



# New Zealand Employment Relations Authority Decisions

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## Helean v Bank of New Zealand Limited (Auckland) [2011] NZERA 508; [2011] NZERA Auckland 319 (19 July 2011)

Last Updated: 23 August 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 319 5315424

BETWEEN

AND

LOUISE SANDRA HELEAN Applicant

BANK OF NEW ZEALAND LTD  
Respondent

Member of Authority: Representatives:

Investigation Meeting:

Submissions Received:

Dzintra King

George Swanepoel, Counsel for Applicant Emma Butcher, Counsel for Respondent

15 March 2011 at Whangarei 24 March 2011 at Whangarei

24 March 2011 from Applicant 24 March 2011 from Respondent

Determination:

19 July 2011

### DETERMINATION OF THE AUTHORITY

[1] The applicant, Ms Louise Helean, says she has been unjustifiably dismissed by the respondent, the Bank of New Zealand ("BNZ" or "the Bank").

[2] At the time of her dismissal Ms Helean was employed as a Private Partner in Northland. Initially she reported to Mr. Michael Hobson, the Senior Partner, BNZ Partners - Northland, and indirectly to Mr Sam Johnson, the Managing Partner, Northland.

[3] Ms Donna Stewart was initially Ms Helean's Associate. In October 2008 Mr Johnson was approached by Ms Stewart who explained that for some time she had found working with Ms Helean difficult and that her rude and abrupt manner made Ms Stewart feel undermined. Ms Stewart said she had not complained because she did not know if her complaint would be taken seriously.

[4] At that stage Mr Johnson was aware that there were plans for a change in reporting lines with the introduction of a Senior Partner. He told Ms Stewart that things were likely to change when that happened as Ms Helean would be subject to greater scrutiny and closer management. Ms Stewart felt that might help matters.

[5] At the same time Mr Johnson had a number of meetings with Ms Helean to discuss her role and how she was going about

her job. An informal Personal Improvement Plan ("PIP") was put in place.

[6] Included in the PIP were the concerns Ms Stewart had raised about Ms Helean's attitude. There were weekly meetings to discuss areas of performance. These occurred with Mr Hobson until around July when he believed a sufficient level of improvement had taken place and the plan was removed in July.

[7] In early 2010 Ms Stewart was promoted to a private bank role and her position as Senior Associate supporting Ms Helean was filled by Ms Suzanne Donaldson, who had been a Senior Associate with the Agribusiness team. Mr Johnson had been Senior Agribusiness Manager and had worked with Ms Donaldson.

[8] In early May 2010 Ms Helean told Mr Johnson her mother was very ill and shortly thereafter died. Ms Helean returned to work on 17 May and had a fall. Mr Johnson received a medical certificate stating she would not be back at work until 31 May. There was a meeting with WellNZ and a plan was drawn up regarding her return to work.

[9] On 1 June 2010 Mr Johnson had a discussion with Ms Claire Catherall about Ms Helean's behaviour to Ms Catherall during the period of sick leave. Later in June he received an email detailing her concerns. He discussed this with Mr Hobson and they agreed to raise it with Ms Helean the next time they had a meeting with her.

[10] Before this could happen Mr Johnson saw Ms Donaldson in the car park with Mr Hobson and it was evident that something was wrong. He asked her if she was alright. She told him she was very upset and told him at length about an incident that occurred with Ms Helean. Mr Hobson also spoke to Mr Johnson, saying that Ms

Stewart had spoken to him regarding her concerns about the incident and that he had subsequently spoken to Ms Donaldson. Mr Johnson told Ms Donaldson he would need the assistance of People and Culture and Ms Sue Prescott from People and Culture later spoke to Ms Donaldson. A short time later Mr Johnson received a formal complaint from Ms Donaldson.

[11] Mr Johnson forwarded it to People and Culture and received a reply from Ms Liz Watchman, who had offered to help with the matter as Mr Andy Smith, who would normally be the person supporting Mr Johnson, was on a long period of annual leave.

[12] Ms Watchman asked whether the behaviour was part of a pattern and whether other staff had observed it. He mentioned the earlier complaints made by Ms Stewart and Mr Hobson's involvement in that. Ms Watchman undertook to speak to Mr Hobson and Ms Stewart and then she would go to Whangarei and speak to Ms Donaldson and any other staff who might be helpful.

[13] Ms Watchman was to undertake a preliminary investigation to determine whether there was sufficient weight to the allegations to move to a disciplinary process.

[14] On 1 July Mr Johnson told Ms Helean there had been a complaint and she would be receiving a letter outlining the complaint. On 2 July Ms Helean was given notice that the Bank had received a complaint alleging conduct contrary to the Code of Conduct, that it concerned allegations of bullying and harassment of other employees and that an investigation into the complaints was being commenced.

[15] Ms Watchman met with Ms Stewart, Ms Donaldson, Ms Catherall, Ms Jude Bowers, Mr Gerald Farmer and Mr Geoff Grigg. She provided Mr Johnson with a summary of her findings. Ms Watchman recommended that the matter move to the disciplinary stage and that suspension should be considered.

[16] Mr Johnson said it was clear that the staff who had been spoken to were anxious and concerned about repercussions from Ms Helean.

## **7 July Meeting**

[17] Ms Helean attended with Mr Swanepoel. Ms Helean was handed a bundle of documents containing allegations. While there was some reference to events that had taken place in 2006, most of the material referred to events in 2010; much of it related to the 22 June incident. Ms Helean was suspended.

[18] A letter of 8 July confirmed the suspension and advised that she was not to contact any BNZ customers or employees other than Mr Hobson and Mr Johnson.

[19] As Mr Smith was back from leave at this stage, Ms Watchman handed the matter to him.

[20] Mr Johnson received a written response from Ms Helean, which he forwarded to Mr Smith.

## **21 July Letter**

[21] The complaint is set out in a letter of 21 July:

*The purpose of the meeting is to provide you with the opportunity to explain the allegation that [sic] have bullied and intimidated*

other BNZ employees.

*The allegation potentially represents a serious and repeated breach of the Bank's Code of Conduct and as such is considered serious misconduct. The potential breaches are as follows:*

- *That on numerous occasions your behaviour towards other BNZ employees has been intimidating which is perceived to be a breach of the NAB Corporate Principles, specifically, "we treat everyone with fairness and respect".*
- *That as a result of your behaviour other employees have felt bullied.*
- *That specifically on 22nd June 2010 your actions and behaviour towards Suzanne Donaldson was derogatory/humiliating.*

*If the allegations are substantiated, then an outcome of this process may be disciplinary action up to and including dismissal.*

[22] Aside from the reference to Ms Donaldson and the incident of 22 June, the allegations are very broad.

[23] When I asked Mr Johnson to detail the allegations he said the numerous occasions referred to included the material in the written statements supplied to Ms Helean on 7 July and his conversation with Ms Donaldson. The reference to the other employee who felt bullied was a reference to Ms Stewart. Mr Johnson said it appeared there was a consistent pattern of behaviour.

### **27 July Meeting**

[24] Mr Smith took notes of the meeting and Ms Helean and Mr Swanepoel spoke to the written responses that Ms Helean had provided.

[25] Mr Swanepoel stated that mediation would have been preferable to initiating disciplinary proceedings. Mr Smith said mediation was not appropriate. Mr Swanepoel said there were two sides to every story and Ms Helean believed she was the victim. On 22 June she had simply asked Ms Donaldson to do her job.

[26] Ms Helean said the client was high value and top priority. She had merely expressed urgency to Ms Donaldson. Ms Donaldson reacted and Ms Helean told her to calm down. Ms Helean believed she had done nothing wrong.

[27] Ms Helean commented on Ms Catherall's information, saying she did not believe she had been rude to her.

[28] Regarding the comment "*f anyone stabs me in the back I will get them 3/4 times over*", Ms Helean said that had been taken out of context; it had been made outside work and concerned personal circumstances.

[29] What the written response and the meeting notes show is that Ms Helean did not accept any responsibility. She stated that a trilogy of people were against her and that Ms Donaldson's allegation was malicious.

[30] After an adjournment Mr Johnson said Ms Helean had not presented anything in the way of mitigating circumstances or evidence that lessened the gravity of the allegations and therefore the allegations were being upheld. He said they had considered first and final warnings and demotion. There were a number of people who had a similar view of Ms Helean's behaviour and that she appeared to lack awareness and remorse and did not feel there was any desire to change. They were proposing dismissal with paid notice. He asked whether they wished to make any comments or provide any mitigating circumstances.

[31] After an adjournment Mr Swanepoel said a dismissal was not justified and that the suspension had not been appropriate. He asked if her length of service had been considered. Mr Johnson confirmed they had and he had a duty of care to other employees.

[32] Ms Helean was dismissed and paid a month's notice.

[33] Her dismissal letter stated:

*The purpose of the meeting was to hear your explanation in regard to the allegation that you have bullied and intimidated other BNZ employees.*

*The breaches are as follows:*

- a. That on numerous occasions your behaviour towards other BNZ employees has been intimidating.*
- b. That as a result of your behaviour other employees have felt bullied.*
- c. That specifically on June 22nd 2010 your actions and behaviour Suzanne Donaldson was derogatory/humiliating.*

*I gave full consideration to your explanation and the mitigating circumstances you presented. However, I was not able to accept your explanation as justification for your behaviour. The reason for this is that the BNZ Code of Conduct is freely available to all employees and I am comfortable required standards of behaviour have been made clear to you.*

*Your actions therefore constituted a breach of the Bank's Code of Conduct. The breach is as follows:*

- *NAB Corporate Principles, principally "we treat everyone with fairness and respect".*

*This breach [sic] of the Code of Conduct is considered serious misconduct.*

*Your conduct has deeply impaired the trust and confidence which is essential to your employment relationship with the Bank.*

## **Justification**

[34] The test for justification is set out in s103A. This requires the Authority to consider, on an objective basis, whether the employer's actions and how the employer acted were what a fair and reasonable employer would have done in all the circumstances.

[35] In submissions Mr Swanepoel alleged that Mr Johnson was biased against Ms Helean. I have considered this claim and find that there is no substance to it. I am satisfied that Mr Johnson conducted the disciplinary process fairly. I have taken into account that he knew Ms Donaldson and had worked with her as his Associate. I do not accept that he solicited a complaint from her.

[36] Nor do I accept that he was hostile to Ms Helean. There had been some frustration with her performance, but I do not find that, as asserted by Mr Swanepoel, Mr Johnson had a high level of annoyance that clouded his judgement.

[37] While some of the allegations were couched in general terms, Ms Helean had access to all the specific details and responded to them. The Bank was entitled to take into account material relating to earlier periods as it established a pattern of behaviour and was relevant in terms of establishing credibility.

[38] It is unfortunate that Ms Helean did not accept any responsibility. Had she done so it may be that the outcome would have differed.

[39] Ms Helean was justifiably dismissed and does not have a personal grievance.

[40] I would note that had I found she had been unjustifiably dismissed there would have been an issue of contributory behaviour to take into account; and also a failure to mitigate.

## **Costs**

[41] If the parties are unable to resolve the matter of costs the applicant is to file a memorandum within 28 days of this determination. The respondent is to file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King

Member of the Employment Relations Authority