

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 257/10
5147601

BETWEEN SABINE STEFFEN
Applicant

AND REGENT INTERNATIONAL
EDUCATION GROUP
LIMITED
Respondent

Member of Authority: Yvonne Oldfield

Representatives: Tony Kurta for Applicant
Jennifer Wickes for Respondent

Investigation Meeting: 30 October 2009

Submissions received: 4 November 2009 from Applicant
12 November 2009 from Respondent

Determination: 27 May 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Steffen was employed by the respondent (“Regent”) on 29 September 2008. Her employment was for 25 hours a week for a fixed term of twelve months and was subject to a three month probationary period. A well qualified teacher of English as a second language, she had been engaged to teach Regent’s higher level English courses to international students.

[2] On 24 November 2008 she was dismissed for serious misconduct, namely harassing a student and behaving in a way that brought the respondent into disrepute.

[3] Ms Steffen says that her dismissal was substantively unjustified and procedurally unfair. She disputes that she harassed a student, denies serious

misconduct, and says that she was dismissed without being given any opportunity to answer the allegations against her.

Issues

[4] The issues for determination are:

- i. whether, pursuant to s.103A of the Employment Relations Act, the employer's actions were what a fair and reasonable employer would have done in all the circumstances at the time, and
- ii. if not, whether Ms Steffen contributed to the situation which gave rise to her grievance.

(i) The dismissal

[5] Issues about Ms Steffen's approach to her work emerged within weeks of her employment. She felt that the respondent's standards were not sufficiently rigorous and disagreed with aspects of the teaching programme and assessment methods. Regent, on the other hand, had observed that (despite reminders to do so) she did not adhere to the required marking system, and also that she had left students unattended in the computer lab when they were meant to be in her class.

[6] Programme leader Michael Wang told me he planned to discuss these issues with Ms Steffen but on 21 October, before he had done so, Regent received its first written complaint about her. The complaint (from some of her students) was that they were given class time to complete homework which they felt was a waste of time and money.

[7] Mr Wang met with Ms Steffen and discussed with her all the issues he had. This meeting was not disciplinary in nature but served to clarify that the respondent expected her to engage in a full programme of instruction during class time, to adopt the same marking system as the rest of the teaching staff, and generally to support and

guide students. Mr Wang then arranged for the principal, Keith Stevens, to meet with the class (with Ms Steffen present) to:

“tell the class about Sabine’s experience, qualifications and abilities to motivate the class.”

[8] No further issues arose for a couple of weeks then, on 18 November, the home stay parents of one of Ms Steffen’s students contacted the school seeking a meeting with Mr Wang and Mr Stevens. This took place on the afternoon of the same day. The couple told Mr Wang and Mr Stevens that the student concerned had come home from school crying and telling them she had been bullied by Ms Steffen, and had reported being accused of cheating by Ms Steffen. The allegations related to help she had received from her home stay father. He was also, as it happened, a teacher by profession and felt that what he had done to assist was within appropriate bounds.

[9] Because the school was engaged in its annual NZQA audit, Mr Wang and Mr Stevens did not meet Ms Steffen to discuss these matters until 20 November. When they did, they dealt with what the student’s host parents had alleged (including an issue about inappropriate comments on student work) the issue of Ms Steffen’s marking technique (which remained a concern) and her attitude to students generally.

[10] Mr Wang explained to Ms Steffen that her handling of the student had been inappropriate and explained that her role as tutor was not punitive, but to provide guidance and support. He says he also told Ms Steffen that any concerns about plagiarism or inappropriate help from home stay parents (in general, but particularly in relation to this student) should henceforth be referred to him.

[11] Mr Wang told me that at the end of the meeting he was still not comfortable with Ms Steffen’s reaction and was reflecting on what further action might be needed to address her approach to her work. As things turned out, however, fresh allegations intervened.

[12] On the evening of Friday 21 November, the same student’s host mother left a message with the school to say that further concerns had come to light. Mr Wang returned her call on the Monday morning and was told that the student had reported

that Ms Steffen had on two occasions taken her out of class and confronted her about the fact that her host parents had complained.

[13] The first alleged confrontation appeared to have been on 19 November, after Ms Steffen learnt of the parents' visit to the school. On the evening of 19 November, the student emailed Ms Steffen to apologise, and just minutes later received a response from Ms Steffen which included the following:

“your homestay parents spent two hours talking about me to the two bosses... now I am having a major problem because they believe all the nonsense your homestay parents have told them...

whether you apologise or not is beside the point...

what is absolutely not acceptable is the interference of your homestay parents...

you may tell your homestay family that I want to receive a written apology for their interference with your work ...and the nonsense that they have been saying behind my back to the school. That letter also needs a written statement that they will abstain from as much as looking at your written work... otherwise I may have to report them to the Code of Practice people and they may well be told that they cannot have any more homestay students in future. They have helped you commit fraud with official documents...

I suggest you explain the situation to them asap as I will not mark any more of your work until I have received the letter...”

[14] The host parents relayed that the student had then been pulled out of another teacher's class and was again “told off” by Ms Steffen who accused her of getting her into trouble. It appears that this second occasion was the trigger for the student divulging the further allegations to her host parents.

[15] Ms Steffen had shown the student's 19 November apology email to Mr Wang and Mr Stevens at the meeting of 20 November. Although she did not show them her reply, she does not dispute sending it. Nor does she deny taking the student aside to

speak to her, on two occasions, although she was not able to recall exactly when the second occasion was.

[16] The email exchange of 19 November was forwarded to the school after Mr Wang and the host mother had spoken on the morning of 24 November. Mr Wang relayed what he had heard to Mr Stevens and an emergency meeting of the respondent's board was convened immediately. Present were Mr Wang, Mr Stevens, another programme leader and a director of the respondent. Mr Wang showed the other attendees the email and outlined what was alleged about the two confrontations with the student.

[17] He noted in his evidence:

“We were very alarmed at the email... The tone and content of the email was so abusive and consisted in our view serious harassment...Sabine had continued to display a quite inappropriate attitude and behaviour ...in contempt of what we had told her. We could not afford to have such a ‘loose cannon’ working for us and potentially damaging our reputation. We viewed her actions as serious misconduct and decided we had to terminate her employment.

Accordingly we called Sabine to a meeting that day and dismissed her.”

[18] In submissions for Ms Steffen Mr Kurta points out that the respondent's Board made its decision without input from the Applicant. He says that she was not provided with any details of the allegations against her, given no opportunity to respond and was not told of her entitlement to have representation. He also disputes the substantive justification for the dismissal, arguing that Ms Steffen's email to the student was “*not unempathetic*” with her and noting that, at 21 years of age, the homestay student was not a child. He asserts that the complaints from the homestay parents were biased against Ms Steffen, and suggests that an apology from them may in fact have been in order.

[19] The respondent submits that the dismissal was justified on substantive grounds for serious misconduct. It says it had lost all faith and confidence that Ms Steffen would adhere to her employment obligations and did could not rely on her to exercise

proper judgement and restraint. It relies on the proposition that in some instances the facts are so clear that instant dismissal is justified.¹ In the alternative it says that if the dismissal were found to be unjustifiable on procedural grounds allowance must be made for the likelihood that the employee would have been dismissed if a proper procedure had been followed, and a finding made of 100% contribution.

Determination

[20] There is very little dispute between the parties about the material facts of this matter. It is agreed that Ms Steffen was called in to the board meeting on 24 November and dismissed forthwith. The further allegations were not put to her in full and she was given no opportunity to answer them or explain herself. It follows that several of the fundamental elements of procedural fairness are missing from this process. In the circumstance I am not prepared to accept the submission that (at the time) the facts were so clear that instant dismissal was justified. The dismissal was procedurally unfair and therefore unjustified.

(ii) Contributory conduct

[21] Mr Wang told the Authority that the respondent entrusted its staff with the task of supporting students from other countries. Both Mr Wang and Mr Stevens confirmed to the Authority that the issues that had arisen in October would not, in their view, have justified dismissal. The relevance of those matters was that they led Mr Wang to make it very clear to Ms Steffen what was required of her, which included providing students with help and pastoral care. These requirements had then been reiterated to Ms Steffen at the meeting of 20 November.

[22] Mr Wang and Mr Stevens told the Authority that in the face of those instructions, the email was totally unacceptable. They were also alarmed that Ms Steffen had approached the student a second time (which they deduced to be after the meeting of 20 November) when she had just been reminded of the need to care for and support students and had been told that issues regarding that particular student were to be referred to Mr Wang. They told the Authority they felt there was no way to overcome Ms Steffen's inherent misunderstanding of her role as tutor. Because it was

¹ *Airline Stewards and Hostesses of New Zealand IOUW v ANZ Ltd (1990) 3 NZLR 594 (CA)*

paramount that the safety and security of the students be safeguarded they felt that they had no choice but to dismiss Ms Steffen immediately.

[23] There is no dispute that Ms Steffen sent the email in question, although she disagrees with the respondent's evaluation of its content. Ms Steffen told the Authority that she sent the email because she felt she needed to take matters into her own hands. She does not feel that it was abusive in nature, believes it was appropriate to send it, and considers that the respondent had insufficient reason to justify her dismissal.

Determination

[24] I am satisfied that the respondent's assessment of the email was entirely fair and reasonable. The content of the email was more than inappropriate. It could in fact be described as bullying. By sending it in the first place and by failing to appreciate (even now) how inappropriate and unprofessional it was Ms Steffen has demonstrated a serious lack of insight into her own behaviour. Sending this email amounted to serious misconduct.

[25] There is also no dispute that Ms Steffen approached the student on two occasions (although she does dispute that these approaches were abusive.) I cannot make any findings about the tenor of these encounters. The allegations were never properly investigated by the respondent and the Authority heard only third hand accounts of what happened. I can say that the second of these encounters can only have occurred after the meeting of 20 November had taken place and therefore after Ms Steffen had been told to refer any issues with that student to Mr Wang. Whether abusive or not those approaches were therefore in contravention of a direct instruction. For this reason I am satisfied that they amounted to serious misconduct.

[26] I am satisfied that Ms Steffen's actions were such as to cause the respondent to lose trust and confidence in her and therefore sufficient to justify dismissal. I accept that this is a case where remedies should be reduced by 100%.

Costs

[27] This issue is reserved. Any application for costs should be made within 28 days of today's date.

Yvonne Oldfield

Member of the Employment Relations Authority