

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 455/09
5146485

BETWEEN LORELEI HICKEY
 Applicant

AND THE CRITICAL GROUP
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Richard Harrison for Applicant
 Matthew Wolf, Director, for Respondent

Investigation Meeting: 21 July 2009

Further Information 28 July 2009 from Applicant
received:

Determination: 17 December 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The respondent (Critical Group) is an Australian based medical supplier who hired Ms Hickey, a registered nurse, to work as a part-time sales representative in its small NZ operation. Ms Hickey started work on September 29 2008 but found it difficult to establish a good working relationship with the New Zealand Sales Manager. On 24 November 2008 she telephoned managing director Matt Wolf in Australia to talk to him about these problems. He responded that he did not think things were going to work out and asked her to attend a conference call at the office the next morning.

[2] The next morning Ms Hickey and the New Zealand Sales Manager were in attendance on the call along with Mr Wolf. He told Ms Hickey that due to the economic crisis the respondent had made her position redundant. He said she would

be paid one month's pay in lieu of notice pursuant to her employment agreement. Ms Hickey was given a letter of dismissal and after she had packed up her things and returned all company property the sales manager escorted her off the premises.

[3] Because of the conversation the night before, Ms Hickey doubted the genuineness of the redundancy. Her claim is that the dismissal was both procedurally and substantively unjustified. Ms Hickey told the Authority that she had left a job as a full time school nurse to work for the respondent. Although her position was part time she had been told as recently as the beginning of November that her hours would increase the following year. After the redundancy she found herself unable to return to the position she had left to work for The Critical Group and had to take her child out of day care. She had also purchased a new car in reliance on the new job and meeting this commitment increased her financial hardship.

[4] Mr Wolf was emphatic that the redundancy was genuine. He said Critical Group had been hit hard by changes to the exchange rate. He said in February 2009 four staff (out of fourteen) were made redundant in Australia and at the same time the New Zealand staff was halved (from four to two.) Even so, the New Zealand operation continued to make a loss. After she left, he said, Ms Hickey's role was done from Australia.

[5] Mr Wolf conceded that Ms Hickey's redundancy might have been put off until February if it had not been for her call to him, which did precipitate things. He also said that he now recognises "*that New Zealand law is different*" and said that at the time, he did not know anything about requirements to consult and thought that all he had to do was comply with the redundancy provision in the agreement, which provides for one month's pay in lieu of notice in the event of redundancy.

Determination

[6] I accept that the respondent's business difficulties were the underlying cause of Ms Hickey's dismissal but I must conclude that this was brought forward as a result of the call she made to Mr Wolf on 25 November 2008. Had this not occurred it seems more likely than not that she would have remained in employment, like her colleagues, until February 2009. I do not consider that it can be said that her position

was genuinely redundant as at 25 November 2008. The dismissal was also conducted without any consultation whatsoever. It follows that it was unjustified.

Remedies

[7] I am satisfied that Ms Hickey is entitled to lost earnings for the period from November 2008 until February 2009, that is, for a period of three months.

[8] The agreed remuneration for Ms Hickey's part time role with the respondent was \$3,500.00 per month. Whilst she was still there she was already doing part-time nursing work as well and after she was made redundant she was able to gain a small increase in that work. For the three month period after her termination she therefore claims total losses of \$9,729.09.

[9] I also accept that the sudden termination of her employment, so soon after she had started with the respondent and in a context where she gave up other secure work to take the job, was very difficult for Ms Hickey to deal with. She is entitled to a small award of compensation for hurt and humiliation.

[10] By way of remedies therefore I order Critical Group to pay to Ms Hickey the following sums:

- i. \$9,729.09 gross lost earnings, and
- ii. \$2,000.00 compensation for hurt and humiliation pursuant to s. 123 of the Employment Relations Act 2000.

[11] I reserve the issue of costs. Any application for costs must be made within than 28 days of the date of this determination.

Yvonne Oldfield

Member of the Employment Relations Authority

