

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 133/10  
5274239

BETWEEN VANESSA MARY  
ELIZABETH SHEARER  
Applicant

A N D RADIUS RESIDENTIAL  
CARE LIMITED  
Respondent

Member of Authority: Philip Cheyne

Representatives: Tony Shaw, Counsel for Applicant  
Peter Kiely, Counsel for Respondent

Investigation Meeting: On the papers

Determination: 24 June 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Vanessa Shearer worked for Radius Residential Care Limited (Radius) until she was dismissed. Mrs Shearer says that she was unjustifiably dismissed and has a personal grievance as a result while Radius says that it justifiably dismissed her.

[2] The matter was not resolved by mediation and arrangements were made for an investigation meeting scheduled for August 2010.

[3] Radius dismissed Mrs Shearer after a disciplinary investigation. Its human resources manager at the time was substantially involved in the disciplinary investigation and will need to give evidence about her involvement and the decision to dismiss Mrs Shearer. There may be a conflict in the evidence given by Mrs Shearer and the human resources manager which will need to be resolved in order to determine Mrs Shearer's personal grievance claim.

[4] After the arrangements for the Authority's investigation meeting were agreed, the human resources manager was appointed as a Member of the Employment Relations Authority. She is due to take up that appointment shortly. If this matter remains before the Authority, I will need to hear and assess evidence from her despite her then being a fellow Authority Member. There is a substantial risk of the appearance of bias should I prefer her evidence over that of Mrs Shearer.

[5] In these circumstances, Radius has applied for the whole of the matter to be removed to the Employment Court for the Employment Court to hear and determine Mrs Shearer's personal grievance without the Authority investigating the matter. That application is consented to by Mrs Shearer.

[6] I have no hesitation in concluding that, in the circumstances as explained above, the Employment Court should determine Mrs Shearer's personal grievance claim. Accordingly, the matter is removed to the Employment Court.

[7] Costs are reserved.

Philip Cheyne  
Member of the Employment Relations Authority