

[4] The husband and wife team were the founders of MSS and worked with the society until they retired to live in India in 2009. MSS is run largely by volunteers.

13 September 2008 Incident

[5] The trigger for events leading to Mr Kumar's dismissal was a disagreement between Mr Kumar and Mrs Nair that took place on 13 September 2008. On that day MSS held its annual day celebration. Towards the end of the day when staff and volunteers were cleaning up Mr Kumar received a phone call from his wife, who was unwell and had returned home but did not have house keys. Mr Kumar said he asked Mrs Nair if he could leave early and go home to attend to his wife. He says that Mrs Nair rudely refused and said he had to stay until she was ready to leave. A few minutes later he asked her again and said his wife was a diabetic and cancer patient. Mr Kumar says Mrs Nair yelled and shouted at him and publicly humiliated him. She refused permission to leave. Mr Kumar then spoke to Mr Nair who gave him permission to leave.

[6] This version of events is strongly contested. Mrs Nair contends that Mr Kumar spoke to her in an impolite and inappropriate manner. She was concerned about what had happened and wrote a letter to the Chair of the Executive Committee asking that advice be given "on a way forward which is conducive to a supportive and sustainable environment for staff and the communities we serve".

[7] Mr Nair said he was approached by a number of people who expressed their concerns about what had happened. He asked them to put their concerns in writing. These accounts bear out Mrs Nair's version of events. Mr Chris Kunanyagam wrote that Mr. Kumar had approached Mrs Nair and said he was leaving and that Mrs Nair was to take charge of the swipe card for the hall that had been hired for the occasion. Mrs Nair had told him that as he was the co-ordinator he had the responsibility of locking up and could wait until the tidying up was over. Mr Kumar reiterated that he was leaving and Mrs Nair said it would not take long to lock up. Mr Kumar became agitated, raised his voice and was disrespectful. Mr Kumar was shown these statements.

[8] He spoke with two people who provided contrary statements, which he later provided to the Committee.

[9] I prefer Mrs Nair's version and that of the people who spoke to Mr Nair to that proffered by Mr Kumar.

Subsequent Events

[10] On 16 September Mr Kumar was asked to attend a meeting with the Committee that day. It seems that there may have been a miscommunication regarding the notification to Mr Kumar the previous day about the meeting.

[11] Mr Kumar responded to the email regarding the meeting by referring to the incident of 13 September. He wrote:

Hope this is not a personal vindictive response of Mrs Nair to my request to her not to shout at me and treat me rudely like her personal servant.

..

I was in fact awaiting from her an apology of sorts to me about her public display of rudeness/shouting & immaturity.

[12] On 18 September Mr Sriram gave Mr Kumar a letter saying the Committee had received his reply to the email of 16 September and that a response was enclosed. Mr Kumar was asked to go through the response and reply within 7 working days. Mr Kumar said the response was not attached and he did not receive it until 22 September when it was faxed to him.

[13] On 18 September Mrs Nair gave Mr Kumar a written employment warning. It is agreed that there had been no prior discussion before this warning was issued. Mr Kumar took grave exception to the contents of the warning.

[14] The warning refers to his "rude, loud, disrespectful, intimidating, confrontational and bizarre behaviour". It noted that he was not a team player and was in continuous conflict with other staff. His work ethic was said to be lacking and his confrontational attitude was not conducive to the sustainability of the organisation.

It was recommended that he attend an anger management course to curb his aggressive behaviour which was frightening to the staff.

[15] Mr Kumar replied to this letter saying he had taken very serious note “of the content, rude language and the aggressive uncalled for angry tone”. He said the letter was “highly opinionated, full of generalisations, abstract thoughts, strong negative words describing my lack of skills/qualities/behaviour thereby debasing me as a person/staff at MSS.” He concluded by saying “I once again reiterate my strong exception to your immature, unwise and uncalled for contents of your warning g letter, and urge you to withdraw the said letter”.

[16] On 24 September 2008 Mr Kumar emailed the Committee members about the meeting he had not attended to discuss his work. He wrote:

It is now my firm belief that it was a deliberate and intentional move by the manager to involve the Committee to escape from her professional responsibilities/duties and put me under undue duress to cover-up and impulsive avoidable public demonstration of her true character/actions.

...

I am quite certain that the credit for this entire regretful saga rests with the manager and her stubbornness in not owning up to her rude behaviour/mistake. The uncalled for, unprofessional, ameteurish [sic] actions she has taken till date from 13/09/08 onwards to carefully prepare grounds to vilify me have not only caused MSS an embarrassment but have tremendously pained, humiliated, emotionally stressed and scarred both me & my wife.

[17] On 2 October Mr Nair emailed the Committee and Mr Kumar saying he had contacted an employment lawyer and when asked what the Committee wanted as an outcome said “the problem should be amicably settled and culminate in a win win situation.” Ms Latimer also suggested that Mr Nair write to Mt Kumar prior to meeting on 30 October.

[18] Mr Nair wrote saying that the current situation was not tenable and it was necessary to meet to try and resolve the issues. He suggested that Mr Kumar seek representation and the final paragraph reads:

I sincerely hope that we all work towards the resolution of issues in the interests of MSS and its reputation, not forgetting your own and that of the manager's self esteem and professional reputation.

[19] Mr Kumar denies that Mr Nair gave him this letter or spoke to him about it. I accept Mr Nair's account of the events of 29 September.

[20] Mr Nair said that after he gave Mr Kumar the letter he said he did not want to go along with the proposed meeting and wanted both sides to withdraw the letters that had been written and that he wanted to leave with the payment of four weeks' salary in lieu of notice. He said he wanted to sleep on it and give Mr Nair his decision the following day. Mr Nair agreed.

[21] He met with Mr Kumar the next day. Mr Kumar said he had already started looking for an alternative position and that as soon as he found one he wanted to depart with four weeks' pay. He wanted to do this because jobs might not be easy to come by and he would like to continue working. He promised to carry out his responsibilities peacefully and efficiently. Mr Nair agreed subject to the Executive Committee's approval.

[22] On 2 October the Committee received an email saying that Mr Nair had tried to "pressurise" him by saying he could consult an employment lawyer and that he had never offered to resign. Mr Nair replied saying that they had differing recollections of what had been said on 29 September. He said it was imperative that a meeting take place and that suggested that Mr Kumar seek representation. He asked Mr Kumar to contact him regarding a meeting.

[23] Mr Kumar had been on sick leave. On 10 October Mr Nair emailed Mr Kumar saying he wanted to meet with him on 13 October and that the purpose of the meeting was to discuss his "serious concerns and it is not tenable for you to continue

in employment.” He continued saying “My current view is that there is a total breakdown of trust and confidence in our relationship.”

[24] On 11 October Mr Kumar emailed Mr Nair referring to his “suspicion of your ulterior motives” and saying he had nothing further to add.

[25] On 17 October Mr Nair wrote to Mr Kumar advising him that a meeting would take place on 23 October and that its purpose was to discuss concerns regarding his employment. Mr Nair referred to conversations he had had with Mr Kumar regarding his conduct and attitude and his inability to work harmoniously with staff and volunteers. He said it seemed clear that there was no trust and confidence in the employment relationship. He referred to the 13 September incident with Mrs Nair and also two incidents where he had met with Mr Kumar and Mr Kumar had behaved negatively. At the hearing Mr Kumar denied that these incidents had taken place. I prefer Mr Nair’s evidence. Mr Nair referred to the fact that Mr Kumar had not conducted a single workshop which was what he had been employed to do and to Mr Kumar’s poor communication skills. He said;

It seems that the only way you can express any concern or frustration is by being disrespectful, angry, vindictive and making unnecessary personal comments. This seems to be your style in both written form and verbally.

[26] Mr Kumar agreed to attend the meeting and provided a written response on 21 October.

Dismissal

[27] The disciplinary meeting took place on 23 October. It was attended by Mr Nair, who had been authorised to deal with the matter by the Committee, and Ms Latimer. Mr Kumar attended with a support person. Mr Kumar was asked whether he wanted to add anything further or whether he wanted to comment on anything, given Mr Nair’s preliminary conclusion that there was no longer trust and confidence in the relationship and that it would be untenable for the employment relationship to continue.

[28] Mr Nair in a letter dated 28 October summed up the meeting. He said Mr Kumar denied that discussions had taken place, denied receiving the 29 September letter and denied that there was any difficulty in the employment relationship. He said Mr Kumar continued to indicate lack of trust and confidence in MSS and in the manager with whom he would have to work. He referred to the tone and manner of his responses and a lack of any remorse. He concluded that as there was no longer any trust and confidence the employment relationship had to be terminated.

Decision

[29] Section 103A 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 do in all the circumstances at the time the dismissal or action occurred.

[30] Reading Mr Kumar's correspondence it is abundantly clear that the tone of that correspondence indicates a lack of trust and confidence, not just in the manager, but also in Mr Nair and the Committee.

[31] Mr Nair made efforts to resolve the matter amicably and sensibly. Unfortunately, these were not responded to in kind by Mr Kumar. It was not possible, given the views and attitudes expressed by Mr Kumar towards his employer, for that relationship to continue. There was a mutual lack of trust and confidence.

[32] The dismissal was justified.

[33] Section 122 Employment Relations Act 2000 enables a finding to be made that there is a personal grievance of a type other than that alleged. The issuing of the employment warning was an unjustified action constituting a disadvantage. There had been no discussion with Mr Kumar prior to the issuing of that warning. Mr Kumar is entitled to be compensated for the hurt and humiliation caused by that. The respondent is to pay Mr Kumar the sum of \$2,000 pursuant to s 123 (1) (c) (1).

[34] Mr Kumar has claimed that he is owed six days' payment in lieu. I find that there is no contractual basis for this claim.

Costs

[35] I have considered the issue of costs. Mr Kumar represented himself and Ms Latimer provided her services to the respondent on a voluntary basis. In the circumstances, no costs award will be made.

Dzintra King

Member of the Employment Relations Authority