

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Lynda Bowles (Applicant)  
**AND** Raukura Hauora O Tainui (Respondent)  
**REPRESENTATIVES** Simon Scott, counsel for Applicant  
Richard Harrison, counsel for Respondent  
**MEMBER OF AUTHORITY** Alastair Dumbleton  
**INVESTIGATION MEETING** 1 December 2005 and 23 March 2006  
**SUBMISSIONS RECEIVED** 23 March and 3 April 2006  
**DATE OF DETERMINATION** 13 June 2006

**DETERMINATION OF THE AUTHORITY**

Employment relationship problem

[1] The Authority has investigated the claims of the applicant Ms Lynda Bowles that she was unjustifiably disadvantaged and unjustifiably dismissed by the respondent Raukura Hauora O Tainui.

[2] Raukura is a trust established to provide health services to the people of Tainui. It employed Ms Bowles as Clinic Administrator, in which role she was responsible for the administration of four Raukura medical clinics located in the Waikato. She had served Raukura for 11 years when she was dismissed on 5 August 2004.

[3] In the course of the Authority's investigation Ms Bowles has been spoken of highly for her dedication and commitment generally to the work of Raukura. The regard it had for her was reflected in an exit package Raukura offered as an alternative to abrupt departure by dismissal, once it had concluded there were grounds for taking that action. Ms Bowles declined the offer, which included some financial assistance and a farewell or poroporoaki.

[4] Raukura decided to dismiss Ms Bowles after it had enquired into her actions towards another employee, Ms Erina Osborne. She was a receptionist who worked at the Templeview clinic under Ms Bowles's supervision. Raukura concluded Ms Bowles actions towards Ms Osborne amounted to serious misconduct.

Complaint of misconduct

[5] On about 22 June 2004, Ms Osborne complained to the CEO of Raukura, Mr Wayne McLean,

about Ms Bowles behaviour. In writing Ms Osborne complained that for several months she had been “verbally abused” by Ms Bowles and that on a particular occasion she been assaulted by Ms Bowles who, in anger, had said to her, “if you were standing any closer to me I’d smack your head on this desk.” There was no one else present when the alleged assault occurred and threatening words were used, which Ms Osborne said was while she was receiving instruction from Ms Bowles.

[6] Ms Bowles was informed of the complaint and was shown what Ms Osborne had written about it. Ms Bowles was suspended on full pay for two days until a meeting could be held for further enquiries to be made and at which, she was advised, “you will explain the situation of events according to your perspective.” Ms Bowles wrote a detailed response to the written complaint. She denied touching Ms Osborne, calling that allegation “an outright lie” and “a blatant lie.” She denied giving any verbal abuse and, in particular, using the words, “if you were standing any closer to me I would smack your head on the desk.”

[7] In her response Ms Bowles indicated that she had a clear recollection of the interaction that had occurred on the particular occasion complained of by Ms Osborne. She conceded that because of frustration she had been experiencing when training Ms Osborne, she had over a period of time developed an “abrupt” manner towards her. She accepted that Ms Osborne may have come to feel “very got at,” humiliated and unappreciated, but she said this had not been done deliberately to make her feel bad. Ms Bowles said she had gone to the Police, expecting that Ms Osborne would have asked for charges to be laid against her if indeed there had been any assault. She found instead that the Police had received no complaint and had no interest in the matter.

[8] As there had been no eye-witnesses to the alleged assault or threatening words about smacking Ms Osborne’s head, to get a better picture of Ms Bowles’s general behaviour Mr McLean instructed that several other staff members were to be asked if they had experienced any verbal abuse or similar conduct.

#### Involvement in enquiry of other employees

[9] The approach to other employees drew written responses from two doctors who worked at the Templeview clinic and from two receptionists from other Raukura clinics. Their responses were highly critical of Ms Bowles behaviour in the workplace. One of the receptionists said she had seen and heard Ms Bowles yell at Ms Osborne and become angry with her. The responses contained allegations of bullying, harassment, deliberate acts of malice, and of intimidatory stand over behaviour by Ms Bowles.

[10] One of the written responses was particularly damning of Ms Bowles. Doctor Grace Paul said that she had had to ask Ms Bowles to cease attending at the Templeview clinic, a place Ms Bowles was required to go in the course of her work. Dr Paul said that over a few months she had “witnessed the anger Lynda displayed” whenever she came to the clinic and had “observed the hostile manner in which she spoke to Erina.” In this regard she said “Lynda’s manner was intimidating to Erina and disturbing to me,” and she said that the feedback from clinic patients indicated that they too had observed this anger and hostility.

[11] At the start of her letter Dr Paul said;

*Lynda Bowles has been my friend, workmate and receptionist for the last eleven years. She has been very committed to her job, and enjoyed working for Raukura Hauora.*

Dr Paul had felt particularly close to Ms Bowles, respecting and admiring her. Yet her concerns about her behaviour were apparently great enough for her to ask her friend to remove herself from

the Templeview workplace.

[12] Copies of the written responses received by Raukura from the two doctors and two receptionists were provided to Ms Bowles and her lawyer Mr Scott, for them to consider before Raukura concluded its enquiries into the complaints.

[13] I find that Ms Bowles was told by Raukura that the matters complained of by Ms Osborne were viewed seriously by the employer and that a possible outcome of the enquiry into them could be dismissal. Ms Bowles was given a reasonable opportunity to consider and respond to all material information Raukura had been given or had obtained. That information included the notes from four staff members including Dr Grace. Ms Bowles responded to her note by saying only that Dr Grace had been hard on her.

[14] The kind of conduct complained about by Ms Osborne and enquired into by Raukura was defined as 'Serious Misconduct' in the employers published Disciplinary Policy, as follows;

3.1 *Assaulting any work colleague or client during working hours.*

3.2 *Unreasonable behaviour towards a colleague or client. This includes abusive or threatening behaviour towards a work colleague or client.*

#### Defects in Raukura's disciplinary enquiry

[15] A number of defects in the disciplinary process were raised on behalf of Ms Bowles in her challenge to the justification for her suspension and subsequent dismissal. One was that her suspension was unjustified because there was no consultation before that action was taken. There is no hard and fast rule about consultation. As was held in *Graham v Airways Corporation of New Zealand Ltd* unreported, AC 40/05, 14 July 2005, the circumstances of each case must be looked at and ultimately the test must be the fairness and reasonableness of the employer's conduct.

[16] In this case it is relevant that, initially at least, the suspension was for a short period and was on pay. Further, the employer's published Disciplinary Policy, at clause 3.13, permitted suspension on full pay for up to 21 days pending a full investigation of serious misconduct alleged against the employee. The nature of the alleged misconduct, which included physical assault and intimidation in respect of a co-worker, is very significant. As the Court observed, at paragraph [104], in *Graham* (above);

*Imminent danger to the employee or others and an inability to perform safety sensitive work are two examples of circumstances in which it might be held to be inappropriate to delay an intended suspension to give the employee an opportunity to be heard about that intention.*

It is also significant that the workplace was a medical clinic attended by patients likely to be under some stress already and, no doubt, not wanting to become more upset through having to observe problems between staff in that workplace.

[17] In my view there was no real alternative to suspension in the circumstances and consultation would not have made any difference. Raukura was obliged to avoid the risk that a workplace complained of as being unsafe would remain so if Ms Bowles stayed in it while the allegations were investigated. The employer was required to ensure reasonable protection was given to Ms Osborne against any repeat of the type of harm alleged by her to have been suffered.

[18] The suspension remained in place for longer than first anticipated because of the circumstances of some of those who were needed to take part in the disciplinary enquiry, Mr McLean in particular. The suspension was not an unduly prolonged one, I find. In any event, Ms Bowles suffered no material disadvantage in her employment as a consequence of it.

[19] Another criticism was about the way Mr Bill Maipi the chairman of Raukura, in the absence of Mr McLean had generally run the disciplinary enquiry at all stages. While I consider that some of Mr Maipi's remarks and his behaviour were at times odd, that may have simply been in keeping with his personality and nature generally and is not a basis for impugning the fairness of the employer's enquiry.

[20] Strong criticism was made of the omission of Raukura to provide Ms Osborne with a copy of Ms Bowles's response to her complaints, presumably for Ms Osborne to respond to. This was contended to be a breach of natural justice. I do not agree that was so in a case where the employee's response was one of outright denial that the behaviour alleged against her had occurred. The employer needed to satisfy itself that the complaints were genuine and not made insincerely or for some ulterior motive. Raukura needed to investigate the complaints and explanation and decide who should be believed, rather than conducting a process more appropriate to a trial at law. In the circumstances Raukura was not required to 'cross examine' Ms Osborne by putting to her the explanation of Ms Bowles. That process might be necessary in some cases because of the content of the explanation given, but here the complaint of assault and intimidation was simply rejected as a fabrication. If Ms Osborne had seen and commented on Ms Bowles explanation then arguably Ms Bowles should have seen and commented on Ms Osborne's comments. Clearly, that process cannot be continued ad infinitum.

[21] As the Employment Court has often held, an employer is not required to 'prove' that serious misconduct took place, but must carry out a full and fair investigation from which it is left with reasonable grounds for believing that misconduct occurred. That standard was I find satisfied in the circumstances of this case, even although the allegations against Ms Bowles were serious and therefore required strong grounds for believing they were true. There were no witnesses to the complained of misconduct, but the word of one person against another is capable of providing reasonable grounds for forming a belief as to what actually happened, just as in a trial before a court one person's word against another's can amount to proof.

[22] As well as the word of Ms Osborne and Ms Bowles, Raukura had statements provided by four other employees. It was reasonable to put some weight on these statements, particularly that of Dr Paul. She said she had been disturbed by Ms Bowles's behaviour, and so she must have been to speak out against a person who was her patient and who she described a few days after the dismissal as "my best and most trusted friend for the last 11 years."

[23] The dismissal occurred in August 2004, before the new test of justification enacted in December of that year as s.103A of the Employment Relations Act 2000, came into force. The test is what it was open to a fair and reasonable employer to do in the circumstances at the time the decision to dismiss was made. I consider that it was reasonable for Raukura to find that Ms Osborne's complaints and the responses received from other employees, when considered against the explanations given by Ms Bowles, provided grounds for believing that there had been serious misconduct justifying summary dismissal. Mr Mclean decided that Ms Osborne's complaints were based on fact and he rejected Ms Bowles's denial that the conduct had taken place. The extent to which Raukura had enquired into the allegations left that conclusion open to him to reach and it is not for the Authority to rerun the disciplinary investigation and see if it comes to the same conclusion.

Determination

[24] For the above reasons the Authority concludes that Ms Bowle's employment relationship problem is not a matter Raukura should be held legally responsible for. Ms Bowles suspension and subsequent dismissal were both justified and accordingly no orders are required to be made against Raukura.

Costs

[25] Costs are reserved. Counsel should confer with a view to reaching agreement to resolve the question. If orders are required from the Authority, application may be made in writing in the usual way.

A Dumbleton  
**Member of Employment Relations Authority**