

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Barbara Halliday (Applicant)  
**AND** Schizophrenia Fellowship NZ Inc (Respondent)  
**REPRESENTATIVES** Jeff Goldstein, Counsel for Applicant  
Timothy J Twomey, Counsel for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**INVESTIGATION MEETING** 29 September 2005  
**DATE OF DETERMINATION** 24 January 2006

DETERMINATION OF THE AUTHORITY

***Employment relationship problem***

- [1] The applicant (Ms Halliday) alleges that she was unjustifiably constructively dismissed, unjustifiably disadvantaged, not provided with a safe workplace and subject to a breach of her employment agreement.
- [2] The respondent, the Schizophrenia Fellowship Inc (the Fellowship), denies each and every one of those allegations.
- [3] The parties attended mediation but were unable to resolve their differences.
- [4] Ms Halliday commenced employment with the Fellowship as its Chief Executive in July 2002. She reported to the National President of the Fellowship as the representative of the Board of the Fellowship.
- [5] Prior to Ms Halliday's appointment as the Chief Executive of the Fellowship, there had been tension within the Fellowship because of a long running argument between the National Board and one of the branches. Ms Halliday, who had been involved with the Fellowship in other capacities, was aware of this tension.
- [6] When she took over as Chief Executive, there continued to be difficulties associated with this somewhat unsatisfactory relationship between the national body and one of the branches and there were some meetings early on in her tenure which must have been difficult for her.
- [7] The annual meeting of the Fellowship for 2003 was held in September and there were a number of new Board members elected. The first full Board meeting for the new year took place at the end of November and there was an altercation at that meeting which resulted in Ms Halliday getting up and leaving the meeting, tendering her verbal resignation as she did so.

- [8] She was spoken to by Max Kerr and another Board member and persuaded to reconsider. She agreed to do so and returned to the meeting.
- [9] The employment relationship continued through 2004 until on 9 December 2004, Ms Halliday noticed a letter from the Board chair to her, raising financial propriety issues in respect of Ms Halliday's position as Chief Executive and her treatment of the financial resources of the Fellowship.
- [10] In a letter written that day (9 December 2004), Ms Halliday tendered her resignation as Chief Executive but also sought to respond to some of the allegations in the letter from the Board chair.

### *Issues*

- [11] It is convenient to deal with each of the heads of claim separately and I will consider them in effect in chronological order. Thus the issues for consideration are as follows:
- Was there a breach of the applicant's employment agreement?
  - Was the applicant denied the provision of a safe workplace?
  - Was the applicant unjustifiably disadvantaged?
  - Was the applicant unjustifiably constructively dismissed?

### *Was there a breach of the employment agreement?*

- [12] Ms Halliday says that had her performance been reviewed pursuant to clause 7 of her employment agreement, she might have continued in employment with the Fellowship because she would have had an opportunity to resolve outstanding issues in a timely fashion.
- [13] As a matter of fact, it is clear that the Fellowship did not follow the process set down in clause 7 of the employment agreement.
- [14] What that clause provides is that there be a review after six months' service and then subsequently reviews 12 monthly on roughly the anniversary of the appointment.
- [15] It seems common ground that there was no review after six months nor it seems was there a review after the first 12 months, that is in July 2003.
- [16] As at July 2004, the point at which the second annual performance review ought to have taken place, there must have been some consideration of Ms Halliday's performance by the Fellowship because the Fellowship gave Ms Halliday a \$10,000 salary increase on 22 July 2004 so it can hardly seriously be contended that even if there is default in following the detailed prescription of clause 7, there was any deficit to Ms Halliday in relation to the 2004 performance review.
- [17] Accordingly, I reject the contention that there is any breach in relation to the 2004 performance review.
- [18] In relation to the two earlier reviews, the one due after six months and the one due after 12 months, it seems clear that there was nothing in the nature of a review after six months and in relation to the review due in July 2003, the evidence was that the Fellowship asked Ms Halliday,

in June 2003, to nominate a small group of people who the Fellowship could consult about her performance.

[19] Mr Max Kerr, who was then President, gave this evidence and then went on to say that Ms Halliday did not come back to him with the suggested names and so the matter was in effect lost sight of.

[20] In any event, I am not persuaded that the evident breaches of clause 7 of the employment agreement in respect of the initial six months review and the first annual review are anything more than technical in nature and accordingly I decline to respond to that claim with any penalty against the Fellowship. I have already noted that Ms Halliday can hardly complain about the 2004 year when, whatever the lack of form, she received a \$10,000 salary increase.

[21] For the sake of completeness, I should also make it clear that the Authority does not accept Ms Halliday's contention that, had there been a proper performance review process (presumably on any of the dates when, strictly speaking, there ought to have been a review), Ms Halliday would have been able to put her concerns to the employer and the relationship might have continued without the breach which subsequently occurred.

[22] I do not accept that contention because it seems to me it was always available for Ms Halliday to raise issues with her employer and the evidence is that her relationship with the Board chair in office during most of the period of her employment (Mr Max Kerr) was very satisfactory indeed.

[23] It follows that I am not persuaded that the breach complained about is either fundamental or significant and accordingly I dismiss that head of claim.

#### ***Was there a safe workplace?***

[24] At the point at which Ms Halliday was appointed, the Fellowship was, by all accounts, an organisation with some significant internal issues.

[25] Ms Halliday had been involved with the Fellowship in a private (non-employment) capacity prior to her appointment as Chief Executive and she was well aware of the internal difficulties.

[26] It follows that, insofar as her allegation about the Fellowship failing to provide a safe workplace relate to the impact of the longstanding difficulties between the Fellowship at national level and one of its branches, her argument has little merit as she well knew the nature of the environment in which she was choosing to work before she even applied for the position.

[27] This was not a situation where there was some inequality in terms of the information between employer and employee. Indeed in this situation, it could reasonably be expected that Ms Halliday would know as much as anyone about the difficulties that then beset the Fellowship.

[28] Accordingly, I reject entirely the suggestion that she ought to be able to look to the Fellowship to protect her from a work environment which she was able to make an intelligent judgement about before she even applied for the role.

[29] That argument does not apply however in relation to matters which post-date her employment. In particular I need to consider the episode at the first Board meeting for 2003 and the subsequent treatment of Ms Halliday by her Board members and in particular by her direct superior, the Board chair.

[30] Turning first to the November 2003 Board meeting, by all accounts this was a lively meeting. Max Kerr who was then the Board chair describes this meeting in his evidence as *the most robust discussion* that he could remember.

[31] For her part, Ms Halliday preferred to categorise this meeting as a *verbal assault*. She complains particularly about the behaviour of Mr Geoff Bridgeman (who was not then the Board chair but subsequently became Board chair) who she says subjected her *to a full on assault*.

[32] Ms Halliday also says that Mr Kerr who at the relevant time was the Board chair *failed to provide me with any support or make any effort to stop the bullying and harassment that was being inflicted on me*.

[33] Whatever the nature of this meeting, it was sufficiently unpleasant for Ms Halliday to verbally tender her resignation at the meeting and then immediately thereafter leave the meeting.

[34] The evidence is clear that Mr Kerr and one other Board member attended upon Ms Halliday and persuaded her not to resign and she subsequently returned to the meeting and withdrew her resignation.

[35] The question is whether because she felt constrained to resign in the first place there has been a failure by the employer to adequately protect her.

[36] In my opinion, any meeting where any senior employee feels so threatened as to be constrained to tender a resignation is, in principle, a meeting which has become so unpleasant for the employee as to call into question whether there is indeed a safe workplace.

[37] While I accept the Fellowship's view that Ms Halliday knew or ought to have known about the nature of the difficulties inherent in the organisation when she took the role, that in my opinion does not absolve them from the obligation to provide Ms Halliday with appropriate protection from members of her governing Board.

[38] However, while Ms Halliday clearly tendered a verbal resignation at this troubled meeting, she was persuaded to reconsider her position and within a very short space of time withdraw that resignation. Having withdrawn the resignation, Ms Halliday then proceeded with her employment and worked for more than a year until the relationship came to an end.

[39] In those circumstances, Ms Halliday has effectively affirmed the agreement and cannot subsequently be heard to rely on the alleged breach.

[40] I turn now to consider whether the behaviour of Board members since that meeting has created another instance of an unsafe workplace.

[41] I have reviewed the evidence of the allegations directed particularly at Mr Bridgeman and to a much lesser extent at Mr Kerr. I am absolutely satisfied that Mr Kerr has nothing to reproach himself for and I do not find any evidence that Mr Kerr by conduct or words created any situation of an unsafe workplace for Ms Halliday.

[42] Nor do I think that, on reflection, the evidence supports such a conclusion in respect to Mr Bridgeman either save for the behaviour of Mr Bridgeman (and perhaps others) at the November 2003 meeting which I have already dealt with.

[43] In particular, I am completely unmoved by the implication in Ms Halliday's evidence that, in writing the letter of 6 December 2004, Mr Bridgeman contributed to any suggestion that he was failing to fulfil his obligations to provide Ms Halliday with a safe workplace.

*Unjustified disadvantage*

[44] Ms Halliday says that her disadvantage claim arises from the process that Mr Bridgeman (who was by then the Board chair) used to present the allegations against Ms Halliday in the 6 December letter and secondly, in the substance of that letter.

[45] Dealing first with the issue of the process around the delivery of the letter with its complaints, Ms Halliday's evidence was that, in holding the letter back until after a national council meeting, Mr Bridgeman had ensured that everybody else knew about the complaints against Ms Halliday, except Ms Halliday herself.

[46] For his part, Mr Bridgeman said in his evidence that he held the letter back until after the national council meeting precisely because he did not want Ms Halliday to be destabilised during the national council meeting which he was sure the receipt of the letter prior to the meeting would achieve.

[47] Ms Halliday spoke of a *mutiny or conspiracy* of the national office staff against her as Chief Executive and she evidently believed that the 6 December letter from Mr Bridgeman had its genesis in this alleged mutiny or conspiracy.

[48] It is true that the information on which the 6 December letter was substantially based came from other national office staff who, according to the Fellowship, had become frustrated by the inability to get Ms Halliday to account for various financial transactions in which she personally had had some involvement.

[49] That however does not constitute a mutiny or a conspiracy and in the absence of any evidence save for Ms Halliday's bald assertion, I cannot find any reason to be critical of the Fellowship's national office staff. Indeed, I reach quite the contrary view because the evidence was that there were regular attempts to obtain information from Ms Halliday and those attempts were invariably unsuccessful. Ms Halliday herself acknowledged that she was asked for information to support financial transactions that she was personally involved with *from time to time* although she denies the evidence of the Fellowship that the requests for that information to her from other staff were *continual*.

[50] The short point is that in the absence of any response from Ms Halliday, the staff did the only proper thing and went directly to the Board chair which resulted in the issuing of the 6 December letter.

[51] The Authority does not find anything improper in the way in which the Fellowship has come upon the information which formed the basis for the complaint set out in the 6 December letter. It was proper that the employer be advised of those anxieties and in the absence of Ms Halliday responding to requests herself, the only thing to do in order that the matter could be progressed was to refer it to the Board chair.

[52] Having had the matter referred to him, the Board chair would plainly have been failing in his duty as a trustee of the Fellowship's funds if he had not taken proper steps to enquire into the matter.

[53] The next question then for determination is whether the steps that Mr Bridgeman decided to take were in fact the appropriate ones in all the circumstances.

[54] Before I deal with the substance of the letter, I want to deal with the other procedural point which relates to the way in which the 6 December letter actually came into Ms Halliday's

possession. She complains about that on the basis that she says the effect of the employer's process was to ensure that everyone else knew about the matter before she did. The letter was originally dated 3 December but altered to be 6 December. It may be that the letter was written on 3 December as a draft. Mr Bridgeman's evidence was that some of the questions that he asked Ms Halliday at the Board meeting on 4 and 5 December 2004 were attempts by him to gather further information in relation to the allegations against Ms Halliday which were then in his possession.

[55] As I have already mentioned, Mr Bridgeman says that he was disinclined to give Ms Halliday the letter before the Board meeting because he knew that it would destabilise her and he thought that insensitive given that Board meetings were inherently stressful.

[56] Accordingly, the letter had its date amended and was not seen by Ms Halliday until 9 December.

[57] I do not see anything inappropriate in the process by which Ms Halliday got notice of the complaints about her. She says that everyone else knew about the complaints except her. I do not think the evidence supports that contention at all. Certainly the originators of the complaints in national office would have been aware that they had put something in the hands of the Board chair but would have had no idea of what (if anything) he intended to do about it.

[58] In relation to other Board members and their knowledge of the complaint matters, it is difficult to see how Board members could be excluded from knowing about a serious set of allegations in respect to the Chief Executive of their own organisation. They, after all, are the employer for all practical purposes.

[59] Accordingly, I am not persuaded that there is any fault in the process by which Ms Halliday got the allegations or about the knowledge that other persons may have had about those allegations before she received the 6 December letter.

[60] I need to consider now the substance of the letter not in terms of minutely analysing each and every complaint (plainly that is not the role of the Authority) but rather in terms of establishing that a fair and defensible method has been used for formulating what the letter actually says.

[61] It is helpful if I describe first the nature of the 6 December letter. It contains a single page covering letter together with a three page attachment. The three page attachment lists a succession of nine individual allegations with detailed commentary on the issue requiring to be commented on in each case. In my opinion, the attachment fairly and reasonably sets out the matters on which the Fellowship is seeking Ms Halliday's comment.

[62] The covering letter clearly contemplates a collaborative process for resolving the issues of concern but also foreshadows the possibility of a formal disciplinary process which might include the consequence of dismissal.

[63] The letter then refers to *the disputes process that is part of your employment agreement* but it is by no means clear just what that process actually is and I will return to that point shortly.

[64] The letter then concludes with a paragraph giving Ms Halliday the opportunity of responding in writing by a named date or arranging to meet with Mr Bridgeman in company with a legal advisor or other representative.

[65] The letter emphasises that whatever form of response Ms Halliday chooses, she is entitled to seek legal or other advice.

[66] Ms Halliday in her evidence agreed that the letter I have just referred to gave her the benefit of the doubt, agreed that she was encouraged to get legal representation in the letter, and agreed that she had been offered two alternatives to respond to the allegations, either by a meeting with Mr Bridgeman or by a formal written response.

[67] With the exception of the issue of the complaints or disputes policy which I will turn to next I am not persuaded that there is anything wrong with the general formulation of the letter of 6 December and its attachment. The only question is whether the reference to the *disputes process* of Ms Halliday's employment agreement fairly and accurately signals to Ms Halliday exactly what process was contemplated.

[68] Mr Bridgeman's use of the terminology *disputes process* and his reference to that process being contained within Ms Halliday's employment agreement effectively directs us to schedule C of her employment agreement which really seems to be directed at disputes in the legal sense, that is disputes about the interpretation, application or operation of the employment agreement. However, schedule C refers both to the settlement of disputes and (emphasis mine) employment relationship problems. Clearly this is an employment relationship problem.

[69] In my opinion, the process which Mr Bridgeman set out in his 6 December letter is absolutely consistent with the process contemplated by schedule C.

[70] However, the matter is complicated by the existence of various forms of complaints policies within the Fellowship some or all of which may be seen to apply to this particular matter.

[71] Mr Bridgeman's evidence on this subject is to say the least confused. Mr Bridgeman makes reference in his written brief to the process by which the allegations against Ms Halliday were to be dealt with and refers to a complaints policy. As I have already noted, in his letter to Ms Halliday of 6 December he refers to the disputes process from the employment agreement with Ms Halliday and I have already noted that that would have been a perfectly appropriate process, in my view.

[72] However, in answer to questioning at the investigation meeting, Mr Bridgeman referred to an August 1999 document of the Fellowship called "Policy Statement – Complaints Procedures".

[73] This August 1999 policy was, immediately prior to the hearing, advanced by counsel for the Fellowship as *the complaints procedures of [the Fellowship] which was in force at the relevant time*. Presumably in reliance on this statement Counsel for the Applicant analysed the Respondent's behaviour against that 1999 policy. Yet in the closing submissions on behalf of the Fellowship, it is suggested first that there was a replacement document actually prepared by Ms Halliday and then I am invited to accept the submission that there was *no relevant policy in place and that the applicant's reliance on the August 1999 policy statement is misconceived*.

[74] In my view, all parties can be forgiven for being confused about what complaints policy was actually in place at the relevant time. The various policy documents offered by the Fellowship as the current document are confusing at best.

[75] In the Authority's view, the Fellowship set out a fair and reasonable process in its 6 December letter and whatever Mr Bridgeman thought he was doing and whatever policy document he thought he was following, what he actually said in his letter was reasonable and balanced and consistent in my judgement with Ms Halliday's employment agreement.

[76] I do not accept that it is necessary to try to identify what process, if any, was adopted by the Fellowship in getting to the point of putting the allegations to Ms Halliday. Clearly what the Fellowship did was it undertook a preliminary enquiry to establish the factual matrix on which it desired to obtain Ms Halliday's input so that the matter could be resolved to both parties satisfaction.

[77] In those respects, I think it acted fairly and reasonably and I am not disposed to be critical of the Fellowship's responses because of a perception that they may or may not have followed a particular policy which may or may not have been in force.

***Was there a constructive dismissal?***

[78] Ms Halliday alleges that the Fellowship's letter of 6 December 2004 *destroyed the trust and confidence she [Ms Halliday] had in her employer and was part of a deliberate course of action to obtain the applicant's resignation.*

[79] The categories of constructive dismissal are well known. On the facts of the present case, the first generally accepted category, namely the action of an employer in giving an employee the opportunity to resign before being dismissed, is not in issue here. There was no evidence to suggest that the Fellowship acted in this way, nor is it pleaded by Ms Halliday.

[80] However, submissions on her behalf identify the other two categories of constructive dismissal as being potentially in play on the instant fact situation, namely where an employer follows a course of conduct with the purpose of extracting a resignation from the employee and/or where a breach of duty by the employer causes the employee to resign.

[81] Dealing first with the *course of conduct* category of constructive dismissal, Ms Halliday's counsel argues that the Fellowship's behaviour, in putting the allegations of concern to Ms Halliday, was designed to facilitate Ms Halliday's resignation. I do not accept that the evidence supports that conclusion.

[82] In my opinion, the Fellowship was confronted with a series of allegations alleging, in effect, financial impropriety and was duty bound to put them to Ms Halliday in a transparent and open fashion. I have already found that the process used to put those allegations to Ms Halliday was a reasonable and fair one and I do not think that there was any evidence before the Authority that the Fellowship desired or connived at a resignation as an outcome.

[83] Indeed, I think all of the evidence suggests quite the reverse. Mr Bridgeman gave evidence, which I accept that he enjoyed the relationship he had with Ms Halliday and would have been sorry to lose her services and his letter of 6 December quite explicitly talks about working together (the Fellowship and Ms Halliday) to jointly resolve the issues of complaint.

[84] Ms Halliday's counsel next submits that the Fellowship ought not to have accepted Ms Halliday's resignation at first blush and at the very least ought to have encouraged her to stay her hand while the issues of concern were worked through.

[85] I accept that this was an option open to the Fellowship, but I do not consider that the Fellowship's failure to elect that course of action necessarily means that they have failed to meet their obligation as a good and fair employer.

[86] On this point, Mr Bridgeman's evidence was that the incomplete nature of Ms Halliday's responses in her letter of 9 December 2004 left him with little option but to recommend to the Fellowship that Ms Halliday's resignation be accepted. Presumably the implication to be taken is that, had Ms Halliday's explanation been more convincing, there might well have been some greater enthusiasm for asking Ms Halliday to reconsider her resignation.

[87] I do not think that in the circumstances the Fellowship was confronted with here, it is unreasonable or unfair for them to accept a resignation that is tendered by a senior employee after

she has been confronted with allegations of wrongdoing and in their terms appears unable to answer completely those allegations.

[88] The position might well be otherwise if the senior employee in question had raised some doubt about her resolve to resign immediately after doing it. Had that been the position, the employer would have been on notice that the employee had potentially re-thought her position and that should have encouraged the employer to reflect on its own response.

[89] Further, on the evidence before the Authority, none of the exchanges of correspondence between the parties' counsel in the period immediately after the termination of Ms Halliday's employment either raises the issue of Ms Halliday changing her position in relation to her resignation, or advances the proposition which is now advanced on her behalf in submissions, that the employer ought not to have accepted the resignation when it was proffered.

[90] In order for the Authority to be satisfied there was a course of conduct perpetrated by the employer, the principal purpose of which was to extract the resignation, there would need to be persuasive evidence in the period leading up to the resignation that such conduct existed.

[91] I accept the respondent's submission that there is no evidence of a deliberate course of action designed to obtain Ms Halliday's resignation. The proximate cause of the resignation, and indeed it would seem the only precipitating factor driving Ms Halliday's resignation, was the receipt by her of the 6 December letter from the Fellowship detailing three pages of complaints concerning her personal financial management of the Fellowship's funds.

[92] The evidence which I heard from the Fellowship's witnesses was that Ms Halliday was well thought of and that the employer was shocked at the allegations and indeed hoped that they could be satisfactorily explained and/or resolved. Nothing there suggests to me any course of action, let alone one which had as its dominant purpose, the extracting of a resignation.

[93] Finally, I need to consider the question whether this allegation of constructive dismissal is one that falls under the head of a breach of duty by the employer which has the effect of causing the employee to resign.

[94] As is well known, this category will cause the Authority to consider the answers to three questions which are:

- a) was the resignation caused by a breach of duty perpetrated by the Fellowship;
- b) was the breach serious enough to justify Ms Halliday's resignation; and
- c) was her resignation reasonably foreseeable?

[95] The first question for consideration is what breach of duty by the Fellowship is alleged and how is that breach demonstrated. Ms Halliday's submissions from her counsel proceed on the footing that the fundamental breach by the Fellowship is in respect to the Fellowship's failure to provide Ms Halliday with a safe work place. I have already found that the unsatisfactory nature of the November 2003 Board meeting, led to Ms Halliday resigning but then withdrawing that resignation and continuing in employment

[96] However, the resignation on which the employment relationship problem is based is **not** the resignation pertaining to the November 2003 Board meeting because that oral resignation was of course withdrawn. For the purposes of her claim, Ms Halliday is relying on her written resignation dated 9 December 2004, over a year later.

[97] That letter of resignation, properly construed, does not seem to rely on a failure by the Fellowship to provide Ms Halliday with a safe workplace except tangentially. The thrust of the letter seems more about Ms Halliday's disappointment that she should be confronted with these kinds of allegations. In the immediate context of the clause in the letter indicating her intention to resign, Ms Halliday refers to the employment relationship being *breached by this distrust*. That phrase I have just quoted seems central to the purpose and direction of the resignation letter.

[98] In order for the Authority to find the resignation was indeed caused by a breach of duty, it is necessary for the nature of that breach to be identified and evidence of that breach to exist.

[99] In my judgement, the breach that Ms Halliday is talking about is not a breach occasioned by an unsafe workplace, but a breach occasioned by people in the organisation raising complaints about her personal financial management and financial probity. I have already found that the process by which the Fellowship obtained the information and raised its concerns with Ms Halliday was fair and proper and so I do not accept that there has been the kind of breach of duty which I believe Ms Halliday is talking about in her letter of resignation.

[100] In the absence of any breach of the employer's duty, causing the employee to resign, there can be no constructive dismissal under this head, made out.

### ***Determination***

[101] For reasons advanced above, I have found:

- a) no breach of Ms Halliday's employment agreement;
- b) no evidence to support the claim of a breach of the Fellowship's duty to provide a safe workplace;
- c) no evidence of an unjustifiable disadvantage; and
- d) no evidence of an unjustifiable constructive dismissal.

[102] Accordingly, Ms Halliday's claim fails.

### ***Costs***

[103] Costs are reserved.

James Crichton  
Member of Employment Relations Authority