

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 160  
5428558

BETWEEN                    STACEY MARLENE DEAN  
   Applicant  
  
AND                            THE SURVEYING COMPANY  
   H.B. LIMITED  
   Respondent

Member of Authority:      Trish MacKinnon  
  
Representatives:            No attendance by Applicant  
   Doug Abraham for the Respondent  
  
Investigation Meeting:     26 November 2013 at Napier  
  
Determination:              17 December 2013

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]      Stacey Dean was employed by The Surveying Company H.B. Limited as General Office Administrator from 24 February 2012 until the date of her dismissal on 19 July 2013. Ms Dean raised a number of personal grievances on 12 August 2013 by means of a statement of problem filed in the Authority and served on her former employer.

[2]      Ms Dean claims unfair treatment, dismissal, discrimination and duress. She also accuses her employer of not supplying an employment agreement when she asked for it. As remedies for her personal grievance, Ms Dean seeks the sum of \$20,000 and lost wages until such time as she finds alternative employment.

[3]      The Surveying Company H.B. Limited (The Surveying Company) denies all Ms Dean's allegations and says that at all times it treated her fairly. It dismissed her

for falsification of time sheets after a comprehensive investigation in which Ms Dean had the opportunity to be represented and to provide her explanations over the course of several meetings.

### **The Authority's process**

[4] The parties attended mediation after Ms Dean had filed her statement of problem and The Surveying Company had filed its statement in reply. Unfortunately they were unable to resolve the matter.

[5] The Authority's support staff contacted Ms Dean and Doug Abraham, advocate for The Surveying Company, about scheduling a telephone conference in late September 2013. This was for the purpose of putting a timetable in place for the filing of written witness statements and supporting documents. It was also to set down a date for an investigation meeting.

[6] Having communicated her availability for the conference call scheduled for 3 October 2013, Ms Dean failed to attend. On 7 October 2013 she was sent a copy of the Notice of Investigation Meeting, and the timetable for filing witness statements leading up to that date. On 10 October 2013, Ms Dean confirmed she had received the Authority's notification and said she was preparing her witness statements and documents which were due by 24 October 2013. On 21 October, Ms Dean forwarded to the Authority a witness statement from her partner, copying in Mr Abraham.

[7] On 22 October 2013, Ms Dean emailed the Authority indicating she would like to complete a written statement and asking what date she would have to have this filed. She indicated that she was out of the country until 6 November 2013 and had limited access to the internet and no access to a computer. The Authority responded by informing her that her written statements were due to be filed in the Authority by that day. If she was seeking an extension, she would need to advise the date for the extension she sought. No further communication was received from Ms Dean and she did not attend the investigation meeting.

[8] I am satisfied that Ms Dean was fully aware of the date, time and location of the investigation meeting. When she failed to attend by 9 a.m., I asked an Authority Support Officer to contact her urgently for an indication of her intentions. The Support Officer left two urgent voicemail messages on Ms Dean's mobile phone asking her to contact the Authority. At my request they left a third message

informing Ms Dean that the investigation meeting would commence at 9.20am regardless of whether she was present or not.

[9] In the absence of Ms Dean, I proceeded to act in the matter as fully as if Ms Dean had duly attended or been represented, in accordance with clause 12, Schedule 2 of the Employment Relations Act 2000 (the Act).

### **Evidence**

[10] The evidence provided by Ms Dean, none of which was sworn, included letters she had sent to her employer. These were attached to her statement of problem. She also included handwritten and typed notes she had apparently made on 18 and 19 July 2013; copies of text messages she had sent to her employer, and various emails. Additionally, she filed a witness statement from her partner, Richard Wolfe, with regard to one particular incident on 13 May 2013.

[11] I have read all these documents and considered them in reaching my decision. As Ms Dean and Mr Wolfe's evidence was unsworn, I have accorded it less weight than I would if they had attended the investigation meeting. In that event, their evidence would have been tested by questioning from the Authority, and cross-examination from Mr Abraham. While not all areas of evidence were contentious, a significant amount of Ms Dean's evidence in particular was disputed by witnesses for The Surveying Company.

### **Events leading to the dismissal**

[12] Mr Foote and Mr Daly, who are co-directors of The Surveying Company, gave evidence to the Authority. Mr Foote informed me of the company's policy with newly-recruited employees. This entailed signing an employment agreement, going through an induction process, and having regular reviews starting after the first month of employment. He said the company followed this process with Ms Dean. While there were no problems apparent after one month of employment, some started to emerge in the following months.

[13] Mr Foote said he operates an open door policy with employees, and is always willing to provide assistance and advice to enable them to understand fully all aspects of their jobs. His evidence was that Ms Dean rarely asked for help and that resulted in her making a number of errors which could have easily been avoided. On 6 August

2012, Mr Foote made a record of a meeting he had had with Ms Dean on that topic. He made it very clear that if she was not sure about something to do with her job, she should ask for assistance or confirmation that what she was doing was correct. He noted that "*we are here to help you*".

[14] Mr Foote and Mr Daly addressed a number of issues, on an informal basis, with Ms Dean over the months leading up to April 2013. Following a discussion with Ms Dean on 23 April 2013, Mr Daly noted that if she did not attend to the matters he had raised, a more formal letter would follow. Further matters were raised with Ms Dean resulting in a written warning being issued to her on 20 May 2013. This followed a letter to her setting out the detail of the issues, and a subsequent meeting at which her explanations were heard and considered.

[15] The letter recording the warning encouraged Ms Dean to inform Mr Foote and/or Mr Daly if she was experiencing problems outside of work, particularly if this was a distraction to her ability to complete her duties effectively. Mr Foote informed me that he views employment in a global sense and is always open to being flexible when employees are experiencing health or social difficulties outside the work environment.

[16] Mr Foote said that Ms Dean's performance had not markedly improved after the 20 May 2013 warning issued to her. Mistakes were still occurring, for some of which she had no explanation. He told me that he accidentally discovered the matter that eventually led to Ms Dean's dismissal. He found two discrepancies in Ms Dean's recording of her sick leave, when he was reviewing timesheets for a different reason.

[17] It was Ms Dean's responsibility to collate employees' timesheets and input the data into the computer system for payroll preparation and leave recording purposes. Mr Foote noted two days on which Ms Dean had notified him she was ill and would not be attending work, which were not recorded in the computer system. On one of those days, she had recorded sick leave on her timesheet, while on the other day, she had not. Neither day's sick leave was recorded when she collated timesheet data and input it into the computer.

[18] The Surveying Company's policies describe the "*(f)alsification of medical certificates, timesheets, character references, application forms or any document presented to or belonging to the company*" as serious misconduct. Ms Dean had

signed an induction checklist on 23 March 2012 in which she agreed that the handbook and policies had been explained to her.

[19] Mr Foote wrote to Ms Dean on 11 July 2013 noting that a recent review of timesheets had covered some issues which appeared to be quite serious and for which he needed to meet with her. Details of the discrepancies were noted in his letter, which recorded that there were two separate occasions over the past eight weeks where she had apparently deliberately misrepresented her hours of work and been paid for them. Mr Foote noted the seriousness with which falsification of timesheets was regarded by the company. He informed Ms Dean that, in the absence of an acceptable explanation, this could result in termination of her employment. The letter required her to attend a formal disciplinary meeting where she had the opportunity to provide her explanation.

[20] Ms Dean's notes and correspondence with The Surveying Company suggest that she was annoyed at being called to account by Mr Foote over matters that she saw as "*simple mistakes*". In handwritten notes written below a typed note headed "*Thursday 11 July*", Ms Dean blamed her mistake on her employer's behaviour which she described as having made her "*extremely uncomfortable, nervous, and distracted*". She noted that she had been diligent to improve on her performance since receiving a first warning about it. She regarded the actions of the two company directors as being "*behind (her) back*", noting that she felt as though they were trying to find something to get her into trouble and make her leave.

[21] In her written response to Mr Foote's letter of 11 July 2013, Ms Dean apologised for her mistakes and stated that she wished to continue working for the company. However, she said she found that the receipt of letters from her employer expressing dissatisfaction with her work made the workplace extremely uncomfortable and confusing for her.

[22] Ms Dean met with her employer on 15 July 2013 and reiterated her explanations. In her letter, Ms Dean stated that, in the one year and four months she had been working for the Surveying Company, those two sick days and another on 1 July 2013, were the only days she had taken as sick leave "*or any other leave*".

[23] Mr Foote wrote to Ms Dean on 17 July 2013, informing her that her explanation had raised some further questions he would need to investigate. He

hoped to come back to her within a week. Mr Foote told the Authority he did so as he wished to check Ms Dean's statement about only taking three days' sick leave and no other leave during her employment. He also wished to consider her explanations for the failure to record her sick leave in the computer system, before progressing the matter in another meeting.

[24] Before the next meeting took place, Ms Dean contacted the Department of Labour, which is now the Ministry of Business, Innovation and Employment (MBIE). She approached Mr Daly on 18 July 2013 and gave him an MBIE publication, "*Solving Problems At Work*". Ms Dean suggested that The Surveying Company attend mediation with her as she was finding things "*uncomfortable*".

[25] The Surveying Company did not agree to mediation at that time. Mr Foote and Mr Daly told me that, after checking leave records, they realised Ms Dean's statement about her leave could not be correct as she had taken annual leave during the company's close down period in December 2012 and January 2013.

[26] Mr Foote informed Ms Dean by letter dated 18 July 2013 of the company's wish to meet with her the following day at 9.30 a. m. The letter informed Ms Dean of her right to have a support person or representative of her choice attend the meeting with her. It ended by advising that if she was unable to attend the meeting at that time, she should advise Mr Foote that day so that another time could be arranged. Ms Dean attended the meeting, although in her contemporaneous notes she expressed annoyance at the short time frame.

[27] At the meeting on the morning of 19 July 2013, Mr Daly and Mr Foote referred to Ms Dean's claim regarding the leave she had taken in the one year and four months of her employment with The Surveying Company. They noted the leave she had taken over the 2012/2013 summer period. Ms Dean's response was that she did not think that leave counted because the company had been on a closedown period.

[28] Ms Dean made a number of notes, which she dated 19 July 2013, giving her perspective of the two meetings with her employers that day. She noted her third request for mediation. When her request was again refused, her notes record that she informed Messrs Foote and Daly they were not acting in good faith. She also recorded her feelings of being "*picked on*" for something she believed was easily remedied, and had been remedied by her as soon as it was brought to her attention.

[29] She again recorded her feeling of being pressured to leave her employment. Ms Dean's notes record that at 11.40 a.m. Mr Foote and Mr Daly approached her to request another meeting that day at 4 p.m. in order to deliver their decision following the morning's meeting.

[30] At the 4 p.m. meeting on 19 July 2013, Ms Dean's notes record that Mr Foote read out a letter of dismissal to her. She says she accepted it and handed over a letter she had written to her employers. Ms Dean's letter referred to the mistakes she had made, which she did not view as major misconduct, and accused her employer of discrimination and duress in the manner in which it had dealt with her. She ended by saying that she was considering taking these matters to the Employment Relations Authority.

### **Discussion and analysis**

[31] The test for assessing whether Ms Dean's dismissal was justified requires an objective assessment of whether The Surveying Company's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time it dismissed her<sup>1</sup>.

[32] The Act requires me to consider the following factors, in addition to any others I consider appropriate:

- Whether The Surveying Company sufficiently investigated the matter before dismissing Ms Dean, taking into account the resources available to it; and
- Whether it raised its concerns with Ms Dean before dismissing her; and
- Whether it gave Ms Dean a reasonable opportunity to respond to its concerns before dismissing her; and
- Whether The Surveying Company genuinely considered Ms Dean's explanation in relation to the matter before dismissing her.

[33] From the evidence presented by Mr Foote and Mr Daly, I am satisfied that The Surveying Company followed a fair process in investigating the sick leave recording issue for which Ms Dean was dismissed. She was informed in writing of the allegations against her and told of the seriousness with which those matters were regarded in terms of the company's policy.

---

<sup>1</sup> S. 103A Employment Relations Act 2000.

[34] She was afforded the opportunity for representation or support at the meetings she was required to attend with her employer. She had the opportunity to advise Mr Foote if she was unable to attend meetings at the requested times, in order that alternative times could be arranged.

[35] Ms Dean had ample opportunity to provide explanations for her actions. Her employer heard and considered her explanations, which were made both orally and in written form. It delayed the process following an assertion made by Ms Dean in her written response to the allegations, and informed her of this. It put the results of its research into that matter before Ms Dean, not as a disciplinary matter, but as a response to a categorical assertion on her part. It adjourned the meeting on the morning of 19 July 2013 in order to consider Ms Dean's explanations further.

[36] Mr Foote and Mr Daly told me that they listened to Ms Dean's explanations with open minds and that, if she had put forward a valid and compelling reason for the failure to record her sick leave, they would have accepted such an explanation. However, after due consideration of her explanation, they were not persuaded that her mistakes had been innocent.

[37] They noted that on one of the days on which she had taken sick leave, another employee had logged sick leave on his timesheet. Ms Dean recorded that employee's sick leave correctly when collating the timesheet information and inputting it into the computer, but failed to record her own from her timesheet. Mr Foote and Mr Daly both considered that her accurate recording of the other employee's sick leave, and the non-recording of her own for the same day, indicated a deliberate intention on her part to misrepresent a sick day as a working day.

[38] I accept the evidence given by Mr Foote and Mr Daly that they genuinely considered Ms Dean's explanation. They weighed up her explanation of a "*simple mistake*" against the fact that she had been responsible for collating and inputting sick leave for its employees into its system since the commencement of her employment with the company. They took into account the counselling given to her in recent months over the importance of accuracy in her work.

[39] I find The Survey Company followed a fair and reasonable process and reasonably concluded that it had lost trust and confidence in Ms Dean over her action in failing to input her own sick leave in the company's computer system. Her

employment agreement, and the employer's company policy, noted that dismissal could result if an employee knowingly or wilfully falsified company records, including timesheets. I find that Ms Dean's dismissal was an action the employer could reasonably take in all the circumstances.

[40] I reject Ms Dean's assertion that her employer did not act in good faith towards her in refusing to attend mediation after it had embarked upon a disciplinary process. I find the company reasonably took the view that it was appropriate to complete that process. It agreed to mediation after Ms Dean had raised personal grievances by means of her Statement of Problem being served on it.

[41] Ms Dean's claim to have been treated unfairly appears to relate to her employer's issuing of a warning to her in May 2013, and its raising of the sick leave recording issue with her. There was no evidence to support her claims and I find they have no basis.

[42] She has also referred to discrimination and duress, both of which have specific meanings in the context of the Act. Ms Dean provided no information that would support those claims.

[43] She also noted in her Statement of Problem that she wished to bring an action against her employer for its failure to provide her with an employment agreement when requested. I am satisfied from the evidence of Mr Foote that Ms Dean was supplied with a copy of her employment agreement after she had signed it in March 2012. I am also satisfied from the evidence of Mr Daly that Ms Dean requested a copy of her employment agreement from him on the morning of 19 July 2013, and that he supplied her with a copy of it that day.

### **Determination**

[44] Ms Dean's personal grievances fail. She was not unjustifiably dismissed, and nor was she treated unfairly. There was no evidence of any discrimination or duress to support her claims, and no failure on the part of her employer to provide her with a copy of her employment agreement.

**Costs**

[45] Costs are reserved.

Trish MacKinnon  
Member of the Employment Relations Authority