

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Kamla Dahya (First Applicant)
AND David Dahya (Second Applicant)
AND Seyclean Schools Ltd (Respondent)

REPRESENTATIVES David Dahya for Applicants
Roger Seymour for Respondent

MEMBER OF AUTHORITY G J Wood

INVESTIGATION 8 March 2005
MEETING
FURTHER SUBMISSIONS 11 March 2005
DATE OF 14 March 2005
DETERMINATION

DETERMINATION OF THE AUTHORITY

1. This is a sad case involving, as it does, the loss of two cleaners' employment at Cannons Creek School. One applicant, Mr David Dahya, had been employed at the School as a cleaner for three years by United Cleaning. His mother had been at the School for 18 years, the last seven years with United Cleaning. Unfortunately for the Dahyas, in April 2004 United Cleaning lost the contract for the cleaning of Cannons Creek School and it was taken up by the respondent, Seyclean Schools Limited (Seyclean). Mr Dahya and Mrs Dayha's employment was terminated with United Cleaning and because this occurred prior to the passage of the Employment Relations Amendment Act No.2 2004, they had no right to employment with Seyclean. Both Mr and Mrs Dahya claim that they have been treated unfairly by Seyclean Schools and Cannons Creek School and seek reinstatement to the School and compensation.

2. The Employment Relations Authority can only deal with employment relationship problems. For a person to be able to access the grievance provisions of the Employment Relations Act a claimant must either be an employee or a person intending to work. A person intending to work is, as required in s.5, a person who has been offered and accepted work as an employee. As neither Mrs nor Mr Dayha had an employment relationship with Cannons Creek School they could not and did not bring a claim against it. However, they believed, for some reason, that the situation was different with respect to Seyclean.
3. In fact Mr Roger Seymour, the principal of Seyclean, did consider employing Mrs Dahya, but not Mr Dayha, at Cannons Creek School. He rang Mrs Dahya one Friday and asked to meet her at the School the next week to discuss employment. However, over the weekend Cannons Creek School made it clear to Mr Seymour that it did not want Mrs Dahya staying on as a cleaner. Therefore, when Mrs Dayha and Mr Seymour met the next week Mr Seymour had the unfortunate task of telling Mrs Dahya that although he had been thinking of offering her a job, there was nothing he could do about the School's objection to her and thus he could not offer her employment. Incidentally, it subsequently turns out that there are no longer any cleaning positions at Canon Creeks School this year and Seyclean has thus lost those positions, so even if Mrs Dahya was successful in her claim to be reinstated to Cannons Creek School, there is no position for her to be reinstated to.
4. However, as is clear from the above, there was never any offer of a position at Cannons Creek School to Mrs Dahya, although one had been in contemplation at one time. Furthermore, there was never any acceptance of any job by Mrs Dahya. As there was neither offer nor acceptance of a job, Mrs Dahya's claim can not therefore succeed in law (*Hayden v. Wellington Free Ambulance Service* unreported, Shaw J, WC 12/02, 24 April 2002, applied).
5. Mrs Dahya was adamant that all she was interested in was a job at Cannons Creek School. She did not believe she could work at any other school because of safety reasons, Cannons Creek School being extremely close to her own residence. However, other job offers doing school cleaning were put to her by Mr Seymour, but, as she told the Authority, she did not accept any of them. She did not accept these offers for the

same reason that she wants to be now reinstated to Cannons Creek School; i.e. that she will only work at Cannons Creek School, because of safety reasons. Given that she never accepted any of these jobs, she has not ever attained the status of employee or person intending to work and therefore the Employment Relations Authority has no jurisdiction to entertain her claim. It must therefore be dismissed.

6. Similarly, it was Mr Dahya's evidence that he had never been offered and accepted a job by Seyclean either. Again, although he thought that he may have been offered one through his union, any such offer was never communicated to him at the time and therefore he never accepted it. Mr Seymour has maintained throughout that he never offered Mr Dahya a job, which is consistent with Mr Dahya's evidence. I therefore dismiss Mr Dayha's claim as well.
7. This is a case that should never have been before the Employment Relations Authority on the facts admitted by Mr and Mrs Dahya. While the Authority can well understand the concerns of Mrs Dahya and Mr Dahya after the loss of their long term employment, and sympathises with them both, there were simply never any legally sustainable grounds for them to claim personal grievances. The issues they have appear to be more directly aimed at Cannons Creek School, but Cannons Creek School was never their employer. As highlighted above, the Employment Relations Authority can only deal with employers and employees.
8. This claim has caused Mr Seymour to incur eight hours of executive time. He therefore seeks \$800 in expenses, but would be prepared to accept \$400 as a contribution to his expenses in terms of executive time.
9. As stated above, in legal terms this was an unmeritorious claim and Mr Dahya, who represented himself and his mother, was warned of the problems facing his case in particular (and also that of his mother) several times over the course of these proceedings. It therefore follows that if expenses are to be awarded they will be at a higher proportion than normal.
10. The issue of executive time was dealt with most comprehensively in *Open Systems Ltd v. Pontifex* [1995] 2 ERNZ 211. In that case the principal of a one-man business (i.e.

someone in the same position as Mr Seymour) was awarded \$1,050 in expenses in recognition of the value of his time devoted to representation.

11. In all the circumstances of this matter, I consider that the sum of \$300 is appropriate here. I therefore order the applicants, David Dahya and Kamla Dahya, to pay to the respondent, Seyclean Schools Limited, the sum of \$300 in expenses on a joint and several liability basis.

G J Wood
Member of Employment Relations Authority