

[4] Before the Authority investigated this employment relationship problem Ms Hunt and Halls Pharmacy Ltd attended mediation and tried to resolve it in that way.

[5] Ms Hunt's employment began in December 2007 after she successfully applied to Mr Peter Hall for a position in his pharmacy as a technician. Mr Hall is a director and owner of Halls Pharmacy Ltd and has been a pharmacist for more than 40 years.

[6] There is no dispute in this case that at the commencement of employment both Mr Hall and Ms Hunt intended that while employed Ms Hunt would enrol for and complete the National Certificate in Pharmacy (Technician). She acknowledged to the Authority that this had been a condition of her employment.

[7] Registration as a Pharmacy Technician is a requirement under the Medicines Regulations 1984 where an assistant in a pharmacy is working in the preparation and sale of prescription medicine.

[8] Ms Hunt had previously been enrolled in the Technicians course when employed as a Trainee Pharmacist Technician by another pharmacy.

[9] During some 15 months employment with Halls Pharmacy Ltd, Ms Hunt did not complete the course. Her enrolment in it had lapsed by the time her job ended in early April 2009

[10] Ms Hunt had advised Mr Hall in the latter part of 2008 of her intention to leave New Zealand and live in Europe. For that reason nothing further was done then towards obtaining certification, but even after her plans suddenly changed nearer the end of 2008 and she stayed working with Mr Hall in his pharmacy, she still did nothing to resume and complete the course. Ms Hunt says she was unaware at the time that her enrolment had lapsed.

[11] Mr Hall in about mid February 2009 raised the matter with Ms Hunt by asking what she was doing about the course. In preparation for again enrolling in it she printed off the application form. Then, near the end of February, Ms Hunt found she had become pregnant and advised Mr Hall of this.

[12] Those circumstances, about which there is little or no dispute, led to a critical discussion between Mr Hall and Ms Hunt in which the latter claims she was told there would be no further employment for her. She claims that Mr Hall told her that was because she was unable to complete the Pharmacy Technicians course before she was due to give birth to her baby in October 2009.

[13] There is disagreement as to whether this discussion was on 6 or 7 April. Although it is not vital to fix the exact date, I find it likely to have been the latter as this was Ms Hunt's last day working at the pharmacy and Mr Hall's evidence, which I accept, is that she did not return to work on the day after the critical discussion. On 8 April by letter Ms Hunt informed Mr Hall that she had a personal grievance and would not be returning.

[14] Mr Hall claims that during their discussion on 7 April, which had taken place a little after 9am, Ms Hunt had offered to resign in acknowledgement of the fact that she could not complete the course before having her baby later in the year. Mr Hall said he simply accepted her resignation and that a notice period of three weeks for Ms Hunt to work out was agreed to immediately by her.

[15] According to Mr Hall the discussion was witnessed by his Pharmacy Manager Ms Debra Vaughan. Ms Hunt disagrees and says that by the time Ms Vaughan arrived at work she had been told there was no longer a job for her.

[16] There is no dispute that Ms Hunt did not use the word resign or any similar term and that Mr Hall did not use the word dismiss or anything like that. They each have a construction of what was said between them, and although not the same their differences are matters more of emphasis and tone in relation to the words they used rather than substance.

[17] I find from the evidence given to the Authority by Mr Hall, Ms Hunt and Ms Vaughan that the discussion which took place began with Mr Hall asking Ms Hunt what she intended doing about completing the Pharmacy Technician course. His concern about that had built up because the forms, which had been printed off for Ms Hunt's enrolment again in the course, had remained sitting on a bench or table in the pharmacy and he could see they had not been posted away.

[18] I find that after short reflection on what Mr Hall had just said Ms Hunt replied that because of her pregnancy she would not be able to complete the course and that

she realised as a result she would have to leave her job. Mr Hall I find simply expressed agreement or approval with that. Immediately after there was a brief discussion in which it was agreed that the final day of work for Ms Hunt would be the last Friday in April, then about three weeks away. This was marked on the calendar as such.

[19] Ms Vaughan, who I find had been present during the discussion and heard it, saw that Ms Hunt had become upset after the discussion and consoled her. Ms Hunt worked for the rest of the day until her partner Mr Adam Poulsen arrived to pick her up. He had become aware of what had happened earlier that day through a text message received from Ms Hunt, saying that she had lost her job. I accept that the tone of the message had determined Mr Poulsen to raise an issue with Mr Hall when he arrived at the pharmacy. However I find that after Mr Poulsen got there Ms Hunt and Ms Vaughan had indicated that he should not take the matter up, at least not at that time, and nothing was said by him.

[20] I find that it was on the next day, 8 April, that Mr Poulsen delivered to Mr Hall a letter advising that Ms Hunt was immediately ceasing work at the pharmacy and that she had a personal grievance. This was stated to be because she had been dismissed from employment for being unable to complete the course in a set time, due to her expecting a baby. In the letter Ms Hunt proposed that Mr Hall pay her 26 weeks wages (\$17,500) as an end to the grievance claim.

[21] Ms Hunt did not return to work and Mr Hall passed on her letter to his solicitors.

[22] I find from the evidence that the termination of this employment relationship was not initiated by either Ms Hunt or Mr Hall. It was neither a dismissal nor a resignation. Viewed objectively this was a termination by mutual agreement or acceptance, I find.

[23] As this outcome had happened suddenly and spontaneously it could reasonably be expected that Ms Hunt or Mr Hall could have an opportunity to reconsider whether it was what they wanted. However that opportunity was cut off by Ms Hunt with the letter of 8 April requesting payment of six months remuneration and rejecting the further employment as a shop assistant talked about if not offered by Mr

Hall. Mr Hall regarded the demand as extortionate and put the letter in the hands of his solicitors.

[24] I find there was nothing unreasonable about Mr Hall raising the issue of Ms Hunt's enrolment in the Technicians course and requesting her to comply with the agreed condition of her employment in relation to that. I find that there was no unilateral declaration by Mr Hall that the employment of Ms Hunt was at an end. Her response was compelled by the circumstance that she had become pregnant. From that fact she deduced that her employment would end because she could not satisfy a condition of it. Mr Hall merely affirmed that he had the same view of the situation.

[25] Unfortunately there was no written employment agreement providing a period of notice, so Mr Hall proposed three weeks or the period until the end of the month for that purpose. Ms Hunt accepted that.

[26] Employer and employee parties can agree to end their employment relationship, although it will usually be reasonable and a matter of good faith to leave room for reconsideration of that by either party immediately afterwards. Unfortunately Ms Hunt assumed that she had been dismissed and immediately claimed a large amount of money, by doing so precluding any possibility of review by Mr Hall of the notice period or any firm offer of alternative employment, as I find he had suggested.

Determination

[27] For the above reasons I find that Ms Hunt does not have a personal grievance, whether of unjustified dismissal or any other kind. She was not dismissed and had no action taken against her unjustifiably to her disadvantage.

[28] No orders are therefore required to be made against Halls Pharmacy Ltd to resolve this employment relationship problem. At the close of the investigation meeting Ms Barden said she would take instructions about claiming costs, so that question is reserved. Any application for costs is to be made within 14 days of the date of this determination.

A Dumbleton
Member of the Employment Relations Authority