

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Angela Barlow (Applicant)
AND Crown Real Estate Limited (Respondent)
REPRESENTATIVES John Burley, Counsel for Applicant
Dennis Tana, Advocate for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 30 March 2005
DATE OF DETERMINATION 18 May 2005

DETERMINATION OF THE AUTHORITY

The applicant, Ms Angela Barlow, was employed as the Principal Officer of the respondent, Crown Real Estate Limited. Ms Barlow says that she was unjustifiably dismissed. The respondent denies that a dismissal took place.

Ms Barlow was employed on 6 October 2003. On 3 May 2003 Ms Barlow tendered her resignation, giving three months' notice. She stated in her letter that the resignation could take place earlier if mutually agreed. Mr Dennis Tana, a director of the respondent, asked her if she would be prepared to leave straight away as there was someone available to be an immediate replacement. She said she would go straight away if she were paid out the three months' notice. Mr Tana then said she should work out the notice.

Later that day Ms Barlow attempted to access the company trust account but found the password had been changed. Mrs Tana said there was nothing sinister about this as all passwords were regularly changed. I accept this evidence. Curiously, Ms Barlow did not try to find out what the new password was. Instead, she decided to "monitor" the situation.

On 27 May she returned to work after time off as the result of an accident. She still could not access the trust account. She spoke to Mr Tana on 1 June who confirmed that the password had been changed and said he would obtain a copy of the financial statement she wanted, which he did. Mr Tana denies that she asked for the password. He said she just asked for a copy of the statement.

It appears that Ms Barlow had become gradually more and more dissatisfied with her employment. She did not believe that she was being granted the ability to have "effective control" pursuant to the Real Estate Agents Act. It was readily apparent that Ms Barlow had not made her discontent known to her employer. That is unfortunate, because her dissatisfaction and her failure to communicate it are aspects of the background to the dispute that led to the termination of employment.

The events of 3 June

While there is some dispute about what happened on 3 June, in essence Ms Barlow asked Mr Tana to agree to alter her resignation period. She wanted to leave the following day and be paid out until the end of June. Mr Tana told her he needed to take some counsel on the matter and that he would let her know the following week. She wanted an immediate response. Mr and Mrs Tana became concerned as they formed the view that she was not intending to return to work the next day and decided to change her computer password so she could no longer access certain information. Mr Tana told her this was “for security reasons”. She told him that such a move would prevent her from having effective control as required by her employment agreement. Ms Barlow said Mr Tana told her he could not trust her. Ms Barlow became upset and asked how she could maintain effective control as required by the Real Estate Agents Act 1976 and her employment agreement. Mr Tana told her to take a couple of hours to consider her proposal. She said she did not need to and wanted to type it up straight away. She was told to use a general office computer. Mr Tana then told her she was to leave the office and to hand over her keys.

Mr and Mrs Tana became very concerned about what they saw as Ms Barlow’s quite unreasonable request to be paid out (which they could not afford) and her intention to leave the following day as neither of them held the requisite licences to operate the business.

This was a matter that very quickly got out of control. This was due to a combination of factors: Ms Barlow’s unexpressed frustration and unhappiness in her work, her desire to leave the following day, the perception of the Tanas that she was highly agitated and emotional and unable to stay at work and the highly unfortunate actions of Mr Tana in removing her computer access, telling her he did not trust her (he denied doing this but his saying it is consistent with his changing of her password) and then telling her to leave the building and asking for her keys.

Ms Barlow denied that she had said she wanted to leave the following day. However, a tape recording indicates that that is what she did say.

Ms Barlow contends that the employer’s failure to agree to a variation of the notice period was wholly unreasonable and that it was a breach of good faith. There is good reason for the notice period and Ms Barlow agreed to it when she signed the contract. The Tanas needed to find someone else with the requisite licence to run the business and could not do so immediately.

There was overreaction on both sides. Mr Tana could not give me any cogent reason for his view that Ms Barlow would damage the property or the business. I find he did not tell her to go home and calm down. He told her to leave the premises and he asked for her key. Mrs Barlow was quite correct to see that as a dismissal. Being asked to hand the keys in was hardly consistent with a cooling down period.

When Mrs Tana phoned the following day it was to ask if Ms Barlow would be returning to work and when she said she was not because she had been dismissed the response was to tell her that she had breached her employment contract and that she was required to work out her notice period. This was hardly a conciliatory way of approaching matters.

The next communication Ms Barlow received was a letter purporting to terminate her employment on the grounds of abandonment.

Decision

Mrs Barlow was dismissed and the dismissal was unjustifiable. The Employment Relations Act 2000 requires that I make an award of lost remuneration. This can only be for the remaining period of the notice, which was until 3 August. Ms Barlow is to be paid two months' salary, being \$8,333.33.

Mrs Barlow says she was humiliated and distressed by the circumstances of her dismissal. I accept that she was, even though she was not happy and had already given her notice and was seeking to shorten the notice period. There is a difference between going in one's own good time and being forced out. Mrs Barlow has asked for \$30,000. That is not a reasonable claim in the circumstances. Mrs Barlow is entitled to an award of \$4,000 pursuant to s.123 (c) (i).

Contribution

It should be readily apparent that I do not consider either party blameless. Had Ms Barlow not stated that she wanted to leave the following day, had she taken the opportunity to have a couple of hours to consider matters and had she the grievance would not have arisen. I set the level of her contribution to the grievance at 25%. Both the compensation and the wages' reimbursement are to be reduced by 25%.

Costs

If the parties are unable to resolve this, the applicant should file a memorandum with 28 days of the date of this determination. The respondent should then a memorandum within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of Employment Relations Authority