

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 255/08  
5038419

BETWEEN                      CHERIL WHAIAPU  
   Applicant  
  
AND                              TE WHARE HAUORA O  
   NGATI KAHU 2000 (KI  
   TAURANGA)  
   INCORPORATED  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Bill Nabney for Applicant  
   Richard Harrison for Respondent  
  
Investigation Meeting      21 March 2007 and 24 April 2008 at Tauranga  
  
Submissions Received:    No submissions from the Applicant  
   28 May 2008 from Respondent  
  
Determination:              17 July 2008

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**DETERMINATION OF THE AUTHORITY**

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**History**

[1]        The investigation into this matter has been extremely protracted as a result of applications from the applicant for a number of adjournments, adjournments sought by the Respondent and the failure of the representatives to communicate with the Authority in a timely fashion with regard to proffered investigation meeting dates.

**Employment relationship problem**

[2]        Ms Cherril Whaiapu was employed as the finance administrator for the Te Whare Hauora O Ngati Kahu (“Hauora”) from mid 2001 until she was dismissed on 23 February 2006. The Hauora denies Ms Whaiapu was dismissed.

[3] The issues for determination are, firstly whether there was a dismissal and, if I find there was a dismissal, then its justification and any remedies.

### **Background**

[4] The Hauora is a not for profit incorporated society that provides health services to the Ngati Kahu whānau, hapu and iwi within the region of Ngati Ranginui. The Hauora employs local people to visit homes of those within the Ngati Kau catchment and operates clinics on various marae with the focus on a preventative approach to health issues such as alcohol and drug counselling and koroua and kuia support. The Hauora is a whānau based organisation with those involved having wider family connections and dealings outside of the organisation.

[5] The Hauora was set up several years ago by the hapu to provide clinical GP services as well as alcohol and drug and health promotion services to the members of the Iwi. Initially the Hauora contracted to the Bay of Plenty DHB to provide four services on behalf of the DHB; that is clinical GP services, alcohol and drug counselling services, health promotion and smoking cessation.

[6] In 2005 in collaboration with the funders, the services provided by the Hauora were extended. At the time the Hauora serviced 250 registered patients. Since 2005 that figure has more than doubled to over 700.

[7] Ms Whaiapu was employed as an administrator working two hours twice a week. As the services being provided to its clients increased, Ms Whaiapu's role also increased and at the time the employment relationship ended Ms Whaiapu was working four mornings a week between 8am to 12pm or longer depending on how many patients were there.

[8] Concurrently with the extension to services the Hauora purchased a client management system which is referred to as the Med-tech system. The Hauora arranged for training for all staff, including Ms Whaiapu, on how to use the new system.

[9] In addition to the client management aspect of the Med-tech system it also encompassed an invoicing program and report programs. To ensure ongoing funding

the Hauora was required to provide reports to Health Link, Poutiri Trust, the WBOPHO, and Ministry of Health.

[10] In 2004 Ms Whaiapu's supervisor left and a new Manager, Ms Judith Harpur was employed. It was common ground that after Ms Harpur became the Manager discussions between Ms Whaiapu and her manager occurred with regard to Ms Whaiapu's skills levels. In recognition of her need for further training during 2005 Ms Harpur arranged for Ms Whaiapu to undertake training in the general use of computers to assist her in carrying out her role.

[11] Ms Harpur says she found Ms Whaiapu difficult to manage, and says Ms Whaiapu challenged her decisions and was critical of her actions. Ms Whaiapu denies this and says that she and Ms Harpur were good friends until Ms Harpur started raising performance issues with her in December 2005.

[12] It was common ground that throughout 2005 Ms Harpur raised various issues with Ms Whaiapu relating to her performance. These informal discussions culminated in a meeting between Ms Whaiapu and Ms Harpur on 19 December 2005.

[13] On 19 December 2005 Ms Harpur met with Ms Whaiapu and discussed a number of issues including issues relating to her performance. Ms Whaiapu says that at this meeting she was told she could be dismissed for non-performance or she could consider being reassigned to the front reception role to replace an employee who was leaving to take Parental Leave. Ms Harpur confirmed she offered Ms Whaiapu the Reception role, but denies telling Ms Whaiapu could be dismissed.

[14] At that same meeting Ms Harpur advised Ms Whaiapu that she was re-evaluating the functions of all the employees and that she was looking to restructure the financial position being undertaken by Ms Whaiapu.

[15] Ms Harpur says, she thought this would send a message to Ms Whaiapu that they were serious about having to make some changes to meet the financial demands of the Hauora. She told Ms Whaiapu they would look at advertising the position and that she was welcome to apply. She thought this might jolt Ms Whaiapu into getting herself into action. She said they were looking at spreading the workload evenly.

[16] I am satisfied it is more likely than not that at the meeting on 19 December 2005 Ms Harpur did indicate to Ms Whaiapu that she would no longer have a job but that this would follow a restructuring of the financial functions. Notes from the meeting, taken by Ms Harpur support my conclusion and state:

**Re-evaluate/restructure of Financial Functions** – Discussed at length. Cherril asked who would get the job. Manager replied that once restructure took place and the position description/job description was completed, the function would be advertised, as per our policy, however she was welcome to re-apply for the position.

[17] Ms Whaiapu was refused the offer of the Receptionist role because the job was substantially different from her job. The Reception role included a lot of computer work which, at that time, Ms Whaiapu believed she did not have the required level of computer skills to undertake competently.

[18] Ms Harpur says she offered Ms Whaiapu the Receptionist role in the hope that she would discover there were other tasks that she could enjoy doing and that if she then did have to restructure the financial duties in the New Year, there would be other duties that Ms Whaiapu could agree to do.

[19] At the end of the meeting on 19 December Ms Whaiapu was advised her employment would be subject to internal assessments which would occur following her return to work after the Christmas/New Year break.

[20] As discussed at the December meeting Ms Whaiapu was subject to performance assessments which were undertaken on 20 and 25 January 2006. Ms Harpur and Ms Whaiapu were due to meet again on Friday 27 January, however, Ms Whaiapu did not attend the office that day. Friday's are not normal working days for Ms Whaiapu and she is not required to attend work on those days.

[21] Ms Whaiapu was not the only employee subject to the performance assessments. Hauora's Receptionist, Ms Lorene Borrell, who was leaving on a period of Parental Leave was also subject to these assessments.

[22] Ms Whaiapu's assessment meeting took place on 1 February 2006. At that meeting Ms Whaiapu says, Ms Harpur gave her notice that her employment would end in one month.

[23] I have not accepted the evidence of Ms Whaiapu that she was given one months notice. In a letter dated 3 February 2006, Ms Harpur outlines the discussions between her and Ms Whaiapu including the specific areas of Ms Whaiapu's performance about which Ms Harpur continued to have concerns. Ms Harpur states in her letter that she will be revisiting the standards required of the financial functions and that job descriptions will be restructured.

[24] Further, hand written notes which Ms Whaiapu has initialled show that Ms Whaiapu was given one month to show improvement in some areas of her performance specifically in the area of records management. This contemporaneous document is annotated with the words:

"1 month given to improve records mgmt doc control  
Recheck filing drawers 27/2/06"

[25] This document also shows that Ms Harpur's assessment of Ms Whaiapu was disputed by Ms Whaiapu. Ms Harpur records the shortfalls in Ms Whaiapu's performance, while Ms Whaiapu considers that she had done a good job.

[26] Ms Whaiapu's last day of employment with the Hauora was 23 February 2006. Ms Whaiapu said that on her last day Ms Harpur told her she did not want her working on finance and Ms Whaiapu reminded Ms Harpur that it was her last day of her notice anyway. She said Ms Harpur then started yelling at her, saying that she could leave now, that she could go right now, take her cheque and get out. Ms Whaiapu says she was told to pack all her stuff and go. Ms Whaiapu said that she was shaking and extremely upset. She said Ms Borrell could see that she was upset and put her arms around her to console her. This evidence was not corroborated by Ms Borrell at the investigation meeting.

[27] Ms Harpur denies the events as described by Ms Whaiapu. Ms Harpur says she had noticed that Ms Whaiapu had been down over the couple of days prior to 23 February but on 23 February she asked Ms Whaiapu how she was getting on with the items discussed in the assessment review meetings and could she [Ms Whaiapu] update her [Ms Harpur] on her progress. Ms Harpur says Ms Whaiapu refused to meet with her advising her that she [Ms Whaiapu] was leaving that day.

[28] What followed next is not certain. Both ladies allege the other raised their voices at the other. Ms Whaiapu says she reminded Ms Harpur that it was her last day of her notice at which time Ms Harpur yelled at her and demanded that she leave immediately.

[29] Ms Harpur denies this and says that she after she tried to discuss Ms Whaiapu's misunderstanding that the day would be her last day of work, Ms Whaiapu left her office and screamed at her from the hallway.

[30] Ms Borrell, told me Ms Whaiapu and Ms Harpur did not always get on well together and would from time to time raise their voices to each other. Ms Borrell says that her way of coping with the friction between the two ladies was to run away to the shed until the interactions between Ms Harpur and Ms Whaiapu were finished.

[31] Ms Borrell told me that she left the Reception area on the morning of 23 February 2008 as Ms Whaiapu was packing her things because she heard Ms Harpur come into the office and she did not want to be there if there was to be any heated discussions. Ms Borrell is related to both Ms Whaiapu and Ms Harpur and did not want to get caught in the middle of any disputes.

[32] I am satisfied that given the history of the two ladies concerned it is more likely than not that words were exchanged in a heated way, however, this was not a situation where Ms Whaiapu left in the heat of the moment.

[33] It was common ground that Ms Whaiapu returned to Ms Harpur's office with the Hauora cheque book. The day before she left, on 22 February 2006 Ms Whaiapu had completed cheques in her name for her final pay and holiday pay together with an additional cheque for reimbursement of old expenses incurred on behalf of the Hauora.

[34] Ms Harpur said she signed the cheques and indicated to Ms Whaiapu that it would still be a good idea to talk about things. Ms Whaiapu turned away, packed up her desk and organised removal of furniture she had brought into the workplace, and left.

[35] Ms Borrell says that on 23 February Ms Whaiapu advised her that she was leaving that day. Ms Whaiapu was packing up her things at the time she advised Ms Borrell of her departure. Ms Borrell was very surprised at this as she was not aware Ms Whaiapu had been given notice of dismissal.

### **Determination**

[36] I am satisfied Ms Whaiapu was not dismissed from her employment. Ms Whaiapu was subject to a performance assessment process which had identified areas needed for improvement and timeframes for improvement were put in place. Ms Whaiapu was not given one months notice of dismissal, she was however, given one month to show some improvement in the areas of record management and document control. The one month did not elapse until 27 February 2006.

**Ms Whaiapu does not have a personal grievance and I am unable to be of further assistance to her.**

### **Costs**

[37] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the parties may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority