IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

5085359
CA 14/08

	BETWEEN	JULIE SVENSSON Applicant
	AND	ANZ NATIONAL BANK LIMITED Respondent

Member of Authority:	Paul Montgomery
Representatives:	Brent Climo, Advocate for Applicant Shane Deegan, Advocate for Respondent
Investigation Meeting:	On the papers by consent
Determination:	15 February 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant claims she has been disadvantaged by the alleged unjustifiable action of her employer, that action being the changing of her hours of work from 30 hours per week over four days to 30 hours per week over five days. Mrs Svensson says this was in breach of her individual employment agreement in that it was done without her agreement. She seeks the remedies of recouping remuneration lost as a result of the change, restoration to her former days and hours of work, and costs.

[2] The respondent says that it undertook a justified reorganisation of the branch and has continued to employ the applicant although on reduced hours.

What caused the problem?

[3] Mrs Svensson was employed as one of two Customer Service Officers (CSO) at the respondent's Richmond branch. She had originally been employed by Countrywide Bank in August 1994, moved to the National Bank of New Zealand

when it was merged with Countrywide. A further merger between that bank and the ANZ Bank led to her being employed by the current respondent.

[4] The applicant has had a history of medical conditions which have, at various stages, affected her ability to function adequately in her employment. At the suggestion of her then manager, Mrs Svensson began working 30 hours each week over four days. She says *this made a marked improvement to my general health and proved a work/life balance for me. I was then able to function better at work with more accuracy and energy*.

[5] After three weeks' sick leave in 2002 due to medication complications, the applicant's manager spoke to her about her health, suggesting a reduction of three hours per week. The offer was declined and, with some changes in her treatment, Mrs Svensson says she has *maintained a good level of health and have coped well with my four days/30 hour week*. From mid-2006 until early 2007, Mrs Svensson's immediate family suffered some serious setbacks which placed her under considerable stress.

[6] In March 2007, the respondent advised all staff that it wanted to reorganise the Richmond branch, including having the two CSOs at the branch work five days each week rather than four. Its rationale was the existing hours were affecting customer service levels adversely, and also the ability of Team Leaders to carry out their own duties when having to cover for CSOs on the fifth day.

[7] The applicant says *there was no private consultation with me. This was presented to all staff at a series of staggered meetings*.

[8] On 13 June 2005, the respondent had written to the applicant with *an offer of a new employment agreement*. The letter included the following term:

> *It is a new term of your employment agreement that your current hours/days of work cannot be changed unless you agree to this.*

[9] The respondent wrote to the applicant again on 29 September 2006 offering *some changes to your employment agreement*. The letter stated:

> *Your position and your duties and your responsibilities remain the same as previously agreed.*

[10] There is no reference to hours of work in this document which relates, in the main, to changes in salary. It details the documents which form the applicant's entire agreement with the bank, which section also states, *these various documents contain the entire agreement between you and the bank and replace any previous agreements between yourself and the bank*.

Issues

[11] There are two main issues in this matter. They are:

- Was the respondent entitled to change the applicant's hours and days of work without her agreement; and
- Has the applicant been disadvantaged?

Analysis and discussion

[12] There appears no significant disagreement between the parties' representatives regarding the consultation process and the genuine nature of the reorganisation process undertaken by the respondent. Further, it is evident that the respondent has, over the period of Mrs Svensson's employment, attempted to accommodate her health issues.

[13] There is little doubt that an employer has a right to reorganise its business to become more efficient or profitable or to enhance its services to customers. Provided the employer undertakes a genuine consultation process with any staff likely to be affected by the proposed changes and considers their views when coming to a decision, a Court or Authority has no jurisdiction to intervene. Mr Deegan has provided a number of cases which confirm this proposition. It is clear that such a process was undertaken prior to the new structure being implemented.

[14] The critical issue is the *new term* inserted into Mrs Svensson's individual agreement in June 2005 as a result of which the respondent required her *agreement* to any change in her *hours/days of work*. The term is strongly stated and the applicant believed she was entitled to rely on this new term.

[15] The respondent says the *new term* is not present in the individual agreement signed by the applicant on 28 October 2006. Its position is that this agreement and its

associated documentation *replace any previous agreements between yourself and the bank.*

[16] As observed above, the document signed by Mrs Svensson makes no reference to days or hours of work, but relates to salary matters. To claim that a generic clause in the offer of 29 September 2006 vitiated an expressed and explicit term particular to Mrs Svensson alone is altogether too cute.

[17] If, at that time, the respondent wished to remove that term from future arrangements, it was obliged, at the very least, to draw the applicant's attention to its absence from the 29 September 2006 document **before** Mrs Svensson signed it. That is what a fair and reasonable employer would have done in all the particular circumstances of this case.

The test

[18] The test to be applied in this matter is set out in s.103A of the Employment Relations Act 2000 and its amendments. This requires the Authority to stand back and determine on an objective basis whether the employer's actions and how the employer acted were what a fair and reasonable employer would have done in all the circumstances at the time the action occurred.

The determination

[19] The applicant has refused, on health grounds, to work over the five days required by the respondent but has agreed to work four days on reduced overall weekly hours. She currently works 24 hours each week.

[20] I find the respondent was entitled to reorganise the operation of the branch to raise its standard of service to customers and that it followed an appropriate consultation with all affected staff before implementing the changes. The proposed changes to Mrs Svensson's working arrangements were then justifiable.

[21] I find, however, that the applicant has been disadvantaged by the respondent's failure to secure the applicant's agreement to the change it imposed on her hours and days of work. I reject the submission that the *new term* in her employment agreement, confirmed to Mrs Svensson by the respondent in June 2005, did not form part of the arrangements with the respondent. The new term's inclusion in the arrangement

between the parties was expressed and I hold the view that the removal of the term between the parties also needed to be expressed.

[22] I find Mrs Svensson has a personal grievance and is entitled to some compensation. Given that I have found the reorganisation was justifiable, I decline to make any order for loss of remuneration.

Remedies

[23] This is a matter in which there is an ongoing relationship between the applicant and the respondent. Having made these findings on the basis of the documents and the submissions of the parties, and given the requirement that the Authority is bound to encourage and support successful employment relationships, I take the somewhat unusual step of directing the parties to resolve the compensation issue between themselves and, if necessary, enlist the assistance of the Mediation Service. If that cannot be achieved, leave is reserved for each party to provide the Authority with submissions on the matter of compensation only.

Costs

[24] Costs are reserved.

Paul Montgomery
Member of the Employment Relations Authority