

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Chrissie Carrick (First Applicant)
AND Glynis Martin (Second Applicant)
AND Julia Nugent (Third Applicant)

AND Spotless Services (NZ) Limited (Respondent)

REPRESENTATIVES Luci Highfield, for the applicants
Sean Heywood, for the respondent

MEMBER OF AUTHORITY P R Stapp

INVESTIGATION MEETING 27 April & 11 May 2005

SUBMISSIONS 13 & 26 May & 9 June 2005

DATE OF DETERMINATION 15 July 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. In 2004 the applicants were employed by Spotless Services (NZ) Limited as domestic workers at Palmerston North Hospital.
2. An issue arose over the introduction of a new flat mop cleaning system between the workforce, the Service and Food Workers Union and Spotless. There were consultations that had been unsuccessful.
3. During the weekend of 12 and 13 June 2004 the floors on Wards 23, 27 and 28 were scratched.
4. Peter Birch, Spotless's area manager, received a report on the damage to the floors from Rose Fitzgerald, the site contract manager. Glynis Martin (and probably Christine Carrick) informed Mr Birch her ward floor (23) was also affected.

5. Mr Birch says he inspected the floors. He says he was not aware of any damage to floors in Wards 24 (Ms Carrick's Ward) and 29 (Ms Nugent's Ward).
6. Mr Birch says that previously he had heard rumours of sabotage from Rose Fitzgerald. Also, the applicants and other staff had raised concerns about Mrs Fitzgerald's behaviour towards them in regard to undertaking the flat mop trial and they allege that she threatened them with the "sack". Mrs Fitzgerald denies this. Mr Birch says he considered what the possible causes of the scratched floors could have been, including that of sabotage.
7. He says he tried to get the support from the Union on 15 June 2004 to deal with the situation when he telephoned Mr Thomas O' Neill, the Union organiser. However, Mr O'Neill says that Mr Birch told him that somebody had sabotaged the flat mop trial and if he caught the person he would sack them. Mr Birch denies this.
8. On 16 June Mr Birch decided to meet with the three applicants. He required them to attend a meeting. The applicants dispute his reasons for choosing them to attend the meeting. Mr Birch says that he considered the three applicants were senior employees, were well regarded by everybody, and that they had real influence amongst Spotless' employees. He says he felt confident that they would be appalled, as he was, at the thought that somebody may have sabotaged the cleaning operation in the hospital where health and safety considerations would be a factor. The applicants deny that these considerations were raised with them. Mr Birch says the meeting was not a disciplinary meeting, but the applicants became upset during the meeting because they felt they were being accused of sabotage (including an issue about Ms Nugent getting out of a lift on another floor). Mr Birch denies he accused them of sabotaging the trial.
9. Mr Birch accepts he did not give any notice of the purpose of the meeting and did not invite the applicants to have a union representative present. The applicants are critical of him not giving them notice and not providing them with the opportunity to have a union representative present.
10. The meeting did not go well. Indeed Mr Birch considered it was a disaster. Mr Birch acknowledges that the applicants became defensive, that they may have felt under suspicion, and that they became concerned that he was making accusations about them, which he denied. The applicants left the meeting and Mr Birch says someone said they would take a personal grievance. He did not hear who said it. The applicants deny saying this. When they left the meeting they went to a staff room to phone a Union organiser. Mr. Birch went to look for

them to ensure that they had gone back to work. The applicants say when they left the staff room Mr Birch was outside the door. He says he was trying to locate them and check if they had returned to their wards.

11. On 17 June Mr Birch requested the applicants to attend another meeting in an endeavour to reassure them.
12. Mr Birch says that he was frustrated about how the meeting on 16 June had turned out and was annoyed and upset about the applicants walking out and not returning to work following the meeting and instead taking a break to do their own thing. At this point he says he had concerns about the applicants returning to work and their own sense of convenience and says *“the complaints of bullying and threats by Ms Carrick also played quite strongly on my mind”*. The applicants say they wanted to speak to their union representative and return to work but Mr. Birch deliberately followed them to harass them.
13. Mr Birch’s reference to complaints of bullying and threats by Chrissy Carrick arise from information that he had received from one worker, Ruby Craddock, another cleaner, who on one occasion became upset about the flat mop system. She reported to Mrs Fitzgerald who took her to Mr. Birch. Mr Birch met with her. He says that Rose Fitzgerald advised him that Ms Carrick had made threats to various cleaners not to use or trial the flat mop. He says she said that these cleaners were mainly weekend cleaners although there was at least one week day cleaner identified by name. He referred orally to three named cleaners but nobody had made any formal complaint, and at the time that he was told of this situation, he did not pursue it any further. Indeed his evidence was that he decided there was no basis for commencing a disciplinary investigation. However, he says that he did decide to talk to Ms Carrick informally, but did not do so until 16 and 18 June.
14. On 17 June he wrote to the applicants on the purpose of the meeting he wanted them to attend on Friday 18 June. His letter conveyed his wish to discuss employment relationships, responsibilities and mutual obligations. He stated that the meeting was not a disciplinary meeting and that he had no objection to them bringing a support person if they chose to do so.
15. The applicants requested their union representative Mr O’Neill to attend and assist them. There was a meeting with the union before the applicants and Mr O’Neill attended Mr Birch’s meeting on 18 June about Mrs Fitzgerald. Each of the applicants say that they had some concern about the 18 June meeting, despite Mr Birch’s reassurances that the meeting was not of a disciplinary nature and there would be no direct nor negative consequences for them.

Underpinning Mr Birch's decision to have this meeting was that he had considered the possibilities as to why the floors had been damaged, ie sabotage or that someone had used a corrosive cleaning product with the flat mop. On the latter he decided to obtain samples of the cleaning solution that had been used on Wards 27 and 28 and have the solutions tested. The results of this investigation did not become apparent until 25 June and were inconclusive.

16. The meeting took place on Friday 18 June 2004, after another meeting about Mrs. Fitzgerald concluded. It was attended by Mr O'Neill and the applicants. Also present was Mr Birch and Doreen Hodgson, administration manager, who was present to take notes. Mr O'Neill took notes also. There is a conflict between both groups about how this meeting progressed, who said what, when, and the context of what was said. Both groups dispute each other's notes. Mr O'Neill produced for the Authority's investigation his handwritten notes and referred in his evidence to going back and filling out his notes to the best of his recollection. Ms Hodgson says that some time after the meeting, but no later than that afternoon, she typed up her notes and handed both the notes and the typed version to Mr Birch. Mr Birch says he checked the notes and then threw away the handwritten notes. When the employment relationship problem was raised Mr Birch consulted Peter Jennings, the company's Human Resources Manager, who requested him to prepare a summary of the notes in bullet form. These notes were produced. It was not until Doreen Hodgson's evidence was produced before the Authority that her full type written notes became available.
17. The applicants' claim that as a result of Mr Birch's and Rose Fitzgerald's behaviour and conduct there was an impact on them and that they were less secure in their employment. The respondent denies the claim.
18. The applicants have complained that Mrs Fitzgerald was checking up on them when they saw her in the cleaning cupboards, presumably looking for evidence against them. Mrs Fitzgerald says she undertook safety checks as part of her role and inspected vacuum cleaners and Mr Birch had requested samples of chemicals to test.

The effects on the applicants

Christine Carrick

19. Ms Carrick currently remains employed by Spotless Services as a domestic worker. She has worked at the Palmerston North hospital since about September 1997. She says the events caused her stress and made her feel sick, angry, distressed and humiliated. She says that she

felt apprehensive and nervous about going back to work with Peter Birch and Rose Fitzgerald to the extent that his power, in particular, made her work insecure.

Glynis Martin

20. Ms Martin is currently employed as a domestic worker by Spotless Services. She has worked at the Palmerston North hospital since 1983. She says the events caused her to be anxious about her job security because of the things she says Peter Birch said at the meetings. This, she says, impacted on her confidence and self esteem and involved her being stressed and nauseous.

Julia Nugent

21. Mrs Nugent was employed as a domestic worker with Spotless at Palmerston North hospital until 28 February 2005. She no longer works for Spotless. She says that the events involving Peter Birch devastated her and she felt threatened, intimidated and scared by his approach. It caused her to worry that she could be dismissed. She says she got sick and emotional that she believed related to stress, and went to her doctor.

The meetings held on 16 and 18 June 2004

22. Mr. Birch's decision to try and engage the help of Mr O'Neill first, and the applicants, secondly, backfired. First a credibility issue arose as to what he said to Mr. O'Neill. Mr Birch has been left exposed by Mr. O'Neill's claim that Mr Birch told him that somebody had sabotaged the flat mop trial, and if he caught the person, he would sack them. Mr Birch denies this and in particular that he would sack anyone.
23. Mr. Birch did not think to permit the applicants to have a representative on 16 June because he did not believe that representation was necessary. He did not adequately communicate to the applicants what he was trying to do in enlisting their assistance. The way he handled the meeting left it open to the applicants to conclude that there was an issue of an allegation of sabotage that involved each of them. His communications failed to assure the applicants that they were not being accused of sabotaging the floors. It seems his reasons for choosing the applicants to attend the meeting does not seem to have been provided at the time, although he provided an explanation at the Authority's investigation meeting. There was no advance notice given to the applicants as to what the meeting would be about. Given the delicate

nature of what Mr. Birch says he was trying to achieve some notice would have been reasonable, especially since his attempt to elicit Mr. O'Neill's help had failed. Also the situation was not helped by Mr. Birch knowing that there was a problem involving Rose Fitzgerald and Ruby Craddock and the underlying allegations about bullying over the flat mop trial. Another factor was that the applicants allege that Rose Fitzgerald was checking on them. In the Authority's investigation the applicants disputed that she was doing safety audits and they were left wondering if she was checking on the chemicals and vacuum cleaners in their cupboards. The meeting ended abruptly without any certainty as to who caused it to end. It is probable that Mr Birch's concern about the outcome of the meeting led him to either ensure the applicants did return to work or check on them, but there is no proof that he set out to harass them.

24. It is reasonable for Mr. Birch to want to talk to employees. However, in the circumstances of this matter he had tried to get Mr. O'Neill's help in regard to a matter the company and the union were consulting on. There was a serious matter that had developed and he singled out three employees without telling them why and left it open to them to conclude, as they say, that they were being accused of sabotaging the trial. He accepted that he did not tell them what the meeting was about in requiring them to attend. He accepted the meeting went badly, and that he was left very frustrated. Thus the meeting was far from ideal and did not accord with reasonable practice.
25. On 18 June another meeting was held. This time the applicants were represented by Mr O'Neill and Doreen Hodgson was present. Mr. Birch's conduct during this meeting has been challenged. He denies acting inappropriately although he says that he did act firmly. What is clear is that the applicants have felt that they were not treated fairly at the meeting because of Mr. Birch's alleged comments, manner and treatment of them and the union. Again the conduct and outcome of this meeting fails to accord with reasonable practice because of Mr Birch's handling of the situation. He has left himself exposed to criticism and everyone's integrity being questioned. This situation falls short of reasonable practice from the senior manager.

The issues underpinning the parties' relationship

26. First there is the matter of the damage to some ward floors. Whatever had affected the floors was not determined at the time. Also, it seems to be unclear which wards were affected because, there is a difference between Mr. Birch and Rose Fitzgerald and the applicants'

versions, about what wards had been affected by the damage and which wards were referred to at the time.

27. Secondly, there is the matter of how Mrs Fitzgerald's presence in the cleaning cupboards has been interpreted. She provided an explanation that she undertook safety checks as required in her job and that Mr. Birch requested samples of chemicals to test. The evidence shows that Mr. Birch did indeed carry out some sampling and testing that proved subsequently to be inconclusive. Mrs Fitzgerald was also able to support carrying out safety checks as part of her job.
28. Thirdly Mr. Birch had knowledge of the difficulties with the flat mop trial. There had been unsuccessful consultations with the Union and employees. There was an allegation of bullying involving Ruby Craddock, and an issue about Mrs Fitzgerald and her relationship in managing the situation with the applicants.
29. Then there was the unsuccessful meeting on 16 June and the failure of Mr. Birch to elicit help from Mr. O'Neill and the applicants. The allegation that Mr Birch threatened to sack anybody found to be involved in sabotage would have happened without any proof and without a full inquiry, but there is no reliable evidence of Mr Birch jumping to a premature conclusion. Instead, the situation has been muddied by the credibility issues between all the participants and especially the issues arising out of the 18 June meeting.

Conclusions

30. My conclusion is that the applicants were not treated in accordance with reasonable practice considering that the meeting on 16 June went badly. Mr. Birch was entitled to meet with the employees and because the meeting did not involve any disciplinary action there was no requirement for him to advise them of it in advance or arrange representation in advance of what he intended to discuss. However the failure to properly present the situation to them caused them to leave upset and worried that there could exist some allegation against them. Also they were singled out and left to face the issues relating to the next meeting. The next meeting on 18 June was purportedly neither a disciplinary meeting nor an investigation. At best it was an untidy and ineffectual attempt to remedy the disastrous meeting of 16 June because Mr Birch took a firm approach in handling the meeting. The feelings of the participants in the 18 June meeting were exacerbated by how upset the applicants already felt and left them believing that they were somehow responsible for the damage done to the floors of the affected wards. Mr Birch was responsible for that atmosphere.

31. It was open to Mr. Birch to consider the possibility of sabotage, as he says he did, and consider what caused the damage. However, if his approach was not to pursue a formal investigation and disciplinary process, but to try and elicit support to help him, then he went about that very poorly. The applicants did not leave that meeting with the understanding that M Birch was seeking their assistance but they thought they were the ones being accused.
32. The next meeting on 18 June did not improve the situation where the parties have left with different versions of what was said and how people behaved with conflicting records and notes.
33. The applicants were not materially disadvantaged, but their claim rests on the how they felt and their impressions and beliefs about the situation. Because I am not satisfied the situation amounts to an unjustified action, albeit the situation was very poorly handled by Mr Birch, the evidence is not sufficient to support the applicants' employment becoming less secure (as opposed to what they believed and in turn was affected by the credibility issues that have emerged). The matter cannot be resolved by way of a personal grievance. If there is an employment relationship problem, it is about Mr Birch's handling of the meetings and the people involved, and he needs to consider giving attention to this for the future, and the company and the union setting about to build relationships.
34. I have no doubt there has been an impact on each of the applicants that I cannot compensate them for. They are fortunately represented by their union, so therefore the costs have been covered by the union. I would not be inclined to award costs to the respondent because the Authority's investigation has found there is an employment relationship problem even although the applicants have not been successful in a claim for personal grievance. There was clearly an employment relationship problem in the parties' dealings and communications with each other that they all have to take some responsibility for. If this had been handled more sensitively by Mr Birch then the union would not have incurred any costs and particularly the filing fee. In case any orders are necessary I will reserve costs.