations Authority