

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Tracey Pateman (Applicant)
AND Siemens Energy Services Limited (Respondent)
REPRESENTATIVES Tracey Pateman In person
Mike Clark, Advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
INVESTIGATION MEETING 6 May 2005
DATE OF DETERMINATION 8 June 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tracey Pateman says her former employer, Siemens Energy Services Limited (“Siemens”), unjustifiably and constructively dismissed her. Siemens says Ms Pateman resigned following a disagreement, in circumstances not amounting to a constructive dismissal.

[2] Ms Pateman also sought the payment of a bonus she said was owed to her. That matter was resolved during the investigation meeting by Siemens offering to make the payment sought, without acknowledging liability. Accordingly I take it no further.

Ms Pateman resigns

[3] At the relevant time in July 2004, Ms Pateman was employed as a member of Siemens’ SENDS team. The SENDS team despatched faultmen on emergency repair jobs when faults were reported on clients’ electricity networks. Fatima Krasniqi was the team leader. Ms Krasniqi reported to Andrew Ovenden, who was employed as a business improvement manager.

[4] As part of his duties Mr Ovenden had been working with the SENDS team on a project basis for some 2-3 months. Among other things, he had identified from client feedback that repairs of higher priority faults (ie emergencies despatched by the SENDS team) were not being escalated to the extent they could have been. In order to address this and other matters he was attempting to introduce a new system under which SENDS despatchers did more than simply despatch jobs as they came in, rather they were to manage jobs more actively from receipt to closure (or from ‘end to end’). As part of this they were to limit the number of jobs in a faultman’s queue to 3 and not add more until existing jobs were dealt with, and to follow up with faultmen on jobs outstanding for more than 24 hours with no status updates. To assist in identifying the latter, all relevant outstanding jobs were displayed on a large plasma screen in the SENDS office.

[5] Mr Ovenden recognised the new system would require a change of behaviour on the part of the SENDS team and the faultmen. Overall, however, he had reasons for introducing the changes, and Ms Pateman was aware of them. She also said she understood the objectives.

[6] The incident which led immediately to Ms Pateman's resignation occurred on Thursday 22 July 2004. At the start of work that morning Mr Ovenden went into the SENDS office and noticed the plasma screen was not turned on. He asked Ms Krasniqi to turn it on, which she did. It showed 4 jobs outstanding for more than 24 hours, two of which were outstanding for more than 48 hours. He queried this.

[7] Ms Pateman had already started working on clearing the jobs. She explained that she was waiting for codes she needed from the faultmen concerned in order to close the jobs in the despatch system. She could not obtain the codes immediately because the faultmen were likely to be asleep following their completion of a standby shift. She explained, too, that she had put the jobs in the standby manager's (Barry McDonald's) tray to chase up. She felt Mr Ovenden took no notice of her explanation and was treating the matter as the despatchers' responsibility.

[8] Mr Ovenden and Ms Krasniqi understood the problem to be that Ms Pateman did not accept that the SENDS team could or should follow up unfinished jobs. Whether or not the discussion began with reference to closure codes only, Ms Pateman did have a wider concern about whether the SENDS team had the resources to follow up on jobs in the way Mr Ovenden required. She did not believe it did, and believed the SENDS team would need another person if follow up duties were to be added to a despatcher's duties. She expressed that concern.

[9] Disagreement about the system Mr Ovenden was attempting to implement escalated to the point where either Mr Ovenden said something like 'come on girl let's take this somewhere else' (his version) or 'you listen to me young girl, this is the way it is going to be, we need to take this outside' (Ms Pateman's version). In papers filed in support of the present application, Ms Pateman referred to Mr Ovenden's making comments in a 'personal and demeaning' way and suggesting he did not wish to hear what she had to say. When I asked her to identify the comments of concern she relied specifically on the exchange I have just set out, as well as more generally on her view that by his attitude Mr Ovenden indicated he did not wish to hear what she had to say.

[10] Since none of the company's meeting rooms was free, Ms Pateman, Ms Krasniqi, and Mr Ovenden went to the cafeteria to discuss the matter further. Mr McDonald, who had arrived at work towards the end of the discussion, joined them. It was early in the morning, but a few other staff members were also present in the cafeteria.

[11] In the course of the resumed discussion, Ms Pateman raised her concerns again. The discussion became heated on both sides. It focussed on whether more staff would be needed if despatchers were to be as proactive as Mr Ovenden required. The disagreement on that point was not resolved. Ms Pateman also raised her concern about holding unallocated jobs when faultmen already had 3 jobs in their queue. She believed this made it look as if the jobs were not under action, and attracted complaints from clients. However discussion at the investigation meeting revealed that relevant client complaints came from particular individuals from one client company, and Mr Ovenden had liaised with that client about the new system. Ms Pateman acknowledged the source of the complaints, and was aware Mr Ovenden had approached the client concerned.

[12] During the conversation in the cafeteria Ms Pateman felt she was receiving a dressing down, and again that she was not being listened to. She left the cafeteria and went to speak to the human resources manager at the time, Roni McLenaghan. Ms Pateman said at the investigation meeting that she told Ms McLenaghan about 'what had happened' and that she wanted to complain about the

way Mr Ovenden had spoken to her. According to Ms Pateman, Ms McLenaghan said Ms Pateman's treatment was unacceptable. Ms McLenaghan did not give evidence.

[13] Later that morning Mr Ovenden sought a further meeting, in a meeting room which had become available by then. He wanted to resolve the earlier discussion. Ms Krasniqi approached Ms Pateman about the meeting, but Ms Pateman did not wish to meet without her colleague or a person from HR as a representative. Ms Krasniqi did not think that was appropriate. Instead she and Ms Pateman went for a walk, during which Ms Krasniqi sought to explain again the direction Mr Ovenden was taking and Ms Pateman repeated her earlier disagreement. Ms Pateman said at the investigation meeting that she told Ms Krasniqi 'Fine. Don't come back to me to fix it when it goes wrong.' It was common ground that Ms Pateman told Ms Krasniqi she would resign.

[14] However Ms Pateman also said in evidence she had not decided to resign at that point, and it was probably the next day when the decision was made. She said she decided Mr Ovenden and Ms Krasniqi would not listen to her opinions on the running of the SENDS centre and it was probably easier for them if she was not there. Further to that, I understand the disagreement of 22 July was not the first of its kind.

[15] The written notice of resignation was contained in a letter to Ms Krasniqi dated 21 July 2004. It said:

"Due to the way the SENDS department is now being managed I find the department to be an unpleasant environment to work in due to the current lack of management knowledge in regards to faults dispatch.

Therefore I submit two week notice (resignation) from SENDS effective 21 July ..."

[16] Mr Ovenden's own work at SENDS ended on Friday 23 July. Thereafter Kevin McGrath, the general manager – northern operations, took over the direct management of the emergency services group. Ms Krasniqi passed Ms Pateman's resignation letter to Mr McGrath, and he sought a meeting with Ms Pateman on Monday 26 July.

[17] Mr McGrath said he considered Ms Pateman a good operative, and that was why on 26 July he asked her to reconsider her resignation. Her reply was that, under the circumstances she could not work in the SENDS centre. It was common ground that the tension in the SENDS team was mentioned, that the possibility of another position was touched on but there was no vacancy, and that by agreement Ms Pateman did not work the remaining period of her notice.

Was there a dismissal?

[18] In order for Ms Pateman's resignation to amount to a dismissal, Ms Pateman must show she resigned because of a breach of her employment agreement, in circumstances where resignation was a reasonably foreseeable result of the breach.

[19] I accept Mr Ovenden was not as calm as he should have been when dealing with Ms Pateman's questioning of the instructions he was attempting to give about the new despatch procedures. It is likely he became exasperated and began to lose his temper. I also accept, as did he, that the cafeteria was not a good choice of venue for the resumption of the discussion about the procedures.

[20] At the same time Ms Pateman was able to, and did, argue her points and did not remain calm herself. I do not accept she was not listened to: rather many of her points had probably been raised before and incorporated matters that were considered or addressed, albeit not in the way Ms Pateman thought they should be.

[21] While she was entitled to express her disagreement with the new procedures, she was not entitled to expect her points would be accepted. Even if she was right in her criticisms, Mr Ovenden had the responsibility for the success or failure of the system and he expressly accepted as much. Again, even if Ms Pateman was right, as the manager in charge Mr Ovenden was entitled to require that the new procedures be followed. While there was profound disagreement about their application, the associated instructions were within the scope of Mr Ovenden's right to manage. Finally Siemens recognised the impact of the changes in that Mr Ovenden was attempting to work with clients and faultmen, as well as the despatch staff, in order to achieve associated changes in behaviour. However this did not make any difference to Ms Pateman's views.

[22] It is clear that Ms Pateman did not accept that Mr Ovenden was entitled to implement the procedures he did, or that she was obliged to act on them. She had a dim view of them, and was unwilling to assist in their implementation. Indeed she made her contempt for Mr Ovenden clear in the way she expressed her letter of resignation, and Mr Ovenden's competence was even more strongly attacked in the investigation meeting. That kind of attack was beside the point given that nothing in it supported any breach of the employment agreement on Siemens' part.

[23] It is unfortunate that Ms Pateman's employment ended as it did, particularly as she was a valued employee and was given an opportunity to cool off and return to her employment. Overall, however, she was unable and unwilling to work in the way she was being asked to. There were irreconcilable differences between the parties, but I am not persuaded there was any breach of the employment agreement sufficient to found a conclusion that resignation was a reasonably foreseeable result.

[24] Accordingly I conclude there was no dismissal. Ms Pateman does not have a personal grievance.

Costs

[25] Costs are reserved. If the parties are unable to reach agreement on the matter they may approach the Authority for a determination of it.

R A Monaghan
Member, Employment Relations Authority