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## **Poulopoulos v Residential Rentals Limited AA359/10 (Auckland) [2010] NZERA 667 (16 August 2010)**

Last Updated: 9 November 2010

**IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND**

AA 359/10 5137955

BETWEEN DORA POULOPOULOS

Applicant

AND RESIDENTIAL RENTALS

LIMITED

Respondent

Member of Authority: Representatives:

Investigation Meeting: Submissions Received Determination:

Alastair Dumbleton

Peter Brosnahan, counsel for Applicant Mark Kamphorst, advocate for Respondent

10 February 2010

18 February and 9 March 2010

16 August 2010

### **DETERMINATION OF THE AUTHORITY**

#### **Employment relationship problem**

[1] On 7 August 2008 the applicant, Ms Dora Poulopoulos, received written notice of one month that her position of employment with the respondent, Residential Rentals Limited, was to become redundant. She was not required to work out the notice period but was advised she would be paid in lieu of it.

[2] Shortly after the termination of her employment Mrs Poulopoulos raised a personal grievance, claiming that her dismissal had been unjustified. The reasons given to support her claim were that the redundancy procedure had been flawed, there had been no selection criteria disclosed to show how a decision was to be made as to who, if anyone, needed to be made redundant, and there had been a lack of genuineness in the redundancy. A further reason given was that irrelevant or immaterial considerations personal to Mrs Poulopoulos had been taken into account in reaching the decision to dismiss her. With regard to this it was alleged that the decision to dismiss had been based on a friendship she had with the estranged wife of the managing director of Residential Rentals, Mr Alan Rolston.

[3] At the time of dismissal Mr Rolston and his wife had been separated for about a year and were engaged in litigation over relationship property. It was claimed that Mr Rolston had not wanted a situation where his wife might obtain information about his business from her friend Mrs Poulopoulos and he had singled her out for redundancy to remove her.

[4] Residential Rentals has rejected the grievance claim that the dismissal was unjustified. The company maintains that the reason for dismissal was genuine redundancy and that a correct procedure was followed in achieving that. It denies that the friendship between Mrs Poulopoulos and Mr Rolston's wife was taken into account.

[5] Mediation did not resolve the grievance.

[6] To remedy her grievance Mrs Pouloupoulos has sought compensation for humiliation and distress arising out of the way in which she was treated, and reimbursement for lost wages.

[7] At the Authority's investigation meeting evidence was taken and examined from a number of witnesses including Mrs Pouloupoulos, Mr Rolston and Ms Karen Brown, the manager of Residential Properties at material times. For Mrs Pouloupoulos counsel Mr Brosnahan accepted in submissions that Residential Rentals at the time of dismissal had been in a position where, as an employer, it could commercially justify the reduction of staff by one, but he contended that improper and unfair considerations had been taken into account resulting in Mrs Pouloupoulos being targeted for redundancy.

[8] It was submitted that Mr Rolston had wanted Mrs Pouloupoulos out of her employment so that she could no longer have access to information about his businesses and pass any of it on to Mrs Rolston. Evidence was led that he had admitted as much in a conversation that took place before any restructuring process had been commenced.

[9] As pointed out in submissions, there were conflicts of evidence in key areas of fact to be established by the Authority, making the credibility of particular witnesses and the evidence given by them a vital consideration in determining this case.

[10] I found Ms Brown to be generally a reliable witness who showed a reasonably careful and accurate recall of events. Less so Mr Rolston, about whom I noted when he was giving his evidence, "vague, poor memory/recollection."

[11] This is not to imply that the Authority has any criticism of the evidence of Mrs Pouloupoulos, but as usual in cases like this she could only really say what her feelings or beliefs were about what had happened to her, without knowing what was in the mind of Ms Brown or Mr Rolston as to their true objectives when terminating her employment.

[12] With regard to the particular evidence given by Mr Murray Phillips, a former accountant employed by Mr Rolston in his business group, caution is needed in accepting that evidence as it is clear that he and Mr Rolston have had a falling out. Serious allegations about each other were exchanged between them.

[13] Ms Brown claimed that she had been the sole decision-maker and that the responsibility throughout the restructuring exercise had been left by Mr Rolston to her.

[14] When Ms Brown answered questions during oral examination a significant inconsistency with her written evidence quickly became apparent. In particular, when questioned by both the Authority and Mr Brosnahan, Ms Brown said, and repeated, that she had decided to make Mrs Pouloupoulos redundant on 30 June 2008. On the basis of that evidence naturally it was submitted by Mr Brosnahan that Ms Brown had predetermined Mrs Pouloupoulos as staff member to be made redundant, before any restructuring process was undertaken with all staff.

[15] When Ms Brown was questioned by Mr Kamphorst she recanted and said that by 30 June 2008 what had been decided was only to present a proposal to disestablish Mrs Pouloupoulos' position as Property Co-Ordinator and to seek feedback on that proposal.

[16] I have considered this aspect of important evidence carefully and concluded that in answering some questions Ms Brown simply did not express herself very well, or may have misunderstood the question. In reaching that conclusion I took into account the evidence Ms Brown had set out carefully in a written brief she signed in August 2009 and which was later forwarded to the Authority and copied to Mr Brosnahan, some months before the investigation meeting eventually took place.

[17] Her written evidence was that in June 2008, after considering with Mr Rolston where savings and cost cutting could be made, after some research they had concluded that by comparison with similar real estate/property management companies, Residential Rentals was overstaffed by one position.

[18] Ms Brown's written evidence was that after mid-June 2008 a decision was made to go ahead with a proposal to restructure, and she said:

*It was proposed that the Property Co-Ordinator's role could be disestablished and the tasks either be reallocated to other positions or dispensed with.*

*In late June 2008 I decided to sit down and have a chat to all three staff members separately re the possibility of changes to the company and a possible restructuring and that if that was the road taken then RRL would bring in an independent consultant to assist with this process.*

[19] Ms Brown described in her brief of evidence speaking to Mrs Pouloupoulos on 30 June 2008 in relation to the "possible restructuring." She then described the process that was followed after that date, with meetings arranged on 17 July to discuss "the possibility of changes to the operation of the company and the proposal that we were looking to disestablish a role."

[20] I do not consider that Ms Brown, who presented to the Authority as a reliable witness generally in her evidence, intended

to change her oral evidence from the evidence provided by her much earlier in a written brief. I do not regard her as suddenly having admitted during the investigation meeting that a decision had been made to dismiss Mrs Pouloupoulos on 30 June, despite having previously maintained in her written brief of evidence that, as at 30 June, there had only been a proposal to disestablish a role that was being looked at.

[21] There is no direct evidence to contradict the written evidence given by Ms Brown. There is a claim that the whole process was simply a sham and that Mrs Pouloupoulos was dismissed not because her position had been genuinely established to be redundant, but because Mr Rolston had not wanted her present in the workplace because of her friendship with Mrs Rolston.

[22] I accept the reliability of Ms Brown's evidence in this regard that she took no account of that matter, although she had known about it. I accept that she carried out the restructuring process and made her decision, based on an assessment of position descriptions and whether particular aspects of each job still needed to be carried out or could be redistributed for more efficiency.

[23] I accept that Ms Brown had not wanted to become involved in Mr Rolston's personal relationship dispute to the extent of taking sides with him at the expense of the employment of a good employee, as was clear Mrs Pouloupoulos had been.

[24] Mr Phillip's evidence was that on an occasion in April 2008 he had been in the company of Mr Rolston who indicated that by restructuring he would be able to put Mrs Pouloupoulos out of the company. This was strenuously denied by Mr Rolston. I have treated the evidence of Mr Rolston and Mr Phillips with some caution because of their poor relationship which may have clouded their view of what happened. In any event I accept Ms Brown's evidence that she had acted independently and had been responsible for the entire process, including the decision-making at the end of it. I accept that was the situation and that Mrs Pouloupoulos was not targeted or singled out because Mr Rolston may have been agitated by her presence in the office and involvement in the operations of his business.

[25] I consider the process applied or followed by Mrs Brown was a fair one which included full and proper consultation with Mrs Pouloupoulos and other employees before a decision to make anyone redundant was made. Consideration was given to various ways of achieving costs savings and the decision was made on the basis of the nature of the position held by Mrs Pouloupoulos rather than any personal circumstances such as a friendship with Mrs Rolston.

## **Determination**

[26] Applying the test of justification at [s 103A](#) of the [Employment Relations Act 2000](#), the Authority's determination is that the dismissal of Mrs Pouloupoulos was justifiable, both in terms of the grounds for that action and the procedure followed before it was taken.

[27] Accordingly, I find that Mrs Pouloupoulos does not have a personal grievance arising from or in relation to her dismissal in 2008.

## **Costs**

[28] Costs are reserved.

[29] The parties are urged as usual by the Authority to try and settle any issue of costs themselves. If they are unable to agree, application can be made to the Authority within 21 days of the date of this determination. The opposing party, upon service on it, may apply in writing within a further period of 21 days.

A Dumbleton

**Member of the Employment Relations Authority**