

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 57  
5124844

BETWEEN

MEI CHAN  
Applicant

AND

G S MCLAUHLAN & CO  
Respondent

Member of Authority: Philip Cheyne

Representatives: Mei Chan, the applicant in person  
Graeme McLauchlan, representative for the respondent

Investigation Meeting: On the papers

Determination: 3 April 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mei Chan worked for G S McLauchlan & Co until she was dismissed in March 2005. Ms Chan raised a grievance about that dismissal by letter dated 2 June 2005. Ms Chan then lodged a statement of problem with the Authority on 21 May 2008, just within the 3 year time limit for doing so. In its statement in reply G S McLauchlan acknowledged dismissing Ms Chan but said it did so justifiably.

**Investigation**

[2] There were various difficulties getting Ms Chan to progress her claim. Eventually an investigation meeting was scheduled for 2 September 2009. Ms Chan did not appear but Mr McLauchlan for the respondent did. I decided to proceed in the applicant's absence and on 2 September 2009 I issued a determination dismissing her claim.

## Reopening

[3] On 12 January 2012 Ms Chan lodged an application to reopen the Authority's investigation. The ground given is:

*Unjustified Actions and Unjustified Dismissal by my then employer.*

[4] Some more detail is contained in a covering letter. Ms Chan says that she was bullied at work but her employer did not protect her, that the partners were not often available for her to raise work issues with, that she was sexually harassed, that she was subject to criticism and put down, that there was a one sided performance review and that she was accused of doing private work. Ms Chan says that in March 2005 she was at first offered an exit package but that was withdrawn two days later and she was instantly dismissed. These matters all concern substantive grievance claims.

[5] The application was served on G S McLauchlan & Co which in its reply said that it had attended at several forums in good faith but Ms Chan had never attended. G S McLauchlan & Co also said that it was a case of dismissal due to performance issues. I infer that G S McLauchlan & Co opposes any reopening.

[6] I made the following directions, notice of which was served on Ms Chan in February 2012:

*[4] Before I further consider the reopening application Ms Chan must provide the following:*

- (a) An affidavit setting out the reasons for her non-appearance on 2 September 2009 including any relevant documents; and*
- (b) An affidavit fully explaining the reasons for the delay since September 2009; and*
- (c) A statement of her evidence setting out full details of her original personal grievance claim.*

*[5] This material must be lodged with the Authority no later than 4.00 pm on Friday 30 March 2012. The Authority will then serve a copy of this material on the respondent.*

[7] Ms Chan has not complied with these directions or communicated further with the Authority.

[8] The Authority's power to reopen an investigation is set out in clause 4 of the 2<sup>nd</sup> Schedule to the Employment Relations Act 2000:

*4 Reopening of investigation*

- (1) The Authority may order an investigation to be reopened upon such terms as it thinks reasonable, and in the meantime to stay the effect of any order previously made.*
- (2) The reopened investigation need not be carried out by the same member of the Authority.*

[9] As expressed this represents a very wide discretionary power but like all such powers it must be exercised in accordance with principle. In exercising this power the Authority must be mindful of its role as set out in s.157 of the Act and more generally the objects of the Employment Relations Act 2000.

[10] Ms Chan was served with notice of the Authority's investigation meeting scheduled for 2 September 2009. Ms Chan was also served with a copy of the Authority's notice of directions to be complied with in advance of that investigation meeting. Ms Chan did not comply with the directions, nor did she attend the investigation meeting. Despite the Authority's clear directions for her to do so before 30 March 2012, Ms Chan has not explained these failures or the extraordinary delay of more than two years from the Authority's determination on 2 September 2009 until the reopening application was lodged on 12 January 2012. This can all properly be characterised as persistent delay and non-compliance.

[11] The substantial merits of the case about reopening the Authority's investigation lie overwhelming against doing so. Even if I assume (in the absence of evidence) that Ms Chan's complaints are valid, such merits are outweighed by Ms Chan's persistent delay and non-compliance. Accordingly I decline to reopen this investigation.

Philip Cheyne  
Member of the Employment Relations Authority