

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number: WA 178/07
File Number: 5073673

BETWEEN PETER ROCHFORD
(Applicant)

AND VICTORIA UNIVERSITY OF
WELLINGTON
(Respondent)

Member of Authority: P R Stapp

Representatives: Russell Buchanan, for Applicant
Derek Broadmore, for Respondent

Investigation Meeting: 15 November 2007 at Wellington

Submissions received: 29 November & 10 December 2007 from Applicant
7 & 10 December 2007 from Respondent

Determination: 21 December 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Rochford has claimed that his employer, Victoria University of Wellington, acted unjustifiably and disadvantaged him in his employment.

[2] In essence Mr Rochford claimed the University breached its obligations of good faith and failed to consult him over its alleged decision to remove his authority to hire casual staff and its direction to him to cancel casual contracts.

[3] He has requested the Authority to make a recommendation concerning the action the University should take to prevent similar employment relationship problems occurring in the future. In his submissions he requested the Authority to consider a recommendation that the University apologise to him.

[4] Mr Rochford is seeking compensation under s.123(1) (c) (i) of the Employment Relations Act 2000 in the sum of \$27,000 in regard to those matters that led up to his sick leave and the raising of an employment relationship problem on 24 November 2007.

[5] He is seeking compensation of \$8,000 under the same section of the Act for humiliation, loss of dignity and injury to feelings as a result of the University's unjustifiable actions and disadvantage since his return to work.

[6] Mr Rochford is seeking compensation for the loss of future income which he says he is "*likely to suffer as a result of the University's unjustifiable conduct and the likelihood he will not be employed at the University for much longer.*" Mr Rochford has requested that this loss be assessed and quantified. He says this is compensation for a loss of chance.

[7] Mr Rochford is seeking a range of costs and expenses and medical expenses incurred arising from the University's alleged breaches of duty and unjustified disadvantage actions. He seeks legal costs on a full indemnity basis including the legal costs in regard to the Authority's investigation meeting.

The Facts

[8] Mr Rochford has spent his entire working life at the University. Initially he was employed for a fixed term working with the caretakers and gardeners. Later he became a mailroom clerk. On 1 July 1995 he was appointed the Mailroom Supervisor, a position he currently holds.

[9] The Mailroom Supervisor is part of the Mailroom Services which is a service delivery group within Facilities Management (FM) at the University.

[10] In November 2005 the University proposed changes to the management structure of FM including the creation of a new position of Operations Manager. This meant that Mr Rochford would report to an Operations Manager instead of reporting directly to the Facilities Manager, Mr David Povey.

[11] During the November 2005 restructuring Mr Rochford's reporting line changed from the Facilities Manager to the new position of Operations Manager. He alleges that there was more to this although the University says that there were no other proposed

changes. Mr Rochford says he was given an assurance there would be no changes to his day to day role. Mr Rochford's *role description* was updated to include the new reporting line. All other operational duties remained unchanged. Mr Rochford's claim is based on changes occurring despite what his job descriptions say.

[12] The new Operations Manager position was created to support ongoing improvement, accountability, oversight and team work through the service delivery areas. It included changes to other areas than just the mailroom, for example the caretakers and other services provided by the University.

[13] Anna van der Lugt was appointed to the role of Operations Manager and has been in that role since 8 May 2006.

[14] Mr Rochford claimed that she was appointed to deal with a problem about him that she did not know about. However, Mr Povey and Jennifer Bentley, Director of Facilities Manager, contended that the position was to include managerial oversight of the University's Mailroom and Campus Care so as to bring about better synergies in the service delivery areas. This included rationalising the Mailroom and Campus Care operations, strategic planning, encouraging closer teamwork and finding efficiencies. They denied that those changes were to deal with any problem involved with Mr Rochford.

[15] Not long after starting in her role, difficulties occurred between Ms van der Lugt and Mr Rochford. Ms van der Lugt found it difficult to facilitate closer linkages between the Mailroom and Campus Care and started to have difficulties with Mr Rochford supporting any initiatives. Examples of the problems that arose between the two included changes in regard to leave approvals, staff training, performance salary reviews, short listing for vacant positions, the budget, service arrangements, employment of casual staff.

[16] In each of these areas Mr Rochford says that Ms van der Lugt assumed what he considered were his direct duties and in effect removed them from him. Ms van der Lugt says, and is supported by her managers, that she simply was acting as a manager and had taken more direct supervision over these areas than her predecessor had in the past.

[17] The University says that between June and November 2006 the issues that it had with Mr Rochford could be summarised as following:

- *Mr Rochford objected to the Operations Manager having the final say in respect of annual and sick leave applications relating to Mailroom staff;*
- *Mr Rochford objected to Mailroom staff attending a customer care training course arranged by Ms van der Lugt;*
- *Mr Rochford objected to her involvement in performance reviews of Mailroom staff;*
- *Mr Rochford objected to losing his role on short listing new Mailroom staff members;*
- *Mr Rochford had an issue about consultation on the Mailroom budget;*
- *Mr Rochford objected to using Campus Care staff instead of casuals for staff absences.*

[18] Mr Rochford says that he had been given assurances from Mr Povey and Ms Bentley that his duties and responsibilities would all remain unchanged and that the only differences would be that he would be reporting to Ms van der Lugt instead of Mr Povey. He says that despite that assurance, she had increasing involvement in his work, and he perceived his position being downgraded as his responsibilities were eroded. He says he began to feel vulnerable.

[19] This is denied by the University, and in particular Mr Povey and Ms Bentley say that there were no changes and that Mr Rochford's responsibilities remained unchanged except that there was a greater degree of management in line with the changes the University wanted to achieve with synergies across the front areas, efficiencies in the running of the services and operating within budget constraints.

[20] The Mailroom was relocated from the Hunter Building to the MacLaurin Building and whilst there were issues that arose with this relocation and the new room, the University says it made every effort to try and resolve those issues with Mr Rochford.

[21] Between 3 November 2006 and 17 November 2007 an issue arose between the University and Mr Rochford about his attendance and timeliness in attending meetings. Mr Rochford also became ill and was off work for a period from 17 November 2006 until 26 March 2007 on paid sick leave.

[22] On 24 November 2006 Mr Rochford's lawyer wrote to the University giving notice that he considered he had an employment relationship problem. That letter reads as follows:

Dear Mr Povey

RE: PETER ROCHFORD – EMPLOYMENT RELATIONSHIP PROBLEM

Further to the writer's telephone discussion with you on 24th November 2006 we confirm that we act for Mr Peter Rochford in relation to his employment. In this regard please find enclosed an authority which Peter has signed recording our appointment and authorising you to deal with us on his behalf. Also enclosed please find a certificate from Dr Naue of City GPs to the effect that Peter is medically unfit to attend work until 29th November 2006.

When taking instructions from Peter about his employment relationship problem it has become clear that he attributes his present ill health to a number of workplace issues which have arisen and which have caused him to feel very anxious and stressed. Actually, in his discussions with us Peter has described the workplace as "toxic" and he has identified a number of particular issues which seem to have combined to cause Peter significant stress, humiliation and injury to his feelings.

In particular Peter has described feeling a loss of self worth and a growing sense of frustration and we believe that until these workplace issues have been dealt with and resolved it would be quite unsafe for Peter to attempt to return to work. Consequently, we have advised Peter to do back to see his doctor on 28 November for a further check up and we fully expect that he will be advised not to return back to work until it is medically safe for him to do so. Our own experience in cases such as this is that pre-mature return to work can prove quite deleterious to the employee concerned.

The workplace issues that Peter has described to us are as follows:

1. *Loss of Control:*
After successfully managing the mailroom operation for many years Peter feels that decisions are now being made without consultation with him that seriously impact on his ability to maintain the high standards of service that he has established. He is concerned that this will in turn cause considerable harm to his reputation. Examples of responsibilities that have been taken away from Peter include:
 - (a) *No longer responsible for managing the mailroom staff and determining staffing requirements, the hiring of casuals, carrying out salary/performance reviews and setting KPIs for the mailroom staff;*
 - (b) *No longer being consulted regarding the mailroom operational expenditure budget.*

2. Loss of Respect:
Peter feels that the many years of good service and the commitment which he has made to the University and his many achievements in his role in the mailroom are being ignored. Peter also feels that his opinions are either not now sought or are given a low priority and in this regard he pointed to a number of recent decisions which have been made which have adversely affected the operation of the mailroom.

3. Loss of Pride:
Peter perceives that his manager has been interfering unnecessarily in the micro-management of the mailroom and he also feels that he has been the subject of a number of unjustified criticisms which have eaten away at his self confidence leaving him less able to make decisions and argue for his views. When coupled with the loss of control which Peter has experienced, Peter has been left feeling hurt and deeply embarrassed at the poor service standards which he is now able to offer and he feels that this demeans him within the University community.

4. Communication Difficulties:
Peter has described a number of different situations where he has been left feeling hurt and angry as a result of what he believes is a communication difficulty with his manager Anna van der Lugt. Peter instructs that as a result of these "communication difficulties" he and/or his staff have had to experience the following:
 - (a) *Anna says one thing and then does another;*

 - (b) *Anna sometimes completely forgets what has been said and/or records "facts" incorrectly and then bases actions on those incorrectly recorded facts which often leads to confusion, unwarranted criticisms of Peter and/or his staff, frustration and unpleasant and unnecessary confrontations;*

 - (c) *Rudeness and a lack of appreciation.*

As Peter's solicitors we believe there is an urgent need to address all of the workplace issues which we have summarised above. In this regard we would like to invite you to attend mediation in the hope that in the type of safe and confidential environment Peter will be able to express him self openly and honestly and without fear of reprisal. This is important because recently Peter has felt bullied and threatened by his manager's behaviour and her reaction to discussion and he feels that this has impacted on his ability to advocate on behalf of the mailroom.

If you are willing to attend mediation please let us know and we would be only too happy to make the necessary arrangements with the Wellington Mediation Service.

[18] While the University did not reply to this letter, the parties did make arrangements to attend mediation services provided by the Department of Labour in Wellington. The matter was not resolved. Mr Rochford now relies upon the letter

raising a personal grievance. The University has raised an issue about whether or not any grievance has been properly raised and has not consented to any grievance proceeding.

[19] On 26 March 2007 Mr Rochford returned to work. Mr Rochford found that the communication difficulties he says he had with Ms van der Lugt continued. Mr Rochford pursued his complaints in regard to her criticising him in front of others. He says Ms van der Lugt tried to catch him out and find fault in him. He says she accused him of being negative. He says that she did and does not grasp what he is talking about or misunderstands what he says. Mr Rochford says Ms van der Lugt does not understand facts and her management has a detrimental impact on the running of the Mailroom. There is an example in June 2007 when Mr Rochford says that Ms van der Lugt accused him of rudeness towards Jennifer Bentley and wanted to know why he deliberately absented himself from a staff meeting held on 1 June 2007. This matter arose after Mr Rochford's lawyers had filed an employment relationship problem in the Authority on 10 May 2007.

[20] Mr Rochford was required to attend a meeting scheduled at the University on 11 June 2007 to provide an explanation for his absence on 1 June. At first he tried to explain that he did not know he was required to attend the meeting on 1 June. He then took his lawyer to the meeting on 11 June and he was able to support that he had not been invited to a meeting on 1 June and the only invitation he was aware of was an invitation to a meeting to be held in July. He says he was poorly treated upon arriving and at the commencement of the meeting. Ms Bentley denied that claim. He says his lawyer explained to Karen McEwen, the University's Human Resources Consultant, that he had not been invited to such a meeting and that there had been clearly a mistake made. He says the University's action put him to the unnecessary cost for his lawyer. The University accepted that the information being relied upon did not involve Mr Rochford being invited to a meeting on 1 June. An apology was offered from Ms Bentley. The cost of his lawyer's attendance remains unresolved although an offer was made by the University.

The Issues

[21] The Respondent has raised an issue about the grievance being raised in 90 days. There is also an issue about what it actually is that Mr Rochford says was an unjustified disadvantage in his employment relationship problem as presented on 24 November by his lawyer on his behalf. The University has accepted that the letter may have raised an issue about the 'casual employees' problem.

[22] The primary issue between Mr Rochford, Mr Povey, Anna van der Lugt, and Jennifer Bentley is over the extent of any changes in Mr Rochford's duties and whether or not Mr Rochford has overstated his duties.

[23] There is also an issue on the extent of Mr Rochford's autonomy in his role.

[24] There are issues about the University's behaviour and the costs to the applicant of the meeting held on 11 June.

Determination

[25] This is a complex and unusual employment relationship problem relying on an unjustified disadvantage action. In particular, I have found it difficult to encapsulate the personal grievance. I understand that the claim as it has unfolded has rested on an allegation of lack of consultation in respect of changes Mr Rochford claims have occurred to his role. I will deal with each of the matters as I need to in turn. However the starting point must be to determine whether or not a personal grievance was raised and if so to determine if it was specified sufficiently for the employer to address: *Creedy v Commissioner of Police* EC [2006]1 ERNZ 517 and CA [2006] 1 ERNZ 886. This is because the applicant's letter of 24 November 2006 is far from clear.

[26] There is no doubt that Mr Rochford, through his lawyer raised an employment relationship problem, but that is not the same as raising a personal grievance. The applicant's lawyer's letter did not state how it was envisaged the employment relationship problem would be remedied, other than suggesting that the parties' attend mediation, which the University agreed to do.

[27] The matters arising out of the applicant's lawyer's letter are best exemplified by using quotes from the letter to highlight what the thrust of it was about:

- *“...a number of workplace issues which have arisen and which have caused him to feel very anxious and stressed.”*
- *“...he has identified a number of particular issues which seem to have combined to cause Peter significant stress, humiliation and injury to his feelings.”*
- *“...Peter has described feeling a loss of self worth and a growing sense of frustration and we believe that until these workplace issues have been dealt with and resolved it would be quite unsafe for Peter to attempt to return to work.”*
- *“No longer responsible for managing the mailroom staff and determining staffing requirements, the hiring of casuals, carrying out salary/performance reviews and setting KPIs for the mailroom staff.”*
- *“No longer being consulted regarding the mailroom operational expenditure budget.”*

[28] The letter made the comment that Mr Rochford’s employment relationship problem was about decisions on managing the Mailroom being made without consultation.

[29] Clearly it can be gleaned from the above that Mr Rochford’s employment relationship problem related to claims he was not being consulted, an allegation of an unsafe workplace and there was a personal impact on him that he considered needed to be dealt with. The subsequent statement of problem lodged in the Authority was consistent with that. I find that Mr Rochford raised a personal grievance that unmistakably made it reasonably clear what the employer was being asked to address in determining whether or not the University has acted fairly and reasonably.

[30] However, I agree with the Respondent that the employment relationship problem has been made more difficult by the lack of specificity on what the events were that Mr Rochford claimed were matters that he was not consulted on. Indeed the nature of the employment relationship problem has an evolving range of causes of action that has made them very difficult to address. I will return to this point shortly. Suffice to say that the starting point I am relying on has been the appointment of Ms

van der Lugt and her decisions regarding casual employment, budget finances and annual holidays that Mr Rochford says changed as far as his role was concerned.

[31] I find that any assurances Mr Rochford received that there would be no changes to his position is supported by the Facilities Management proposal for change and the job descriptions, except for his line manager.

[32] Mr Rochford says there was a “*set up*” in Anna van der Lugt’s appointment to fix any alleged problem the University had with him. The evidence before me does not support such a claim. I have reached this decision because there was a comprehensive management of change process put in place that included more people than just Mr Rochford. The management of change followed a proper process and documentation supports that. Ms van der Lugt’s appointment involved a process affecting other people also. Indeed, in final submissions on his behalf the applicant resiled from the claim of a “*set up*” to say there was conflict between them but that could be put down to communication difficulties.

[33] The most crucial point related to the evolving change that Mr Rochford says occurred to his position and did not involve any consultation with him. There clearly was a difference in the management of responsibilities from when Mr Povey was the direct line manager to after Anna van der Lugt’s appointment to the Operations Manager. This was evidenced by the consultation document for the change proposal to Facilities Management dated November 2005. The proposal was clearly to introduce the new position of Operations Manger with responsibility: “*...for all aspects of operational service delivery, including energy management, energy planning, and provision of the caretaking and mail services.*” Also the document envisaged that the Operations Manger would be required to investigate and maximise synergies between the various delivery areas including Campus Care and the Mailroom.

[34] The proposal stated that the Applicant’s position would report to the Operations Manger.

[35] I cannot accept that everything within the mail delivery system within the University was intended to remain untouched or remain as it applied to the Applicant.

[36] I am supported in this conclusion by referring to the role descriptions for the Mailroom Supervisor and the Operations Manager. I accept that the Mailroom Supervisor position was a supervisory one and not a managerial position: see the

references in the “Key Results Area” and the requirement to work closely with the Operations Manager.

[37] Mr Rochford has claimed that changes related to his role as it had been established in regard to casual employees, the budget finances, and annual holidays.

[38] He says he experienced differences in his work because of Ms van der Lugt’s more direct involvement compared to his previous manager, and her style of communication with him. It started off over an issue about the employment of casuals.

Casual Employees

[39] Mr Rochford’s role description does not refer to hiring staff, either permanent or casual, as part of his role. He assumed a role in the activity with Mr Povey’s approach to managing but could not anticipate after the change process and appointment of the new Operations Manager that that would continue.

[40] I am supported in reaching this conclusion by the delegations: they make it clear that while Mr Rochford’s level of delegation authorised him to hire casual staff, and the University accepted that he had been exercising that level of delegation, the delegation framework also makes it clear that an employee with a higher delegation may also carry out the action of the person holding the lower delegation. In other words Ms van der Lugt also held the same authority in respect to casuals.

[41] I am further supported by the University’s decision to rationalise the use of casuals and to maximise the use of Campus Care staff to assist with the Mailroom when required is a matter that was discussed with Mr Rochford. He had a different view about the proposal.

[42] Notice was provided on the rationalisation proposal in the Facilities Management change proposal and outcome. Other evidence of what was envisaged was found in the memorandum produced from Ms van der Lugt to Mr Povey and handwritten notes that make it clear management were trying to find efficiencies with existing staffing and that the suspension in the use of casuals was a temporary measure. I conclude that that was a decision entirely open to the University to make.

Budget Finances

[43] Mr Rochford has not satisfied me that his role included decision making on the construction of the budget. He has not provided any specific incident or time that the University negated or changed his role on the budget process. He certainly had some issues but I conclude that these were not enough to claim an unjustified disadvantage. Moreover there was no grievance specified sufficiently for the employer to address. I find it hard to find that there was any grievance raised in ninety days of the 24th of November 2006 letter to the University. Indeed Mr Rochford's behaviour of raising evolving claims was highlighted by instructing his lawyer to respond to a submission made by the University on not being consulted about staff costs in the Mailroom operations budget for 2006. New evidence on this was opposed by the University. I have decided not to pursue it further because Mr Rochford had every reasonable opportunity to raise it earlier.

Annual Leave Responsibility

[44] This matter was not specified sufficiently for the employer to address. However, as an aside, I comment that Mr Povey outlined the system for dealing with annual leave and overall control. Mr Povey had the oversight of leave applications. I am satisfied that there was no change made by Ms van der Lugt when she commenced and followed the process previously followed by Mr Povey. I am not satisfied that Mr Rochford is correct in the amended statement of problem considering the rebuttal made by Mr Povey and relying on his exhibit C.

Other Issues

[45] These include an allegation of changes being made to Mr Rochford's role in respect of any authority he had to conduct staff reviews. Ms van der Lugt contradicts Mr Rochford's evidence of any change because:

- There is evidence that Ms van der Lugt sat in on salary/performance reviews in 2006. Given her role Mr Rochford can not succeed that there was any unjustified disadvantage associated with this.
- Mr Rochford conducted the review. Mr Rochford's document called "Job Description" under the heading "Timeline" and the date 31 August 2006 makes it clear Mr Rochford conducted the September review.

[46] Mr Rochford has alleged that his responsibility for staff training somehow changed. There is no indication and documentation of what he relies on. The University has tried to guess what event might be relevant. This adds weight to my conclusion that Mr Rochford did not raise a grievance specifically sufficiently for the University to address on the matter.

[47] Mr Rochford has complained that his authority to negotiate with outside couriers has somehow changed. He informed me that he was involved in negotiations with outside providers in October 2006 and that Ms van der Lugt wanted to have some oversight to the point of his being excluded, but I am not satisfied that this amounts to an unjustified action disadvantaging him in his employment. His job description does not support his claim that there was any authority extending to the negotiation with outside couriers in his role without supervision. His claim that that was included in his role was disputed by the University. Such a claim would also not be consistent with his financial authority, which does suggest he would not have had authority to enter into such negotiations. I accept Mr Povey's evidence set out on the extent of Mr Rochford's role with outside suppliers. I have no reason not to accept Mr Povey's evidence.

[48] Mr Rochford has also raised other issues such as the move of the Mailroom to a new location and health and safety issues associated with that. It is only background and I have treated it as such.

[49] In regard to the 1 June 2007 meeting that the University accepted it made a mistake about involved a cost to Mr Rochford when he required his lawyer to be present on 11 June 2007. The University accepted a mistake had been made; it apologised and offered a sum of \$300 (plus GST) per hour to cover Mr Rochford's costs: in response of being informed what Mr Rochford's lawyer's charge out rate was. The actual costs amounted to \$750 (plus GST). This matter was included in the amended statement of problem lodged in the Authority on 3 September 2007. Therefore, the matter was raised in 90 days and a remedy for costs was sought. I find the University acted genuinely in regard to the meeting of 1 June and requesting Mr Rochford's explanation, and then acting reasonably on establishing its mistake and apologising. Mr Rochford was disadvantaged financially by incurring costs that could have been avoided by both sides. This is a matter that remains open to the parties to resolve the amount of costs given the offer that was made.

[50] Finally, I turn to the relationship problem between Mr Rochford and Ms van der Lugt. This has deteriorated over the time since Ms van der Lugt started at the university. It has caused then both some anguish. Mr Rochford's claims about her behaviour toward him have lacked details. I find that Ms van der Lugt and the University have put in place training for her to manage better and improve in respect of the problems she has had in her role. I am satisfied that the changes that Mr Rochford has opposed are within the University's right to manage having regard to the Facilities Management of change document, the job descriptions and the delegations.

[51] I dismiss the Applicant's claims. I do not have to deal with the remedies sought.

[52] Costs are reserved.

P R Stapp
Member of the Employment Relations Authority