

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Suzanne Ferrar-Jones (Applicant)  
**AND** Ascot Insurance Brokers Limited (Respondent)  
**REPRESENTATIVES** David Flaws for Applicant  
Christopher Muston for Respondent  
**MEMBER OF AUTHORITY** Alastair Dumbleton  
**INVESTIGATION MEETING** 1 March and 22 April 2005  
**DATE OF DETERMINATION** 4 July 2005

**DETERMINATION OF THE AUTHORITY**

Employment relationship problem

[1] Near the beginning of April 2002 the applicant Mrs Suzanne Ferrar-Jones executed an employment agreement with the respondent Ascot Insurance Brokers Ltd (referred to as "Ascot"), and commenced full time employment with the company in the position of office administrator and computer operator.

[2] After almost two years in this employment, during a tense meeting between Ascot management and staff held on 2 March 2004, Mrs Ferrar-Jones said she was resigning. She immediately followed this advice up with a signed note confirming that she would be leaving on 19 March 2004. She continued her usual work at Ascot for the fortnight in between those two dates.

[3] The problem Mrs Ferrar-Jones has in relation to her employment and its ending is precisely stated in her application to be the following;

*1. The respondent's breach of the following implied and express obligations:*

- An obligation to provide an emotionally secure working environment.*
- An implied obligation not to conduct themselves in a manner calculated to destroy the relationship of trust and confidence between me and my employer.*
- An obligation to act in good faith.*

*2. The respondent's failure to protect me from bullying and harassment despite my repeated pleas, and my constructive dismissal by the respondent as a result of their failure to act.*

[4] It is doubtful whether an employer's express or implied obligations extend to providing an "emotionally secure" workplace, whatever that may mean. However what I take to have been

intended in this part of the application would seem to be covered by the claim with regard to protection from bullying and harassment.

[5] To resolve her problem Mrs Ferrar-Jones seeks a determination requiring Ascot to reimburse her for lost income and to compensate her for humiliation, and for pain and suffering, caused by the employers contended unlawful actions. She also seeks reimbursement of fees and expenses incurred for counselling and advocacy services retained by her.

[6] As required with employment disputes of this kind, the parties undertook mediation before bringing the problem to the Authority for resolution.

#### Resolution of Mrs Ferrar-Jones problem

[7] The findings I have made from the profusion of evidence heard by the Authority is that Ascot must bear legal responsibility for the circumstances that caused or contributed to the employment relationship problem. I have concluded, on the basis of findings that will be given, that Mrs Ferrar-Jones was subjected to unreasonable behaviour and that this caused disadvantage in her employment and conditions of her employment.

[8] Further, from a combination of my factual findings and applicable legal principle, I have concluded that the resignation of Mrs Ferrar-Jones was caused by a breach of duty by Ascot. I have also concluded that the breach of duty was of sufficient seriousness to make it reasonably foreseeable to Ascot by the time Mrs Ferrar-Jones resigned, that she would not continue to put up with the conditions prevailing in her workplace. In this regard I have applied the test set out by the Court of Appeal in *Auckland Power Board v Auckland Local Authorities IUOW* [1994] 1ERNZ 168, at page 172, and concluded that Mrs Ferrar-Jones was constructively dismissed by Ascot. I have concluded that the dismissal was unjustified in the circumstances.

[9] In resolving the problem in a practical or tangible way I have regarded the dismissal as the culmination of earlier unreasonable behaviour carried on by the employer over a period of time, so that in assessing monetary remedies I have looked at the harm and loss suffered by Mrs Ferrar-Jones as a consequence of the dismissal rather than of the behaviour leading up to it.

[10] In summary, I have determined that she is entitled to recover \$7,500 for wages lost over a three month period and \$8,500 for general distress and anxiety accompanying the unjustified dismissal. She is entitled to a contribution from Ascot to the fees and expenses she paid to her representative Mr Flaws.

#### Management of Ascot

[11] Ascot is an insurance brokerage firm. When Mrs Ferrar-Jones was employed in about April 2002 there were three directors, Mr Bill Buckley, Mrs Carol McGonagle and Mr Kevan Summerlee, the more senior being Mr Buckley. They also worked for the firm in management positions, Mr Buckley effectively acting as managing-director. Mrs Ferrar-Jones worked mainly for Mrs McGonagle.

[12] Before Mrs Ferrar-Jones started with Ascot a division already existed between directors Mrs McGonagle and Mr Summerlee. He resigned his directorship in early 2003 and sold his shareholding in the firm later that year, but he remained working for the firm in the same offices as his former co-directors and Mrs Ferrar-Jones. The rift remained and caused general discontentment in the office, which lingered to a point where the meeting with staff held on 2 March had to be called by management. It was addressed by Mrs McGonagle. Her advice that

she was not about to retire was responded to by Mrs Ferrar-Jones with the announcement of her resignation.

[13] Another significant feature affecting the employment relationship and the workplace was that Mrs McGonagle and Mr Buckley suffered to varying degrees from ill health at material times. Mr Buckley was so unwell that he had to take leave for a few months to try and recover, and when he was at work, because of his condition, he was not able to fully apply himself to handling the complaints made to him by Mrs Ferrar-Jones about the behaviour of Mrs McGonagle.

[14] Mrs McGonagle was beset by problems with the health of members of her immediate family as well as her own. She acknowledges that she had been close to having a nervous breakdown by the end of 2003, as her swings of mood and temper seem to indicate.

[15] While on the subject of health, it is relevant that a great strain must have been placed on that of Mrs Ferrar-Jones because of an event in about April 2003 when she had to act immediately to prevent the imminent sudden death of her husband. The circumstances as recounted to the Authority could only have been harrowing for her to experience and it is not surprising that she afterwards obtained professional help from a psychologist. It seems unlikely that in carrying on working for her employer after the event she functioned entirely normally. She told Mr Buckley and Mrs McGonagle of the traumatic episode she and her husband had endured and they assisted her with time off.

### Findings

[16] It is clear that Mrs McGonagle had a strong and dominant personality and that she did not disguise her annoyance at any staff making mistakes in their work for her. Mrs McGonagle was also on the edge of a breakdown.

[17] Whether or not it could be described as bullying, intimidation or harassment, the behaviour of Mrs McGonagle over a period of time in the presence of and as directed towards Mrs Ferrar-Jones, was I find unreasonable. Mrs McGonagle's personal manner and her speech was received as unpleasant, aggressive and disturbing to an extent that Mrs Ferrar-Jones several times asked both her and her co-director of Ascot, Mr Bill Buckley, for it to be stopped. Some balance to the picture is given by the fact that on at least one occasion Mrs McGonagle had been insightful enough to apologise to Mrs Ferrar-Jones for anything perceived as derogatory in what she had said earlier.

[18] I accept the evidence of Mrs Ferrar-Jones that she was subjected to sarcasm, anger, irrational conduct, shouting, sneering, swearing, denigration and other similar verbal abuse, and also to physical behaviour such as stamping, door-slamming and file banging. I also accept that she was referred to as "stupid girl" by Mrs McGonagle. In considering whether Mrs Ferrar-Jones exaggerated, overly dramatised, or even fabricated, these complaints about the behaviour of Mrs McGonagle, I wondered whether she was hyper-sensitive by nature and whether the trauma of her husband's near death had caused her to over-react or respond abnormally to the behaviour. I took into account the evidence of her psychologist, Mr Richard Smith, that Mrs Ferrar-Jones' perception was impaired by a tendency to fixate on negative things, because of a state of heightened arousal as he described it. I considered whether, as a result of strain placed on her mental faculties by events which Ascot had nothing to do with, in the latter part of her employment Mrs Ferrar-Jones had a distorted view of Mrs McGonagle's behaviour.

[19] My finding about Mrs Ferrar-Jones as a witness is that she was honest and consistent in her evidence and that she accurately described what she experienced from Mrs McGonagle. Her responses were not those of an overwrought or unduly sensitive person. She had begun

complaining about the behaviour of Mrs McGonagle some months before her husband's near fatal encounter, so I do not think that episode explains her reaction to what she experienced at Ascot.

[20] The evidence is strengthened by the fact as I find, that even before Mrs Ferrar-Jones became employed by Ascot, as one of its directors at the time Mr Summerlee, in late 2001 had raised with Mr Buckley concern about the bullying and intimidatory behaviour of Mrs McGonagle towards two staff who had advised him of it.

[21] I have considered the several possible motives for the central part Mr Summerlee has played in this case. He made no secret that he wanted to see the departure of Mrs McGonagle from Ascot. Also, he frequently spent time talking privately to Mrs Ferrar-Jones in the office, so much so that it became obvious to staff that they had formed an allegiance of some sort, whether personal or to do with their employment by Ascot.

[22] I regard Mr Summerlee too as having been a reliable witness who observed some of the complained of behaviour by Mrs McGonagle towards Mrs Ferrar-Jones. In early 2003 he formally raised with Mr Buckley and Mrs McGonagle his concerns about management behaviour towards staff. He was at that time still a director of Ascot and it seems likely to me his motivation was a wish to avoid having legal proceedings brought by staff against a company he was a director and a shareholder of. It is clear from his meeting notes that he was concerned about the possibility of personal liability and the consequences to his professional reputation. It seems a far-fetched scenario that he consulted a lawyer and an HR person and then urgently convened a lengthy meeting to tax his co-directors about their behaviour and the risk they ran, all so that he could endear himself to Mrs Ferrar-Jones.

[23] In his meeting notes Mr Summerlee wrote "three staff have complained to me", and he referred to the possibility of a breach of statute law in relation to "intimidation" and "harassment". At this time Mr Summerlee, as a director of the company, was eyes and ears of Ascot and his concerted response to the complaints in his capacity as the employer, I take as good evidence that there was likely to be some substance to them.

#### Combination of circumstances

[24] I do not consider that the behaviour of Mrs McGonagle alone caused Ascot to become liable for dismissing Mrs Ferrar-Jones constructively. Rather, it was her behaviour in combination with two other circumstances that did so. The first of these was the fact that Ascot had undertaken to personally train Mrs Ferrar-Jones to do certain work at a higher level of responsibility. Ascot promised or represented that this work would become available after training. Mrs McGonagle attempted to provide the necessary training, because it was some of her own specialist brokerage work that was to be taught. However after some months the training exercise broke down before it was successfully completed. Mrs McGonagle said that was because Mrs Ferrar-Jones proved incapable of learning the new work, whereas Mrs Ferrar-Jones said the discontinuance of training was another aspect of Mrs McGonagle's unreasonable treatment of her. Either way, in my view Mrs McGonagle's temperamental behaviour is likely to have made the training environment difficult and affected the ability of Mrs Ferrar-Jones to learn the new work within a reasonable time.

[25] The second circumstance was the fact that when Mrs Ferrar-Jones complained to Mr Buckley about Mrs McGonagle's behaviour and the discontinuance of her training, he responded by saying that the problem was going to disappear because of the impending retirement of his co-director Mrs McGonagle. However when Mrs McGonagle subsequently announced that she was not going to retire she dashed the expectation Mrs Ferrar-Jones had been given by Ascot that the cause of her problems would be overcome by that event.

[26] I accept that there was a good reason why Mrs McGonagle decided not to retire and that she was not just being difficult and bent on annoying Mrs Ferrar-Jones. It was entirely a matter between Mrs McGonagle and other directors of Ascot as to whether and when she retired, but because Mr Buckley relied on this happening and held out to Mrs Ferrar-Jones that it was going to happen, Ascot did not act to address the complaints of Mrs Ferrar-Jones sooner or in any other way. When the retirement did not happen it was reasonably foreseeable that Mrs Ferrar-Jones would lose trust and confidence in her employer to act reasonably towards her and would resign as a demonstration of that loss. Mrs Ferrar-Jones had warned Mr Buckley she was not likely to stay if Mrs McGonagle remained. It is, I find, through this combination of circumstances that Ascot failed in its duty to act fairly and reasonably. The consequences of its failure should reasonably have been foreseen by the employer.

### Determination

[27] For the above reasons I find that Ascot is responsible for creating the employment relationship problem.

### Remedies

[28] In assessing remedies I have considered whether Mrs Ferrar-Jones contributed to the situation that gave rise to her grievance and if so the extent to which that should have a reducing affect on the award of monetary remedies claimed by her. I accept from the evidence that Ascot had some grounds for criticising the work performance of Mrs Ferrar-Jones. This was particularly so in respect of the frequent private discussions in the office with Mr Summerlee, the distraction she had during her employers time with outside causes she was involved in, and also the distraction she allowed herself of conversing with clients and office staff at times when she had other work to do. For this conduct to be regarded as blameworthy however, warnings about her performance should have been given. If they were not heeded then she could have been held as partly to blame. I find that there was no assessable contribution.

[29] I accept the evidence that in the three month period following her resignation Mrs Ferrar-Jones did not earn income or receive remuneration for any work she did. The salary she lost in that period was \$7,500 and Ascot is therefore ordered to reimburse that amount to her.

[30] I also accept the evidence of Mrs Ferrar-Jones and her husband of the personal effect the employers conduct culminating in the resignation had on her confidence and approach to life generally. She experienced the harmful behaviour of her employer over a period of time and not all of a sudden. I award \$8,500 under s.123(c)(i) of the Act and order Ascot to pay that amount to Mrs Ferrar-Jones.

### Costs

[31] Costs are reserved to enable the parties to try and settle that question before any application is made back to the Authority on behalf of Mrs Ferrar-Jones.