

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 219/10
5289770

BETWEEN PEAOLAINA FAITAUA
 Applicant

A N D ARMOURGUARD SECURITY
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Mohammed Shahadat, Advocate for Applicant
 Linda Ryder, Counsel for Respondent

Investigation Meeting: 30 November 2010 at Christchurch

Date of Determination: 30 November 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Peaolaina Faitaua worked for Armourguard Security Limited from February 2002 until September 2009 as a cashier. On 16 September 2009, following some comments to her by her supervisor, Mrs Faitaua told her manager that she was going to resign. The next day she provided a letter of resignation and was required to finish up there and then. Mrs Faitaua says that she was unjustifiably dismissed and has a personal grievance.

[2] Having heard Mrs Faitaua's evidence I formed the view that she was not dismissed so her only grievance could be one of constructive dismissal but the facts fall well short of establishing that case also. I will explain why Mrs Faitaua resigned and why I have formed the view that she does not have any personal grievance.

Why Mrs Faitaua resigned

[3] There is a substantial amount of evidence to support Armourguard's view of the exchanges between Mrs Faitaua and her supervisor (Debbie Pardoe) on 16 September but I will take Mrs Faitaua's account at face value for current purposes.

[4] At about 11.07am Mrs Faitaua was asked by her supervisor, in an aggressive manner, whether she would be finished her current task by 11.30am. Mrs Faitaua said she did not know and the supervisor said she should be finished by now. The exchange ended.

[5] At about 11.45am the supervisor came back to Mrs Faitaua and said *Are you still doing that job – you should have finished it by 11.30am!* That too was said in an unpleasant and aggressive manner.

[6] At about lunchtime Mrs Faitaua went and spoke to her manager (Denise Dabinette) and told her that she was not happy with the supervisor's attitude that morning. Mrs Faitaua received the response *Debbie was doing what she was told to do*. Mrs Faitaua did not understand that to mean that Debbie had been told to be unpleasant and aggressive, just to ensure that work was done without delay. Mrs Faitaua responded by saying if that was the case, she would have to leave. The manager asked when would she be leaving and Mrs Faitaua said in two weeks time. That was meant and understood as a resignation on two weeks notice.

[7] Later the manager came back to Mrs Faitaua and told her that the regional manager needed a letter of resignation. Dumbfounded, Mrs Faitaua said she would bring a letter the next day.

[8] Mrs Faitaua finished work as usual. At home that night, although very upset, she typed out a letter of resignation. She did not say anything to her husband or anyone else about this. Mrs Faitaua's evidence, which I do accept, is that she felt like she had not done anything wrong but was being dismissed.

[9] The next day, at about 10.30am, Mrs Faitaua was called into the regional manager's office. The supervisor and the manager were also there. Mrs Faitaua gave the letter of resignation to the regional manager. It reads:

Dear Denise

I am writing this letter to let you know that I am leaving the Armourguard Company Limited on the 2nd of October 2009. I have been enjoying working with the company for 9 years, and I thank you for everything, you have given me. Once again thank you.

Yours sincerely

Laina Faitaua

The regional manager told Mrs Faitaua that she would be paid for the two weeks notice in advance. Mrs Faitaua left work immediately.

No personal grievance

[10] Dismissal is the termination of employment at the initiative of the employer: see *Wellington etc Clerical etc IUOW v Greenwich* [1983] ACJ 965. That covers actual and constructive dismissals. Here, the initiative came from Mrs Faitaua, not the company. There was nothing equivocal about her statement to the manager – Mrs Faitaua intended to resign. In accordance with the provision in the applicable employment agreement Mrs Faitaua was asked to put her resignation in writing and she did so. The letter gave no clue that hers was anything other than a voluntary resignation.

[11] An employee cannot always be held to words of resignation in the heat of the moment provided they promptly make it clear that the communication was not meant as a resignation: see *Boobyer v Good Health Wanganui* WEC3/94, 24 February 1994. Here, Mrs Faitaua backed up her clear words with a written resignation the next day and took no steps to challenge her actions or the company's acceptance of her resignation until more than a month later.

[12] In *Auckland etc Shop Employees etc IUOW v. Woolworths (NZ) Ltd* [1985] ACJ 963, the Court of Appeal held that constructive dismissal includes cases where the employer gives the employee a choice between resigning or being fired, or the employer embarks on a course of conduct with the deliberate and dominant purpose of coercing the employee to resign, or a breach of duty by the employer leads the employee to resign. The third category is the only one possibly in issue here.

[13] Not every breach of duty is sufficiently serious to give rise to a personal grievance for constructive dismissal. In *Auckland Electric Power Board v. Auckland*

Provincial Districts Local Authorities Officers IUOW Inc [1994] 1 ERNZ 168, the Court of Appeal said:

In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

[14] I will assume that the supervisor spoke in an unpleasant and aggressive manner to Mrs Faitaua in breach of a duty owed by the employer to Mrs Faitaua. Even on that assumption it was not reasonably foreseeable that Mrs Faitaua might resign. If there were two exchanges they were very brief and amounted to no more than a supervisor being curt and abrupt. Such behaviour falls well short of creating a reasonably foreseeable substantial risk of resignation. It follows that Mrs Faitaua's resignation does not give rise to a constructive dismissal.

Summary

[15] Mrs Faitaua does not have a personal grievance against her former employer.

[16] Costs are reserved. Any claim for costs must be made by lodging and serving a memorandum within 28 days. The other party may lodge and serve a memorandum in reply within a further 14 days.

Philip Cheyne
Member of the Employment Relations Authority