

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Christine Gardner (Applicant)
AND Safe Secure Limited (Respondent)
REPRESENTATIVES David Bruce, Advocate for Applicant
Lawrence Herzog, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 5 December 2005
DATE OF DETERMINATION 12 December 2005

DETERMINATION OF THE AUTHORITY

The applicant, Ms Christine Gardner, says that she was unjustifiably constructively dismissed from her employment with the respondent, Safe Secure Limited. The respondent says Ms Gardner resigned.

Relationship with Mr Ford

Ms Gardner was employed by the respondent on 4 November 2002 as the Office Manager. On 25 February 2004 an incident occurred at work. A salesman, Mr. Chris Ford, had an altercation with Ms Gardner and another employee. Mr. David Taylor, the Auckland Area Manager, dealt with this by issuing the following employment warning.

While I was out of the office yesterday, I was told that there was yet another altercation involving yourself, Christine and Marjorie.

Apparently, you approached Marjorie to print off some flyers and when Christine told Marjorie that any such responses should be coordinated through her you shouted out "the trouble is, I just don't like you" in a hostile, loud and generally unpleasant manner. This outburst followed a protracted discussion between yourself and Christine.

The incident has been verified by other office staff and furthermore, they have told me that Christine did nothing to trigger your outburst.

Apparently, you later apologized to Marjorie, presumably for your unacceptable behaviour.

On Friday last week Gilbert instructed you to work through the office manager at all times. Obviously you have chosen to ignore this instruction.

Such behaviour will not be tolerated and as a result this warning has been issued.

On 5 May another incident involving Mr. Ford occurred. He had an altercation with Ms Garner which was overheard and witnessed by other staff. The day before that Mr. Ford had been spoken to about an incident regarding his behaviour towards a female client and towards an employee at the monitoring station. Surprisingly, Mr. Ford was not dismissed. He did, however, receive a further warning letter which referred to the incidents of the previous day and said:

This outrage continued between Christine and yourself outside our office. You then followed Mrs. Gardner back into our office and at this stage she was made to feel physically threatened by you and when she came to see us soon after she was ashen.

His conduct was referred to as “disgusting” and he was told that any further incidents would be met with summary dismissal.

Ms Gardner denied that she had been aware that Mr. Ford had been disciplined. Mr. Taylor and Mr. Gilbert Trott, the Managing Director, say she was aware of the letter because she was the person who typed it. Ms Gardner denied that she had typed the letter. On the balance of probabilities, I think Ms Gardner did type the letter. She was the Office Manager and it is unlikely that any other employee would have been trusted with that task. Ms Gardner thought she had typed the previous warning letter and it would be consistent for her to have typed the second one as well.

Ms Gardner said she was scared of Mr. Ford and frightened by his abusive language and aggressive attitude. Mr. Ford was a witness at the hearing and it was evident to me that Ms Gardner’s complaints about his attitude had substance.

On 8 May she wrote a letter to Mr. Trott saying she was not satisfied with the way the incident had been handled and that she thought he should have intervened. She went on to say that use of bad language and behaviour was not acceptable. She wrote:

I request that measures are taken to help prevent situations of bad language and behaviour again, and that Chris Ford not be allowed in our office unless David is there, to intervene should it be necessary.

I look forward to a better working environment. As we discussed, I should not be put into a situation whereby I felt forced to leave.

She said she had no response to this letter. Mr. Trott however said he discussed the letter with her on his next visit to Auckland. Mr. Trott is based in Christchurch. He said he told her that any further outbursts would not be tolerated and would result in immediate termination as stated in the warning letter, dated 10 May, which letter was discussed with her; and that she should contact him immediately if any further inappropriate behaviour occurred. She said she would do so. Thereafter he met with her regularly every two weeks but received no complaints. Mr. Taylor did not convey any complaints about Mr. Ford from Ms Gardner to him either.

Ms Gardner said she had made complaints to Mr. Taylor, who was her immediate manager, but that he did nothing, saying he couldn’t do anything because he did not witness the behaviour. Mr. Taylor denied this. When I asked Ms Gardner to specify incidents which had upset her and about which she had complained to Mr. Taylor, she was only able to recall one, which was his use of abusive language in the office although that language was not directed at her. She said Mr. Ford’s comments were not directed at her; it was just his general behaviour

Mr. Taylor had a negative view of Ms Gardner. He said that Mr. Ford had complained that she was “manipulative” and Mr. Taylor said he strongly agreed with this view. He said:

I think he meant that if somebody had the temerity to criticize her, she would always justify her actions with other staff including Gilbert and myself. I was either sucked in or did nothing to keep the peace.

Mr. Taylor appeared, in answer to my questions during the Meeting, to play down Mr. Ford’s behaviour while at the same time admitting that “Chris Ford is not the most popular sales rep in the Auckland office and at times with good reason.” I have considered whether Mr. Taylor swept any comments made by Ms Gardner under the carpet in order to keep the peace. However, that behaviour would have been inconsistent with his taking action on previous occasions. The time the first warning letter was issued he was out of the office and did not witness that incident yet that did not prevent him undertaking an inquiry and issuing a warning.

Stress

Ms Gardner said she had been taking sleeping pills and tranquillisers since September. Mr. Taylor said he aware of that but thought it was a result of Ms Gardner being under financial stress. She accepted she had never said it was work stress or due to Mr. Ford. The medical certificates were nonspecific. Ms Gardner started to suffer from alopecia and was prescribed tranquillizers s her doctor thought it was stress induced. Ms Gardner was concerned that the presence of cell phone towers near her workplace might be responsible. She contacted the company’s OSH officer and she was referred to a Dr Black. The company paid the associated costs.

Mr. Taylor said that on 8 or 9 December an employee called Marjorie went to see him and said she and another employee couldn’t take any more of Christine and something had to be done about it. Mr. Taylor told her he could not act on a few comments and people would have to put something in writing so the allegations could be discussed with Ms Gardner. On the weekend Ms Gardner went into work and found notes written by her fellow employees on Marjorie’s desk. She said she was so upset she just could not take any more. She could not face being part of a roundtable talk and suffer what she considered would have been a character assassination.

Ms Gardner was off work from 13 December. This was unpaid as she had used her sick leave entitlement. Mr. Taylor said he was concerned about her so he went round to her home on 14 December. He made notes of the conversation he had had with Ms Gardner. He told her he wanted to talk to all three of them and to clear the air. Ms Gardner said the letters were very personal and objectionable. I can see that Marjorie’s comments would have been upsetting. Mr. Taylor said Ms Gardner also spoke of putting her house on the market. Mr. Taylor and Mr. Trott had previously discussed Ms Gardner’s financial situation and talked about offering her a loan. She had been previously money and had salary advances. Mr. Taylor offered her a personal loan which she rejected. He said it was an amicable meeting and there was no mention of Mr. Ford or any criticism of management.

On 17 January 2005 Ms Gardner resigned. She wrote:

I am taking this opportunity to submit my resignation, as it means that I will not have to step foot in the office again and be the receiver of Chris Ford’s aggression, or anyone else’s unfounded character attacks.

I believe the company should have done more to prevent the unnecessary stress I have suffered over the last few months as per my letter to Gilbert dated 8/05/04.

After long consultations with my doctor, he has concluded that is more than likely that my work environment has caused my hair loss, the trigger being the incident with Chris Ford last day, than any stress I may have outside of work and that my hair growth will not recover until at least six months after being away from it.

There was a footnote appended to the letter:

Chris Ford's last aggressive attack was on 9-12-04. He said "When I see Gilbert I am going to blast his f..ing head off." I have to leave and he gets to stay??? Hardly fair.

Neither Mr. Trott nor Mr. Taylor made any attempt to contact Ms Gardner and discuss this letter with her. Both said that was because she had resigned and they could not see any point.

Constructive Dismissal

The onus is on the employee to show that there has in fact been a dismissal. The applicant says she resigned because of bullying and that the employer failed to provide a safe workplace.

I have no doubt that Ms Gardner suffered stress related symptoms. The cause of those is another matter. Letters from medical practitioners who have no knowledge of the workplace are of little assistance in determining causation.

If an employee complains about the actions of another employee and the employer takes no action then there may well ultimately be an unjustified constructive dismissal. In this case, however, the evidence shows that the respondent took Mr. Ford's behaviour seriously. It issued him with strong employment warnings. I find on the balance of probabilities that Mr. Trott did discuss her 8 May letter with her and a warning was issued, which I find Ms Gardner did type, on 10 May. Mr. Trott told her to contact him if there were any further incidents. Ms Gardner accepted that she had not done so.

While I do not doubt that Ms Gardner found Mr. Ford to be a less than pleasant person her resignation was precipitated by her finding the notes written by her fellow employees that were critical of her and upset her. That is not something that can be laid at the door of the employer. Ms Gardner was not constructively dismissed and does not have a personal grievance.

Costs

Costs were reserved. If the parties are unable to resolve this issue, the respondent should file a memorandum within 35 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King
Member of Employment Relations Authority