

The Investigation

[4] In her statement of problem received on 2 September 2009 Ms Williams said she had been unjustifiably dismissed by the Trust. The remedies she sought were: a letter of apology, a reference, compensation of \$9,000 and holiday pay.

[5] Mediation in October 2008 did not resolve this employment relationship problem.

[6] In an email received on 28 September 2009, and which I treated as the Trust's statement in reply, Mr Robert Cribb said he was the former chairperson of the Trust and that it was no longer operational and to his knowledge was "*non-existent*". Mr Cribb also said that no future funding was available or likely to be forthcoming. Mr Cribb's email otherwise did not address the issue of Ms Williams's claim of unjustified dismissal.

[7] As at the time of preparing this determination the Trust remains registered by the NZ Companies Office as a charitable trust.

[8] I convened a telephone conference of the parties on 16 October. Despite undertaking to participate, a Trustee did not respond to attempts to telephone her. Following discussion with Ms Williams I directed that this matter proceed to an investigation on 26 November 2009. Timelines were also directed for the parties to provide witness statements and documentary evidence: neither party elected to provide any material.

[9] As became abundantly clear at the investigation on 26 November, the Trust's trustees and the applicant are extended family members (uncles, aunties, cousins, etc) and they know each other well.

Relevant Facts and Findings

[10] I am satisfied from the answers given at my investigation that the following is an accurate summary of relevant facts and findings.

[11] The Trust was set up to distribute funding received from the Crown Forest Rental Trust for the purpose of Treaty of Waitangi claims.

[12] Ms Williams worked for the Trust from July 2006 on what were described as “*part-time and fixed term contracts as office administrator (the) most recent being a fixed term contract from October 2007 until March 2008. However, this contract rolled over due to the fact that Roberta was required to stay on for various contracts and projects and a new agreement was never drawn up or signed by either party. **Roberta continued in her role in a full time capacity on a permanent basis***” (emphasis added – advice of personal grievance dated 28 October 2008, attachment to statement of problem).

[13] On Friday, 5 September 2008 and outside of normal business hours, Ms Williams was approached by a Trustee about closing the Trust’s office and returning office keys: the applicant new nothing about the context of the approach.

[14] Later that evening Ms Williams was informed by others of overhearing a conversation that suggested her employment was about to be terminated.

[15] On Monday 8 September Ms Williams spoke to the Trust’s then chairperson, Mr Cribb (see par 6 above) who denied advising another the office was closing and said the applicant still had a position with the Trust.

[16] Early on the morning of Wednesday 10 September Ms Williams received a telephone call from Mr Cribb who informed her that payments were being stopped and she was to return office keys to him by 12 September.

[17] On 12 September, while at work, Ms Williams received a faxed letter from Mr Cribb that all Trust contracts had come to an end (copy attached to statement of problem); Ms Williams delivered the office keys to Mr Cribb’s house.

[18] According to evidence given by Mr Cribb at the Authority’s investigation, the closure of the office was “*temporary*” and the Trust decided to re-advertise Ms Williams’ position: she was approached about re-applying for the position, however another person was appointed. The office was closed again, later as the Trust’s business – facilitating Treaty claims – was at an end.

[19] By letter dated 28 October Ms Williams raised her personal grievance.

[20] As is made clear above, and as was reiterated by the Trustees including Mr Cribb at the investigation on 26 November (although without the assistance of bank statements), the Trust says it has no funds or property and is unable to meet Ms Williams' claims. At the time it took the decision to close the office it did not know where the last funding was and trustees used their own monies on an interim basis.

[21] Mr Cribb also made it clear, on behalf of the Trust and in respect of the applicant's claims against it, that "*there is some justification in what Roberta says*" (oral evidence, 26 November).

[22] No evidence was provided as to when the Trust first appreciated its funding was drying up and it would have to wind down its activities including Ms Williams' employment. No evidence was provided as to why no notice was provided to the applicant, or why it could not give her notice. Mr Cribb said that payments from the funding provider were not always reliable and a delay prompted its decision to terminate Ms Williams' employment; the Trust had closed the office on previous occasions for the same reason.

[23] It is not disputed that the Trust has no funds, is not expecting any more funding, that it is bound by its deeds to pass on any assets to another charitable trust, and it is in the process of winding up its affairs.

[24] According to Mr Cribb, the decision to terminate Ms Williams was made at a meeting on the night of 9 September: no explanation was provided for not including the applicant in the process, advising her of the meeting and providing her with a chance to comment before the decision to dismiss her was made.

[25] It is not clear why she was required to reapply for the position she had been undertaken, or why she was not continued in her role when funding did arrive and the decision was made to resume the Trust's activities.

Findings: Unjustified Dismissal

[26] In *Air New Zealand Ltd v V* (unreported, Colgan C J, Travis, Shaw and Couch JJ, AC 15/09, 3 June 2009), at para [37] it was made clear that the Authority is required to objectively review all the actions of an employer up to and including the decision to dismiss, against the test of what a fair and reasonable employer would have done in all the circumstances.

[27] As abundant case law makes plainly clear, in a case such as this, a fair and reasonable employer would meet its contracted obligations by serving advance notice on Ms Williams that, as funding was coming to a close, her employment could not be sustained. Alternatively, proper steps would also be taken if funding was abruptly terminated, to sit down with Ms Williams and explain this development and its consequences, urgent as they would be.

[28] A fair and reasonable employer would manage its affairs so as to balance its obligations to meet its deeds and objectives as well as its obligations to any employees, such as Ms Williams.

[29] Of particular concern to Ms Williams is that she received no advance notice of the termination of her position despite being aware that, at the time of her termination, fresh funds had been or were about to be received sufficient to – from her perspective – meet the respondent's contracted obligations to her, including the giving of reasonable, paid notice.

[30] The Trust's failure to meet these obligations is sharpened by the fact that it re-opened its office for another period, and appointed somebody else into the position previously undertaken by Ms Williams. It cannot account for its actions in terminating the applicant's employment while appointing someone else to the same role a short time later.

Remedies

Compensation for Hurt

[31] Ms Williams' evidence about the distress and shame caused her by the abrupt termination of her employment was eloquent. The sudden loss of her employment caused her considerable personal hardship and she has had to borrow money and look for other support from family and friends, for herself and child.

[32] However, Ms Williams also acknowledged that she appreciated her job would eventually come to end along with the Trust's role and activities and that, on an earlier occasion, she worked for the Trust for two-months without pay, until funding resumed; Ms Williams expected, in September 2009, that a similar pay pause would apply, even though – as events demonstrated – it did not.

[33] In all the circumstances I am satisfied an award of \$7,000 dollars compensation for hurt and humiliation is appropriate.

Apology and Reference

[34] The Authority has no statutory power to direct the Trust to provide Ms Williams with an apology or a reference. I record here, however, the regret clearly expressed by the Trustees in respect of how it had handled Ms Williams' situation and Mr Cribb's oral advice he had written a reference for the applicant.

Holiday Pay

[35] After scrutinising the employment agreement attached to her statement of problem, Ms Williams withdrew her claim for holiday pay as she accepted it was expressly incorporated into her hourly rate.

Contributory Fault

[36] There is no evidence of Ms Williams in any way contributing to the situation that resulted in her grievance.

Determination

[37] The Trust is to pay to Ms Williams, as compensation for hurt and humiliation, the sum of \$7,000 (seven thousand dollars).

[38] Costs are reserved.

[39] I add here my apology to the parties for the unforeseen delay in completing this determination.

Denis Asher

Member of the Employment Relations Authority