

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 354
5534725

BETWEEN FAISAL MOHAMED AHMED
Applicant

A N D CONNECT SUPPORTING
RECOVERY
INCORPORATED
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
Darryl Bishop, Advocate for the Respondent

Investigation Meeting: 6 November 2015 at Auckland

Date of Determination: 12 November 2015

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] The applicant (Mr Ahmed) alleges that he was unjustifiably dismissed from his employment by the respondent (Connect) and in addition claims to have been bullied, harassed and intimidated during the employment.

[2] Connect denies all of Mr Ahmed's claims, says that his dismissal was justified in all the circumstances after a "*protracted and fair process*" following "*an investigation into a series of complaints against [Mr Ahmed]*".

[3] Mr Ahmed was employed from 1 May 2013 as a Peer Support Worker until his dismissal by letter dated 1 August 2014 taking effect after a period of notice on 5 September 2014.

[4] Mr Ahmed's evidence to the Authority was that he had made numerous complaints to the respondent, Connect, during the employment about being bullied or harassed or intimidated and he gave me a significant number of examples of these

complaints. He says that on most occasions he directed his complaint to a supervisor but that nothing was ever done to address those complaints. However, with the exception of two specific examples which I will refer to shortly, Connect's evidence was that it knew nothing of these complaints and had never been aware of them.

[5] Moreover, Connect said that there was never a personal grievance raised in respect of these bullying complaints during the employment, and it was not until long after the employment had ended that Connect received a letter from Mr Ahmed dated 27 November 2014 in which Mr Ahmed advanced various generic complaints of the sort I have just referred to.

[6] What Connect did in response to that letter, and an earlier email dated 9 October 2014, was to seek to meet with Mr Ahmed to discuss his concerns and try and resolve them.

[7] The evidence I heard indicated that Connect had made four separate proposals for a meeting between it and Mr Ahmed to discuss these issues but that Mr Ahmed had not responded to any of those proposals.

[8] Mr Ahmed told me in his evidence that he was unwell at the time and in hospital for part of the period in question and that was why he had not responded, although I did feel obliged to point out to him that he had been well enough to write the two communications that I have just referred to.

[9] Mr Ahmed was adamant that I needed to investigate his allegations of bullying, harassment and intimidation, but given the absence of any evidence that Connect ever knew about these matters, I indicated to Mr Ahmed that there was nothing further I could do; even if I were persuaded that he had these concerns during the employment, unless there was evidence that he had put them before the employer such that the employer knew or ought to have known that those complaints were made and required investigation, then there was nothing for Connect to answer.

[10] I also note that the only occasion when it seems that Mr Ahmed has sought to document his concerns to the employer (the letter of 27 November 2014) was long after the employment had ceased and Connect quite properly tried to engage with Mr Ahmed in order to explore his concerns but was completely unsuccessful in getting him to talk to it.

[11] There were two matters that Connect acknowledges Mr Ahmed did raise with it, the first being a complaint dated 11 February 2014 about a particular colleague and Connect's evidence on that point was that it did receive a complaint from Mr Ahmed, it did investigate it, it found the complaint completely unsubstantiated, and indeed found that the colleague that Mr Ahmed had complained about was distressed by Mr Ahmed.

[12] The only other complaint which Connect acknowledges it received from Mr Ahmed was what it described in its evidence as a counterclaim from him when Connect put to Mr Ahmed complaints received about his behaviour from co-workers and he then responded by himself making these "*counterclaims*". Again, Connect says that the so-called counterclaims were investigated and found to be unsubstantiated.

[13] On 1 and 2 May 2014, Connect received two complaints of harassment and bullying by Mr Ahmed and a third complaint was received by email from a third colleague making similar allegations.

[14] As an investigating process was initiated by Connect, further complaints by other staff about Mr Ahmed were also received including allegations that staff felt unsafe in dealing with Mr Ahmed because of his alleged unpredictability.

[15] To progress matters, Connect asked Mr Ahmed to attend a meeting on 15 May 2014 and by that date, there had been an exchange between the parties so that Mr Ahmed was provided with, in the words of Ms Ruth Williams who gave evidence for Connect, "*all of the material that we had on complaints made against Mr Ahmed*".

[16] At the 15 May 2014 meeting, Mr Ahmed was given the opportunity of responding to the complaints and he did so at the meeting, both verbally and by tabling a written document. Both of those methods resulted in Mr Ahmed denying all of the allegations. Indeed, Mr Ahmed was adamant that "*none of the events had occurred*".

[17] Because of the adamant denial from Mr Ahmed there was then a break in proceedings while Connect conducted further inquiries in order to first assess Mr Ahmed's so-called counterclaims and then form preliminary views about whether

there was still a case to answer in regard to the original allegations made against Mr Ahmed, given his adamant denial.

[18] A second investigatory meeting was held between Connect and Mr Ahmed on 11 June 2014 at which Connect told Mr Ahmed that it thought he should take a period of paid leave because according to his team leader, Mr Ahmed was “*struggling to perform his role and function as a member of the team*”. It seems to have been common ground at that point that Mr Ahmed had some personal external issues that he was dealing with and he told me in his evidence that he was initially supportive of the employer’s decision to give him some time off although he went on to say that he later became suspicious of Connect’s motive.

[19] During the period of special leave, Connect asked Mr Ahmed to access external supervision which formed part of the obligations Mr Ahmed had in terms of his Job Description.

[20] There was another meeting between the parties on 17 June 2014 at which it was established that Mr Ahmed had not accessed clinical supervision as Connect had suggested and he was encouraged again to do that in order that he could work through the issues that were impacting on his work performance, including his relationships with co-workers. Mr Ahmed was also asked to see his psychiatrist as Connect had genuine concerns about his mental health.

[21] Yet another meeting took place on 24 June 2014 and again it was apparent that Mr Ahmed had not accessed supervision or engaged with his psychiatrist as requested. Connect says in its evidence that it was concerned that Mr Ahmed continued to demonstrate little insight into his situation.

[22] During the investigation meeting, I tried to get Mr Ahmed to explain why he was reluctant to engage with external supervision and with his psychiatrist and he told me that he was concerned essentially with protecting his privacy.

[23] A further meeting between the parties took place on 1 July 2014, by which time Mr Ahmed had finally accessed supervision and he gave some feedback to Connect which encouraged it that there might be a possibility of working towards a return to work programme for Mr Ahmed. In his evidence to me, Mr Ahmed told me he had been promised a return to work programme at this meeting; that evidence is flatly rejected by Connect which says that it certainly was more hopeful at this

meeting than it had been previously but it still required a further and full report from his external supervisor and a full report from his psychiatrist about any risks for himself or others in Mr Ahmed returning to the workplace.

[24] There was a further meeting on 7 July 2014 at which Connect had hoped to receive definitive information from the psychiatrist but the letter provided by Mr Ahmed from the psychiatrist did not cover the matters that Connect sought to be informed about. Accordingly, Connect asked for Mr Ahmed to attend a psychiatrist of its choosing to obtain that information; Mr Ahmed refused. Connect also obtained a report from Mr Ahmed's external supervisor whose view of matters was quite different from Mr Ahmed's. Connect proposed that the supervisor and Mr Ahmed meet to explore their differences of opinion. Mr Ahmed refused.

[25] Connect's evidence is that by the end of the 7 July 2014 meeting, it had formed the preliminary view that Mr Ahmed had a case to answer in respect of the allegations made against him by co-workers and that it had done all it could to try to get Mr Ahmed back into the workplace and accordingly it determined that a disciplinary process needed to be initiated. Mr Ahmed was provided with a report from Connect on the position to date and a first disciplinary meeting was held on 22 July 2014 at which Mr Ahmed denied the allegations again and told Connect that he thought the outcome had been predetermined.

[26] A further meeting took place on 22 July and there were written exchanges between the parties at the end of that month leading to a letter dated 1 August 2014 which terminated Mr Ahmed's employment. It is evident to me on the evidence that the decision to dismiss was made as much as anything because Connect was anxious about Mr Ahmed's recollection of events and his inability to have any insight into his own behaviour and ultimately went to Connect's trust and confidence in him.

[27] Notwithstanding the decision to dismiss based on Connect's findings, it offered to go to mediation with Mr Ahmed instead of terminating his employment; Mr Ahmed declined that offer but notwithstanding that, Connect left the offer in place for a month beyond the date of the letter of dismissal.

Issues

[28] Because Mr Ahmed was so adamant that I should hear him on the subject of his various complaints about how he was treated by the employer, I am obligated to

consider that aspect, and of course in addition, I must consider whether Mr Ahmed has a personal grievance for unjustified dismissal.

Did Mr Ahmed complain to Connect?

[29] Mr Ahmed was adamant that he had made a number of complaints to Connect. He told me in his evidence that he complained “*every month or so*” but when I asked him for details about when these complaints were made and what their subject matter was, he became rather vaguer.

[30] He said the first complaint he had made was against a co-worker called Amanda and that he thought that would have been in July of 2013 and he said that he habitually complained to his team leader but there was no evidence of those complaints save for his general evidence on the point. I was offered no documentary evidence that there had been complaints nor any oral evidence from any other witness that Mr Ahmed had made these complaints and that Connect had simply failed to deal with them.

[31] Connect’s evidence was that if it had received complaints of any kind from staff it would have investigated them. I note that there is a very clear provision in Mr Ahmed’s employment agreement concerning occupational safety and health which places an onus on both parties to look after the safety and wellbeing of staff and volunteers; my assessment of Connect’s evidence on the point was that it was genuinely horrified at the suggestion that it knew about these complaints but had simply done nothing.

[32] Connect was adamant that it knew nothing about Mr Ahmed’s complaints except the complaint that he raised in February 2014 and the complaints that it referred to as his counterclaims when it sought his response to the complaint that had been made about him.

[33] Early on in his employment, Mr Ahmed claims to have been accused of being gay by a co-worker; when I asked him if he had told the employer about that he was adamant that he had not, but yet he maintained that he had told the employer about the other complaints.

[34] Mr Ahmed said that he complained to his team leader and that his team leader ought to have escalated the complaints to management but if the team leader did not, then that could not be Mr Ahmed's fault.

[35] I would feel able to agree with that analysis if there was some other evidence that the complaints had ever been made, but there was none; no written evidence, no corroborating oral evidence, no notes, diary notes or other documentation and one would have thought that if, as Mr Ahmed maintained, he was complaining monthly about the way he says he was treated, if those complaints were not being properly dealt with by the team leader, Mr Ahmed would have sought to progress the matter with management, but he did not.

[36] Moreover, some of the matters that Mr Ahmed referred to as being evidence for his view that he was being picked on were no more than misunderstandings by him; for instance he complained about a label that appeared on his personal computer on his desk at work because it used the word "*dog*" and he took that as being an insulting reference to him, but in fact it was simply the name of the IT company that provided the software that Connect used and I was assured by Connect that everybody's personal computer had the same logo on it.

[37] Connect told me in its evidence that, as was the protocol with all staff, Mr Ahmed's external supervision notes were provided to the employer. Ms Williams was clear that there were no references in that material to any complaints made by Mr Ahmed concerning bullying or harassment.

[38] Accordingly, I must conclude that the evidence simply does not support Mr Ahmed's claim that he complained about bullying and harassment to his supervisor, that those complaints went unresponded to, and that in consequence, Mr Ahmed had done all that he needed to, to put matters before the employer.

[39] As I have been at pains to emphasise, there is simply no evidence, apart from Mr Ahmed's very general assertions on the point, that there were complaints made to Connect. In Mr Ahmed's allegation where he says he was accused of being gay, his own evidence is that he took that matter no further. In relation to the complaint about his computer at work being labelled with the word "*dog*" (and this allegedly referring to him), Connect pointed out that all of the computers had that word on them because that word was part of the name of the Connect IT provider.

[40] Mr Ahmed could provide me with no supporting evidence of his having made these generic complaints and the absence of any reference to the complaints in his external supervision notes is, I think, telling because it is difficult to see why he would not have referred to these matters in supervision if these issues were troubling him, as he now contends.

[41] Moreover, Connect was adamant that it knew nothing about the contention that Mr Ahmed had been bullied or harassed by co-workers save for what it referred to as his counterclaims when he was asked to respond to similar allegations of him harassing and bullying other staff.

[42] Connect says that if it had received the complaints that Mr Ahmed claims to have made, it would of course have investigated them and it points to its behaviour in dealing with the issues that it did know about, as support for that view.

[43] I am entitled to take notice of the fact that Connect provided Mr Ahmed with a significant amount of paid leave in the hope that he would be able to recover his health and return to the workplace and as soon as it was apprised of the general nature of the allegations that Mr Ahmed is now making (when it received his letter of 27 November 2014), it immediately made four separate attempts to meet with him to discuss matters notwithstanding the fact that the employment had ended some months previously.

[44] Furthermore, when Connect was trying to get Mr Ahmed onto a return to work programme, it sought to get his agreement to provide further information from his psychiatrist and to meet collaboratively with his external supervisor to resolve the differences in perception between the supervisor and Mr Ahmed, and despite those efforts, Mr Ahmed rejected all those attempts by Connect to engage.

[45] Further and finally, Connect, in dismissing Mr Ahmed, made the offer that rather than have a dismissal recorded against his name, the parties should go to mediation to see if an alternative outcome was possible and Mr Ahmed refused that suggestion as well.

[46] In all the circumstances, I think the evidence shows that Connect went out of its way to try to get Mr Ahmed well enough to return to work, that it provided him with extensive paid leave in order to achieve that, that it made various offers to him to try to facilitate that, and even on dismissal, it undertook to not record the dismissal

and go to mediation instead if Mr Ahmed wanted that, but all of those attempts at engaging appropriately with Mr Ahmed were unsuccessful. I think it more likely than not that an employer which takes those extra steps to engage with their employee is likely to investigate any allegations of bullying or harassment that it knows about.

[47] Accordingly and for the avoidance of doubt, I must conclude that the evidence that Mr Ahmed ever raised these matters appropriately with the employer is simply not apparent and I have to prefer the evidence of Connect which says that it was never aware of these allegations and had it been aware of them, it would of course have investigated them and dealt with them.

Was Mr Ahmed unjustifiably dismissed?

[48] I have not been persuaded that Mr Ahmed has been unjustifiably dismissed. Connect went to some considerable length to engage appropriately with Mr Ahmed once it received complaints about him from co-workers. I have already catalogued the extensive raft of meetings that Connect arranged with Mr Ahmed as part of its investigation into the complaints made against him and what Connect calls his counterclaims.

[49] Once the initial meeting between the parties had taken place in May of 2014, Connect undertook further inquiries to establish whether there was any veracity in Mr Ahmed's counterclaims (it found there were not), but then, as a consequence of talking with Mr Ahmed's team leader, formed the view that Mr Ahmed was not well enough to continue to be in the employment and so it proposed a period of special leave which ran on for some weeks because of Connect's hope that Mr Ahmed would start accessing therapeutic services appropriately and might eventually be well enough to return to the workplace.

[50] However, because Connect's various attempts to get Mr Ahmed to provide it with the necessary comfort that he was fit to return to the workplace (its request for a full report from the psychiatrist and its request for Mr Ahmed to agree to meet with the external supervisor to resolve differences in their respective views), were all of them rejected by Mr Ahmed, Connect determined that all that was left to it was to complete its formal disciplinary process which on the evidence before me increasingly focused, for Connect, not on the original allegations of staff about Mr Ahmed but on

Connect's own assessment of his continuing unwellness and unfitness for the workplace.

[51] Increasingly, Connect was fearful that Mr Ahmed's perception of reality was so different from that of his work colleagues and of the employer itself that Connect concluded ultimately that it could no longer have trust and confidence in Mr Ahmed to do the work that it required of him.

[52] Concerns about Mr Ahmed believing he was under surveillance when moving around on his duties, his distress in the workplace which was upsetting to other staff and the perception that Connect had that other staff were genuinely frightened of him, led it inexorably to the conclusion it reached that it could no longer have the necessary trust and confidence in him to perform his duties appropriately in the workplace.

[53] While no doubt part of that analysis by Connect was driven by Mr Ahmed's denial, not only of any wrongdoing in respect to the allegations made against him by co-workers, but even denial of the actual facts on which the complainant relied (denial that particular events even happened when Connect was absolutely clear that they did), made it more likely than not that Connect would reach the conclusion it did.

[54] Applying the law to the situation that Connect found itself in, I think that a fair and reasonable employer in Connect's position could have concluded that it no longer had trust and confidence in an employee in Mr Ahmed's position and therefore that dismissal was the only course available: s.130A of the Employment Relations Act 2000 applied.

[55] I think I am bound to observe that not only is the conclusion that Connect reached one that a fair and reasonable employer in its situation could reach but also that the process that Connect used was patient, measured and willing to go the extra distance to try to give Mr Ahmed the benefit of any doubt.

[56] This assessment of Connect's procedure is demonstrated by the length of time the whole process of investigation and disciplinary procedure took, the efforts that Connect made to get Mr Ahmed to satisfy it that his health was robust enough for him to be able to contemplate returning to work and the correspondence that was sent by Connect to Mr Ahmed after each meeting of the parties.

[57] This correspondence was the only documentation which I have relied upon in writing this decision which was not available to me in preparation for the investigation meeting and I asked for it to be provided at the investigation meeting and it was. The documentation consists of four letters and one email from Connect to Mr Ahmed following on from each of the meetings that the parties had starting on 11 June 2014 and concluding on 7 July 2014. The items of correspondence carefully set out what was agreed at each meeting so that there could be no misunderstanding from Mr Ahmed about what Connect was seeking from him.

[58] Another example of Connect's willingness to try to engage with Mr Ahmed postdates the dismissal and I have already referred to it; it is Connect's attempt to arrange a meeting with Mr Ahmed to deal first with his allegation of personal grievance by letter dated 9 October 2014 (which fails entirely to mention the allegations of bullying and harassment that he now wishes me to consider), and a much later letter to Connect of 27 November 2014 where he does raise these generalised allegations of bullying and harassment. As I have already noted, Connect's response in each case was to try to get Mr Ahmed to meet with it to discuss matters; despite making four separate attempts to arrange a meeting, Connect was unable to get any response from Mr Ahmed over a two month period.

Determination

[59] I have not been persuaded that Mr Ahmed has any viable personal grievance and his claim therefore fails.

Costs

[60] The parties acted for themselves and so there is no issue as to costs.

James Crichton
Member of the Employment Relations Authority