

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 197
5396797

BETWEEN ANGELIQUE TERE SINGH
Applicant

A N D TE HOHEPA KOHANGA REO
Respondent

Member of Authority: Rachel Larmer

Representatives: Kevin Murray, Advocate for Applicant
Daniel Vincent, Counsel for Respondent

Investigation meeting: 18 September 2013 at Christchurch

Date of Determination: 19 September 2013

DETERMINATION OF THE AUTHORITY

- A. The Authority does not have jurisdiction to investigate Ms Singh’s personal grievance claims for unjustified disadvantage and unjustified dismissal because she did not raise her personal grievances with Te Hohepa Kohanga Reo within 90 days of them arising as required by s.114 of the Employment Relations Act 2000.**
- B. The parties are referred to mediation on Ms Singh’s claim that Te Hohepa Kohanga Reo breached the Wages Protection Act 1983 by failing to pay her final pay.**
- C. Ms Singh is directed to advise the Authority within 14 days of mediation being completed whether or not she intends to pursue her wage arrears claim.**

D. Ms Singh is ordered to pay Te Hohepa Kohanga Reo \$2,406 towards its costs and disbursements.

Employment relationship problem

[1] Ms Singh has filed claims against Te Hohepa Kohanga Reo that it:

- a. unjustifiably disadvantaged her in her employment by reducing her hours of work on 21 September 2009;
- b. unjustifiably constructively dismissed her in October 2009;
- c. breached the Wages Protection Act 1983 by failing to pay her final pay.

[2] Te Hohepa Kohanga Reo says the Authority does not have jurisdiction to hear Ms Singh's personal grievance claims because she did not raise any personal grievances with it within 90 days of the alleged grievances arising/coming to her attention contrary to the requirements of s.114 of the Employment Relations Act 2000 (the Act). It says Ms Singh's grievances were not raised until her Statement of Problem was served on it by the Authority on 16 October 2012, approximately three years after the grievances are alleged to have arisen.

[3] Te Hohepa Kohanga Reo denies that Ms Singh was dismissed. It says her employment ended because she resigned by letter dated 02 October 2009. It denies unjustifiably disadvantaging Ms Singh and says it had good commercial reasons for restructuring her position and that it only did so after following a fair and proper consultation process with her.

[4] Te Hohepa Kohanga Reo denies withholding Ms Singh's final pay and/or breaching the Wages Protection Act. It further says Ms Singh still owes it unpaid reparation as a result of her criminal conviction on a charge she dishonestly banked \$480 of its money into her own personal bank account on 12 February 2009.

Issues

[5] The following issues are to be determined:

- (a) Credibility of witnesses;

- (b) Factual findings;
- (c) Did Ms Singh raise a personal grievance claim for unjustified disadvantage within 90 days?
- (d) Did Ms Singh raise a personal grievance claim for unjustified dismissal within 90 days?
- (e) Outcome
- (f) What if any costs should be awarded;
- (g) What if any disbursements should be awarded?

Credibility issues

[6] On 21 December 2012 Ms Singh was convicted by the District Court at Christchurch of a criminal charge of using a document dishonestly and without claim of right on 12 February 2009 when she banked a cheque for \$480 dated 10 February 2009 from Te Hohepa Kohanga Reo into her own bank account.

[7] In the judgment on the criminal charges Judge Callaghan made adverse findings about Ms Singh's credibility and about the accuracy of documentation which she had presented to the Court in support of her defence.

[8] I was likewise dissatisfied with the evidence presented by Ms Singh in support of her claims that she had raised personal grievances within 90 days of them arising or coming to her attention, whichever was the later.

[9] I find Ms Singh is an unreliable witness. She gave conflicting and contradictory evidence. She changed story almost every time she was asked a question. She changed her evidence under cross-examination. She contradicted the evidence in her witness statement when questioned by the Authority.

[10] Ms Singh had to accept under cross-examination that the evidence in her witness statement, which she had confirmed was true and correct, was in fact obviously incorrect. Ms Singh's evidence also conflicted with documents available to the Authority. In some respects the evidence she gave did not make sense.

[11] Ms Singh appeared confused about critical matters such as when her alleged grievances had arisen and in respect of the key issue about what if anything she had done to raise her grievances with her employer. Her evidence kept changing to the extent that her Advocate found it difficult in his closing submissions to identify exactly what Ms Singh's evidence was in respect of the critical issues to be determined.

[12] I consider the deficiencies in Ms Singh's evidence were such that no reliance should be placed on her version of events. I have preferred the evidence given by Mr George Raerae (the then Chairman of the Te Hohepa Kohanga Reo) and Ms Catherine Stuart who is the District Manager for the South Island of the Te Kpohanga Reo National Trust Board (National Trust).

[13] I was also concerned about the evidence given by Ms Singh's mother, Ms Tere Hita. Ms Hita told me that she was present when Ms Singh raised her grievances with her employer and Ms Hita confirmed that the witness statement she had filed to that effect was true and correct.

[14] However, when questioned by the Authority Ms Hita was unable to provide any information at all about her daughter having raised a grievance or grievances. Ms Hita could not tell me when she had seen and/or heard her daughter allegedly raise her grievances, who they had been raised with, how they were raised, or what Ms Singh had said or done to raise her grievances. When questioned about these matters Ms Hita had to reluctantly admit she was unable to recall anything at all about her daughter having raised grievances with her employer.

[15] Ms Hita also told me she did not discuss her evidence with her daughter and had not seen her daughter's evidence before she prepared her own statement. I am concerned this is not correct because some of the paragraphs in Ms Singh's and Ms Hita's statements are word for word identical. I do not consider such extensive similarities can be explained away as a mere coincidence.

[16] Ms Hita was unable to provide any explanation for her statement being identical in some respects to her daughter's statement. I consider it more likely than not that parts of Ms Hita's statement were directly copied from her daughter's statement. I find that Ms Hita's evidence is entirely unreliable and I have no regard to it.

[17] I was also concerned that Ms Singh produced to the Authority at the beginning of its investigation meeting a document which she said she had just found on her computer which purported to be a resignation letter which made reference to a personal grievance.

[18] This letter was dated 24 September 2009 and Ms Singh's evidence was that she personally handed it to Mr George Raerae on 25 September 2009. Mr Raerae says he has never seen the letter before the Authority's investigation and definitely did not receive a copy of it previously. I accept his evidence about that.

[19] I do not accept that the letter dated 24 September 2009 is an authentic document. Ms Singh was unable to explain why the document provided to the Authority had her signature on it if she had indeed found it on her computer as claimed.

[20] The 24 September letter also conflicted with Ms Singh's handwritten resignation letter dated 02 October 2009. The content of the October letter materially conflicted with the September letter. In the October letter Ms Singh thanks her employer for its support and for the experience she had been given during her employment. She says she is resigning for personal reasons on three weeks' notice.

[21] The 24 September 2009 letter has not previously been referred to at all before being produced on 18 September 2013 (almost four years after it was supposedly written). It was not mentioned in her Advocate's letter dated 03 February 2010 which was supposedly sent to Te Hohepa Kohanga Reo but which I find was never received. No mention was made of it in the Statement of Problem or in Ms Singh's written evidence or in any other communications between the parties.

[22] The 24 September letter also conflicted with meeting minutes dated 28 September of a meeting Ms Singh attended which records that her position was to be discussed with her at a meeting on 02 October 2009. If she had given Te Hohepa Kohanga Reo the letter of 24 September there would not have been any reason for it to meet with her on 02 October.

[23] I accept Te Hohepa Kohanga Reo's evidence that Ms Singh's letter of 24 September 2009 had not previously been seen by it before she produced it to the Authority on 18 September 2013.

Factual findings

[24] I consider that the following facts are either not disputed or have been proven to my satisfaction on the balance of probabilities:

- (a) Ms Singh's alleged disadvantage grievance arose on 21 September 2009;
- (b) Ms Singh did not raise a personal grievance claim for unjustified disadvantage until her Statement of Problem was served by the Authority on Te Hohepa Kohanga Reo on 16 October 2012;
- (c) Ms Singh's Advocate's letter dated 03 February 2010 was sent to the wrong address and was not received by Te Hohepa Kohanga Reo before the Statement of Problem was served on it;
- (d) The first time Te Hohepa Kohanga Reo became aware of Ms Singh's Advocate's letter of 3 February 2010 was when it was shown to Ms Stuart by Ms Singh's lawyer while Ms Stuart was giving evidence to the District Court on 08 June 2012 as a witness in Ms Singh's criminal prosecution.
- (e) The 03 February letter was shown to Ms Stuart while she was in the witness box but she was not provided with a copy of it to take away. She did not see it again until she received the Statement of Problem on 16 October 2012;
- (f) Ms Singh failed to turn up to work from 20 September 2009 onwards although she was treated as still employed until after her resignation letter of 02 October was received;
- (g) Ms Singh's employment ended as a result of her written notice of resignation dated 02 October 2009;
- (h) Ms Singh was only required to give two weeks' contractual notice so her employment ended on 16 October 2009;
- (i) Ms Singh's was not paid between 20 September and 16 October 2009 because she did not report to work over that period nor was she on

approved paid leave for that period. She simply failed to turn up to work;

- (j) Ms Singh's personal grievance claim for unjustified dismissal was not raised with Te Hohepa Kohanga Reo until her Statement of Problem was served by the Authority on 16 October 2012;
- (k) Ms Singh failed to raise her dismissal grievance with her employer within 90 days of it arising;
- (l) Even if Ms Singh had made the comments to her employer that she claims she did (and I do not accept her evidence about that) she would still have been unable to meet the requirements of s.114(1) of the Act because what she claims to have said does not satisfy the requirements and/or legal test for raising a personal grievance as identified by the Supreme Court in *Creedy v. Commissioner of Police*¹.

Did Ms Singh raise her unjustified dismissal grievance within 90 days of it arising?

[25] Ms Singh did not raise her disadvantage grievance with her employer until more than three years after it had arisen. That is outside the 90 day time limit required by s.114(1) of the Act. The Authority therefore does not have jurisdiction to investigate her disadvantage grievance.

Did Ms Singh raise her dismissal grievance within 90 days of it arising?

[26] Ms Singh did not raise her dismissal grievance with her employer until almost three years after it had arisen. This is again outside the 90 day time limit required under s.114(1) of the Act. The Authority therefore does not have jurisdiction to investigate her dismissal grievance.

Outcome

[27] Te Hohepa Kohanga Reo does not consent to the Authority investigating Ms Singh's grievances out of time. No application has been made to the Authority by Ms Singh for leave to raise her grievances outside of the 90 day time limit in s.114(1)

¹ [2008] NZSC 31

of the Act. Accordingly, Ms Singh's dismissal and disadvantage grievance claims are struck out.

[28] That leaves Ms Singh's wage arrears claim as the sole issue for the Authority to investigate and determine. The parties are referred to mediation on the wage arrears claim. If after mediation Ms Singh wishes to pursue her wage arrears claim then she needs to advise the Authority of that within 14 days of mediation being completed.

What if any costs should be awarded?

[29] Te Hohepa Kohanga Reo as the successful party is entitled to a contribution towards its actual costs. The parties agree the Authority should adopt its usual notional daily tariff based approach to costs and that there were no factors which would warrant an adjustment to the notional daily tariff which is currently \$3,500.

[30] The Authority's investigation involved four hours of hearing time, which includes a half hour lunch adjournment. In accordance with the notional daily tariff of \$3,500 Ms Singh is ordered to pay Te Hohepa Kohanga Reo \$2,000 towards its actual costs.

Should Te Hohepa Kohanga Reo be awarded any disbursements?

[31] Te Hohepa Kohanga Reo seeks reimbursement of Mr Vincent's airfares for his travel from Wellington to Christchurch for the investigation meeting. Although the Authority does not normally reimburse a party who elects to engage out of town counsel, in this case I consider it is appropriate to do so.

[32] Mr Vincent acts for the Kohanga Reo National Trust Board in respect of all matters nationally so I consider it was reasonable and appropriate for him to be instructed to appear in this matter as the respondent's national counsel. Mr Vincent provided an invoice for his airfares of \$406 and I consider it appropriate that Te Hohepa Kohanga Reo be reimbursed for this amount.

[33] Ms Singh is ordered to pay Te Hohepa Kohanga Reo \$406 to reimburse Mr Vincent's airfares.

Rachel Larmer
Member of the Employment Relations Authority