

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 83
5392807

BETWEEN

MAKERE WILLIAMS
Applicant

A N D

NGATI KAHU SOCIAL AND
HEALTH SERVICES
INCORPORATED
Respondent

Member of Authority: T G Tetitaha

Representatives: M Tawhara, Counsel for the Applicant
D Grindle, Counsel for the Respondent

Investigation Meeting: 19 March 2015 at Kaitaia

Submissions received: 13 and 19 March 2015 from Applicant
6 and 19 March 2015 from Respondent

Date of Oral
Determination: 19 March 2015

Date of Written
Determination: 20 March 2015

ORAL DETERMINATION OF THE AUTHORITY

A. The personal grievances that arose prior to 22 March 2012 including the first and final written warnings are dismissed.

B. Costs are reserved.

Employment relationship problem

[1] This is an application by Makere Williams alleging unjustified disadvantage and dismissal.

[2] The matter has come before me today to determine a preliminary issue about my jurisdiction to hear all or some of Ms Williams' personal grievances at a substantive hearing in April 2015.

Facts leading to dispute

[3] The facts leading to this application are that on 22 May 2006 Makere Williams was employed as a Kaiatawhai Mental Health Services Worker. Some restructuring occurred between March and May 2011 and Ms Williams job title changed to Iwi Support Worker.

[4] Between February and March 2012 Ms Williams was issued with two warnings. Between 2 April and 7 May 2012 there were various altercations between Ms Williams and the respondent Chief Executive Officer, Marihi Langford.

[5] On 9 May 2012 Ms Williams and other staff were advised services were due to expire, affecting Ms Williams' job of Iwi Support Worker. Around this time Ms Williams sent an incident report to the Board complaining about several altercations between herself and Ms Langford.

[6] On 18 June 2012 Ms Williams received a letter advising her employment was to be terminated on 29 June 2012.

[7] On 20 June 2012 Ms Williams sent a letter seeking resolution of her personal grievances of bullying, warnings and attached a calendar of events.

[8] On 29 June 2012 Ms Williams' employment was terminated.

[9] On 21 August 2012 through her lawyer, Ms Williams raised a personal grievance. She alleged unjustified disadvantage and constructive unjustified dismissal.

[10] On 13 March 2014 a statement of problem was filed.

Issues

[11] There is a single issue for determination before me. That is, was the personal grievance of unjustified dismissal and/or disadvantage raised with the respondent employer within 90 days?

[12] Ms Williams does not seek leave to raise the grievance out of time pursuant to ss.114(3) and 115 of the Employment Relations Act 2000.

Determination

[13] Once I determine the date her personal grievance was raised, the matters that fall 90 days prior to that date will be the only matters that are available to be raised as separate grievances for hearing.

[14] The parties accept that a personal grievance was raised at the earliest on 20 June 2012. This was by letter from Ms Williams to the Chief Executive Officer, Ms Langford. The letter states that Ms Williams feels victimised, bullied, intimidated, picked-on and abused during her employment. She alleges she was treated unfairly in many situations and has been given warnings unfairly and unreasonably.

[15] In my view, that letter clearly raises a personal grievance with sufficient specificity for the respondent employer to be on notice about a personal grievance being raised by Ms Williams.

[16] Ms Williams had asserted that she had raised a personal grievance earlier on 7 May. With respect, I disagree. The 7 May is an incident report. It does not refer to it being a personal grievance, nor does it set out anything more than the details of an incident that occurred on 7 May 2012. She referred to evidence which was not before me. Ms Williams did not seek further time to file evidence about the date the personal grievance was raised.

[17] As a consequence I determine that the earliest time a personal grievance was raised was 20 June 2012. This will still encompass the incidents that occurred on 7 May 2012. It will be limited to incidents that occurred 90 days prior to 20 June 2012, i.e. from 22 March 2012 forward. It does not encompass a personal grievance about the warnings on 10 February and 6 March 2012.

[18] I also determine that on 22 August 2012 a personal grievance was raised in respect of any unjustified disadvantages that arose from 20 June until the date of dismissal and about the allegedly unjustified dismissal that occurred on 29 June 2012.

[19] Accordingly, I make the following orders:

- (a) The personal grievances that arose prior to 22 March 2012 including the first and final written warnings are dismissed.
- (b) Costs are reserved.

Next steps

[20] The personal grievances pertaining to bullying and unfair treatment that occurred from 22 March 2012 until termination on 29 June 2012 and the allegedly unjustified dismissal for redundancy that occurred on 29 June 2012 shall go to substantive hearing.

[21] Applicant's counsel has confirmed that the issue around termination is about Ms Williams' selection for redundancy and the failure of the respondent to offer her redeployment. Redeployment was offered to other employees but not Ms Williams.

[22] After discussions with counsel, the following directions are now made:

- a) This matter is set down for a one day investigation meeting starting **1 May 2015 at 9.30am at Kaitaia**. It may be that some of the witnesses can be heard in conjunction with Mr Larkin's hearing which is starting the day before.
- b) Both parties are to file their briefs of evidence by **1 April 2015 at 3pm**;
- c) A bundle of documents, both indexed and paginated, is to be prepared and filed by the applicant in conjunction with the respondent by **1 April 2015 at 3pm**. The briefs of evidence are to refer to the bundle of documents where relevant;
- d) Both parties are to file their briefs of evidence in reply by **15 April 2015 at 3pm**;
- e) Opening submissions are to be filed by both parties by **24 April 2015 at 3pm**;
- f) An opportunity to give final submissions will be offered at the end of the evidence;
- g) If time and resources allow an oral determination will be given;
- h) In terms of witnesses I will require both the applicant and the respondent's chief executive officer, Ms Langford to attend the hearing.

[23] The parties have leave to come back to me if the one day hearing is going to be exceeded by the amount of evidence. The Support Officer shall be in touch with both parties to arrange for a teleconference in the week prior to hearing ensure this matter is ready.

T G Tetitaha
Member of the Employment Relations Authority