

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Raheera Taylor (Applicant)

AND The Attorney-General in respect of the Chief Executive of the
Department of Corrections (Respondent)

REPRESENTATIVES Barry Henderson for Applicant
Guido Ballara for Respondent

MEMBER OF AUTHORITY P R Stapp

INVESTIGATION MEETING 21 December 2004, New Plymouth

SUBMISSIONS 12, 14 & 21 January 2005

DETERMINATION 24 February 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem:

1. The problem between the parties relates to a decision by the respondent to change a probation report, prepared by the applicant, due to the imperatives of a deadline and without any input and consultation with the author (the applicant) while retaining her name as the report's author. The probation report in question was altered on 27 April 2004. The applicant has challenged the employer's justification for altering this report. The issue before the Authority relates to whether or not this action constitutes an unjustified action. Then I am required to determine how this action may have affected the applicant's employment to her disadvantage, or affected her terms and conditions of employment to her disadvantage.
2. The respondent has denied the applicant's claims and opposed the remedies sought for compensation and costs to resolve the employment relationship problem.

Preliminary matter: Request by the respondent for the prohibition on the publication of certain information

3. At the commencement of the investigation meeting the Authority put in place interim orders prohibiting publication of:
 - (i) The two probation reports produced in evidence and the probation report on the Department's computer system IOMS.
 - (ii) The name of the person referred to in the probation reports and any details leading to that person's identity.
 - (iii) The names of third parties not involved in the Authority's investigation proceedings and information leading to their identity.

4. The Authority was requested by the Department to consider an order prohibiting publication in respect of the following –
 - “(a) Ms Taylor’s statement of problem/application to the Employment Relations Authority: all references to (the person) should be deleted. A copy of the proposed deletions are set out in the attached document.*
 - (b) All the sentencing reports in respect of (the person): including the two reports to the High Court dated 26 April 2002 and the report to the Court dated 8 May 2004;*
 - (c) Letter dated 3 May 2004 from R Taylor to the Department of Corrections: all references to (the person) (wherever (the) name appears) to be deleted. In addition, the date in paragraph 5 of that letter also needs to be deleted as it could identify this matter with (the person). A copy of this letter with the proposed deletions is attached;*
 - (d) Letter 31 May 2004 from the Department of Corrections to R Taylor: all references to (the person) (wherever (the) name appears) to be deleted. (A copy of that letter with the proposed deletions is attached); and*
 - (e) Witness statements/briefs of evidence: all references to (the person), or other identifying information, in witness statements/briefs of evidence/including the attachments to those documents, should be deleted. We attach copies of those briefs/witness statements with the proposed deletions. (This includes withholding some of the documentation attached to R Taylor’s witness statement). (Letters to (the person) dated 7, 16 and 20 April 2004).”*

5. The respondent sought the applicant's consent to the prohibition on the publication of the above in the first instance. The consent was not forthcoming from the applicant except in regard to the probation reports produced in the evidence because they were produced for the High Court.

6. Mr. Henderson left it to the Authority in its discretion on what to do with the name of the person who was the subject of the probation report. However the parties have made further

submissions on the publication of the name of the person. The applicant considers the name should be published. The respondent resists the publication of the person's name and evidence that would lead to the person's identity because that person is not involved and may not even know about the Authority's investigation meeting.

7. I have decided to make permanent the order prohibiting the publication of the probation reports that have been produced in evidence, ie the original report prepared by Mrs Taylor, the altered report submitted to the High Court and the report that appears in the Department's computer system IOMS. The person concerned has no direct bearing on this employment relationship problem and the facts of the applicant's employment relationship problem can be summarised without the person's name being published. I am satisfied Mrs Taylor will not be prejudiced in regard to her employment relationship problem if the name is not published. I have decided to make permanent the order on the prohibition on the publication of that person's name and the names of third parties not involved in these proceedings unless they have been referred to in this decision.

The facts:

8. The facts in this employment relationship problem are relatively straightforward and I summarise them as follows.
9. Mrs Taylor is a probation officer employed by the respondent in the New Plymouth Community Probation Service. She has been employed with the Probation Service and its predecessors since February 1988. She is employed under the terms and conditions of a collective employment agreement ("the agreement").
10. A person was found guilty at the High Court without being convicted until a pre sentence report was provided by the Probation Service. Mrs Taylor volunteered to write the probation report and was allocated that task in due course. The report was requested by the High Court to be provided by 5pm on Tuesday, 27 April 2004.
11. Mrs Taylor says she took particular care in preparing the report and consulted amongst her colleagues, including her manager, Jan Hareb, the Department's New Plymouth Service Manager. She also consulted Alan Guy, a clinical psychologist employed by the Probation Service whose relationship with the applicant was to provide regular and ongoing professional supervision. Mrs Taylor says that she also consulted one of her colleagues who gave evidence, Kevin Wensor. She says that she consulted two other colleagues, probation officers ("P" and "L"). Prior to afternoon tea on 26 April 2004 Mrs Taylor met with Mrs Hareb. Mrs

Hareb agreed that at this point she had told Mrs Taylor that the report could be sent to the High Court. Mrs Taylor emerged from the meeting and at afternoon tea handed the report to her colleagues for any further comment. As an aside there is no formal peer review process in place other than collegiate support.

12. During afternoon tea Mrs Hareb says that another employee (P) she approached made a comment that (the guilty person) would get a harsh sentence. Mrs Hareb says she started to feel uneasy with the report and decided to read it again. She says that she concluded it was a "*bit thin*" but also that the preamble included too much information. She did not express these reservations to Mrs Taylor immediately (who believed that she could send the report). Mrs. Hareb says that after afternoon tea she asked yet another employee (L) about his view of the report and says that he told her he thought the report was a bit "*two dimensional*". She says he said to her that it was not how he would have written it and that it missed a lot of the "*flavour*" about the person.
13. Mrs Hareb says that at this point she decided to take the matter up with Mrs Taylor again. It is common ground that there was a discussion between them on pencilling in a full stop and that Mrs Hareb raised L's comments concerning the tone and balance of the report.
14. Mrs Hareb says that Mrs Taylor took the view that her report was a good report, that she should be trusted, that she was an experienced probation officer and counsellor, and that she was not going to change the report. Mrs Taylor could not recall whether or not she said this. But she did agree with Mrs Hareb that she said that if Mrs Hareb wanted to change the report, Mrs Hareb would have to do that herself and put her name on it. At this point Mrs Taylor left the meeting. Mrs Hareb concluded that Mrs Taylor wanted nothing more to do with the report unless it was sent the way in which it had been drafted. Mrs. Hareb says that she concluded from Mrs. Taylor's reaction and her leaving the room that Mrs. Taylor intended to have nothing further to do with the report.
15. On 27 April 2004 Mrs Hareb rang another service manager to talk about the report. This manager undertook to have a look at the report. On 27 April Mrs Taylor was due to attend Court as the court officer but because the report had not been received by the other service manager by the time Mrs Taylor arrived back from court, Mrs Hareb asked Mrs Taylor to email a copy of the report to the service manager. Mrs Hareb says that the service manger said that she did not think a long preamble should be there and that the tone was quite judgmental. Mrs Hareb decided that because of these concerns she would elevate the matter

to Michael Dale, the Area Manager. Mrs Hareb rang Mr Dale to request him to have a look at the report. The report was emailed to Mr Dale at about 4pm on 27 April.

16. Mrs Hareb started to make some draft changes to the report and she rang Mr Dale at approximately 4.20 pm to indicate what she was doing. He says, and it was confirmed by Mrs Hareb, that he was making "*a lot of changes*" and they discussed them. His version of the changes was forwarded to Mrs Hareb. Mr. Dale says that he became aware that Mrs Taylor would not change the report and her insistence that Mrs Hareb put her name on the report if there were any changes to it.
17. Mr Dale accepted responsibility for authorising the changes to the probation report and that he was happy to discuss the changes with Mrs Taylor either by phone or in person. The changes were made to the report at about 4.30pm. The preamble was edited, other changes were made in editing the report to keep its flow and the recommendation was changed from a recommendation of "*imprisonment*" to a recommendation of "*As a conviction has not been entered, no recommendation is offered in this instance.*" Mrs Taylor's name remained on the document as she had conducted the interview. But inserted were the words "*Forwarded through: J M Hareb, Service Manager*". The report was signed by the other service manager on Mrs Hareb's behalf because they were in different localities and the service manager could hand it on to the Court in her area quickly to meet the deadline (which was not met anyway). The report was delivered to the High Court early on Wednesday, 28 April 2004.
18. On 28 April 2004 Mrs Hareb says she asked Mrs Taylor into her office. She had the finalised report there. She says she explained to the applicant that she had had some unease about the original report and that she had asked the other service manger and Michael Dale to review. She also explained the process used to make some changes. Mrs Taylor was shocked. Mrs Hareb says that, as she got part way through explaining the changes, Mrs Taylor said that she did not want to do this any more and walked out of her office. Mrs Taylor was upset by what had happened and another colleague, Mr Wensor provided her with some assistance. This assistance involved Mr Wensor deciding to take Mrs. Taylor somewhere out of the office so that she could gather her thoughts. He says that her physical appearance had changed dramatically from the time that he had spoken with Mrs. Taylor earlier on his arrival at work. He says she was shaking, and her complexion was grey in colouring and her face almost wax like in appearance. He says Mrs. Taylor was clearly upset. He took her to the sea because he thought being near the "*moana*" may have a calming effect on Mrs Taylor. He says they spent approximately 30 minutes discussing her disbelief and horror at not being consulted on

the changes that had been made to the report that she had written. He says that she was too upset and at times incoherent to benefit from any further discussion with him. He suggested they return to the office to include another member of the Maori network. His evidence was supported by Tania Hoeta-Bevan another probation officer who witnessed Mrs. Taylor's demeanour at the time.

19. Mrs Taylor went on sick leave and provided a medical certificate for her time off work. However, there was evidence that Mrs. Taylor had a pre existing health related problem that existed well before these events. Mr Dale attempted to contact Mrs Taylor to discuss the matter and whilst he contacted her by telephone, he was subsequently unable to meet with her.

Determination

20. The issues in this problem include: was the respondent obliged to consult the applicant about changing her report, whether it could change her report without her consent, and having changed her report without her consent, could it fairly and reasonably leave her name on the report and whether its actions, if unjustified, have affected Mrs Taylor's employment to her disadvantage?
21. I conclude that it was not reasonable for Mrs. Hareb to change the report without consultation with Mrs. Taylor before it was sent, where Mrs. Taylor's name was required on the report because she interviewed the person whom the report was about. There was no indication to the High Court Judge that the report had been altered under Mrs. Taylor's name. Mrs. Hareb's signature under the heading "*Forwarded through: J M Hareb, Service Manager*" did not explain her role in the changes made to the report.
22. Although the employer has a right to alter reports, and that right was not challenged, this problem is about how it was done. In this case the action was unjustified without proper consultation and process. Although there was a meeting between Mrs. Taylor and Mrs. Hareb where Mrs. Hareb says that she concluded from Mrs. Taylor that Mrs. Taylor would not make any changes the subsequent events were poorly managed by Mrs. Hareb and Mr. Dale, even if Mrs. Hareb considered that Mrs. Taylor walked out and was not prepared to make any changes. This raises the issue about who would be responsible for any changes in the apparent absence of any formal peer review process and professional guideline on such matters. Mrs Hareb and Mr. Dale say that they would have taken responsibility, but Mrs. Taylor did not understand this.

23. Mrs. Taylor's professional standing was put at risk in the High Court with the way in which the changes in the report were handled, where she could have been called and requested to discuss the report with the Judge as Mrs Taylor was the author who interviewed the person who was the subject of the probation report. The absence of any consultation on the changes put Mrs Taylor and the Department at a risk in the Court and could have caused embarrassment for Mrs. Taylor since she did not know of the changes made to the report and her having no certainty on who would take responsibility for the changes without any guidelines.
24. Mr. Hareb also breached her understanding with Mrs. Taylor that the report could initially be sent without change. Mrs. Taylor seemed to have wanted further professional reinforcement from her colleagues because, after being told she could send her report, she gave it to her colleagues for any further comment. She did not receive any comments from them. However, remarks that her colleagues made to Mrs. Hareb alerted Mrs. Hareb that the report could be improved. Mrs. Taylor had a fair entitlement to be consulted when the decision was made that changes were desirable. It would appear that the Court's deadline became the guiding factor for the Department in proceeding. Any conclusion about Mrs. Taylor's reaction that she would not change the report, if this was the case since she could not recall if she in fact said this, needed to be managed fairly and reasonably, within the deadline for the report to be produced, since her name remained on it. The Department's decision to proceed without consultation with the changes had the affect of disadvantaging Mrs Taylor's employment in that the decision impacted on her trust and confidence in her professional relationship with her employer and put Mrs. Taylor at risk since she was also externally accountable for the report with her name on it.
25. She has a personal grievance. Her claim in the statement of problem to resolve the matter was for a modest \$5,000 sum of compensation and costs. Mrs. Taylor's evidence supported her being visibly and physically affected by the respondent's action. She was given support from other colleagues. I order the Department of Corrections to pay \$5,000 without deduction compensation for humiliation, loss of dignity and injury to feelings under section 123 (c) (i) of the Act to resolve the problem.

26. Costs are reserved.

P R Stapp
Member of Employment Relations Authority