

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 421
5295325

BETWEEN MARIE BELLASS
 Applicant

AND COMMUNITY BUSINESS
 AND ENVIRONMENT
 CENTRE CO-OPERATIVE
 SOCIETY LIMITED T/A
 CLEAN STREAM
 NORTHLAND
 Respondent

Member of Authority: Dzintra King

Representatives: Clare Abaffy, Counsel for Applicant
 Justine Foden, Advocate for Respondent

Investigation Meeting 14 September 2010

Additional Information 1 October 2010, 12 January 2011 and 29 March 2011
and Evidence Received: 20 April 2011

Submissions Received: 27 May and 27 June 2011 from Applicant
 13 June from Respondent

Determination: 26 September 2011

DETERMINATION OF THE AUTHORITY

[1] The applicant, Ms Marie Bellass says she has been unjustifiably dismissed by the respondent, Community Business and Environment Centre Co-operative Society Ltd t/a Clean Stream Northland (“CSN” or “the company”).

[2] Ms Bellass was employed to work as a recycle station worker at the Ahipara transfer station. She lives in Kaitaia. On Friday 10 July 2009 she told Ms Wendy Masters, the Operations Manager, that her car had broken down and she would not be able to get to the Ahipara station over the weekend. Her hours of work were Monday, Wednesday, Friday and Sunday working from 7.30 to 1pm on weekdays and 9am to 1pm on weekends.

[3] On the Saturday and Sunday Ms Masters arranged rides for Ms Bellass. She told Ms Bellass she realised the car could not be fixed over the weekend. On Sunday when Ms Masters was driving Ms Bellass to Ahipara she told her about the bus timetable between Kaitaia and Ahipara.

[4] On the Monday Ms Bellass was on leave so the following Tuesday was the first day to try and arrange car repairs. She spoke to a mechanic and obtained a quote.

[5] On the Tuesday she texted Ms Masters and asked her to ring. When Ms Masters called she explained that the car was not fixed and asked if Ms Masters could help with transport or let her work in Kaitaia. Ms Masters said she could drive Ms Bellass to Ahipara but she would have to make her own way home. Ms Masters suggested she take a bus as there was a bus not long after she finished work. CSN runs the bus service.

[6] There was discussion about the bus timetable. Ms Masters said there were buses leaving Kaitaia at 7am which would enable Ms Bellass to get to work by 7.30am. The trip took fifteen minutes and Ms Bellass would then have to walk a kilometre or a kilometre and a half to the transfer station. On two of the working days Ms Bellass would have to wait four hours for a bus home. At this point the call was disconnected. Ms Bellass says her niece knocked the phone and Ms Masters says Ms Bellass hung up. Ms Bellass said she could not text back because the phone was out of money.

[7] On Wednesday she did not go to work.

[8] On Wednesday Ms Masters spoke to Mr Simon Millichamp, the Business Manager. He gave her a letter for Ms Bellass, which Ms Masters delivered. In the letter he asked Ms Bellass to contact him. Ms Bellass then spoke to Mr Millichamp on Ms Master's cell phone. She says she told him the car would not be fixed for about two weeks because that was the earliest she could get an appointment with WINZ. Mr Millichamp denies that anything was said about an appointment with WINZ. Ms Bellass told him she had no money. He asked when she would be able to

get to work. She said “*I’ll leave that to Henry [the union representative] and Trevor [the union organiser] to tell you.*”

[9] Mr Millichamp spoke to both men, neither of whom knew anything about it. Mr Millichamp told Mr Noel that he would be arranging a disciplinary meeting with Ms Bellass.

[10] On the Friday she phoned Ms Masters and left a message saying she could not get to Ahipara.

[11] On the Saturday morning she found a letter mistakenly dated 16 July in her letterbox. This asked her to attend a disciplinary meeting.

[12] On 19, 20, 21 and 22 July she rang and said she could not get to work.

Disciplinary Meeting and Dismissal

[13] On 23 July she attended a meeting. Present were Mr Millichamp, Ms Masters, Mr Henry Martin, a union delegate, and Mr Trevor Noel, an organiser with the Northern Distribution Union.

[14] Mr Millichamp’s notes indicate that Ms Bellass was asked if she would take responsibility for getting herself to work. She acknowledged that her place of work was Ahipara, she knew she was responsible for getting herself to work *within reason*” and was taking steps to get her car fixed.

[15] There are a number of disputed matters regarding this meeting. Mr Noel says that CSN was advised that Ms Bellass had an appointment with WINZ on 27 July to try and obtain money for car repairs and asked that the employer consider options. He says these included working in Kaitaia, using a work truck and taking unpaid or annual leave until the car matter was sorted. The company says there was no mention made of leave being used nor was a date given for a meeting with WINZ. It is agreed there was some mention of Ms Bellass hitchhiking. Mr Noel said Ms Bellass did not want to bus as she would have to walk with a substantial amount of money to get to the bus and the Ahipara region was unsafe. The company says there was no mention of this and if there had been Ms Bellass could have left the money at the workplace.

The amounts were said to be around \$40 by the company and \$100 plus the \$50 float by the union.

[16] Mr Millichamp said Ms Bellass said she was trying to get a loan from WINZ and that she would get the car fixed if she could get a loan from WINZ. Mr Millichamp said there was no mention of leave of any sort.

[17] After an adjournment Ms Bellass' employment was terminated with two weeks' notice. She asked to work out the notice in Kaitaia but that was refused.

[18] The company accepted that it drove another worker to Ahipara while Ms Bellass was not at work. This was done because the station needed to be manned and the other worker's designated place of work was not Ahipara and assistance was needed to transport that person. In leave situations the company also had to make arrangements to transport another worker.

WINZ Appointments

[19] It appears Ms Bellass originally had an appointment for 23 July, the day of the disciplinary meeting.

[20] She variously denied having an appointment and said she had cancelled it.

[21] At some stage Ms Bellass had made an appointment for 11am on 27 July. She said this was made before the disciplinary meeting. The WINZ records appeared to show that it was actually made at 2.52pm on 23 July, after the disciplinary meeting and dismissal.

[22] The Authority contacted WINZ and endeavoured to seek clarification regarding the printouts relating to the timing of calls and making of appointments.

[23] The evidence was to the effect that generally appointments were made at the time the phone call was logged. That would mean the 27 July was made after the disciplinary meeting and could not have been referred to at the meeting.

[24] On the balance of probabilities I find that the appointment was made at 2.52pm on 23 July.

[25] Ms Bellass did not return to work after 14 July.

[26] The respondent says she did not have reasonable cause not to attend work. She did not provide a reasonable indication when she would be able to return to work.

[27] Ms Bellass maintained her employment was to work at Ahipara and at Kaitaia if that became necessary. She worked solely at Ahipara from November 2007 except for Thursday 11 September 2008 (in addition to her Ahipara duties) and for two weeks in March 2009 (instead of her Ahipara duties) while she was waiting for new glasses.

[28] In March when Ms Bellass needed glasses she told Ms Masters she did not have the money for the glasses. Ms Masters mentioned this to Mr Millichamp who agreed to advance Ms Bellass the money and provided alternative transport during the period she was waiting for the glasses to arrive. Ms Bellass was told that was a one off arrangement.

[29] The company denies that there was an arrangement or agreement that Ms Bellass could work at Kaitaia. It says it would not have offered the position on that basis as it was difficult to get people to work at Ahipara.

[30] The first time such an arrangement was asserted was in her brief of evidence. Neither she nor Mr Noel raised it before her dismissal. If this had been her view she would have raised it prior to dismissal.

[31] She accepted her place of employment was at Ahipara. This set out in minutes of meeting of 23 July.

[32] Ms Masters says Ms Bellass was given an employment agreement in May 2008. Ms Bellass says she did not receive one until 2009. I prefer Ms Masters' evidence. The unsigned agreement provides that the place of work is Ahipara and any other reasonable location to which she may be directed by the employer. Although Ms Bellass had made a number of comments on her agreement she made no change to or comment on the location.

[33] I find that Ms Bellass' place of work was Ahipara and that she could not elect to work at Kaitaia. The letter of offer says the place of work is Ahipara.

[34] Ms Bellass accepted that she had been advised of the availability of bus transport, including a non-scheduled drop off in Ahipara. The argument is that it was not reasonable for her to get the bus because she would not have been dropped off in time to open the gates, she would have had to wait on the main road and she was not safe carrying cash takings.

[35] The respondent says these matters were not raised prior to the dismissal. Mr Noel says he stated it was unsafe to expect her to stand on the road waiting for the bus or hitchhike home. He said it was high risk area; there was a lot of violence. The written notes do not document this. Mr Millichamp recollected some discussion about it being unsafe for women to hitchhike when transport options were being discussed.

[36] Mr Millichamp and Ms Masters denied there had been any discussion about carrying large sums of money. Ms Bellass was unsure whether the issue of money had been discussed at the meeting. If that had been raised Ms Masters and Mr Millichamp said alternative arrangements could have been made such as leaving the cash takings in the locked shipping container or making arrangements for a truck to call to pick up the money.

[37] I prefer the respondent's evidence. Mr Millichamp's typed notes were prepared shortly after the meeting from his handwritten notes. The Union representatives had no notes.

[38] The respondent dismissed Ms Bellass because she would not given assurance that it was her responsibility to get herself to work and she made no effort to find alternative ways of getting to work by, for example, using the bus.

[39] Unless the employment agreement provides that it is the employer's responsibility to provide transport to and from work for the employee, it is, as Ms Bellass accepted in response to a question from me at the hearing, the employee's responsibility.

[40] The employer did not know when Ms Bellass would be able to resume her duties. I accept the evidence of Ms Masters and Mr Millichamp that if they had been told of an imminent appointment with WINZ and if Ms Bellass had taken responsibility for trying to get herself to Ahipara the dismissal may not have taken place.

[41] An employee has a responsibility to be communicative and responsive and Ms Bellass was not.

[42] The employer had been reasonable and helpful when other circumstances had prevented Ms Bellass getting to Ahipara. There was no legal obligation on the employer to do that.

[43] It was not the fact that Ms Bellass' car was not working that led to her dismissal. It was her refusal to consider alternatives, such as using the bus for a short period; and to provide her employer with information about her attempts to deal with the car situation that led to her dismissal.

[44] The dismissal was justified. Ms Bellass does not have a personal grievance.

Costs

[45] If the parties are unable to resolve the matter of costs the respondent is to file a memorandum within 28 days of the date of this determination. The applicant should file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority