

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number: WA 151/07
File Number: 5080503

BETWEEN YVONNE GEORGE
(Applicant)

AND THE CORRIEBEG TRUST T/A
DISCOVERY MOTOR LODGE
(Respondent)

Member of Authority: P R Stapp

Representatives: Adam Parker for Applicant
Derek Clarkson for Respondent

Investigation Meeting: 1 November 2007, Wellington

Determination: 14 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an employment relationship problem about what happened to Ms George's employment. She is claiming that she has a personal grievance and is seeking \$500 for 5 weeks lost wages, \$5,000 compensation for humiliation, loss of dignity and injury to feelings, and costs.

[2] The Respondent denied the claims.

Issues

[3] The primary issue is whether or not Ms George has a personal grievance, and if she has a personal grievance to determine what type of grievance it is. Therefore I am required to determine the circumstances of her employment ending.

The facts

[4] The relevant facts can be summarised as follows.

[5] Yvonne George commenced employment as a cleaner at the Discovery Motor Lodge (the Motor Lodge) located in Masterton. It is owned and run by the Corriebeg Trust (the Trust). Her pay started from the week ending 17 October 2005. There was no employment agreement.

[6] Ms George described her employment as part time and the Trust's employee summary report for Ms George's wages and holiday pay indicates that she worked regularly each week and was paid weekly but worked variable hours as an hourly paid worker. Her hourly rate of pay was \$10.50.

[7] On 1 February 2007 the employees went to a meeting with the Motor Lodge's manager, Vicki Mapusua.

[8] The employer's purpose of the meeting was to propose a change to the employment arrangements on how the workers were paid based on rooms cleaned instead of an hourly rate, to get agreement to trial the new system of payment and to get agreement on new individual casual employment agreements for each worker. Ms George disagreed with the proposal. The meeting became heated because there was an issue about how the system would work given different performance amongst the workers. There was no agreement. Ms George threw the proposed agreement on the table, and left the meeting.

[9] Ms George says Vicki Mapusua required her to sign the proposed agreement by 5 February 2007. I am not satisfied that there was any ultimatum for Ms George to sign the agreement by 5 February because there was at least one further meeting held on 19 February and the workers were able to take the agreements away. A meeting was scheduled for 12 February, but did not occur because Ms George was on her leave. However Ms George says she believed a meeting did occur by which time the other workers had agreed to the changes. Also, Ms George obtained a copy of the agreement after the meeting. Further copies were produced by Vicki Mapusua later.

[10] Ms George returned to work the next working day (5 February) and worked on Waitangi Day 6 February 2007. There was a payment made for work in the week ending 12 February (see the pay summary) so no changes applied to her.

[11] I conclude that Vicki Mapusua informed Ms George on 6 February that she was extending Ms George's leave that had been approved in January to commence on 7 February 2007. I am satisfied that Ms George was at work on 6 February and got paid for work that week. The extension to the leave was made without proper and adequate notice. If Vicki Mapusua had raised a proposal that Ms George extend her leave at the meeting on 1 February that was not sufficient to be notice. My conclusion that Vicki Mapusua extended Ms George's leave is consistent with her raising it on 1 February, the leave commencing on 7 February and that Vicki Mapusua understood that Ms George had leave that was due and needed to be taken so she could require Ms George to take it. The employer has consistently said that Ms George was on leave since then.

[12] Ms George accepted the situation on the extended leave at first and went home, but then decided at home she did not agree with that decision. Ms George returned to work at which point she and Vicki Mapusua had a disagreement over the employer's right to require leave to be taken when Ms George only wanted to take the leave that had been approved for one week. The situation was not sorted out. Ms George obtained information on holiday entitlements from the Department of Labour. She gave the information to Vicki Mapusua and pursued it 3 times with Vicki Mapusua at the workplace that included returning to work on 6 February, going into work on 14 February and meeting her on 19 February. She says she informed Vicki Mapusua that she wanted to return to work on 14 February. At some point before the meeting on 19 February Vicki Mapusua told Ms George "*you are getting on my wick go away*".

[13] It is common ground that Ms George was requested to return to work during her holiday for a meeting by Vicki Mapusua, but she could not arrange to do that. Ms George believed that meeting was rescheduled. What seems to have happened is that the other workers agreed sometime after 5 February to the changes, and possibly met thinking that Ms George would go along with their decision. It is in this context I understand that the employer conceded that a meeting took place with the other workers. In her SOP and written statement Ms George says she would trust the other

workers' decisions. The workers decided to sign the agreements and accept the changes on the system of payment.

[14] Ms George says that when she returned to work on 14 February it was made clear to her by Vicki Mapusua that she would only be permitted to do odd jobs and not her usual cleaning because it would be unfair on the other workers as they had agreed to sign up to the new system. I am satisfied that by 14 February the other workers had agreed to the changes. It is more than likely that because of this it is probable that Vicki Mapusua told Ms George she would only be permitted to do odd jobs and not her usual cleaning because it would be unfair on the other workers as they had agreed to sign up to the new system. This is consistent with the other workers agreeing to change the work system and impacting on their pay and the difficulties it imposed with Ms George not agreeing and what she would be required to do and be paid hourly.

[15] It was conceded that Vickie Mapusua did say to Ms George "*you are getting on my wick go away*".

[16] On 19 February Ms George returned to work and attended a meeting on sorting out a roster and it became clear that she had refused to agree to the changes and that the other workers had agreed to the changes. The other workers got frustrated by her stance. Ms George was paid on 19 February for holiday pay, according to the record; and her employer considered that she was still taking leave.

[17] On 20 February Ms George and her daughter Tracy Hinton arrived at work and met with Vicki Mapusua, who although she did not like the surprise visit by them, agreed to meet, and provide another employment agreement for Ms George. Ms George referred during the meeting to notes she had made on the conditions she wanted that included an increase in her pay to \$11.50 per hour from 1 April 2007, set days and minimum hours of work. Ms George and her daughter left thinking the meeting had been positive. However, Vicki Mapusua says she could not agree to Ms George's demand for a guaranteed minimum number of hours on set days of the week. This is supported by the further agreement she provided that did not change the proposal. Vicki Mapusua reported to Derek Clarkson, her father, who was in charge of the Motor Lodge for the Trust.

[18] He then decided enough was enough. He did not want Ms George returning to work until her contract had been sorted out and that she should stay away from Vicki Mapusua due to the stress they were under.

[19] Mr Clarkson telephoned Ms George and told her to stay away. He understood that he and Ms George would meet the following week. That meeting did not take place because Ms George had gone to a lawyer who requested time to get instructions. During this time Ms George says she decided not to return to work because she had lost her trust in her employer because of the way it had treated her over her holidays and Mr Clarkson's telephone call for her to stay away.

[20] The parties subsequently attempted mediation but without any successful outcome on the employment situation.

Determination

[21] The events in this matter illustrate some very poor practice by the employer.

[22] First, there were no employment agreements in place.

[23] Second, the workers who gave evidence at the Employment Relations Authority's investigation meeting had a very poor understanding of their leave entitlements that Mr Clarkson says would either be cashed up or taken. They had no detailed knowledge of their personal leave entitlements.

[24] Ms George was given no real choice in the matter of the extended holidays. Ms George was given no proper notice of Vicki Mapusua's decision to extend her holiday prior to the approved week commencing.

[25] Vicki Mapusua and Mr Clarkson could not produce any reconciliation of holiday records and hours worked other than the payments made and recorded in the summary produced. The employer is required to keep a wages and time and holiday record and it was more than reasonable to expect it to be produced during the investigation meeting to reconcile holidays taken and paid by using Ms George's holiday anniversary date.

[26] Third, Mr Clarkson's telephone call to Ms George was wholly unjustified.

[27] It was the first time he had become involved in the matter involving Ms George. He had made his decision to tell her to stay away until 23 February without giving her any opportunity for input when the leave was disputed and how she would be paid when she reasonably had expected to return to work on 14 February. She was entitled to prior notice of his decision. It was entirely unreasonable not to get her input. A fair and reasonable employer would not require an employee to stay away and take leave until a contract was sorted out without agreement, or if further leave was required to be taken proper notice had to be given. A fair and reasonable employer would manage its process of change and negotiation of contracts in a proper process that might require a decision on change, subject to consultation, but must involve the negotiation of any employment agreement. I am not satisfied that Ms George agreed to that on an informed basis and to meet on 23 February. Her decision not to agree meant that her employer in the absence of a proper process to effect the change was bound by Ms George's existing duties, work arrangements and method of payment.

[28] Furthermore Mr Clarkson has relied upon wanting Ms George to stay away from Vicki Mapusua due to stress he says they were both under. This was an entirely new matter he had a responsibility to investigate, get Ms George's input and give her the opportunity to comment. He failed to do this. It is more serious because it was the first time he had become involved and because of his prior decision was not objective.

[29] It is my conclusion his action of telephoning Ms George and telling her to stay away was unjustified. Her employment has been affected to her disadvantage because she lost her job due to Mr Clarkson's action and she had to take holidays without any proper notice.

[30] Ms George has a personal grievance. Mr Clarkson's action was unjustified and disadvantaged Ms George in her employment. Ms George did not actually resign. However she did decide not to return because she says she had lost trust in her employer having regard to its actions on her leave and Mr Clarkson's telephone call where he told her to stay away until the agreement was sorted out. This is tantamount to a constructive dismissal when Mrs George was required to stay away.

[31] A fair and reasonable employer would have foreseen that an employee would leave given an appalling process involved with mixing a group consultation on employment changes, and the introduction of individual employment agreements that the employees had the right to negotiate separately. Ms George reasonably felt under pressure from the other workers and Vicki Mapusua; and the proposed agreements indicate that the employer preferred Ms George not to stay on her hourly terms because each of the agreements refer to the new arrangements and all the other workers had agreed to change. I am further supported in this conclusion because Mr Clarkson hoped that he could convince Ms George that she would be better off under the new arrangement. I am satisfied, however, it clearly was the employer's wish to effect some change, and Ms George ended up the only worker not to agree to the proposal. An issue then did arise about how the system was going to be managed not to disadvantage anybody in its implementation and their performance. It is therefore more than likely that Vicki Mapusua considered looking for other odd jobs for Ms George to do, as alleged by Ms George, if she continued on an hourly rate. In any event the situation needed careful management by Mr Clarkson. This did not happen because of his telephone call and because Ms George did not return to work and had raised a personal grievance.

Conclusion

[32] Yvonne George is entitled to her claim of lost wages. She has mitigated the loss by looking for other cleaning around Masterton in motels and considered moving to Lower Hutt. She found that moving to Lower Hutt would be too costly. She obtained further employment in Masterton. She claimed \$500 for 5 weeks to cover her loss. I accept that claim without any deduction for contributory fault because there is no contributory fault or blameworthy conduct here. Her decision to leave was attributable to her employer's unjustified actions and cannot be her fault.

[33] She has claimed \$5,000 compensation. Her evidence, supported by her daughter, supports her claim because there has been an impact on her feelings. She has suffered some personal embarrassment that involved her having to look for other work. Ms Georges' daughter witnessed Ms George being tearful over the matter. I accept that occurred.

[34] Ms George told me about how she felt losing her work and being told to take extended holidays without proper notice. She needed to get her daughter's help to get some meaning on what Mr Clarkson had told her. She explained how she worried about what could be said and the affect of that if word got out that she would not sign a contract. I accept that Mr Clarkson says he did not speak to anyone else, but the point is how Ms George genuinely felt, and not if it actually happened. I accept that Ms George genuinely felt that word might have got out.

[35] There is one final point. Some employees have filed and given evidence that involved what allegedly Ms George talked about in the workplace. Some of the matters are quite personal initiated in the employer's SIR. I accept that the matters were included to genuinely describe to me what happened in the meeting held on 1 February. However it was unnecessary for them to go into the level of detail because they could have told me in more general terms that the meeting was heated and that there was no agreement at that meeting.

[36] One of the witnesses told me the reason for providing the personal matters was to show Ms George was "*unstable*". This was unnecessary unwarranted and, irrelevant in regard to the issues. I conclude given the public nature of the investigation meeting this has added to Ms George's feelings and embarrassment. Mr Clarkson acknowledged Ms George was a good worker and her performance was not at issue as she was a fast and thorough worker. There was no contribution on her part. I award her \$5,000 compensation.

[37] She is entitled to costs. I order in her favour the sum of \$1,500 contribution and the \$70 filing fee. She was successful in bringing a personal grievance. Costs follow the event. The sum is less than the actual costs yet to be charged (\$3,000) and does not include costs for mediation. Ms George paid the filing fee. She has been put to the expense of needing to proceed to the Authority. It was entirely reasonable, and her right, to be represented in the Authority's investigation. Costs have been reasonably incurred.

Orders

[38] The Corriebeg Trust t/a Discovery Motor Lodge is to pay to Yvonne George the sums of:

- (1) \$500 lost wages
- (2) \$5,000 compensation
- (3) \$1,500 costs and \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority