

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 4/08
5086989

BETWEEN SHARON ANNE JOHNSON
Applicant

AND NEW ZEALAND RACING
BOARD
Respondent

Member of Authority: Philip Cheyne

Representatives: Trisha Aubrey and Sharon Johnson for Applicant
Katie Elkin and Megan Richards for Respondent

Submissions received: By teleconference on 15 January 2008

Determination: 16 January 2008

DETERMINATION OF THE AUTHORITY

[1] This determination resolves an application for a problem to be removed to the Employment Court for the Court to hear and determine it without the Authority investigating the problem. The application is made by Sharon Johnson, the original applicant. The respondent neither consents to nor opposes the application and will abide by the order of the Authority.

[2] Before assessing the grounds for removal, it is helpful to explain the background.

[3] Ms Johnson lodged a statement of problem on 3 August 2007. The New Zealand Racing Board lodged a reply on 23 August 2007. A phone conference was then organised and held on 4 October 2007. Ms Johnson was represented by Trisha Aubrey and the New Zealand Racing Board was represented by its solicitors (Katie Elkin). Two issues particularly were discussed: whether there should be further mediation and the adequacy of the statement of problem in informing the Authority and the respondent as to the nature of the employment relationship problem to be

investigated. However, Ms Aubrey said that she had not received her copy of a fax from Ms Elkin to the Authority. I therefore decided to give Ms Aubrey a chance to make written submissions about these points, which she did after receiving a replacement copy of the fax. Having considered the submissions, I issued a direction requiring further mediation and an amended statement of problem (and therefore allowing an amended statement in reply) before any further investigation.

[4] The submissions on behalf of Ms Johnson also asked for a different member to be assigned. Because I raised a concern about the adequacy of the statement of problem during the phone conference and a similar point was made in Ms Elkin's fax, the applicant appeared to think that there had been some collusion between us. That reflects a misunderstanding. The statement of problem does not provide sufficient detail to ensure that the Authority and the respondent are fully, fairly and clearly informed about the facts giving rise to the problem. Properly, Ms Elkin raised that concern in the fax to the Authority. It was however already a point I had noted for discussion with the parties when I looked at the file before seeing the fax. There was no basis for me to recuse myself and I declined to do so.

[5] Apparently, Ms Aubrey made a complaint to the Office of the Ombudsmen. I am not aware of the details of the complaint but I presume it is about the Authority. On 22 November 2007, Ms Aubrey sent an email to the Authority saying that an Assistant Ombudsman had referred her to rights under the Employment Relations Act 2000, in particular section 178 which provides for removal of matters to the Employment Court. Ms Aubrey asked for that to be applied to Ms Johnson's problem. Later, an application for removal and the prescribed fee were received.

[6] As mentioned above, counsel wrote to say that the respondent would abide by the Authority's decision regarding removal. The parties were given an opportunity to make submissions during a phone conference on 15 January 2008. Other matters are mentioned below, but Ms Johnson also said that counsel's letter should not be treated as a statement in reply to the removal application. As a matter of natural justice, the Authority will give all parties an opportunity to comment on an application such as the present one before a determination is made. While the Employment Relations Authority Regulations 2000 say that a reply to a removal application should be by statement in reply, counsel's letter clearly enunciates the respondent's position and I will treat it as a statement in reply. To do otherwise would be inconsistent with the

Authority's role of determining matters according to their substantial merit without regard to technicalities.

Grounds for removal

[7] It is common ground that there are no existing proceedings between the parties already before the Court.

[8] During the phone conference, Ms Johnson said that she regarded the case as of such a nature and such urgency that it is in the public interest for it to be removed immediately to the Court. Ms Aubrey argued that an important question of law is likely to arise.

[9] These matters must be resolved by reference to the existing statement of problem.

[10] The problem is described as *Mediation talks not conclusive – no formal structures for finalising. Issues within complaint not addressed – My stress leave of 30 days (no communication or help given). The facts that have given rise to this problem are said to be Workplace hazards not addressed – Bullied & abused in workplace Disadvantaged (ie; hours reduced) – Security hazards not addressed – Privacy Act of 1993 not adhered to – intimidation/discrimination against, concerns not taken seriously, Denied attendance performance review. Various financial and other remedies are sought and there is reference to health and safety and privacy legislation.*

[11] From other material lodged with the statement of problem, it seems that Ms Johnson voiced concerns about security arrangements (in particular, wanting a lock on a door) to management but a lock was not installed for some time. In February 2007 Ms Johnson apparently found a quantity of an illegal drug in her workplace which she took to the police and reported to management. An email between two of the respondent's managers about this indicates some scepticism on the part of one of them about the truth of Ms Johnson's report. It seems that Ms Johnson was also dissatisfied with the amount of work she was receiving. Her notation on a copy of an email suggests she was promised 40 hours per week. That February 2007 email indicates that the employment agreement permitted the employer to determine the weekly hours but Ms Johnson was bullying her manager for more work and causing (unspecified) trouble with other staff.

[12] There is more information in the statement in reply. It appears there was mediation in May 2007 following which the respondent took and offered a number of steps to resolve the problems raised by Ms Johnson but not by way of binding settlement. Ms Johnson was later on sick leave for a month. A medical certificate reported Ms Johnson as requiring stress leave. When Ms Johnson returned to work in August 2007, the respondent apparently asked and Ms Johnson agreed to have a medical assessment verifying her fitness for work. The respondent then received some communication from Ms Johnson's advocate questioning the reason for the medical assessment. Overlapping these developments, Ms Johnson's position was disestablished as a result of restructuring and her employment was terminated for redundancy. No grievance claim in respect of this last development is before the Authority.

[13] While it is unlikely that no question of law will be considered during an investigation into the matters apparent from the review above it is far from obvious that any important question of law is likely to arise other than incidentally. It follows that this ground for removing the matter to the Employment Court is not made out.

[14] I do not accept that Ms Johnson's case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court. Although Ms Johnson's problem remains ill defined, the case is obviously important to her. During the phone conference she suggested that the case raises important issues about health and safety that are more widely applicable in the respondent's business. That is not apparent at this point from the material before the Authority but, even if it were so, there is no aspect of urgency to meet the statutory ground for removal.

[15] It would be possible for the Authority to order removal if it was thought that, in all the circumstances, the Court should determine the matter. There is nothing about this matter that makes it more suited to litigation before the Court rather than investigation by the Authority. To the contrary, an Authority investigation would help unearth more clearly what is Ms Johnson's problem.

Conclusion

[16] There are no grounds to order the removal of this matter to the Employment Court so Ms Johnson's application is declined.

[17] Costs are reserved.

[18] The directions in the notice dated 10 October 2007 remain extant. Ms Johnson or her representative should contact the mediation service to progress matters.

Philip Cheyne
Member of the Employment Relations Authority