

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Codey Robins (Applicant)
AND The Martinborough Hotel (1995) Limited (Respondent)
REPRESENTATIVES G Ogilvie for Applicant
N Waldren for Respondent
MEMBER OF AUTHORITY G J Wood
INVESTIGATION 16 December 2004
MEETING
DATE OF 11 January 2004
DETERMINATION

DETERMINATION OF THE AUTHORITY

1. At the commencement of the investigation meeting the name of the respondent was amended by consent to the Martinborough Hotel (1995) Limited.
2. Codey Robins claims that she was forced to resign from the employment of the respondent (The Martinborough Hotel) as a result of poor treatment by its new beverage manager. The Martinborough Hotel considers that Ms Robins resigned of her own accord.
3. The parties went to mediation in an attempt to resolve matters and further discussions occurred during the course of the investigation meeting. However, these efforts proved unsuccessful and accordingly a determination of the Authority is required.

The Facts

4. Codey Robins was employed at the Martinborough Hotel between September 2002 and November 2003 as a bar person. The hotel is owned by Mr Michael Laven and his wife, who have been the majority shareholders in the respondent company since 1995.

5. About a year into Ms Robins' employment, a new management team was hired to run the hotel, following the development of a new business plan earlier that year, as the previous manager had given notice at that time. The food and beverage manager left following the development of the business plan meaning that a new general manager, chef, function manager and beverage manager were to be appointed.
6. The new general manager was Mr Robert Davey. The new beverage manager, Mr Peter Nicholson, Ms Robins' boss, reported to him. Both started work at the hotel in September/October 2003. Because of the restructuring and the relatively high number of new staff there were a lot of pressures on management and staff in October 2003. Furthermore, the new management team adopted a different approach to the running of the hotel, involving a less relaxed style of management.
7. For some reason Mr Nicholson and Ms Robins did not get along well. From Ms Robins' perspective, Mr Nicholson was unfairly critical of her work and put her down to the point where he often used to deliberately barge or shoulder her and shove past her at the bar. From Mr Nicholson's perspective, he considered that Ms Robins was very popular with many customers, but unhelpful to him and inconsistent in her work habits, including the need for equal treatment of customers.
8. Ms Robins' concerns grew to the point where she decided to take matters up with Mr Davey and a meeting was prearranged for this purpose. In a long conversation I find that Ms Robins outlined a number of concerns about Mr Nicholson's management which she felt demonstrated that Mr Nicholson was picking on her. She stated that she felt excluded by him. I find that she did not raise any of the issues about being barged or shoved by Mr Nicholson that she now claims to have done. Rather the focus was on the way Mr Nicholson communicated with Ms Robins. It was clearly discussed that Ms Robins had no dispute about the way Mr Nicholson actually carried out his management functions other than the communication issues.
9. Mr Davey also told Ms Robins that he felt she had a personality conflict with Mr Nicholson.
10. Ms Robins made it clear to Mr Davey that unless matters improved within two weeks she would have to resign. The meeting concluded on the basis that Mr Davey

undertook to take the issues raised up with Mr Nicholson and get back to Ms Robins about his response.

11. Mr Davey did take matters up with Mr Nicholson and told him that Ms Robins was unhappy with his management style. Mr Nicholson stated that he treated Ms Robins no differently than the other staff and Mr Davey determined to take the matter no further. Unfortunately, Mr Davey did not get back to Ms Robins as he had promised.
12. An issue then arose during the week of Ms Robins' birthday. She asked for several days off and was given an additional one, which was one of her normal working days. Mr Nicholson did not give her any reason for this. I accept that this upset Ms Robins, but I also accept that rosters are difficult to manage in hotels and Mr Nicholson's evidence that the needs of other workers may have needed to be met that week.
13. I accept that there were difficulties between Ms Robins and Mr Nicholson, but find that there is nothing of substance in Ms Robins' claim that she was unjustifiably required to assist in the training of new staff. That is only to be expected from an experienced staff member. I also do not accept that Ms Robins was left alone to deal with drunken patrons at weekend closing times, as Mr Nicholson was on the premises.
14. Furthermore, while there was one incident where Mr Nicholson almost jammed Ms Robins' fingers in the fridge door and another where he bumped into her, I do not accept that these actions were carried out deliberately. These are serious allegations and on the balance of probabilities I do not accept that they in fact occurred as the result of Mr Nicholson's deliberate actions. In addition, it is one thing to cite two examples of what could have been accidental contact and quite another to then maintain that these sorts of incidents happened every day, particularly after the meeting between Ms Robins and Mr Davey. In this regard, it needs to be noted that Mr Nicholson is an experienced manager with over 20 years' bar experience and that these events took place in the bar. If these incidents had occurred as often as Ms Robins now claims, it would surely have been apparent to customers, who would have drawn the issues to management's attention. I also accept that in a small area such as the bar at the Martinborough Hotel, workers regularly bump into each other or brush pass each other. There is also the fact that Ms Robins did not raise these issues at the

time of her meeting with Mr Davey, a nervous but not dishonest witness. I am sure that if Mr Davey had been told of such serious allegations such as barging a staff member he would have taken the matters raised by Ms Robins more seriously. I also note that there appeared to be no trigger to such extreme behaviour and even Ms Robins could not provide a reason why Mr Nicholson would deliberately behave in such a way.

15. That is not to say that these incidents did not occur. Certainly I accept that Ms Robins genuinely believes they occurred, but time can have an impact on such recollections and people's perceptions are important. Furthermore, the Authority is able only to determine matters on the balance of probabilities, i.e. what is more likely than not to have occurred. In this regard I accept that the evidence of all the witnesses in this matter was genuine.
16. I do accept that there was a great deal of tension between Mr Nicholson and Ms Robins. Mr Nicholson was a new manager who required assistance, particularly over the issue of using the till, and Ms Robins did not react well to some of his initiatives. On the other hand, Mr Nicholson's manner clearly did not endear him to Ms Robins to the extent that she had no respect for him and felt intimidated by him.
17. As a result of all the pressures Ms Robins felt under, she decided to resign. She wrote out a letter of resignation following advice from another member of the staff. It was brief and thanked Mr Davey for the opportunities that she had been given at the hotel. She then wished Mr Davey all the best. Mr Davey did not receive the note until the next day. Ms Robins worked out her notice period of two weeks. Altogether she was employed for only five weeks during the period of Mr Nicholson's employment.

Determination

18. While I accept there were problems in communication between Mr Nicholson and Ms Robins, these problems are insufficient to ground a claim for constructive dismissal. As was found in *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers IUOW* [1994] 1 ERNZ 168, what has to be determined is whether or not the resignation has been caused by a breach of duty on the part of the employer. In my view the only possible breach of duty related to issues of communication.

However, there is insufficient evidence for me to even conclude that there was a breach of duty in this regard. In any event, any breach of duty would certainly not have been of sufficient seriousness to make it reasonably foreseeable by the Martinborough Hotel that Ms Robins would not be prepared to work under the conditions prevailing. Ms Robins had certainly made it clear that unless things improved she would resign, but dissatisfaction with a manager's methods is not the same thing as a breach of duty.

19. As the Arbitration Court made clear as long ago as 1983, the employer's conduct needs fairly and clearly be said to have crossed the borderline which separates inconsiderate conduct causing some unhappiness or resentment from dismissive or repudiatory conduct reasonably sufficient to justify the termination of the employment relationship (*Wellington etc Clerical etc IUOW v. Greenwich* [1983] ACJ 965 at 975.) What can be said here is that Mr Nicholson could have changed the roster to assist Ms Robins and communicated better with her, albeit that communication is a two way process. Furthermore, Mr Davey should certainly have responded to Ms Robins about his discussion with Mr Nicholson. But these are minor issues in the overall context of the employment relationship. Nothing in this case, on the facts as found, therefore supports the conclusion that there was unreasonable conduct of sufficient seriousness to take the matter beyond the line referred to in *Greenwich*.
20. It therefore follows that Ms Robins' claim must fail and I dismiss it accordingly.

Costs

21. Costs are reserved.

G J Wood
Member of Employment Relations Authority